

# NATURAL RIGHTS DEVELOPMENT<sup>1</sup>

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## ABSTRACT

*Natural Rights and Natural Law have a long but at times confusing history. We take a brief examination of this area herein and provide a conjecture that Natural or Nature has a fundamental basis in the genomic structure of the limbic system in Homo sapiens and in fact in all species. We compare this conjecture to the philosophic interpretations over time and then contrast this with the Social Justice movement which is in stark contradistinction.*

## 1 INTRODUCTION

Why study Natural Rights theory? What purpose does it serve? What do we mean by Natural, Nature? Have not these concepts been aborted in the more contemporary view of an evolving historicity, namely humans are changing and so too are their views of what is a right and what is not. One need just to consider nothing more than a political election where the contenders make rights claims for almost everything. Rights to homes, education, medical care, incomes, reproductive acts and sequalae, voting, immigration and so forth. There have become so many "rights" that one wonders if it would be better just to list what you cannot do or have. Like the Ten Commandments. Short, simple, and leave it at that.

But what, one may inquire, is Natural, or Nature? Humans are growing in a linear temporal manner and human ideas are evolving and one wonders what is this inherent faculty which humans have that was the same now as it was a millennium ago or even two or three? Those Ten Commandments were allegedly brought down quite a while back and would it then not be natural for us to have changed enough so that perhaps we could amend a couple of them?

After all, look at the dog. It came from a wolf. There are still wolves, but few are kept as pets. They have the tendency to attack and consume. But wait, is that not that Nature of a wolf. Yet, in a dog, has not time and human interaction changed that Nature? We keep using the term Nature, a term which has some type of ahistoricity, yet here we see an ahistorical term applied to a temporal change. Is this a fundamental non sequitur?

Our argument is simple. The term Nature is an artifact of the past but it can now take on a reality in fact.

Consider the statement; humans walk upright. The comparable statement is that; it is in the Nature of a human to walk upright. But as we know today, scientifically, the genetic structure of human genes results in processes, functions, and structures that make human walk upright. Namely the Nature of a human is to walk upright is the same as the genetic predispositions of humans to walk upright. Genetic structure and functioning are then the basis of the term Nature. We argue they are the sole basis.

It is in the Nature of a rose to have thorns. The genetic makeup of the rose is such that it has the persistent propensity to have thorns. Thus, Nature and Genetics are isomorphic and isometric.

## 2 SOME COMMENTATORS

### 2.1 MIDDLE AGES

The development of Natural Rights theories has a somewhat uncertain history. There seems to be an ongoing examination of this effort and the work of Tierney appears to be the clearest. We begin with Makinen who makes note of some earlier Middle Ages discussion on rights. Namely he notes:

*Henry of Ghent, for instance, posed in his Quodlibet IX the question (q. 26) "whether one condemned to death can licitly flee" (c. 1289). Henry treated the question by distinguishing between the rights of the judge and the rights of the condemned person in the body of the criminal. The judge has the power (potestas) of capturing, holding, and executing the condemned person, whereas the criminal has the power of using his body so as to preserve his life as long as he does not injure another*

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This is an interesting analysis. It states on the one hand the right to exercise control over another while have the one being controlled having the right to prevent or negate the actions. There is here the Natural Right to preserve one's life. It can overcome one need to obey lawful authority.

He then continues:

*In his article "Origins of Natural Rights Language: Texts and Contexts, 1150–1250" (1989), Brian Tierney argues that "the decretists put forward a subjective definition of a natural right in terms of faculty, ability, or power of individual persons associated with reason and moral discernment." According to Tierney, this canonistic teaching on natural rights influenced both later philosophical and juridical discussions on rights. Tierney based his argument, on the one hand, on his study of the twofold textual material of the decretists:*

*(1) their definitions of ius naturale in Gratian's Decretum (c. 1140) and*

*(2) their analyses of the example of the poor in extreme necessity using the canon law principles concerned.*

*On the other hand, Tierney has also studied late medieval and early modern rights discourse and shown the decretists' influence on it.*

The Decretum was a compilation of Canon laws compiled by Gratian. By the time he had compiled them they were a collection of disparate and often conflicting laws. This was an attempt to collect them in a logical manner. There does not seem to be any overt attempt to deal with a Natural Right issue but notwithstanding the influence has been argued.

Natural Rights was an evolution in the understanding of two words; ius and dominium. Ius was originally justice, and namely the justice handed down by the state. Dominium was control, control by the power of the state, in most cases the ruler, or control by the Church, ultimately the Pope. But with the separation of subject and citizen, between the power of the Papacy can the Conciliar movements rebirth, individual thought and the power of the individual began to arise, and with it the concept of rights versus duties.

## 2.2 AQUINAS

Aquinas was a promulgator of Aristotle and in a sense, he transliterated between Aristotle and then current Christian Theology. The approach of Aquinas was to

take the Aristotelian terms and approaches and to lay upon them the fundamental Christian dogma. As Lisska noted:

*In the tradition of human rights theory, scholars often look to the texts of Thomas Aquinas, especially those passages in which Aquinas discusses lex naturalis, jus naturale, and jus positivum, as foundation stones for the development of human rights in western political theory. While this scholarly suggestion is correct as far as it goes, nonetheless the story of rights theory rooted in Aquinas is more nuanced than what one sometimes finds in political philosophy writings. This essay is an attempt to sort out several conceptual complexities that arise when discussing how Aquinas's texts contributed to the development of human rights theory and practice.*

*To begin, one needs to distinguish between rights that are called "objective" and those rights central to Enlightenment philosophy that are often referred to as "subjective." Secondly, an important distinction arises between rights that are considered as "negative" versus those referred to as "positive." Thirdly, there is the further conceptual difference between "natural" rights and "positive" rights. While there is some conceptual overlap within these categories, nonetheless these sets of concepts are distinct to a large extent, thus requiring substantive analysis.*

Aquinas does not articulate true Natural Rights. He seems to wander about and uses the claim to a Natural Law to delimit those rights, whatever they may be. But the subjective rights above is a recognition of individual rights. The concern always seems to be; what is the source of these rights? In the Middle Ages the source was always Divine, directly. There were to be no intermediary constructs. God gave the rights; thus, they were Natural and part of Human Nature, Divine in origin.

## 2.3 OCKHAM

Ockham, as we have presented elsewhere, is the fundamental thinker who separates the past from the present on the thinking of Natural Rights. Ockham was driven there not necessarily by his nominalism, but more clearly by his battles with the Avignon Papacy. Dealing with the topic of property, use, ownership, led to an understanding of rights as relating to the individual, as an extension, not as a limitation. As Van Duffel and Robinson have noted:

*Hence discussion of Ockham's political work has remained predominantly the territory of specialists in*

medieval thought. Surely Ockham's theory deserves more attention, not only because of its immense influence, but also because its nature and its significance in the history of natural rights doctrines remain highly controversial. Many of the discussions of the Franciscan doctrine of rights in general and Ockham's contribution to this tradition in particular have focused on the strong association between rights and dominium (and between rights and potestas).

The Franciscans often claimed to have no rights in the things they used because having a right for them meant having dominium (insofar as a right-holder is, *ipso facto*, on the dominant side of a relationship), and having dominium was, for them, incompatible with the life of poverty and humility that they had vowed to observe. Ockham has sometimes been depicted as a radical innovator. His nominalism supposedly led to a "social atomism" in political discourse, while his voluntarism<sup>2</sup> would have led him to exalt God's will and that of human beings. Consequently, Ockham would have had no place for a genuine theory of natural law; instead he filled the resulting void with a body of natural rights, marking off domains where human wills prevail. Ockham is thus sometimes regarded as the proponent of a view that sees an intrinsic link between rights and "freedom" or "sovereignty".

He continues:

However, even if the most general power or natural right of using can be restricted by laws, it cannot be emptied totally. Ockham, again following what was the common belief of the day, thought that in times of extreme necessity-in case someone would face certain death because of lack of access to some good-all things were common, so that anyone in such a condition could licitly use whatever he needed to avoid death. Outside cases of extreme necessity, however, if someone is prevented from using some determinate temporal thing only by the fact that it is another's, "the permission alone of the person whose thing it is, which is expressed through a licence, suffices for this: that he may use that thing by right of heaven" (OND 65.221-223, 2:578)<sup>3</sup>.

Permission of an owner is thus sufficient, according to this reasoning, to "untie" the natural right of using things that anyone has at all times regarding all things (OND 65.218-227). It is this kind of use, licit use by

right of heaven, that the Friars Minor, according to Ockham, have in the things they use

Burns has noted:

Prescriptive rights were strengthened by a widespread but not yet very well-developed belief in natural rights. That men ought to be free and that they ought to have safe possession of their goods slowly took shape as philosophical truths during the fourteenth century. William of Ockham, by locating freedom within what he called 'second mode' natural law, established it as a necessary part of the best state. Because freedom was part of the law which rational men would observe if not subjected to other pressures, states needed substantial justification to depart from it.

From different assumptions, the natural right to property was articulated by John of Paris and then by Ockham's opponents in the course of the poverty conflict. Both rights were brought together by Gerson in his *De vita spirituali animae*, in what has been hailed as the first true natural rights theory:

There is a natural dominium as a gift from God, by which every creature has an *ius* directly from God to take inferior things into its own use for its own preservation. Each has this *ius* as a result of a fair and irrevocable justice, maintained in its original purity, or a natural integrity ... To this dominium the dominium of liberty can also be assimilated, which is an unrestrained *facultas* given by God.

If natural rights were slow in finding adequate philosophical expression, they were understood to exist and translated into royal duties before Gerson's day. Ockham deduced from natural freedom the consequence that a king ruling by will alone was prevented from using his subjects' lives or goods for his own advantage. Oresme, from a vague right to property based in divine law, concluded that 'A Prince should not enlarge his dominion over his subjects, should not overtax them or seize their goods, should allow or grant them liberties, and should not interfere with them or use his plenary powers, but only a power regulated by law and custom.'

But if subjects could transpose their rights into royal duties, kings could deflect those duties back on to the subjects. So that they might perform adequately their task of protecting their subjects' lives, liberties and goods against all other parties - a task which in

<sup>2</sup> Voluntarism is the theory that the will is the dominant factor in the individual universe. The will dominates the intellect. However, these constructs evoke classic Thomist and Aristotelean constructs.

<sup>3</sup> OND is Ockham's Work of Ninety Days.

*practice constituted the chief pillar of the people's reverence for their king — the French and English monarchs of the later middle ages demanded sacrifices of lesser rights in the interests of the greater. Occasionally this meant willingness to die for the defence of the realm; far more commonly, it meant the acceptance of taxation.*

*Because taxation involved an infringement of prescriptive and natural rights, it could not occur without the subjects' consent — which in any case was essential on practical grounds. The Roman law tag *quod omnes tangit ab omnibus debet approbari* (what touches all should be approved by all) came swiftly to mind as a means of expressing the principle (though the question of how far beyond this taxation was affected by Roman law is still a matter of earnest debate among historians).*

*In England, the minority of Henry III saw the *communitas regni* assent in grants of subsidy to the regency government; by 1295, the representation of shires and boroughs in this act of assent was formalised. In the 1320s, the author of the *Modus Tenendi Parliamentum* was contending that the knights of the shire had a louder voice in the act of consent than the magnates, since they represented the whole realm, while the magnates spoke only for themselves.*

*The implications of representation were now well understood. By accepting the principles of consent and representation, the localities of England had turned the *communitas regni* from a baronial club to an assembly which expressed the will of all tax-payers, hence of the political nation as a whole. Since king and people negotiated within the same frame of reference, thereafter only taxation of the clergy re-opened the question of rights. For the laity, each demand for a subsidy began a strictly political battle; neither side had recourse to fundamental questioning of the system.*

Reid poses the following all important question:

*The term *ius naturale* in the writings of such classical and postclassical authors as Cicero or Ulpian meant "natural law" or "natural order," not "natural right. By the seventeenth century, however, the term clearly embraced subjective rights as well. When and under what circumstances, then, did the natural law of Cicero and Ulpian also acquire the meaning of natural rights?*

Rights went from control to enablement, from dominium over a subject to the freedom of an individual. Reid continues:

*Tierney's analysis covers the entire corpus of Ockham's political writings. He finds that Ockham's contribution to the development of rights in the West was crucial. Indeed, Tierney proposes an entirely new synthesis concerning Ockham's role in the shaping of the Western rights tradition. Tierney demonstrates the falsity of the idea that Ockham replaced an ordered theory of rational justice with a doctrine of rights dependent on blind and inscrutable will. 96 Rather, Ockham creatively reworked the natural-law tradition he had inherited from his thirteenth-century predecessors, and thereby produced a theory of natural rights that had nature and reason as its twin foundations*

He continues:

*Tierney's treatment of Ockham on political rights is similarly original and provocative. He shows that Ockham argued that both the emperor and the pope were obliged to respect the rights of their subjects.<sup>109</sup> Ockham maintained that the emperor derived his power from the people, who "could not confer more power than it actually possessed."<sup>110</sup> A provision of the canon law of corporations, Ockham continued, limited this power, holding that a governing majority and, by extension, the emperor-could infringe on the rights of the other members only in the case of "necessary actions."<sup>111</sup> The pope, furthermore, was limited by the canonistic maxim that no one was to be deprived of rights "without fault" (*sine culpa*),<sup>112</sup> and the fundamental principle of evangelical liberty:*

*"Ockham's favorite way of proving [the restraints on papal power] was to argue that the evangelical liberty proclaimed in scripture limited papal power by safeguarding the natural and civil rights of the pope's subjects.... Christian law was a law of liberty, indeed, "a law of perfect liberty" according to the Epistle of James. Paul too wrote of "the freedom that we have in Christ Jesus" and declared that "Where the spirit of the Lord is, there is liberty." But, if the pope could command anything not contrary to divine and natural law, then Christian law would be a law of most horrid servitude.*

*All Christians would be made slaves of the supreme pontiff, for to command anything not forbidden by divine and natural law was precisely the kind of power that a master held over his slaves.... The proper limits to papal power were set by the liberties and temporal rights of emperors, kings, princes and other persons,*

*rights that came to them from natural law or the law of nations or civil law. Without cause and without fault the pope ought not to disturb these rights of others* "(quoted from Tierney)

Christianity was fundamentally different than Judaism and Muslimism. If one follows Strauss, he argues that the latter two were religions of laws whereas Christianity was a religion of faith<sup>4</sup>. Thus, it can be argued that Christianity placed the burden on the individual to follow a way to salvation, it did not lay forth a set or code of strict laws, it was a daily challenge to understand the Faith and act accordingly.

## 2.4 WYCLIFFE

Wycliffe (or Wyclif and other variants) was a late 14<sup>th</sup> century cleric who amongst other things translated the Bible into Middle English. He was befriended by John of Gaunt and in turn by Chaucer. His views were on the verge of being heretical and to some degree he had pushed the edge of the political thorny envelop. Yet he too examined the complexities of laws and the political domain. As Lahey has noted:

*On the political level, John Wyclif advocates two social classes-property owners (including those who use what others own) and those who live in apostolic poverty, owning nothing privately. He believes the duty of the just civil lord or king is to see that the apostolically poor, who are all members of the church, are supplied with alms necessary for acquiring the goods they share, and to protect their pure poverty. The king's duty is also to ensure that society's civil owners can live harmoniously together and with the apostolically poor, free from any threats.*

*The co-existence of these two classes under the protection of the king suggests an attitude of toleration towards property ownership, which Wyclif believes to be founded in Original Sin. Further, his doctrine of Grace-founded dominium requires the king to serve as moral exemplar for his subjects, to refrain from war for any reason but strictly defined defense of the realm, and to keep the nation's laws and taxes to a bare minimum. And given the still common social strictures of feudalism, Wyclif's argument that no civil dominium, including both property ownership and civil jurisdiction, can be granted in perpetuity overturns established feudal machinery.*

He continues:

*At the outset of De Mandatis Divinis Wyclif explains that **ius** is a term used when something is just. To show that iustitia is an effect of being in accord with ius, Wyclif suggests we look at the three senses of the term **ius**.*

*First, it is used to describe **any real created nature justly exercised over a subject** (servum), including the use of something/someone.*

*Second, it is used to describe the **power of a lord to use something/someone** (a right of use).*

*Finally, it is used to refer to the **uncreated truth paradigmatic for all iustitia**, "which some call the art of the fair and the good, and some a holy sanction, which commands the upright and forbids the opposite, but some more completely say that **ius is the constant and perpetual will granting to each what is their own**."*

*Some have used this last definition of iustitia, but incorrectly. We should recognize that iustitia is an effect of ius, for the only thing prior to iustitia according to the jurist's definition is the constant will to give to everyone their due. Can this constant will be anything other than ius? Here Wyclif is extrapolating from Justinian's Institutes, where in the first sentence the emperor begins with the working Roman definition of iustitia just given.*

*Perhaps Wyclif is reasoning that if created iustitia is founded in a constant human will, the uncreated and purer divine iustitia must be founded in the divine will. If so and if one reads Justinian's definition "constans et perpetua voluntas ius suum cuique tribuens" as presupposing a ius which is each person's due, it seems natural to conclude that God knows as he wills what is each person's due, which would make what is ius at least contemporaneous with divine willing and certainly prior to the iustitia consequent on perfect willing.*

Understanding Wycliffe is again understanding his context. He was at Oxford and sought significant self-prominence. He managed to attain influence through the Kings brother, John of Gaunt, and thus managed to see this as a path to establish his influence. In a sense Wycliffe was a Hussian before Hus and a precursor of Luther. If Gaunt had been more powerful and in need, then perhaps Wycliffe could have been used as Luther was. Thus, understanding Wycliffe is understanding the evolving time.

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<sup>4</sup> See Vaughan, Leo Strauss and His Catholic Readers, Cath Univ Press (Washington) 2018.

## 2.5 SUAREZ

Suarez was one of the Spanish theologians who followed a somewhat Scholastic route. He lived into the 17<sup>th</sup> Century but outside of the changing attitudes afoot in France and Germany.<sup>5</sup> Makinen has noted:

*According to John Finnis, the transition from Thomas Aquinas's (1225–1274) ius, defined as "that which is ius in a given situation", to that of Francesco Suárez's definition (1548–1617) as "something beneficial – a power – which a person has" was a kind of watershed. Suárez's innovation redefined the concept of rights as a potestas or libertas possessed by an individual, a quality that characterises one's being. There is, however, many scholars that defined ius as potestas or libertas before Suárez, and already before Aquinas.*

## 2.6 STRAUSS

Leo Strauss was a brilliant mind and as a refugee from Fascist Europe he managed to settle well at the University of Chicago at a time when his thought and that of his new environment melded. Chicago was the antithesis of Columbia and Berkeley. The latter were bastions of proto communists and Marxists, and also were homes to the new intellectual elite of the mid twentieth century. Strauss is not an original thinker as we the others we have been discussing as much as he was an interpreter of many that had come prior to him.

From Reid:

*Leo Strauss and his followers have also maintained that the seventeenth century was decisive for the shift from systems of thought that emphasized transcendent and immutable principles to a way of viewing the world that placed primacy on the competition of all against all and the individual rights that flow from such an asocial struggle. ...Tierney's work effectively refutes this entire approach to viewing the development of rights. Two recent exceptions to this school of thought are Richard Tuck, *Natural Rights Theories: Their Origin And Development* (1979) (acknowledging that the twelfth through fifteenth centuries were important to the development of rights, but understating their significance) and Annabel S. Brett, *Liberty, Right And Nature: Individual Rights In Later Scholastic Thought* (1997) (examining philosophical treatments of the concept of individual right from the thirteenth century to Thomas Hobbes's in the seventeenth century).*

Strauss was a brilliant observer and interpreter of a broad section of political and philosophical thought but it appears that his grasp of the complexities of the Middle Ages is wanting. In many ways the writing of Strauss were done in a polemical manner refuting those for whom he saw inadequate theories. To some degree it is surprising that Strauss missed Ockham and this period albeit having included it briefly in some of his writings. Yet understanding Ockham requires a good understanding of the times and especially the Church. In a sense the Avignon Papacy was the end of a Papal era and the beginning of a newer one. It was however a continuation of the Papacy as one of the two swords, and the more powerful of the two.

Now in Vaughn (p 119) the writer notes about Strauss in his writings stating:

*Traditional natural law is primarily and mainly an objective "rule and measure," a binding order prior to, and independent of, the human will, while modern natural law is, or tends to be, primarily and mainly a series of "rights," of subjective claims, originating in the human will. I have tried to establish this view in the present study by comparing the political doctrine of Hobbes, as the founder of modern political philosophy, with that of Plato and Aristotle, as the founders of traditional political philosophy. Hobbes obviously starts, not, as the great tradition did, from natural "law," i.e. from an objective order, but from natural "right," i.e. from an absolutely justified subjective claim which, far from being dependent on any previous law, order, or obligation, is itself the origin of all law, order, or obligation. It is by this conception of "right" as the principle of morals and politics that the originality of Hobbes's political philosophy (which includes his moral philosophy) is least ambiguously evinced.*

As Tierney would later note, the subjective Natural Right is more importantly a result of the studies and writings on Ockham, not just Hobbes. One can argue, as I have, that Hobbes was promoting his political views at a time when the monarchy in England suffered its beheading. Ockham, on the other hand, was struggling with the ever-expanding grasps of the Avignon Papacy. Hobbes was seeking a return to a monarchy, arguing that people surrendered their "rights" to the Crown for protection whereas Ockham saw the Crown, Papal or otherwise as an impediment to the individual. Strauss is well versed in Classic philosophy, Plato and Aristotle, and more contemporary works as Hobbes and forward.

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<sup>5</sup> <https://plato.stanford.edu/entries/suarez/#DisJus>

However, in my readings, he seems to let two millennia pass un-noticed.

### 3 NATURAL LAW?

Let us now briefly examine Natural Law. In a recent article in *The New Republic*<sup>6</sup>, the author alleges the following regarding Natural Law and Natural Rights.

*One obvious drawback to natural law theory is that it requires legislators to fully comprehend human nature, a topic of considerable philosophical—not to mention sociological, psychological, and medical — disagreement, with many scholars doubting the very existence of a universal human nature. Another, however, lies in the historical origins of natural law theory, which are theological. The medieval Christian theologian Thomas Aquinas believed that the nature of things is revealed by their purpose. The nature of a pen is to write, because that's its purpose. But what is the purpose of the human being?*

*According to Aquinas, humans could discover their purpose simply by applying their reason. But the answer they would find, he argued, happened to coincide with what God intended that purpose to be. In practice, that meant that Aquinas believed the purpose of humans included procreation, and that sexual acts that did not take place within a context geared towards reproduction were immoral. Natural law is still used today by its proponents as a justification of the view that gay sex is morally wrong, as well as for banning abortion, and even contraception.*

Aquinas was a 13<sup>th</sup> century Parisian philosopher whose works represent the pinnacle of scholastic philosophy. It was in many ways a canonization of Aristotle placed in a Christian milieu and attempting to establish Christian thought as reachable by reason. It would take Ockham some fifty years later to reinsert faith in such issues as the Eucharist. Namely, it would be Ockham that said; one relies upon reason to go too far and fail to rely upon faith and the Biblical texts.

*The concept of natural rights as a check to state power evolved in the seventeenth century out of natural law theory. As citizens, the idea went, we tacitly enter into a social contract with the state: We agree to obey its laws in exchange for security, social order, etc. But there are limits to what those laws can dictate — certain things the state cannot, without legitimate reason, take away from us, and, in fact, has a*

*responsibility to protect: our natural rights, integral to our human nature and granted to us by God. According to English political theorist John Locke, these rights included life, liberty, and property.*

Natural Rights are twofold. First, they are Natural, whatever that means, and as such are inherent in all people perforce of their humanity. This we shall explore at length later. Second, they are rights, which we seem to see as a term much more comfortably. But rights to the Medieval were unheard of since then people were subjects, they were not citizens, namely Kings and Popes were at the top, and serfs were nowhere to be seen. It took initially Ockham and his revolt against the Avignon Papacy and then Locke and Rousseau to examine and articulate elements of individual rights. Natural Rights are Individual Rights, they are subjective adhering to the individual, and they are Natural because people, individuals, think they are.

*Natural law and natural rights don't necessarily have to be used to promote a conservative, religious moral agenda. Sanders himself has said that the right to healthcare comes from "being a human being"—a claim echoing natural rights language. There are also scholars who have argued that abortion rights are in fact natural rights. Some debate on natural rights is to be expected, given that human nature and its moral implications are hardly consensus-generating topics. But this also suggests appeals to natural law might not be a good guide to drafting legislation: The defense and interpretation of human rights is ultimately a political project, and should be treated as such.*

Philosophers from Aquinas, Ockham, Locke, Kant and others have struggled with Natural Rights and Laws. The key question is; what is natural or in one's nature? How does one determine what is natural and how does one ascertain that some act is natural or un-natural? Without stating details, which, depending on who one is, could be quite extensive, we can simply ask; why do many people consider acts of a few as un-natural if those people find them natural? Again, we defer on any example.

One can say that it is the nature of a wolf to hunt in packs, it is the nature of a chipmunk to be solitary, it is the nature anything to do what it does. The latter is a tautology, but the two forms are really just biology. Namely the genetic makeup of wolves and chipmunks do what they do because their genes are programmed to reinforce certain behavior and suppress others. It is a result of the natural selection of these species.

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<sup>6</sup> <https://newrepublic.com/article/154192/sneaky-politics-natural-law>



Thus, one may posit that it is in the nature of humans to be social, to hunt, to farm, and the list goes on. It is also in the nature of humans to kill. Wolves kill, primarily to eat, but they will also do so for pack leadership. No one trains wolves to do this, it is in their nature, namely their genetic makeup. Man kills and it may very well be in the makeup of that specific individual. It may be suppressed in the makeup of many individuals which is why the military must bring this trait out of many who otherwise would not be "naturally" inclined to kill. There are mass murders, very few, but they exist. One could posit that it is in their nature, and one could then posit that this means it is in their genetic makeup. After all we blame genes from everything from drinking, smoking, obesity, and drug abuse. But perhaps there is more than a bit of truth here.

Thus, when we say that something is in the nature of an entity or natural, we are asserting a pre-programmed genetic response. For example, take the limbic system. This is a section of the brain, internal but a significant neural connection matrix, which is generally composed of the hippocampus, thalamus, hypothalamus, and amygdala. The limbic system is a powerful system in the brain. It controls emotions, desires, controls the sorting of short-term memory to long term. The limbic system has what is termed limbic valence, the imprinting of a collection of ideas and emotions and reactions. It is the limbic valence that imprints a memory of just where we were on say 9/11 or the day Kennedy was shot. It is the limbic system that evokes the responses we often see as PTSD. It is the limbic system that "tells" us right from wrong and what we see as rights. Thus, one can argue that the "Nature" Aquinas and the others argued about is in essence the limbic system, and the limbic system is wired and operates under a genetic profile in each human. Namely the limbic systems are individual and different, but almost the same.

Thus, when we look at "Natural" as generally acceptable limbic responses we are integrating many individual limbic DNA responses and finding commonality. Murder is bad, except for those who have a limbic system for which the DNA has somehow turned that switch off. Society however creates laws, things which delimit our rights. Most people do not think they have a right to murder. Thus, a law is created to delimit that "right" that some few may think they have.

Now the discussion above is part science, part biology and part speculation. It is an attempt to give a non-Kantian definition to what is Natural and in turn what is a Right. Instead of invoking God directly we invoke what we know about the human and frankly all species. Thus, when we say it is in their nature, we are saying that it is in their DNA. But like Ockham, we assert that each is an individual, with different DNA, and thus laws are a necessary sequella to Rights since laws are controlling the putative rights of the few for the benefit of the many.

Grotius is a seventeenth century Dutch writer on the law who spent much of his life in France but heavily involved in establishing international legal principles. He incorporated in his thinking certain constructs of natural rights worth considering.

As Darwall notes<sup>7</sup>:

*An imperfect right, on the other hand, is not a "Faculty" but an "Aptitude." Under this heading, Grotius includes considerations of "Worth" and "Merit" that can recommend actions as more or less worthy or meritorious, but which no one has standing to demand "Prudent management in the gratuitous Distribution of Things" to which no individuals or society has a valid claim may nonetheless recommend giving preference to "one of greater before one of less Merit, a Relation before a Stranger, a poor Man before one that is rich" (I, 88). But while "Ancients" like Aristotle, and even "Moderns" who follow him, may take considerations of the latter to be included within justice and so right (it is what Aristotle and his followers include under "distributive justice,")<sup>23</sup> nonetheless "Right, properly speaking, has a quite different Nature," namely, "doing for [others] what in Strictness they may demand" (I, 88-89). The strictly proper, modern sense of right as a quality "annexed to the Person," according to Grotius, is the one he here identifies: respecting persons' authoritative demands and, we might add, their "Faculty" or authority to demand it.*

*In its final sense, 'ius' or "Right" signifies the same Thing as Law when taken in its largest Extent, as being a Rule of Moral Actions, obliging us . . . I say obliging: for Counsels, and such other Precepts, which however honest and reasonable they be, lay us under no Obligation, come not under this Notion of Law, or Right.*

<sup>7</sup> Darwall, Grotius At The Creation Of Modern Moral Philosophy, 2008, <https://www.semanticscholar.org/paper/GROTIUS-AT-THE->

[CREATION-OF-MODERN-MORAL-PHILOSOPHY/d7805333f5678caaf66f9410fb7438253cebdab3](https://www.semanticscholar.org/paper/GROTIUS-AT-THE-CREATION-OF-MODERN-MORAL-PHILOSOPHY/d7805333f5678caaf66f9410fb7438253cebdab3)



Grotius follows this with his definition of the “law” or “right” of nature:

*NATURAL RIGHT is the Rule and Dictate of Right, Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its Suitableness or to a reasonable Nature.*

Barbeyrac notes that other editions interpolated “and Sociable” between “reasonable” and “Nature” and says there is some reason to believe that these were simply left out by a printer or transcriber. As he points out, when Grotius distinguishes between a priori and a posteriori proofs of laws of nature, he brings in sociability explicitly. A posteriori proofs appeal to a *consentium gentium*, that is, to something being “generally believed to be” natural law “by all, or at least, the most civilized Nations”. An a priori proof, by contrast,

He continues:

*Tuck points out that in the Prolegomena to the first edition, Grotius says that the law of nature “necessarily derives from intrinsic principles of a human being” and that the law would hold “even if we were to suppose . . . that there is no God, or that human affairs are of no concern to him” (Grotius 2005: I, xxiv; III, 1748-1749). Tuck notes that Grotius is less direct on this point in later editions.*

There Grotius says that

*“Natural Right [the Law of Nature] is the Rule and Dictate of Right Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its Suitableness or Unsuitableness to a reasonable Nature, and consequently, that such an Act is either forbid or commanded by GOD, the Author of Nature”.*

*This might encourage the Suarezian thought that genuinely obligating natural laws require an authoritative divine direction that is consequent upon any intrinsic reasonableness or unreasonableness and that the latter is impotent to provide all by itself. However, Grotius then adds that actions that are thus suitable or unsuitable to a reasonable nature are “in themselves either Obligatory or Unlawful, and must, consequently, be understood to be either commanded or forbid by God himself”. This means that the obligatory character of natural law depends not on divine legislation, but vice versa.*

and furthermore:

*A perfect right is a “Faculty” of the person, which includes the standing or authority to “deman[d] what is due” to him, including, Grotius says, “Liberty,” or “power over ourselves” (or over others who are under his authority) and property. Grotius adds that such a faculty “answers the Obligation of rendering what is owing”.*

*There can be natural rights, therefore, only if natural law includes genuine obligations to respect them. And among our natural rights is Hegelian subjective freedom, that is, autonomy or our “power over ourselves.”*

We can examine Grotius directly we have a discussion of rights, justice and the term natural in his work *On War and Peace*<sup>8</sup>. He writes on the topic of Natural Rights and attempts to delineate them and establish them as some basis in fact. We examine several of his definitions.

*The title of this work, On the Right of War and Peace, should be understood in the first place in terms of the questions I have begun by raising: Is there such a thing as a just war? and What is just conduct in war? “Right” in this context means simply, what is just — “just” being understood in a negative rather than a positive sense, to mean “what is not unjust.” “Unjust,” in turn, means what is inconsistent with the nature of a society of rational beings. However, “society” can be of two kinds: a society of equals, e.g., brothers, citizens, friends, allies; and a society of unequals, Aristotle’s kath’ huperochen, as of father and children, master and servant, king and subjects, God and men (NE 1158b12). So, there are two kinds of justice, the justice of those who live together as equals, and the justice of those who rule and are ruled, in whatever respect that relation is relevant. The technical terms rectorial Right and equatorial Right refer, I believe, to these two.*

Thus, above we have his first definition, a right is simply what is just. For Grotius just is simply what is not unjust. Indeed, this is apparently circular. For he then says unjust is what is inconsistent with the nature of society. But who is society? What mechanism does this society use to make this decision? For if it is just a majority and then one society can have something being unjust and another being just. There are lots of societies and thus lots of unjust and thus a conflicting

<sup>8</sup> See O'Donovan and O'Donovan p 767 218. O'Donovan and O'Donovan, From Irenaeus to Grotius, Eerdmans, 1999.

assemblage of natural laws. Yet perhaps that is nothing more than a reflection of the disparity amongst human DNA. How would this change if instead of just a majority we required a near total consensus, say 95% agreement? Would this result in some form of "natural" convergence in the Grotius I definition?

Now Grotius continues:

*[4] There is a second distinct sense of "right" deriving from the first, which is attributed to a subject ["subject" in the grammatical, not the political, sense]. A right is a moral quality attaching to a subject enabling the subject to have something or do something justly. A right, in this sense, attaches to the subject even though it is sometimes associated with a thing. An example: the ownership of an estate carries with it the right to certain services. These are called "real rights" in contrast to "purely personal rights." It is not that real rights do not also attach to persons; they simply attach to the person who has the thing. A moral quality may be said to be "perfect," in which case it is called a "faculty," or it may be less than perfect, in which case it is called a "fitness" These two categories correspond to the categories of act and potency in metaphysics.*

This Grotius II right is more in line to what we have been using as a right. It attaches to the subject, it is "my" right, my enabling to have or do something. I have a Grotius II right to free speech, to own property, to practice or not practice a religion. Here Grotius presents rights as something attaching to a person, an individual, devoid of any societal context.

*There is a third sense of the term "Right," which means the same as "law," understanding "law" in a broad sense as a rule of moral action obliging us to do what is correct. It implies obligation; for counsels are not called "law" or "Right" even if they take the form of nonbinding precepts. Permission, too, is strictly not an act of law; rather, it is the negation of an act, except in so far as it obliges someone else not to interfere. Our definition contained the words "obliging us to do what is correct" (rectum) not "what is just"; for Right in this sense is not only concerned with matters of justice, such as we have explained it, but of other virtues too. However, from this sense of Right (ius) the word "just" comes to have a looser sense equivalent to "correct" (rectum). The best analysis of Right in this sense is Aristotle's: there is natural Right, on the one hand; on the other, there is voluntary Right (which he calls legal Right, using the word "law" in a narrower sense than ours, or sometimes to en taxei, positive Right).*

This Grotius III definition is the more classic one handed down from Roman Law, the right one has in an object usually perforce of some established law. Thus, I have a right of use in my car, my house, my clothing.

He continues:

*[10] Natural Right is what correct reasoning prescribes when it identifies moral turpitude or moral necessity in a given act by virtue of its compatibility or incompatibility with our rational and social nature, with the inference that acts of that kind have been forbidden, or commanded, by the author of nature, God. Acts which are the object of such prescription are obligatory or illicit in themselves, from which we infer that they are necessarily required or forbidden by God. This is what distinguishes them not only from human Right but from divine voluntary Right; for that does not require or forbid things obligatory or illicit in themselves, but makes them illicit by forbidding them, or obligatory by commanding them. We should note that there is a looser sense (what the scholastics like to call a "reductive" sense) in which some things are said to be of natural Right because they are not inconsistent with it; as we have now defined as "just" those things that are not unjust. Sometimes, too, the phrase is used in a secondary sense of actions which reason identifies as virtuous, of superior to the alternative, though not obligatory. We should also notice that natural Right is not only to do with acting in situations that arise independently of human will, but with many situations which arise as a consequence of human actions. Ownership of property, as we know it now, is 3-h. u-man institution. But given that institution, natural Right is enough to forbid me to take your property without your permission.*

Grotius concludes some of this discussion with an argument for demonstrating something as a natural right.

*[12] There are two ways of demonstrating that something is of natural Right, one a priori, the other posteriori. The former needs more finesse, so the latter is more often encountered. The a priori proof is to show that there is a necessary compatibility or incompatibility of something with our rational and social nature. A posteriori proof, which does not admit of absolute certainty but of a reasonable degree of probability, infers that something is of natural Right from the fact that it is accepted by all nations, or at least by the more civilized. For a universal effect must follow from a universal cause; but what cause could there be for such a generally held*

*evaluation other than what is called the “common sense” of mankind?*

Unfortunately, this proof again relies upon the demonstration of something predicated upon reason or nature. It is again a circular argument. Yet if we return to Grotius in the context of our argument regarding Nature and DNA then we have removed the circular elements.

## 4 SOCIAL JUSTICE

There appears to be a multiplicity of definitions of Social Justice. Perhaps that is the problem. Hayek asserts that fundamentally it does not exist. However, a great many of authors have attempted to define it and seeking a clear unified definition can be difficult.

### 4.1 CURRENT CONSTRUCTS

We begin with some of the definitions in current usage. For example, Capeheart and Milovanovic have stated:

*What Is Social Justice? Social justice is necessarily broad and inclusive of historical and critical examinations. The study of social justice must attend to what justice may mean and whether this justice is available within a variety of social contexts. As human beings, we necessarily exist in social worlds. Discerning whether these worlds are just is a complex endeavor. At a first approximation, studying social justice must begin with an examination of how dominant and nondominant conceptions of justice arise; how they are selectively institutionalized; how they are formally and informally applied; what persons and/or groups are being deprived of its formal mandates; and how, finally, to correct deviations so that justice is served.*

*What is justice? This is our first concern. Once we accept this as an appropriate question, we must consider who provides the definition. As we will show later in this text, definitions of justice have historically been provided by and/or for the few (elites), with little attention to the needs and desires of the majority (the rest of us). There are, however, examples of justice deriving from “below” through inclusive justice traditions and/or justice struggles. These justice developments would be in line with a more genuine form of social justice.*

*Theorists engaged in the examination and critique of justice have developed a range of understandings that can be applied. Activists have also provided ideas and practices to the development of social justice. No*

*single conception or practice of justice is adequate for all points in history or for all forms of society. Rather, as societies develop and change through historical processes, so too does justice. The study of these developments allows for a more complete understanding of our current notions of justice and the possibilities for a more just future.*

***Social justice is concerned not in the narrow focus of what is just for the individual alone, but what is just for the social whole.*** Given the current global condition, social justice must include an understanding of the interactions within and between a multitude of peoples. This is indeed a complex and inclusive pursuit. It is also an exciting and worthy pursuit. It requires the consideration of and sensitivity to all voices and all concerns. A challenging task before us is developing a process by which historically emergent principles of justice may find arenas for their discussion, resolution, and implementation in a changing historical order, especially the new global order, with a simultaneous sensitivity to difference and commonality and subsequent practices that carry through what has been implemented without disenfranchising persons and/or groups.

Ultimately, it is an attempt to blend justice with element of social, namely what is just for society as an entity. Thus, there is a struggle first in accepting the concept of justice but more importantly with the concept of society. The society struggle is akin to the communitarian argument, namely that there is an abstract entity called society, the community or whatever and that this abstract entity is the target of justice. This is a Rawlsian argument wherein the individual is lost, relegated at best to some past dark agreement, and the subversion of the individual to those who know best for society. We cannot identify a society, for when we do there is always an individual who protests.

Now we can examine an earlier version of social justice. This is one by Hobhouse (1922) who explains:

*Social and political institutions are not "ends" in themselves. They are organs of social life, good or bad, according to the spirit which they embody. The social ideal is to be sought not in the faultless unchanging system of an institutional Utopia, but in the lore of a spiritual life with its unfailing spring of harmonious growth unconfined. But growth has its conditions and the spiritual life its principles, the sum of which in the relation with which we are here concerned we call Social Justice.*

*To define these conditions and display them as a consistent whole is the object of this book. In what institutions they may best be realized is a further question, on which history and psychology, economics and politics must have their say. We approach this problem towards the close of the volume, but our main concern is not with applications but with principles, not with institutions but with the ends that they serve.*

***This is not a popular subject in political controversy, for it is obnoxious to those who, making success their god, naturally wish to discard all questions of right and wrong, and is hardly more attractive to the reformer, who sees a short cut to Utopia in some political or economic change in pursuit of which he is ready to throw away everything that makes social life worth living. Both views are practically disastrous as they are theoretically false.***

Frankly, this is an incomprehensible statement. Consider what he defines as Social Justice, "*But growth has its conditions and the spiritual life its principles, the sum of which in the relation with which we are here concerned we call Social Justice.*"

What does this mean? This seems to be a pandemic issue in the field of Social Justice. Growth and Spiritual Life, conditions and principles. Is this another Marxian dialectic? Or is it just poor writing.

Another approach is by Miller who remarks on the topic:

*When we talk and argue about social justice, what exactly are we talking and arguing about?*

***Very crudely, I think, we are discussing how the good and bad things in life should be distributed among the members of a human society.***

*When, more concretely, we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a category of persons, enjoys fewer advantages than that person or group of persons ought to enjoy (or bears more of the burdens than they ought to bear), given how other members of the society in question are faring. But to state the question in these general terms is to conceal a host of difficulties.*

*Three of these stand out as soon as we reflect on the precise meaning of the terms used in the sentences above.*

*First, what exactly are the goods and bads, the advantages and burdens, whose allocation is the*

*concern of social justice? We tend to think immediately of income and wealth, jobs, educational opportunities, and so forth, but how far should the list be extended and what is the rationale for including or excluding particular items?*

*Second, if social justice has to do with distribution, what precisely does this mean? Must there be a distributing agency that brings about the outcome whose justice or injustice we are trying to assess? And are we thinking narrowly about how government policies, say, affect the fortunes of different groups in society, or is our concern much wider than that, encompassing all kinds of social activities that determine the shares of goods that people have (for instance, exchanges and transfers within families or among friends)?*

*Finally, what is meant here by a human society? If social justice presupposes that a boundary has been drawn inside of which its principles are applied to the circumstances of different members, how is the boundary to be fixed? Should all human beings be included, or only some?*

*These questions have to be answered before we can begin to examine in detail what the principles of social justice are and how they should be applied. I begin by looking briefly at how the idea of social justice first entered our political vocabulary, at the implicit assumptions that were made by those who first regularly used the idea.*

*For this, I believe, will help us to understand the idea itself; in particular, it will throw light on what I shall call 'The circumstances of social justice,' meaning the circumstances in which social justice can function as an operative, policy guiding ideal, an ideal with political relevance rather than an empty phrase.*

*It is surely not an accident that the idea appeared in the particular social and political context that it did—the economically developed liberal societies of the late nineteenth and early twentieth centuries—but by the same token the circumstances of its appearance may suggest limits on its scope; if we try to stretch the concept too far, we may find that the assumptions needed to make it function cease to hold.*

*And we must also ask, as I do in the last chapter, whether changes that are now taking place in the societies where social justice has been pursued for most of the twentieth century mean that the circumstances of social justice no longer obtain. Is it possible that the era of social justice is drawing to its close? in the writings of most contemporary political*

*philosophers, social justice is regarded as an aspect of distributive justice, and indeed the two concepts are often used interchangeably.*

*Distributive justice is an idea with a very long pedigree. It forms one element in the classic division of justice found in Aristotle's writings and passed down to the Christian tradition through Aquinas and others.*

*In this tradition, distributive justice meant the fair distribution of benefits among the members of various associations: in giving his account, Aristotle probably had in mind not only the distribution of public funds to office-holders and citizens in need, but also the distribution of benefits within clubs and other such private societies. Aquinas refers to the distribution of honors and wealth within a political community, but also, for example, to appointments to professorships.*

*Since these are among the issues that we expect a theory of social justice to address, it seems natural to regard the idea as simply an expanded version of distributive justice as understood by these older philosophers— distributive justice pursued more systematically and with respect to a wider range of benefits.*

This clearly starts to approach the specifics of Social Justice. It is about classes, what we would currently call identity politics. Namely there are classes of individuals not individuals and these classes are defined by those who may be in power. Thus, various minorities are classes, there may be the wealth class, the power elite class, the intellectual class, and classes defined by a variety of social constructs. Unlike Linnaeus and his classification system for which we can have family, genus, species and the like, these socially constructed classes may overlap. One can be a Hispanic, lesbian, socialist or an Evangelical, transgender, libertarian. Each of the classes may or may not be overlapping but justice is to be accomplished for the class, not the individual. In fact, the individual is denied. For Social Justice to have any meaning the Individual must be annihilated!

#### 4.2 CATHOLIC CONSTRUCTS

Catholic social thinking has in many ways been a rejection of social thought which rejects the ultimate authority of the Church. Thus, the idea of infallibility was a result of the development of Marxism and socialism, and constructs which not only denied the faith but stated that the faith was the basis for human oppression. Then we have 20<sup>th</sup> century Jesuit thought on Liberation Theology, the actual application of

Marxist "group-think" to the Catholic beliefs in Central and South America. Liberation Theology was in many ways the basis for much of the current thinking in the Catholic Church, it is a Marxist interpretation of Christianity wherein the individual is depleted into the mass of the proletariat. It is the proletariat who are oppressed and it is the proletariat who must overcome.

From Novak and Adams, in a presentation from the now classic left wing of the Catholic teachings, we have their multiple views of Social Justice. We lay them out as follows:

**1. Distribution.** *Most people's sense of social justice is generic, amounting to little more than what we find in an internet search of the term "social justice": "The fair distribution of advantages and disadvantages in society." Now, notice that this standard definition introduces a new key term, not "virtue," but "distribution." This newly added term also suggests that some extra-human force, some very visible hand, that is, some powerful agency—the state—should do the distribution. And do it fairly. But I, for one, do not trust politicians to neglect their own self-interest ("Where will I pick up the most votes?") in their considerations of distribution.*

The discussion here, though written by progressives, is quite telling. The delegation and distribution are done by the State. Who then is this State and by what rules do they distribute?

**2. Equality.** *Furthermore, the expression "advantages and disadvantages" supposes a norm of "equality" by which to measure. Consider this professorial definition: Although it is difficult to agree on the precise meaning of social justice I take it that to most of us it implies, among other things, equality of the burdens, the advantages, and the opportunities of citizenship. Indeed, I take [it] that social justice is intimately related to the concept of equality, and that the violation of it is intimately related to the concept of inequality. This sense of the term expresses a whole ideology: "Equality" is good and ought to be enforced. But also note what has happened here to the word "equality." In English, equality can be taken to suggest fairness, equity, or what is equitable. But what is equitable often requires that each receive not exactly the same portions but rather what is proportionate to each, given different efforts and different needs. In many recent writings on social justice, however, equality is taken to mean something more like equality-as-uniformity. That conception of equality calls for some great power to sweep in and enforce on*

*a society its strict measure of equality, and to restrict freedom accordingly*

**3. Common Good.** Social justice is typically associated with some notion of the “common good,” a wonderful term that goes back to Aristotle. The Catholic tradition is very fond of this term, but does not mean by it exactly what the American founders meant by the “public good” or the “public interest.” The precise meaning given to the “common good” by the Second Vatican Council was this: “the sum of those conditions of social life which allow social groups and their individual members relatively thorough and ready access to their own fulfillment.”<sup>2</sup> As one can see, this definition avoids speaking of “equality of condition” or “collective equality,” in favor of emphasizing the opportunity for each unique individual to develop his or her talents to their full potential. In any case, the common good is an important master concept among Catholic social principles, one that tries to do justice to both the communitarian nature of humans and their unique personal endowments.

**4. The Progressive Agenda.** In America, many of our elites describe themselves as progressives. But what do they mean? Watch what they do, what they advocate for, and you will most often see that these are activists on behalf of larger government and more spending for their favorite causes: the poor, Planned Parenthood, solar and wind power, restrictions on the use of fossil fuels, and two of their most passionately held causes, abortion and gay marriage. Such progressives are not necessarily anticapitalist. Many of those funding progressive causes are, in fact, very wealthy capitalists...

*Many progressives talk and act as though the trouble with the American people is that they do not know what is good for them. They have to be told, herded, regulated, fined, and forced into the right course of action. Nanny, nanny, everywhere the nanny state. Progressives now play the role that Puritans used to play in saying no. No smoking, no ozone, no gun-ownership, no this, that, and the other thing. Some of these may be admirable ideas; it is the relentless nagging in the progressive character that is new and troubling.*

**5. New “Civil Rights”: Gender; Sex, Reproduction.** When I first went to the United Nations Human Rights Commission meetings in Geneva in 1981, two different delegates from opposite sides of the world (Norway and India) told me that the most hopeful signs they had seen in their lifetimes was the much delayed shift in the United States in favor of institutional support for the

*rights of black Americans. To change habits of mind so inveterate and so entrenched gives hope to the rest of humanity, they said. The calling of the Second Vatican Council by the old Pope John XXIII and the election of the handsome young President John F. Kennedy and his “New Frontiersmen” gave hope that the old thick ice was breaking up.*

History still must come to grips with John XXIII. Ironically, he took the name of a prior Pope, one not accepted, and he took the name of the next Pope after John XXII, the Avignon pope who squandered the papacy and led to the development of the individualism of Ockham and Marsilius of Padua. The Vatican II dicta entered into the domain of social politics. The Church, in a sense, returns to its role as interlocutor of social interactions.

#### 4.3 HAYEK

It thus seems like a painful task to get a stable definition. Now let us examine Hayek and his analysis of Social Justice. He first notes:

*The use of the term ‘social justice’ in this sense is of comparatively recent date, apparently not much older than a hundred years. The expression was occasionally used earlier to describe the organized efforts to enforce the rules of just individual conduct,<sup>2</sup> and it is to the present day sometimes employed in learned discussion to evaluate the effects of the existing institutions of society. But the sense in which it is now generally used and constantly appealed to in public discussion, and in which it will be examined in this chapter, is essentially the same as that in which the expression ‘distributive justice’ had long been employed. It seems to have become generally current in this sense at the time when (and perhaps partly because) John Stuart Mill explicitly treated the two terms as equivalent in such statements as that*

*“...society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens should be made in the utmost degree to converge...*

*or that*

*“...it is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is perhaps the clearest and most emphatic form*

*in which the idea of justice is conceived by the general mind. As it involves the idea of desert, the question arises of what constitutes desert."*

*It is significant that the first of these two passages occurs in the description of one of five meanings of justice which Mill distinguishes, of which four refer to rules of just individual conduct while this one defines a factual state of affairs which may but need not have been brought about by deliberate human decision. Yet Mill appears to have been wholly unaware of the circumstance that in this meaning it refers to situations entirely different from those to which the four other meanings apply, or that this conception of 'social justice' leads straight to full-fledged socialism.*

*Such statements which explicitly connect 'social and distributive justice' with the 'treatment' by society of the individuals according to their 'deserts' bring out most clearly its difference from plain, justice, and at the same time the cause of the vacuity of the concept : the demand for 'social justice' is addressed not to the individual but to society—yet society, in the strict sense in which it must be distinguished from the apparatus of government, is incapable of acting for a specific purpose, and the demand for 'social justice' therefore becomes a demand that the members of society should organize themselves in a manner which makes it possible to assign particular shares of the product of society to the different individuals or groups. The primary question then becomes whether there exists a moral duty to submit to a power which can co-ordinate the efforts of the members of society with the aim of achieving a particular pattern of distribution regarded as just.*

Hayek then explicitly states:

*I believe that 'social justice' will ultimately be recognized as a will-o'-the-wisp which has lured men to abandon many of the values which in the past have inspired the development of civilization—an attempt to satisfy a craving inherited from the traditions of the "small group but which is meaningless in the Great Society of Free men. Unfortunately, this vague desire which has become one of the strongest bonds spurring people of good will to action, not only is bound to be disappointed. This would be sad enough. But, like most attempts to pursue an unattainable goal, the striving for it will also produce highly undesirable consequences, and in particular lead to the destruction of the indispensable environment in which the traditional moral values alone can flourish, namely personal freedom.*

Clearly this is a strong statement. As we have seen from others, Social Justice must perforce of its nature be imposed from above. That means those imposing it get to make the rules and thus it is inherently unjust if justice implies freedom for individuals and equity in individual interactions. Equity is clearly abrogated in such an environment.

Hayek continues:

*The meaning of social: One might hope to get some help in the search for the meaning of 'social justice' by examining the meaning of the attribute 'social; but the attempt to do so soon leads into a quagmire of confusion nearly as bad as that which surrounds 'social justice itself. Originally 'social had of course a clear meaning (analogous to formations like 'national, 'tribal, or 'organizational') namely that of pertaining to, or characteristic of the structure and operations of society. In this sense justice clearly is a social phenomenon and the addition of 'social' to the noun a pleonasm such as if we spoke of 'social language'—though in occasional early uses it might have been intended to distinguish the generally prevailing views of justice from that held by particular persons or groups.*

*But 'social justice as used today is not 'social in the sense of 'social norms', i.e. something which has developed as a practice of individual action in the course of social evolution, not a product of society or of a social process, but a conception to be imposed upon society. It*

He then exams the issue of equality:

*'Social justice' and equality the most common attempts to give meaning to the concept of 'social justice' resort to egalitarian considerations and argue that every departure from equality of material benefits enjoyed has to be justified by some recognizable common interest which these differences serve. This is based on a specious analogy with the situation in which some human agency has to distribute rewards, in which case indeed justice would require that these rewards be determined in accordance with some recognizable rule of general applicability.- But earnings in a market system, though people tend to regard them as rewards, do not serve such a function. Their rationale (if one may use this term for a role which was not designed but developed because it assisted human endeavour without people understanding how), is rather to indicate to people what they ought to do if the order is to be maintained on which they all rely. The prices which must be paid in a market economy for different kinds of labour and other factors of production if individual efforts are to match, although they will be*



*affected by effort, diligence, skill, need, etc., cannot conform to any one of these magnitudes; / and considerations of justice just do not make sense<sup>29</sup> with respect to the determination of a magnitude which does not depend on anyone's will or desire, but on circumstances which nobody knows in their totality. The contention that all differences in earnings must be justified by some corresponding difference in deserts is one which would certainly not have been thought to be obvious in a community of farmers or merchants or artisans, that is, in a society in which success or failure were clearly seen to depend only in part on skill and industry, and in part on pure accident*

Hayek then concludes:

*The basic contention of this chapter, namely that in a society of free men whose members are allowed to use their own knowledge for their own purposes the term 'social justice' is wholly devoid of meaning or content, is one which by its very nature cannot be proved. A negative assertion never can. One may demonstrate for any number of particular instances that the appeal to 'social justice' in no way assists the choices we have to make. But the contention that in a society of freemen the term has no meaning whatever can only be issued as a challenge which will make it necessary for others to reflect on the meaning of the words they use, and as an appeal not to use phrases the meaning of which they do not know. So long as one assumes that a phrase so widely used must have some recognizable meaning one may endeavour to prove that attempts to enforce it in a society of free individuals must make that society unworkable.*

Thus, what can we ascertain as to the meaning of Social Justice? Clearly there are many meanings and oftentimes they are in the eye of the beholder. But fundamentally the commonality is that there exists a society, and rulers of that society, that perceive inequities amongst people, inequities in a collection of areas, and that these leaders will set up rules to redistribute the "goods" of society more equitably in a manner that they see fit as well as mitigate the "bads" in a similar manner.

We can take an example of Universal Health Care or more specifically the "Medicare for All" proposals from American Socialists. This is a classic example of a Social Justice action. Namely some "officials" have perceived a set of inequities and they will have the Government set up a program to redistribute the "goods" and "bads" of health care. Rather than individual choice, the Government sets up what can be delivered by whom, to whom, when, and what can be denied. That is a test of Social Justice. It is the top

down distribution of "goods", such a medical service, and "bads", such as denial of medical service. Thus, if the Administrator of the program, for reasons determined solely by them, determines that one should not receive certain medical care, and despite the fact that such denial results in death, that is good for society, the "Social" part of justice, albeit perhaps not so good for the patient. To most people is some form of good health they see just equal distribution.

However, those with the means may find ways around this system. They may go to Germany, Thailand, Japan, or some other market where they can purchase the services extra the Social Justice market. Is that "fair", is that "equitable". it that "justice"? For those who control the market the answer is yes, since they fail to control this process. But their solution to such inequity is to tax those who can afford it to a degree where they can no longer afford it. How? Perhaps place a tariff on such procedures.

In a world of Individualism, if we see health care as a societal need, then one could make each person buy their own plan, like we do with auto insurance and home owners insurance. If there are those who cannot afford it then we can use Government funds, our taxes, to perhaps offset this. Namely, we keep the public individual market using methods which we know function.

#### 4.4 DISTRIBUTIVE JUSTICE

In the work of Inamura, we have a discussion of Aristotle and Distributive Justice. This is important since it is a prelude to the long-standing status of the State over Individual. He notes:

*Even Plato does not seem to develop as holistic or totalitarian a political philosophy as Popper, Nussbaum and Miller ascribe to him. This is because Plato's Socrates in the Republic does not argue that the happiness of a polis is completely independent of the happiness of an individual. In the context of the aforementioned argument regarding the happiness of a polis in Republic, Adeimantus criticises Socrates' view of an ideal polis (or what is called 'Callipolis' in the Republic in such a way as to argue that the guardians in Callipolis are not happy because they are not allowed to have private property by which people ordinarily enjoy their life.*

*In reply, Socrates reminds him that they have been constructing Callipolis not by trying to make one particular class very happy, but rather to make the whole polis as happy as possible. Soon afterwards, Socrates clarifies the meaning of 'the whole polis' by*

*saying that the well-organised polis should allow each class whole polis is happy if and only if its structure is well organised, regardless of whether its citizens are unhappy.*

*When Socrates refers to the happiness of 'the whole polis', he means that the polis ensures that each class of its citizens shares an appropriate form of happiness by getting them to do their proper jobs. Although the term 'each class- does not necessarily mean each individual citizen in the polis, it is clear that Socrates is concerned about what form of life citizens lead in the polis. In his view, therefore, the happiness of a polis depends partly, if not totally, on the happiness of its citizens.*

*On the other hand, Socrates does not develop an individualistic view that the happiness of a polis can simply be reduced to the aggregate of individuals' happiness. In his view, we should not aim at promoting a kind of happiness that makes people reluctant to fulfil their own task. Rather, he formulates the happiness of individuals in terms of their contribution to the aim of the whole polis, namely, mutual benefit brought by the provision of foods and services. In particular, Socrates is very anxious to make the guardians do their own work, because it is vital to the happiness of a whole polis.*

He quotes Aristotle as follows:

*A polis is the community of tribes and villages for the sake of a complete and self-sufficient life. This is, as we say, to live happily and nobly. We must thus think that the political community exists for the sake of noble actions, not for the sake of sharing lives. Hence those who contribute most to such a community have a greater share in the polis than those who are equal or superior in freedom or noble birth yet inferior with regard to civic virtue, or than those who exceed in wealth but are surpassed with regard to virtue.*

Namely it is the polis that has rights and the individual only as he is a working part of the polis. The author continues:

*These two perspectives on a good polis - the idea of aristocratic governance and the promotion of citizens' good lives - are also expressed in Aristotle's definition of aristocracy. In Politics 3.7 he indicates that aristocracy is the rule by a few - not many but more than one - who look to the common benefit, 'either because the best people rule, or because they rule with a view to what is best for a polis and those who share in it'. Usually, according to Aristotle's typology, as I shall argue in the next chapter, a constitution is*

*classified in terms of who governs a polis, and an aristocracy is defined as a constitution in which good persons hold supreme power in the polis.*

Aristocracy is a group of men of virtue whose interest is the polis. Now anyone aware of politics knows well that such people are beyond rare. Politicians are beholden to those who fund them, and they have little if any interest in the polis at large. They spawn ideas that the believe will get them elected while ruling or legislating to their financial masters. Now Aristotle expands his ideas to Distributive Justice where he states:

*Soon afterwards, he also argues that noble birth and wealth do not make any substantial contribution to the performance of a flute-player. He dismisses the oligarchic idea that noble birth and wealth should be the defining characteristics of distribution. Hence, political authority should primarily be distributed to those who can work well in holding and exercising such authority, namely, to those who have the relevant excellence or virtue to make the best use of political authority. Aristotle's aristocratic use of distributive justice, formulated in this flute analogy, is the material least compatible with Nussbaum's idea of political distribution. As Nussbaum herself admits, Aristotle has in mind as a criterion for the distribution of resources not the potential capacity that people might cultivate in the future, but an already trained capacity that people can exercise in the present. Nussbaum wishes to establish a modern humanitarian position, that if a person has a potential capacity for human functions, then the government should be engaged with the cultivation of the potential capacity up to at least a certain threshold. Aristotle, however, argues that a resource needs to be distributed to those who have already acquired the capacity for making the best use of it, not those who might cultivate the capacity to use it in the future. This is clear also from the definition of distributive justice in ...which, as discussed above, he considers it in accordance with distributive justice to apportion resources in proportion to what people contribute ... Nussbaum does not draw serious attention to this distinction in arguing that the flute distribution passage is 'a supplementary piece of evidence' for her view that a capability is the basis for a proper distribution.*

Now Fleischacker provides the following definition:

*"Distributive justice" in its modern sense calls on the state to guarantee that property is distributed throughout society so that everyone is supplied with a certain level of material means. Debates about distributive justice tend to center on the amount of*

*means to be guaranteed and on the degree to which state intervention is necessary for those means to be distributed. These are related issues.*

*If the level of goods everyone ought to have is low enough, it may be that the market can guarantee an adequate distribution; if everyone ought to have an ample basket of welfare protections, the state may need to redistribute goods to correct for market imperfections; if what everyone ought to have is an equal share of all goods, private property and the market will probably have to be replaced altogether by a state system for distributing goods.*

Yet in the introduction he conflates distributive, social and economic as all one and the same. This seems to be merely a repetition of some Government entity taking from those who have, and in most cases have because of their own productive efforts, and allotting it in a manner seen only to them to others.

Now Ryan (1916), a Catholic priest in the early 20<sup>th</sup> century, a purveyor of social justice ideas, had defined the comparable concept, Distributive Justice, as:

*Distributive justice is primarily a problem of incomes rather than of possessions. It is not immediately concerned with John Brown's railway stock, John White's house, or John Smith's automobile. It deals with the morality of such possessions only indirectly and under one aspect; that is, in so far as they have been acquired through income. Moreover, it deals only with those incomes that are derived from participation in the process of production. For example, it considers the labourer's wages, but not the subsidies that he may receive through charity or friendship. Its province is not the distribution of all the goods of the country among all the people of the country, but only the distribution of the products of industry among the classes that have taken part in the making of these products.*

*These classes are four, designated as landowners, capitalists, undertakers or business men, and labourers or wage earners. The individual member of each class is an agent of production, while the instrument or energy that he owns and contributes is a factor of production. Thus, the land-owner is an agent of production because he contributes to the productive process the factor known as land, and the capitalist is an agent of production because he contributes the factor known as capital; while the business man and the labourer are agents not only in the sense that they contribute factors to the process, but in the very special sense that their contributions involve the continuous expenditure of human energy.*

This definition by Ryan is an extension of the Piketty argument on wealth. It is also a quasi-Marxist approach in that labor is a measure of contribution to capital. Ryan, a Catholic priest Catholic University in Washington DC at the time, was also presenting the position of Rome, a position, that despite their abhorrence of Marx, was and is very much in line with Marx's thinking, other than who the decision maker is. For Marx it is the proletariat, and more importantly the selected body of the proletariat, whereas for the Catholic Church it is Rome and specifically the pontiff. A distinction without a difference perhaps.

From Ryan's remarks, we try to understand some of the issues today in the context of a century ago. Let us continue with some of his definitions:

*Moreover, there is the more fundamental ethical question concerning the titles of distribution: whether mere ownership of a factor of production gives a just claim upon the product, as in the case of the landowner and the capitalist; whether such a claim, assuming it to be valid, is as good as that of the laborer and the business man, who expend human energy in the productive process.*

*Productive activity should be rewarded at different rates; in what proportion. Why should the capitalist receive six percent, rather than two percent, or sixteen percent? Why should the locomotive engineer receive more than the trackman? Why should not all persons be compensated equally? Should all or any of the benefits of industrial improvements go to the consumer? Such are typical questions in the study of distributive justice. They are sufficient to give some idea of the magnitude and difficulty of the problem.*

To Ryan then and to the Progressives now Distributive Justice is allocation by some mechanism other than the Free Market of profits, and land and wealth in general. He accepts that individual ownership is not acceptable as it stood at that time and one would suspect now as well.

He continues:

*...that individuals are morally justified in becoming and remaining landowners. May we take a further step, and assert that private landownership is a natural right of the individual? If it is, the abolition of it by the State even with compensation to the owners, would be an act of injustice. The doctrine of natural rights is so prominent in the arguments of both the advocates and the opponents of private landownership that it deserves specific treatment Moreover, the claim*

*that private landownership is a natural right rests upon precisely the same basis as the similar claim with regard to the individual ownership of capital; and the conclusions pertinent to the former will be especially applicable to the latter.*

*A Natural right is a right derived from the nature of the individual, and existing for his welfare. Hence it differs from a civil right, which is derived from society or the State and is intended for a social or civil purpose. Such, for example, is the right to vote or the right to hold a public office. Since a natural right neither proceeds from Z is primarily designed for a civil end, it cannot be annulled and it may not be ignored, by the State, for example, the right to life and the right to liberty are so sacred to the individual, so necessary to his welfare, that the State cannot rightfully kill an innocent man, nor punish him by a term in prison.*

Thus, he does attribute a right to land and property. But he does so through a principle of a Civil rather than a natural right. This is a twisting of Thomistic Theory.

Now he moves to a Fair Wage. He states:

*Although the principle of needs is somewhat prominent among the theories of wage justice, it received only incidental mention in the last chapter. Considered as a comprehensive rule, this principle has been defended with less energy and definiteness than most of the other canons. Considered as a partial rule, it is sound and fundamental, and therefore could not have been classed among theories that are unacceptable.*

#### *The Principle of Needs*

*Many of the early French Socialists of the Utopian school advanced this formula of distribution:*

*"From each according to his powers; to each according to his needs."*

*...The difficulties confronting it are so great and so obvious that they would defer the introduction of it to a time when the operation of their system will, they hope, have eradicated the historical human qualities of laziness and selfishness. To adopt needs as the sole rule of distribution would mean, of course, that each person should be rewarded in proportion to his wants and desires, regardless of his efforts or of the amount that he had produced. The mere statement of the proposal is sufficient to refute it as regards the men and women of whom we have any knowledge. In*

*addition to this objection, there is the insuperable difficulty of measuring fairly or accurately the relative needs of any group composed of men, women, and children. ... Indeed, the standard of needs should be regarded as a canon of Communism rather than of Socialism; for it implies a large measure of common life as well as of common ownership, and paternalistic supervision of consumption as well as collectivist management of production.*

#### *The Right to a Decent Livelihood*

*Every man who is willing to work has, therefore, an inborn right to sustenance from the earth on reasonable terms or conditions. This cannot mean that all persons have a right to equal amounts of sustenance or income; for we have seen on a preceding page that men's needs, the primary title to property, are not equal, and that other canons and factors of distribution have to be allowed some weight in determining the division of goods and opportunities. Nevertheless, there is a certain minimum of goods to which every worker is entitled by reason of his inherent right of access to the earth.*

*He has a right to at least a decent livelihood. That is; he has a right to so much of the requisites of sustenance as will enable him to live in a manner worthy of a human being. The elements of a decent livelihood may be summarily described as: food, clothing, and housing sufficient in quantity and quality to maintain the worker in normal health, in elementary comfort, and in an environment suitable to the protection of morality and religion; sufficient provision for the future to bring elementary contentment, and security against sickness, accident, and invalidity; and sufficient opportunities of recreation, social intercourse, education, and church-membership to conserve health and strength, and to render possible in some degree the exercise of the higher faculties.*

These rights are thus not only to a salary but to all other things as he describes them. The list above is significant because it was presented in 1918 and not last week!

He then goes on to describe what he calls the Principal Canons of Distributive Justice:

*Before taking up the question of the morality of profits, it will be helpful, if not necessary, to consider the chief rules of justice that have been or might be adopted in distributing the product of industry among those who participate actively in the productive process. ...The canons of distribution applicable to our present study*

*are mainly six in number: arithmetical equality; proportional needs; efforts and sacrifices; comparative productivity; relative scarcity; and human welfare.*

*(1) The Canon of Equality: According to the rule of arithmetical equality, all persons who contribute to the product should receive the same amount of remuneration. ... It is unjust because it would treat unequals equally...*

*(2) The Canon of Needs: The second conceivable rule is that of proportional needs. It would require each person to be rewarded in accordance with his capacity to use goods reasonably. If the task of distribution were entirely independent of the process of production, this rule would be ideal; for it would treat men as equal in those respects ... Like the rule of arithmetical equality, the rule of proportional needs is not only incomplete ethically but impossible socially. ... Moreover, any attempt to distribute rewards on this basis alone would be injurious to social welfare. It would lead to a great diminution in the productivity of the more honest, the more energetic, and the more efficient among the agents of production.*

*(3) The Canon of Efforts and Sacrifice: The third canon of distribution that of efforts and sacrifices, would be ideally just if we could ignore the questions of needs and productivity. But we cannot think it just to reward equally two men who have expended the same quantity of painful exertion, but who differ in their needs and in their capacities of self-development. To do so would be to treat them unequally in the matter of welfare, ...*

*(4) The Canon of Productivity: According to this rule, men should be rewarded in proportion to their contributions to the product. It is open to the obvious objection that it ignores the moral claims of needs and efforts. ... When men of equal productive power are performing the same kind of labour, superior amounts of product do represent superior amounts of effort; when the tasks differ in irksomeness or disagreeableness, the larger product may be brought into being with a smaller expenditure of painful exertion. If men are unequal in productive power their products are obviously not in proportion to their efforts. ...*

*(5) The Canon of Scarcity: It frequently happens that men attribute their larger rewards to larger productivity, when the true determining element is scarcity. The immediate reason why the engine driver receives more than the track repairer, the general manager more than the section foreman, the*

*floorwalker more than the salesgirl, lies in the fact that the former kinds of labour are not so plentiful as the latter. ... As between two men performing different tasks, superior skill receives superior compensation simply because it can command the greater compensation; and it is able to do this because it is scarce. ...*

*(6) The Canon of Human Welfare: We say "human" welfare rather than "social" welfare, in order to make clear the fact that this canon considers the well-being of men not only as a social group, but also as individuals. It includes and summarizes all that is ethically and socially feasible in the five canons already reviewed. It takes account of equality, inasmuch as it regards all men as persons, as subjects of rights; and of needs, inasmuch as it awards to all the necessary participants in the industrial system at least that amount of remuneration which will meet the elementary demands of decent living and self-development. ... Owing to the exceptional hazards and sacrifices of their occupation, a combination of producers might be justified in exacting larger compensation than would be accorded them ...*

Ryan leaves the reader somewhat with the old adage, "on the one hand, on the other hand". He does however demand a living wage, yet it is left undefined, only that it must cover all the factors he outlined.

Finally, with regard to Profits Ryan states:

#### *The Question of Indefinitely Large Profits*

*As a general rule, business men who face conditions of active competition have a right to all the profits that they can get, so long as they use fair business methods. This means not merely fair and honest conduct toward competitors, and buyers and sellers, but also just and humane treatment of labour in all the conditions of employment, especially in the matter of wages. When these conditions are fulfilled, the freedom to take indefinitely large profits is justified by the canon of human welfare. The great majority of business men in competitive industries do not receive incomes in excess of their reasonable needs. Their profits do not notably exceed the salaries that they could command as hired managers, and generally are not more than sufficient to reimburse them for the cost of education and business training, and to enable them to live in reasonable conformity with the standard of living to which they have become accustomed.*

*Efforts and sacrifices are reflected to some extent in the different amounts of profits received by different business men. When all due allowance is made for chance, productivity, and scarcity, a considerable*

*proportion of profits is attributable to harder labour, greater risk and worry, and larger sacrifices. Like the principle of needs, that of efforts and sacrifices is a partial justification of the business man's remuneration.*

*Those profits which cannot be justified by either of the titles just mentioned, are ethically warranted by the principles of productivity and scarcity. This is particularly true of those exceptionally large profits which can be traced specifically to that unusual ability which is exemplified in the invention and adoption of new methods and processes in progressive industries. The receivers of these large rewards have produced them in competition with less efficient business men.*

The question as to the above is who makes all these decisions? Government? Well a century later we see what has transpired.

But let us read Timothy 5(16)

*If any of the faithful have widows, let him minister to them, and let not the church be charged: that there may be sufficient for them that are widows indeed.*

This is Paul stating the Individual responsibility, not the Church or the State. One wonders how this conflict is resolved.

#### 4.5 RETRIBUTIVE JUSTICE

Again, we consider to approach this by example. Fundamentally, Retributive Justice is a concept that restores to someone something in place of some "harm" which may have been done to them. Let us assume I am waiting on line at some movie theater. I have been waiting a long time and have brought a date and am meeting my date's request to see this particular movie. I know it is in great demand and I was intent in getting there in time to be assured a seat.

Along comes someone in a large limo, pulls up at the curb, and unload eight people. They just walk to the door and tip the person controlling admission, one assumes very well, and they all get in. No wait. When we finally get to the door, we are told there are no more seats. My date is now very mad demanding that I do something. Now, who has been harmed, by whom, for what amount, and who should pay whom for the retribution, if any?

Now clearly, I was harmed. Even if I did not really want to see the movie, I was embarrassed. My date was harmed since they wanted to see the movie. We both were harmed by standing there in compliance and then being denied what was represented to us. But what was the value of the harm. Moreover, who harmed us? The person at the entrance allowing others in for money, the people paying the money, the movie theater owner for enabling such an injustice? This is a complex issue.

Take a bigger picture question. We know the Germans killed millions of people, Jews, and many others. Has Germany provided any retribution? Take the English, they forced the Irish into poverty and enabled starvation and death of two million in 1848 so does England owe retribution? The Belgian King, Leopold, personally controlled the Congo, reaping great personal benefit, while millions died. What is the claim here? Then there is Stalin, Mao, Pol Pot, the list goes on.

### 5 WEALTH AS A NATURAL RIGHT

Wealth or the accruing of money and/or goods can be considered a Natural Right. An individual has the right to seek opportunity and if that opportunity leads to great wealth, then so be it. Thus, by examining wealth, as what can be considered a Natural Right, in contemporary terms, we can see how certain segments of the body politic applies their view of Social Justice as a countervailing power.

However, in contemporary leftist thought this act is often considered as almost an evil. Thus, examining this topic is an essential preview to understanding Natural Rights. On April 28, 2014 Francis, the current Bishop of Rome, sent out a Tweet which said<sup>9</sup>:

*Inequality is the root of social evil.*

The first thing that one is amazed about here is the fact that the Bishop of Rome is sending out ecclesiastical edicts via Tweets! Imagine what Augustine or Gregory I would think of such a method of communicating with the Faithful! Second there may be a contradiction here. On the one hand the Bishop has recently been alleged to advise some Argentinian woman who married a divorced man that she may receive the sacraments, a violation of Canon Law<sup>10</sup>. On the other hand, having wealth damns one to perdition. One may sleep with

<sup>9</sup> <https://twitter.com/Pontifex/status/460697074585980928>

<sup>10</sup> <http://www.telegraph.co.uk/news/religion/the-pope/10782508/Pope-Francis-tells-sinner-she-should-be-allowed-Communion.html>

As it states: He reportedly told her: "A divorcee who takes communion is not doing anything wrong." In a rebuke to the local priest who refused her the Sacrament, he added: "There are some priests who are more papist than the Pope." When asked whether the remarks attributed to the Pope were correct, a Vatican

another's spouse but one may not have more money than one's neighbor. Perhaps this was part of the Sermon on the Mount that was lost somewhere in translation.

There are two points being made in this set of seven words. The first point is the issue of inequality or wealth. We will examine this in the context of the Piketty arguments. The second is the word evil. Not sinful, but evil, male facere. Evil has a truly overpowering response in English, a language used by the Bishop, albeit learned in Ireland. We will examine both terms starting with evil.

Now perhaps we should return to Augustine for he thought heavily on the issue of evil, a term that should not be thrown about so glibly. I have read Augustine and his Theory of Evil. It basically is the lack of good. But evil is a powerful word, a real powerful word. We call Hitler Evil. That has true meaning. With all due respect to The Bishop of Rome, does this mean all inequality is Evil? Some people run better than others, is that Evil? Some people make better investments than others. Is that Evil? When one makes such a sweeping indictment then it often tends to reduce the strength of the word.

Evans writes on Augustine and *The Theory of Evil*. Augustine was a Manichee, one who believed in the dual gods, a god of good and a god of evil. The world was a continual conflict of good and evil. But Augustine when he converted to Christianity had to reconcile evil and its existence with the existence of but one god. As Evans states (p 115):

*We are discussing not the nature of evil but what it is to do evil (male facere). What is it for a man to act wickedly? Augustine ... begin(s) by taking the example of an act of adultery. To say that adultery is wrong because the law is against it or because a man because no man would like the sin of adultery to be committed against him by his own wife, is not satisfactory. The evil lies within the act; the evil thing in adultery is lust. ... The evil lies in the will, then, and is transferred to other things by the act of the will.*

Thus, perhaps if we read Augustine correctly that Wealth is not in and of itself an evil, it is perhaps the greed or the lack of charity which is the evil. As Augustine points to lust, perhaps Francis could point

to the sin. But also, there is the need for the complicity of the will, yet how do we know that the will is present, for that is within a person, not something viewed from afar. Francis sees the overt presentation as an evil, whereas the intent, the will, the movement of the soul he seems to see as irrelevant.

Evans further states:

*Augustine had demonstrated that sin begins in the soul. The will is the only source of evil, and the will is a faculty of the mind not of the body. Original sin must therefore affect the will so that it wills evil.*

*Thus, the willing of evil evokes the sin and the ability of this evocation is predicated on the human having the weakness related to this original sin.*

The Guardian jumped on this quickly. As they say<sup>11</sup> :

*But in last autumn's essay, Evangelii Gaudium, Francis wrote that: "Just as the commandment 'Thou shalt not kill' sets a clear limit in order to safeguard the value of human life, today we also have to say 'Thou shalt not' to an economy of exclusion and inequality. Such an economy kills ... Today everything comes under the laws of competition and the survival of the fittest, where the powerful feed upon the powerless. As a consequence, masses of people find themselves excluded and marginalised: without work, without possibilities, without any means of escape.*

Human beings are themselves considered consumer goods to be used and then discarded." The claim that human beings have an intrinsic value in themselves, irrespective of their usefulness to other people, is one that unites Christianity and socialism. It can be even found somewhere in the shadows of Marxism, but in that shadow, humans gain their value from history, and when they stand in its way, that's tough for them, as the millions of Stalin's victims could tell us.

But if you think the market is the real world, it makes no sense at all, since in the market, value is simply the outcome of supply and demand.

Yes, people have individual value; that is the essence of individualism. Yet humans each have a duty to perform, to maximize their potential. Humans ultimately must answer for what they have made of

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spokesman told The Telegraph: "We would neither confirm nor deny that - this was a private telephone call made by the Holy Father and we would not divulge the details." But the reported remarks were in line with the position taken by Pope Francis in recent months – that the Church should treat divorcees and their partners with more compassion.

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<http://www.theguardian.com/commentisfree/2014/apr/28/pope-francis-condemns-inequality-john-paul>



their lives, either to themselves or God. Survival of the Fittest is a view of nature that has a basis in fact. It may not be a norm for social interaction. Now I wonder what Augustine would think of this Bishop of Rome?

Now, Evil requires a *mens rea*, a deliberate overt choice and action to inflict harm, on others or on oneself. Murder is evil, assault is evil, theft is evil. However, the accumulation of wealth perforce of using one's human talents is not evil. This Bishop of Rome is in error, in fact he may very well have gone beyond error. What we do with our wealth is an issue. If we benefit those in need for no calling of their own, then that is Charity. But taking wealth from those who earn it is in itself theft, whether done by others or the state. Yet if one is a Marxist then this is compliant with Marxist theory.

Medical School in the 1960s focused on the “whats” and “hows”. Namely what disease was it and how did you treat it, if at all. There were very few whys, very few. Cancer was an almost total mystery. You cut or you used some chemotherapy which all too often was worse than the disease. But Medicine has moved to a true science, it asks why now-a-days. It now understands that knowing why a cell is mutating uncontrollably is just as important as naming the disease and having a “treatment” at hand. Reversing the process may be possible and stalling its progress is also a valuable outcome.

However, in Economics the whys are all too often hidden, if not totally unknown, in the mass of whats. It also is hidden in that often trumped up set of hows, remedies without any basis in cause, no whys. If one were to read through the mass of writing on wealth inequality there are a lot of whats and hows. There are no whys. Why not? Namely, why has there been a shift, if indeed there has been one. What is the cause, it is not because less people allegedly have more money?

Now we examine Piketty and his work on wealth, not as a Natural Right but as some effected evil akin to an Augustinian artifact<sup>12</sup>. Piketty is a French economist, of the mathematical type, lots of equations to explain things, and of the French mindset of Socialism, and even to the extent of those of the Philosophes, as

discussed quite well by Israel in his recent book on the French Revolution. He exudes the whats, and further exudes the “hows” as to remedy his “whats”. Unfortunately, he fails to grapple with the whys.

But most importantly, Piketty is French, and in Paris. There is a mindset that is uniquely French and moreover uniquely Parisian. This is Piketty and his world view, a view that only one who has spent time in Paris can understand. The French all too often look at the Americans and their “Revolution” with a bit of disdain and then when they look at their “Revolution” there is a mixture of pride and abject terror. The Parisians have pride in the ability to express Fraternity, Equality and Liberty and terror at the “Terror”, Robespierre and his followers, and the fact that the French Revolution was an intellectual act whereas the American Revolution was an economic and human act.

We will examine this and we will consider how it fits in the American mindset, at least what was considered American. We also will argue that there is an alternate American mindset that lives in a somewhat parallel world to Piketty's, the Progressive, or better phrased the neo-Progressive mindset. Both mindsets fundamentally believe that Government should and must play a controlling role, and that there is a need to redistribute wealth since it is all too often unjustly received. Both mindsets deny the individualism which supports fundamental capitalism, namely that each individual is equal before the law and that each individual should be supported by its Government to see and maximize their potential in the society.

Before commencing it is perhaps worth the while to remember what de Tocqueville noticed in the States:

I do not mean that there is any deficiency of wealthy individuals in the United States; I know of no country, indeed, where the love of money has taken stronger hold on the affections of men, and where the profounder contempt is expressed for the theory of the permanent equality of property. But wealth circulates with inconceivable rapidity, and experience shows that it is rare to find two succeeding generations in the full enjoyment of it.

fictionalized view of the French. Yet the fact is that page after page Piketty returns not only to Balzac but to Pere Goriot. I have gone back and reread Pere Goriot in both English and the original French. It is clearly a characterization in time by an author so molded by his own personal conflicts that when one tries to use it as a metaphor of all time that the exercise stretches reality to the breaking point.

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<sup>12</sup> See Robb. Piketty uses Balzac again and again to try to make his point. Balzac was the son of a woman who took him on her cuckolding trysts and who's on life was somewhat of a mixture of exclusion and conflict. One must ask why Piketty seems to dwell upon a Balzacian world. It is in many ways a Dickensian approach to understanding humanity. It looks often on the underbelly, especially I that time just after Napoleon. One could just as easily use Camus or Sartre, as contrasts, or even Dumas and his

There still is a lingering truth to this statement despite the explosion of wealth across the country. There is not the collection of long-standing wealth families as was the case in old Europe. Somehow the children of those with the wealth, there being a few exceptions, manage to deplete it rapidly. Thus, perhaps the worries that inequality brings may be fleeting.

## 5.1 THE POOR VS THE WEALTHY

There seems to be a growing demand from Church leaders for the Government to do more for the poor. This seems especially the case after the appointment of the newest Bishop of Rome. The question is; what is the fundamental Biblical dictum that mandates support of the poor? Is the mandate communal or individual? Is the mandate one of public collectivism or of individual consideration?

From Mathew 6 we have:

*Be sure you do not perform your acts of piety before men, for them to watch; if you do that, you have no title to a reward from your Father who is in heaven. Thus, when thou givest alms, do not sound a trumpet before thee, as the hypocrites do in synagogues and in streets, to win the esteem of men. Believe me, they have their reward already. But when thou givest alms, thou shalt not so much as let thy left hand know what thy right hand is doing, so secret is thy almsgiving to be; and then thy Father, who sees what is done in secret, will reward thee.*

And Mathew 26 states:

*And when Jesus was in Bethany, in the house of Simon the leper. There came to him a woman having an alabaster box of precious ointment, and poured it on his head as he was at table. And the disciples seeing it, had indignation, saying: To what purpose is this waste? For this might have been sold for much, and given to the poor. And Jesus knowing it, said to them: Why do you trouble this woman? For she hath wrought a good work upon me.*

*For the poor you have always with you: but me you have not always. For she in pouring this ointment upon my body, hath done it for my burial. Amen I say to you, wheresoever this gospel shall be preached in the whole world, that also which she hath done, shall be told for a memory of her. Then went one of the twelve, who was called Judas Iscariot, to the chief priests, and said to them: What will you give me, and I will deliver him unto you? But they appointed him thirty pieces of silver.*

One should be careful with this reading. Yes, the poor we always have, but the duty of personal care remains. The many with the thirty pieces of silver did himself no good.

Finally, in Matthew 25:

*Then shall the king say to them that shall be on his right hand: Come, ye blessed of my Father, possess you the kingdom prepared for you from the foundation of the world. For I was hungry, and you gave me to eat; I was thirsty, and you gave me to drink; I was a stranger, and you took me in:*

*Naked, and you covered me: sick, and you visited me: I was in prison, and you came to me. Then shall the just answer him, saying: Lord, when did we see thee hungry, and fed thee; thirsty, and gave thee drink? And when did we see thee a stranger, and took thee in? or naked, and covered thee? Or when did we see thee sick or in prison, and came to thee? And the king answering, shall say to them: Amen I say to you, as long as you did it to one of these my least brethren, you did it to me.*

The admonition in Matthew was what "you" did, not what you were taxed and the Government did. If elected bodies so demand, welcome to representative government. That does not relieve the individual of their individual duty. A duty which is not to be publicly displayed but privately acted upon. If the poor are always there then the individual has a duty, a perpetual duty to help bring them out of poverty, not to institutionalize it.

Now why this long exegesis on Matthew? Because there seems to be a growing demand from the various bishops to emphasize the duty of the State, rather than the duty of the individual. As the Guardian reports on the newly appointed Cardinal in England, a current Bishop of Rome appointment:

Cardinal-designate Vincent Nichols, the Archbishop of Westminster, attacked the reforms led by Iain Duncan Smith. The work and pensions secretary are a practising Catholic. He said that the welfare system had become more "punitive", leaving people with nothing if they fail to fill in forms correctly.

His move follows attacks by prominent figures in the Church of England against the government's programme. "People do understand that we do need to tighten our belts and be much more responsible and careful in public expenditure," the archbishop said. "But I think what is happening is two things: one is

that the basic safety net that was there to guarantee that people would not be left in hunger or in destitution has actually been torn apart. "It no longer exists and that is a real, real dramatic crisis.

And the second is that, in this context, the administration of social assistance, I am told, has become more and more punitive." The archbishop also told the Daily Telegraph: "So if applicants don't get it right, then they have to wait for 10 days, for two weeks, with nothing – with nothing. For a country of our affluence, that, quite frankly, is a disgrace."

Where is the Church in England (not Church of England, prepositions make a big difference) in promoting individual duties? Duties that can be taken care of where they are best understood. Duties which appear most strongly related to the person and done so in the context of anonymity.

It was Gregory, as Bishop of Rome, in the early 7th Century, as the former Mayor of Rome and from a well-respected Roman family instituted the Public collection and distribution of alms to the poor. Prior to that, the duty was an individual duty. In fact, in early Christian belief the duty was personal and was also to be kept in camera.

The fact that we are "taxed" and then the distribution is by the Government and is public is an anathema to the original intent.

Francis of Assisi took poverty to a different level. For Francis he saw the need for personal poverty. He sought alms, a method that Paul eschewed. However, it was Francis' interpretation that lasted for a brief while until the Order began to collect property. Then the claim was individual poverty within a wealthy order. Yet the Order dealt with the poor. They feed the poor, "employed" the poor, and educated the "poor" and so forth.

Thus, the poor need our help. Help to be fed, educated, employed, and cared for. But from a Biblical perspective in my opinion it is clearly a personal, individual, duty, not just a Governmental one.

Now one can see another view by reading Paul and his letter in Romans. From Romans 13:

*Every person is to be in subjection to the governing authorities. For there is no authority except from God, and those which exist are established by God. Therefore, whoever resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. For rulers are*

*not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath on the one who practices evil. Therefore, it is necessary to be in subjection, not only because of wrath, but also for conscience' sake. For because of this you also pay taxes, for rulers are servants of God, devoting themselves to this very thing. Render to all what is due them: tax to whom tax is due; custom to whom custom; fear to whom fear; honor to whom honor.*

Paul is telling the Christians in Rome to obey the authorities because their very authority is from God. Is that to keep them safe or is that a true belief that somehow God had selected Nero. Nero, Caligula, Commodus, and a multiplicity of Roman Emperors were as close to Evil as one can get. Thus, is Paul suggesting that the Christians respect and follow this evil? Indeed, one must often fear abject authority. Would there have been an American Revolution if the Founders read Paul as clearly as it is stated herein?

In Romans 15 Paul states:

*Now accept the one who is weak in faith, but not for the purpose of passing judgment on his opinions. One person has faith that he may eat all things, but he who is weak eats vegetables only. The one who eats is not to regard with contempt the one who does not eat, and the one who does not eat is not to judge the one who eats, for God has accepted him. Who are you to judge the servant of another? To his own master he stands or falls; and he will stand, for the Lord is able to make him stand....*

*But you, why do you judge your brother? Or you again, why do you regard your brother with contempt? For we will all stand before the judgment seat of God. ... Therefore, let us not judge one another anymore, but rather determine this—not to put an obstacle or a stumbling block in a brother's way.*

Judging without knowledge or even judging at all of others has its problems. The Roman Christians were about judging those they felt did not comply with what they saw as the Law. They then were critical, yet not knowing what the reality was. The same is true regarding the Wealthy. The Wealthy often donate to those who are truly in need whereas the Government oftentimes "gives" or redistributes to those who can keep them in their authority. Thus, Paul sits on a weak stool here, his affirmation that all authority is from

God, begs the question of God and Evil, the problem faced by Augustine. For if God authorizes the Emperor and the Emperor does true evil, is then God the author of that evil? One would have to reject that unless we accept a Manichee like God, a duality of a good God and an evil God.

Finally, in Romans 16 Paul states:

*Now I urge you, brethren, keep your eye on those who cause dissensions and hindrances contrary to the teaching which you learned, and turn away from them. For such men are slaves, not of our Lord Christ but of their own appetites; and by their smooth and flattering speech they deceive the hearts of the unsuspecting. For the report of your obedience has reached to all; therefore, I am rejoicing over you, but I want you to be wise in what is good and innocent in what is evil. The God of peace will soon crush Satan under your feet.*

Paul here argues against an open discussion. Perhaps the authority of a God given leader supplants any individual opinion. Clearly in a hierarchical Romanized structure one obeyed from the top down without any questioning. One sees this in Pelagius' Commentaries on the Romans. In contrast one sees just the opposite in a later dialog between Columbanus and Gregory I. There the deference and respect of individuals exists, but Gregory is taken aback by Columbanus, an Irish monk, who has not knowledge or experience of having been under a Roman thumb. Thus, does one follow the Romanized view of Paul or the individualistic view of Columbanus. Likewise does one follow Paul's recommendation of respecting all views?

## 5.2 THE INITIAL PAPAL ATTACK

When we saw the first Jesuit Pope it was no surprise that this may be a bumpy ride. Before commenting on the recent note by the current Bishop of Rome let me establish some basic facts. Catholicism was initially, and had remained for many of the early centuries, a religion based upon the individual. The individual was judged based on what the individual did, not what the group did.

The best example would be to examine Augustine, Bishop of Hippo, who controlled his throng, and their money, through what he knew as the basic principles of Roman law. Gregory I, the Bishop of Rome in the early 7th Century, was before becoming bishop basically the "Mayor" and "Proprietor" of the Roman properties, handed over to the Church, including the very City of Rome. The Church used the denigration of individual wealth as a means of control, a tactic

consistent with classic Roman precepts. Furthermore, the post-Constantinian Church used these principles to centralize the "redistribution" into the hands of the local bishops. This allowed the bishop to take the wealth of the few and "redistribute" it in whatever manner they saw fit. It in effect eliminated individual responsibility.

Christianity was primarily seen in the early Church as duties ascribed to individuals and between individuals. What a person did or did not do was the basis for their redemption. Sacraments were not group exercises, but they were a relationship of the individual with God. The Ten Commandments were individual commandments. The Beatitudes were individual dicta, not what the group should do, but what the individual should do. Salvation is not attained via the group, but by singular individual actions. Thus, the view that groups, read that Governments, have duties to redistribute wealth, is fundamentally against the principals first ordained.

Charity is not the taking of funds from those who have and then redistributing the wealth by third parties. Charity is the willful giving by an individual to others who are in need, and moreover, the helping of those individuals to help themselves and thus in turn to help others. True Charity is helping others succeed as we ourselves may have been fortunate enough to do so. It is an individual and personal obligation. Charity is a bilateral obligation. The giver assists the impoverished, yet the impoverished has a duty to make good, nor just make do, with the gift transferred, thus creating another link in the human chain.

The distortion of this into some third-party collective was a Roman artifact, and was not part of the origins of Christianity. Let us consider one other quote by Woodrow Wilson in 1912:

*We have come upon a very different age from any that preceded us. We have come upon an age when we do not do business in the way in which we used to do business, when we do not carry on any of the operations of manufacture, sale, transportation, or communication as men used to carry them on. There is a sense in which in our day the individual has been submerged. In most parts of the country men work, not for themselves, not as partners in the old way in which they used to work, but generally as employees, -in a higher or lower grade, of great corporations.*

*There was a time when corporations played a very minor part in our business affairs, but now they play the chief part, and most men are the servants of the corporations . . .*

*Yesterday, and ever since history began, men were related to one another as individuals . . .*

To-day, the everyday relationships of men are largely with great impersonal concerns, with organizations, not with other individual men. Now this is nothing short of a new social age, a new era of human relationships, a new stage-setting for the drama of life.

Now here Wilson is praising the individual and denigrating the corporation. Wilson is almost Jeffersonian in his seeking the old ways and seeing in the new some end point of a fatal state controlled by corporations. Yet it was Wilson who did the most to encumber the individual. Income Tax, the Draft, the War, the oppression of women, again he jailed my grandmother who sought a vote, and Wilson's other Progressive programs of institutionalization and rejection of fundamental individualism.

In reality this period opened up opportunity for all. The Carnegies, Rockefellers, and others, albeit controlling mass wealth for the time, themselves came from little and each in turn demonstrated that it could be done and that in doing so each gave back many times. Every time I look across from the entrance of Sloan Kettering to Rockefeller, I see that long line of giving, individual giving. These people came from nothing. They were not from aristocratic families as was the case in Europe. They demonstrated the ability of the individual to prosper. They were examples for entrepreneurs for decades to come.

The last half of the twentieth century was also a time of individual success and in turn individual giving. The Weil Cornell hospital is the benefactor of not just the named man but of many others, the NYU Langone is also the same donation of an individual. The research conducted in the centers with names on them, and those who were anonymous, are a true sign of that individualism of the entrepreneur. Wilson used the corporations as a means to seek political support and failed to understand the full temporal and social benefits. The U.S., unlike Britain where an aristocracy and Class Society exists, has no class. Anyone may have the chance at the gold ring, and those who get it all too often return it in kind, several fold.

Now let us examine but one paragraph in this recent letter from the current Bishop of Rome. In EVANGELII GAUDIUM the Bishop of Rome states:

*54. In this context, some people continue to defend trickle-down theories which assume that economic growth, encouraged by a free market, will inevitably*

*succeed in bringing about greater justice and inclusiveness in the world.*

This opinion, which has never been confirmed by the facts, expresses a crude and naïve trust in the goodness of those wielding economic power and in the sacralized workings of the prevailing economic system. Rome, it appears, has been taken over by the Marxists. The State is the arbiter of where wealth is to be distributed. Those that create wealth are damned to contribute their creations to those who have not done so. The distributor is the State.

Meanwhile, the excluded are still waiting. To sustain a lifestyle which excludes others, or to sustain enthusiasm for that selfish ideal, a globalization of indifference has developed. Almost without being aware of it, we end up being incapable of feeling compassion at the outcry of the poor, weeping for other people's pain, and feeling a need to help them, as though all this were someone else's responsibility and not our own.

The culture of prosperity deadens us; we are thrilled if the market offers us something new to purchase. In the meantime, all those lives stunted for lack of opportunity seem a mere spectacle; they fail to move us.

First, as many have already recognized the pejorative of "trickle down" is just that, a wonderful proof of the sophist at work. Only those opposed to free markets and capitalism would use the term. Thus, unlike the many Sophists battled by Socrates, such as in Gorgias and Protagoras, this Sophist comes, from the beginning of his argument, to establish his bona fides.

As Mankiw writes on this as well:

*First, throughout history, free-market capitalism has been a great driver of economic growth, and as my colleague Ben Friedman has written, economic growth has been a great driver of a more moral society.*

*Second, "trickle-down" is not a theory but a pejorative used by those on the left to describe a viewpoint they oppose. It is equivalent to those on the right referring to the "soak-the-rich" theories of the left. It is sad to see the pope using a pejorative, rather than encouraging an open-minded discussion of opposing perspectives.*

Mankiw is quite observant of the facts. Mankiw understand market capitalism, has examined it in detail, and he has personally participated in the

process. Indeed, Mankiw is correct in saying that the use of the term is a pejorative, meant as such or not, it reflects a mindset.

But let us examine this paragraph from the current bishop.

1. His criticism of “trickle down” is not based upon any fact or metric but upon some concept, not defined, of justice. This is the classic redistributionist's Distributive Justice model having evolved from the 19th century.

2. There is no assumption about the goodness of those wielding power. There is in Christian dogma the burden placed upon the individual, not the Government, to recognize and need and help remedy it. That means teaching someone how to earn a living, not just feeding them, by being an example for those who need guidance, not just once but for a life time, by seeing a need for money, if that is the case, and helping provide it and the other non-monetary needs as may be required. If one has and denies and denigrates those who are less advantaged, or worse oppresses them, then that is an individual sin. There is no real community sin; it is only an agglomeration of individual errors. Here the Bishop errs.

3. We do not see the cries of the sick, dying and oppressed? The Beatitudes were individual directives, they said we are to visit the sick, help them. If a person is ill, without support, then it is our individual responsibility to “nurse” them, to go out of our way to visit them and bring them from the brink. It is not, from a Christian perspective, for us to be taxed and then the Government hands out money in our stead. Again, the Bishop errs.

4. Finally what drives humankind in many cases is the movement forward of civilization, of humanity. Those who work in cancer therapy may have some ego involvement, may be compensated, but in many of not almost all cases they are individual commitments to make mankind better. When one walks down York Avenue in New York one sees what many wealthy have contributed to help others, not only short-term help caring for the sick, but in establishing long term efforts to relieve the disease that plague mankind. In fact, the statement the Bishop makes, “we are thrilled if the market offers us something new to purchase. In the meantime, all those lives stunted for lack of opportunity seem a mere spectacle”, reflects a total lack of knowledge of what a few wealthy individuals have done for millions. Even more so, there are thousands more who have financially given, individually and of their total free will, to that which

those with a great deal more have set a foundation for. The Bishop not only errs, but he seems to either be deliberately ignorant of this process or totally denies individual duties as the sole path of rectification.

Individualism is not a concept of individual isolationism. To the contrary. It is a principle of individual responsibility and duty, of the belief that all individuals are equal, have equal opportunities, and that given that opportunity that they can achieve whatever they can perform of their individual efforts. There is no requirement for redistribution; there is in fact a denial of any Distributive Justice, if each individual has unfettered opportunity and balance.

One must attempt to deconstruct what the Bishop is saying, since he now is saying it for the world, not for those in Argentina. Perhaps we need to have a Columbanus, an Irish monk who argued continuously with Gregory I over issue after issue. The Irish never had the hand of Rome controlling them and their lands and thus did not have the fear of Rome. They feared God but not man. Perhaps another such dialog is timely.

### 5.3 THE QUESTIONS

Before commencing on the work of Piketty, so avidly discussed by many, let us first pose some questions. For all too often the question begs the answer and the right question may actually shine light on reality rather than opinion. But first, let us begin with a few “facts”.

1. Different countries have different social and economic systems. It would appear that this should be obvious but all too often it is assumed that say the U.S. and France are somehow the same. For example, the U.S., and the U.K., despite a common language and heritage, have markedly different systems. The U.K. is a class-based society, it is embedded in its unwritten Constitution. The U.K. has three classes; the Crown, the Aristocracy, and the commoners. In the U.S. one generation may succeed and the next fail, there is no memory.

2. Wealth can be measured in a variety of ways. There is no simple measure. Namely wealth may be real temporal income in some period, or it may be total assets, it may be in land, gold, or many other factors.

3. Not all wealth is the same.

4. Most people who have accumulated wealth have done so on their own merits. Some have not done so.

5. There are many people who have little if any wealth. It is not the fault of those who do have wealth.

6. Wealth accumulation is not a zero-sum game. If Person A accumulates wealth, that in no way means that others have been diminished to the same degree. In fact, if an entrepreneur creates wealth then those whom the entrepreneur uses in the process may very well increase their personal wealth as well.

7. Extreme Taxing of wealth oftentimes creates market distortions which reduce the wealth potential of those who had benefitted before the taxation and attempted redistribution. Entrepreneurs are highly creative and in today's markets very fluid. If for example the U.S. increases a tax to say 95% then most likely they will relocate to those markets with lower taxes. One needs to look no further than the flight from France to England as an example.

Most non-wealthy people are ignorant of the truly wealthy and are informed all too frequently by those wishing to create resentment for their own purposes. Thus, politicians, union leaders, community organizers, academics and others spout forth what they consider facts about wealth and that it is somehow distributed unequally, as if equality is even a factor in wealth creation.

The very essence of wealth creation is inequality. Namely if one looks at an entrepreneur, then the entrepreneur creates wealth by being better, faster, cheaper, or whatever is necessary. The entrepreneur is different, unique, stands apart. The entrepreneur has no duty to share their wealth. They use it to create more wealth if they are so fortunate. Wealth creation is by its very nature the creation of inequality. The Wealth creator produces something, a good or service, that people value more than other providers and thus an unequal situation is created. It is competition.

Wealth is not a static accumulation. Perforce of the return on wealth conjecture and assertion by Piketty, in order to grow wealth, it must be put to use. When put to use then it is used by others to create more wealth, thus in turn making those participating increase their own wealth.

The reduction in "wealth" of the "middle class" is driven by factors aside from those of wealth distribution. Increases in productivity have driven the need for manufacturing labor from the labor force. Likewise, the ability to outsource to lower pay countries also drives this. There is absolutely nothing new here. Thus, anyone who relies upon a minimal skill set to create their own share of wealth is

disadvantaged by the change in the way we see production occurring. It can be argued that those who accumulate wealth do so by understanding this process and benefitting by it. Those who do not benefit do so by failing to understand this process and thus not obtaining any benefit.

Piketty's work on Capital and wealth is an example of forming an argument for Distributive Justice and infringing on Natural Rights. But Piketty's recent work Capital, is long, but not very complicated. His fundamental argument falls into three simple statements:

1. The economic growth rates is no lower in most economies. Yet at the same time the return on wealth is greater than the growth rate. Thus, the rich will get richer and the poor will get nowhere. That he contends is bad. We are asked to accept this dictum on faith, faith in Piketty.

2. Income Inequality is a fundamental core evil in our current society. The fact that some people have managed to amass a large base of wealth from which they get returns in excess of the growth rate of the society as a whole is fundamentally evil. Of course, Piketty never discusses the basis of this contention. For example, just what does he mean by evil?

3. This evil must be promptly addressed by Government redistribution of a form not yet experienced, namely a Wealth Tax. This is a tax on your total wealth. Thus, if they tax your wealth at say 5% per annum then it theoretically disappears in twenty years. Then all people are equal. Again, the Government, and this for Piketty and others means simply those chosen by the Government to make such decisions.

He uses Balzac and his novel *Pere Goriot* as the example of the evils of wealth. In fact, he uses it again and again and again. Balzac was in a sense the Dickens of France. He wrote realistic novels of human despair. His writing began just after the collapse of Napoleon and lasted until his early death in about 1850. Balzac was an influence on many, including Marx. Thus, why should we believe Balzac, and for that matter Dickens, should reflect on our current society.

Piketty examines the relationship between wealth and income. His concern fundamentally is that less people have more wealth than at previous times and that somehow this concentration of wealth is the basis of some future collapse of civilization.



Overall and despite its length, there is not a great deal in the book. One can argue with the data but if one takes his assumptions as they are one is led to the same conclusion.

Fundamentally one must question the whole meaning of wealth. Does the fact that in 1800 a person in France would not have either a running toilet or a long lifetime the same as today where they have perforce of the social redistribution system all the comforts affordable to any other citizen. Thus, what is the difference between the wealth and the poor. That factor seems to be an element not at all addressed.

For example, one needs look no further than some of the insights of Wiener. Wiener being both a great mathematician and a well-versed student of philosophy had many insights half a century ago which are worth sharing. In a paper he wrote in the mid-1950s (as quoted by Masani in his book on Wiener) Wiener is quoted as saying:

*"Suppose, now, that a sum of money at the time of Christ had been left at 2% compound interest; for example, the thirty pieces of silver off Judas. By what factor would it have multiplied up to the present time? We are approaching the year 2000 and in order to express our result in round numbers let us suppose that we are at the year 2000. Then one dollar at the time of Christ would amount, at 2%, to a quantity with over ninety-seven zeros. At any conceivable scale of evaluation one cent at the time of Christ put in a bank at 2% compound interest would amount to something like 10 to the 84 times all the value of the goods in the world at the present time. This is ridiculous, but it still has meaning."*

He continues:

*"The sums earned by money put out to interest have been wiped out time and time again by wars, famines, plagues, and other catastrophes. These catastrophes have been great enough to wipe out every single commercial undertaking of antiquity of thousands of years, and if they had not taken place. The rate of interest for long term investment could scarcely be two tenths of a percent."*

Masani then states Wiener's conclusion:

*"It follows that modern capitalism is able to offer attractive returns on private investments in long term undertakings only by its condescension of bankruptcies during down phases of its periodical trade cycles. For the well off the resulting losses are often on paper, but they are painfully real to poorer*

*people thrown out of work. Thus, the system is not socially homeostatic."*

Wiener had a practical insight that many in today's complex world of macroeconomics should consider. For Wiener was a true mathematician, one of the best of the 20th century, and unlike these economists who attempt at mathematics to hide a swath of frailties Wiener made primal contributions, the Generalized Harmonic Analysis and Brownian motion being two which have affected the current world.

Thus, Piketty examines from the French Revolution onwards. Wiener's insight is to see what can be done with longer "time series".

#### 5.4 OTHERS ON PIKETTY

We will now examine several of those who have commented on Piketty, mostly from the left. Now as to the premise that inequality is due to growth being less than return on investments, we can examine that a bit in detail. As Wiener was the first to point out, the increase in automation results in the reduction in the need for labor. It also results in the disaggregation of labor classes; some having increasing value and many having significantly decreasing value. High School education and the reliance on union manufacturing jobs has begun to disappear. There is no surprise there. Thus, the Piketty observation is another case which begs the question; why?

There has been a rush from to laud Piketty and his observations by both left and right. As usual the Left displays its classic denigration of the other viewpoint, sans raison. Let us examine some of these savants.

We begin with Solow who writes:

*Piketty writes as if a tax on wealth might sometime soon have political viability in Europe, where there is already some experience with capital levies. I have no opinion about that. On this side of the Atlantic, there would seem to be no serious prospect of such an outcome. We are politically unable to preserve even an estate tax with real bite. If we could, that would be a reasonable place to start, not to mention a more steeply progressive income tax that did not favor income from capital as the current system does. But the built-in tendency for the top to outpace everyone else will not yield to minor patches. Wouldn't it be interesting if the United States were to become the land of the free, the home of the brave, and the last refuge of increasing inequality at the top (and perhaps also at the bottom)? Would that work for you?*

Frankly, no. The very chance that each person has in the US, still fundamentally a classless society, to get rich is a significant factor in the success of this country. Yes, many partake of this opportunity via political contacts, the many who are in the “Broker” class, the value transfer types. But the value creation types may still find a home here.

Let us proceed to other commentators. We start with Wolf and his review in the *Financial Times*. He states:

*Capital in the Twenty-First Century contains four remarkable achievements.*

*First, in its scale and sweep it brings us back to the founders of political economy. Piketty' himself sees economics "as a subdiscipline of the social sciences, alongside history, sociology, anthropology, and political science".*

*The result is a work of vast historical scope, grounded in exhaustive fact-based research, and suffused with literary references. It is both normative and political. Piketty rejects theorising ungrounded in data. He also insists that social scientists "must make choices and take stands in regard to specific institutions and policies, whether it be the social state, the tax system, or the public debt".*

But as a balance with Wiener, just how far back must we go to gain perspective. Economies are changing as we make the progression. What was poverty at one time is no longer the case. Also, must we look across various countries in the process of evolving economically.

*Second, the book is built on a 15-year programme of empirical research conducted in conjunction with other scholars. Its result is a transformation of what we know about the evolution of income and wealth (which he calls capital) over the past three centuries in leading high-income countries. That makes it an enthralling economic, social and political history. Among the lessons is that there is no general tendency towards greater economic equality.*

*Another (Third) is that the relatively high degree of equality seen after the second world war was partly a result of deliberate policy, especially progressive taxation, but even more a result of the destruction of inherited wealth, particularly within Europe, between 1914 and 1945. A further lesson is that we are slowly recreating the "patrimonial capitalism" - the world dominated by inherited wealth - of the late 19th century.*

The equality after WW II was due to the total destruction of Europe and Asia and the need in the US to rebalance the debt somewhat on the backs of the vanquished. If one were to examine the US in the 50s one sees high taxes but great growth. Growth due to the fact that the US was not destroyed and others were. Thus, taxes were in effect a means to balance the guaranteed growth.

*Fourth, Piketty makes bold and obviously "unrealistic" policy recommendations. In particular, he calls for a return to far higher marginal tax rates on top incomes and a progressive global wealth tax. The case for the latter is that the reported incomes of the richest are far smaller than their true economic incomes (the amount they can consume without reducing their wealth). The rich may even take themselves outside any fiscal jurisdiction, so enjoying the fiscal position of aristocrats of pre-revolutionary France.*

*This fact blunts one of the criticisms of the book's reliance on pre-tax data: over time, the ability of individual countries to redistribute resources towards the middle and bottom of national income distributions might dwindle away to nothing.*

*Yet the book also has clear weaknesses. The most important is that it does not deal with why soaring inequality - while more than adequately demonstrated - matters. Essentially, Piketty simply assumes that it does.*

*One argument for inequality is that it is a spur to (or product of) innovation. The contrary evidence is clear: contemporary inequality and, above all, inherited wealth are unnecessary for this purpose. Another argument is that the product of just processes must be just. Yet even if the processes driving inequality were themselves just (which is doubtful), this is not the only principle of distributive justice.*

*Another - to me more plausible - argument against Piketty's is that inequality is less important in an economy that is now 20 times as productive as those of two centuries ago: even the poor enjoy goods and services unavailable to the richest a few decades ago.*

Inequality in wealth is all too often the result of chance and capability. One may have the best of intentions and capabilities but if one is “not on the corner when the bus goes by” one never succeeds. Luck or good fortune plays a role in success and thus in wealth accumulation. Timing in developing a new product is always an essential element. Too early and there is no market and too late and the market is gone.

The last statement above has value. The less wealthy today in the West are for the most part better off than a century ago. For the most part there are social programs to support the poor. For the most part the poor have ways of succeeding if they so desire. The “middle class” may have a much larger burden since the support mechanism are not there for them. In fact, they support the poor.

We now consider Cook, in Bloomberg, who has written a review that is somewhat critical and thus drew the wrath of the Left. One of Cook’s observations is:

*As I worked through the book, I became preoccupied with another gap: the one between the findings Piketty explains cautiously and statements such as, “The consequences for the long-term dynamics of the wealth distribution are potentially terrifying.”*

*Piketty’s terror at rising inequality is an important data point for the reader. It has perhaps influenced his judgment and his tendentious reading of his own evidence. It could also explain why the book has been greeted with such erotic intensity: It meets the need for a work of deep research and scholarly respectability which affirms that inequality, as Cassidy remarked, is “a defining issue of our era.”*

*Maybe. But nobody should think it’s the only issue. For Piketty, it is. Aside from its other flaws, “Capital in the 21st Century” invites readers to believe not just that inequality is important but that nothing else matters.*

*This book wants you to worry about low growth in the coming decades not because that would mean a slower rise in living standards, but because it might cause the ratio of capital to output to rise, which would worsen inequality. In the frame of this book, the two world wars struck*

Yes, Piketty does fly the flag from the Barricades on the terror that will arise from this shift in wealth, but as best I could try, I could not find a basis for it in Piketty. The Piketty book is ponderous, for he repeats himself again and again, and belabors each point in so many ways one guesses he is building a barricade against any offense to his conclusion. However, his conclusion whose heart is the statement of the pending evils of wealth consolidations cannot be justified by what he has constructed.

I have met Solow several times and have spoken with him at length. He comes from the same part of Brooklyn as did my parents and his world view in

many ways is that of my Grandmother, when she headed the Socialist Party in New York in its early days. Benevolent, insightful, yet dedicated to a world view that in many ways was formed in the Brooklyn apartments and tenements at the turn of the 19th century. Thus, if one returns and reads Solow accordingly one gets to appreciate what he says. He states:

*Since comparisons over vast stretches of time and space are the essence, there is a problem about finding comparable units in which to measure total wealth or capital in, say, France in 1850 as well as in the United States in 1950. Piketty solves this problem by dividing wealth measured in local currency of the time by national income, also measured in local currency of the time. The wealth-income ratio then has the dimension “years.” The comparison just mentioned says in fact that total wealth in France in 1850 amounted to about seven years’ worth of income, but only about four years for the United States in 1950. This visualization of national wealth or capital as relative to national income is basic to the whole enterprise. Reference to the capital-output or capital-income ratio is commonplace in economics. Get used to it.*

*There is a small ambiguity here. Piketty uses “wealth” and “capital” as interchangeable terms. We know how to calculate the wealth of a person or an institution: you add up the value of all its assets and subtract the total of debts. (The values are market prices or, in their absence, some approximation.) The result is net worth or wealth. In English at least, this is often called a person’s or institution’s capital. But “capital” has another, not quite equivalent, meaning: it is a “factor of production,” an essential input into the production process, in the form of factories, machinery, computers, office buildings, or houses (that produce “housing services”).*

*This meaning can diverge from “wealth.” Trivially, there are assets that have value and are part of wealth but do not produce anything: works of art, hordes of precious metals, and so forth. (Paintings hanging in a living room could be said to produce “aesthetic services,” but those are not generally counted in national income.) More significantly, stock market values, the financial counterpart of corporate productive capital, can fluctuate violently, more violently than national income.*

Solow makes an excellent point in the use of the terms; wealth and capital. Indeed, one often does not understand wealth. Capital I should be able to count.

*There is a stronger implication of this line of argument, and with it we come to the heart of Piketty's case. So far as I know, no one before him has made this connection. Remember what has been established so far. Both history and theory suggest that there is a slow tendency in an industrial capitalist economy for the capital-income ratio to stabilize, and with it the rate of return on capital.*

*This tendency can be disturbed by severe depressions, wars, and social and technological disruptions, but it reasserts itself in tranquil conditions. Over the long span of history surveyed by Piketty, the rate of return on capital is usually larger than the underlying rate of growth. The only substantial exceptional sub-period is between 1910 and 1950. Piketty ascribes this rarity to the disruption and high taxation caused by the two great wars and the depression that came between them.*

Solow here faces the  $g$  and  $r$  arguments. The reality is that this is a very complex issue. Returns to capital can only exceed rates of growth of the economy for a short while. Then they collapse. The whole issue of the business cycle is an example of such a phenomenon. They are dependent variables in a very complex set of fashions.

*This is a fairly recent development. In the 1960s, the top 1 percent of wage earners collected a little more than 5 percent of all wage incomes. This fraction has risen pretty steadily until nowadays, when the top 1 percent of wage earners receive 10-12 percent of all wages. This time the story is rather different in France. There the share of total wages going to the top percentile was steady at 6 percent until very recently, when it climbed to 7 percent.*

*The recent surge of extreme inequality at the top of the wage distribution may be primarily an American development. Piketty, who with Emmanuel Saez has made a careful study of high-income tax returns in the United States, attributes this to the rise of what he calls "supermanagers." The very highest income class consists to a substantial extent of top executives of large corporations, with very rich compensation packages. (A disproportionate number of these, but by no means all of them, come from the financial services industry.) With or without stock options, these large pay packages get converted to wealth and future income from wealth. But the fact remains that much of the increased income (and wealth) inequality in the United States is driven by the rise of these supermanagers.*

*There is not much understanding of this phenomenon, and this book has little to add. Piketty is of course aware that executive pay at the very top is usually determined in a cozy way by boards of directors and compensation committees made up of people very like the executives they are paying. There is certainly an element of the Lake Wobegon illusion: every board wants to believe that "its" high executives are better than the median and deserve to be paid more than the median.*

The point Solow and Piketty make is spot on. Compensation has exploded especially in Financial Services. One can look at markets as value creation, value transfer and value destruction. The creation elements are often the entrepreneurs. Those who risk all for a dream and for a very few the rewards can be excessive. The Finance players however do not create value; they transfer value. Namely they transfer capital from one person to another and in turn take a small cut. It is however a small cut of a very large number.

As for supermanagers, do they even exist? Just look at the heads of GM, Kodak, Polaroid, even HP. Look for Lucent, Nortel, and others. They destroyed value. Yet the Boards continued to reward failure. The solution there is simple. It should, perhaps, be easier for shareholders to hold Directors personally liable. It is amazing how one act of a beheading is the option for failure.

Now we consider Krugman. Krugman is often, in my opinion, the Left's "attack dog". Let me give an example in his discussion of Piketty:

*Still, today's economic elite is very different from that of the nineteenth century, isn't it? Back then, great wealth tended to be inherited; aren't today's economic elite people who earned their position? Well, Piketty tells us that this isn't as true as you think, and that in any case this state of affairs may prove no more durable than the middle-class society that flourished for a generation after World War II. The big idea of Capital in the Twenty-First Century is that we haven't just gone back to nineteenth-century levels of income inequality, we're also on a path back to "patrimonial capitalism," in which the commanding heights of the economy are controlled not by talented individuals but by family dynasties.*

Well this is not quite true, at least in the US. Carnegie, Rockefeller, Goldman, Sachs, hardly family dynasties when they started. In Europe, perhaps, after all in England its unwritten Constitution demands three classes of society; Crown, Aristocracy, and Commons. The US eschewed that approach. In addition, family

wealth often is squandered as new genes are introduced, usually ones who spend the hard-earned wealth.

Krugman continues:

*The general presumption of most inequality researchers has been that earned income, usually salaries, is where all the action is, and that income from capital is neither important nor interesting. Piketty shows, however, that even today income from capital, not earnings, predominates at the top of the income distribution. He also shows that in the past—during Europe’s Belle Epoque and, to a lesser extent, America’s Gilded Age—unequal ownership of assets, not unequal pay, was the prime driver of income disparities. And he argues that we’re on our way back to that kind of society. Nor is this casual speculation on his part. For all that Capital in the Twenty-First Century is a work of principled empiricism, it is very much driven by a theoretical frame that attempts to unify discussion of economic growth and the distribution of both income and wealth. Basically, Piketty sees economic history as the story of a race between capital accumulation and other factors driving growth, mainly population growth and technological progress.*

In fact, anyone who has even slightly understood wealth knows it is not obtained from a salary but from some form of capital appreciation such as stock. Only sports figures and entertainment individuals make what could be called a salary, but even there one sees a capital appreciation. So frankly there is nothing quite new. Piketty is looking at Europe, and especially at France. That is one reason they had a Revolution.

He continues:

*Piketty is, of course, too good and too honest an economist to try to gloss over inconvenient facts. “US inequality in 2010,” he declares, “is quantitatively as extreme as in old Europe in the first decade of the twentieth century, but the structure of that inequality is rather clearly different.” Indeed, what we have seen in America and are starting to see elsewhere is something “radically new”—the rise of “supersalaries.”*

Yes, there are many supersalaried people: especially in Finance and some Corporate havens. But in the Corporate world they supersalaries are driven by stock options which are not really salaries, they are returns on capital. Those in the Finance world get bonuses also predicated on returns on capital, namely how well they judge the market. Thus, there is a fundamental

difference that Krugman appears to have missed. Land is no longer the capital asset, nor a factory but the less tangible assets that exists in the market.

Yet he continues:

*Who determines what a corporate CEO is worth? Well, there’s normally a compensation committee, appointed by the CEO himself. In effect, Piketty argues, high-level executives set their own pay, constrained by social norms rather than any sort of market discipline. And he attributes skyrocketing pay at the top to an erosion of these norms. In effect, he attributes soaring wage incomes at the top to social and political rather than strictly economic forces.*

This point is well taken. There is an incestuous relationship between CEO, Boards, and compensation to all. The CEO often appoints the Board, all of whom are exorbitantly well paid, and they in turn keep their Golden Goose well fed. The solution to this is simple; better Shareholder control.

I now examine the writing by Cassidy. I do not know Cassidy but I know many of his type; Irish but of what could be called the new Irish Left, perhaps with that Irish “chip on the shoulder” attitude that often analyzes by attacking. They have the turn of phrase that cuts but does not unfortunately enlighten. Cassidy comments on Piketty as follows:

*Piketty believes that the rise in inequality can’t be understood independently of politics. For his new book, he chose a title evoking Marx, but he doesn’t think that capitalism is doomed, or that ever-rising inequality is inevitable. There are circumstances, he concedes, in which incomes can converge and the living standards of the masses can increase steadily—as happened in the so-called Golden Age, from 1945 to 1973. But Piketty argues that this state of affairs, which many of us regard as normal, may well have been a historical exception. The “forces of divergence can at any point regain the upper hand, as seems to be happening now, at the beginning of the twenty-first century,” he writes. And, if current trends continue, “the consequences for the long-term dynamics of the wealth distribution are potentially terrifying.”*

*In the nineteen-fifties, the average American chief executive was paid about twenty times as much as the typical employee of his firm. These days, at Fortune 500 companies, the pay ratio between the corner office and the shop floor is more than two hundred to one, and many C.E.O.s do even better. In 2011, Apple’s Tim Cook received three hundred and seventy-eight million dollars in salary, stock, and other benefits,*

which was sixty-two hundred and fifty-eight times the wage of an average Apple employee. A typical worker at Walmart earns less than twenty-five thousand dollars a year; Michael Duke, the retailer's former chief executive, was paid more than twenty-three million dollars in 2012. The trend is evident everywhere.

*But the compensation of Cook was dominated by a return on capital, namely stock options. The Market, people, were willing to pay him, via the appreciation in options, a substantial sum. The people rewarded him as the reward some basketball player or rock star. His salary was not the gain element it was the stock. Could someone else have done this well? Yes, Jobs did, how much was still a Jobs effect, most likely a great deal. But Cook was there when the bus went by.*

*Eventually, Piketty says, we could see the reemergence of a world familiar to nineteenth-century Europeans; he cites the novels of Austen and Balzac. In this "patrimonial society," a small group of wealthy rentiers lives lavishly on the fruits of its inherited wealth, and the rest struggle to keep up. For the United States, in particular, this would be a cruel and ironic fate. "The egalitarian pioneer ideal has faded into oblivion," Piketty writes, "and the New World may be on the verge of becoming the Old Europe of the twenty-first century's globalized economy."*

Not really. If one reads de Tocqueville's tale of his journey through Ireland one sees the Old World. It was illegal for the Irish under the English to be educated, to read, to practice many professions, and the list goes on. That certainly is not the case in the US. That is every person has the opportunity to become a Steve Jobs, not all will make it, and in fact hardly any will even try. The Capitalist system in a raw sense rewards success and punishes failure. The current US system allows rewards on success but provides many cushions for failure. It allows many second chances.

*Defenders of big pay packages like to claim that senior managers earn their vast salaries by boosting their firm's profits and stock prices. But Piketty points out how hard it is to measure the contribution (the "marginal productivity") of any one individual in a large corporation. The compensation of top managers is typically set by committees comprising other senior executives who earn comparable amounts. "It is only reasonable to assume that people in a position to set their own salaries have a natural incentive to treat themselves generously, or at the very least to be rather optimistic in gauging their marginal productivity," Piketty writes.*

*Many C.E.O.s receive a significant amount of compensation in the form of stock and stock options. Over time, they and other rich people earn a lot of money from the capital they have accumulated: it comes in the form of dividends, capital gains, interest payments, profits from private businesses, and rents. Income from capital has always played a key role in capitalism. Piketty claims that its role is growing even larger, and that this helps explain why inequality is rising so fast. Indeed, he argues that modern capitalism has an internal law of motion that leads, not inexorably but generally, toward fewer equal outcomes. The law is simple. When the rate of return on capital—the annual income it generates divided by its market value—is higher than the economy's growth rate, capital income will tend to rise faster than wages and salaries, which rarely grow faster than G.D.P.*

*If ownership of capital were distributed equally, this wouldn't matter much. We'd all share in the rise in profits and dividends and rents. But in the United States in 2010, for example, the richest ten per cent of households owned seventy per cent of all the country's wealth (a good surrogate for "capital"), and the top one per cent of households owned thirty-five per cent of the wealth.*

*By contrast, the bottom half of households owned just five per cent. When income generated by capital grows rapidly, the richest families benefit disproportionately. Since 2009, corporate profits, dividend payouts, and the stock market have all risen sharply, but wages have barely budged. As a result, according to calculations by Piketty and Saez, almost all of the income growth in the economy between 2010 and 2012—ninety-five per cent of it—accrued to the one per cent.*

***"If the ownership of capital were distributed equally"***

By whom? Who gets to decide how much of my wealth gets given to someone else. What justification is there for that? None, Cassidy should know that, if indeed he is true Irish. The English just appropriated all the land and left starving tenant farmers. Shall we repeat that?

The Economist, in rebuttal to a piece by Cook, states:

*Why do we care about inequality? We care about it because we are human, and we can't help but be concerned about matters of fairness, however much economists might wish that were not the case. But what Mr Crook seems not to understand is that we also care about it because we care about living standards.*

*Mr Piketty's book does an able job showing that high levels and concentrations of capital have not been a necessary or sufficient condition for rapid growth in the past, though they have often sowed the seeds for political backlash that is detrimental to long-run growth. His argument is that the living standards of many people around the rich world are now unnecessarily low, because of the nonchalance with which elites have approached distributional issues over the past generation, and that continued heedlessness of this sort will ultimately undermine the growth-boosting institutions of capitalism.*

*His argument is that economic growth that concentrates benefits on a small group of people will probably not be tolerated as fair, even if living standards among the masses are not completely stagnant. It is an argument that is powerful and well-supported by the data—and extremely relevant today, whether or not one thinks inequality qualifies as the defining issue of the era. That, it seems to me, is why the book has been received as it has.*

We care about living standards? In the US the living standards have increased exponentially as wealth localization has increased. Despite the moans from the Left, there are now many benefits to the poor that never existed and the average American has more “things” than ever before.

## 5.5 BACK TO PIKETTY

Let us now return to examine Piketty and his arguments. In a recent interview in *Le Monde*, Piketty states:

*La réalité, c'est que les inégalités ont beaucoup plus augmenté aux Etats-Unis qu'en Europe au cours des trente ou quarante dernières années. De ce point de vue, ce n'est pas étonnant que le problème soit très présent dans le débat américain. Le retour des inégalités inquiète ici.*

Inequality has increased a great deal in the U.S. as he alleges, is an observation of a dynamic in any society. Inequality, as measured by Piketty, is a measure based upon he claims tax records. Oftentimes that may very well be a poor measure. But what is clear in the U.S. is that many have been able to attain great wealth perforce of circumstances that do not exist elsewhere. In fact, the circumstances are fostered by policies of the Government. Returns in the Financial markets to those who “make” them are supported and even insured by the Government. Low interest rates and guarantees against failure feed those flames.

*Mais les Etats-Unis ont toujours une relation beaucoup plus compliquée avec cette problématique que ce que l'on imagine parfois en Europe. C'est un pays qui a une tradition égalitaire très forte, qui s'est construit autour de cette question en opposition à une Europe elle-même confrontée à des inégalités de classe ou patrimoniales. Ensuite, il ne faut pas oublier que ce sont les Etats-Unis qui, il y a un siècle, ont inventé un système de fiscalité progressif sur les revenus justement parce qu'ils avaient peur de devenir aussi inégalitaire que l'Europe.*

In response to critics he states:

*C'est sans doute toujours mieux de lire avant d'écrire. C'est amusant de voir que *The Economist* ou le *Financial Times* se révèlent plus ouverts que certains journaux français. Ce qui me gêne, c'est que d'une certaine façon, cette anecdote est révélatrice de l'état du débat dans notre pays. Il y a une telle peur du déclassement en France qu'on est en permanence dans un débat électrisé entre des gens de droite qui accusent des gens de gauche de vouloir tuer la compétitivité du pays et qui n'arrivent même plus à lire et à regarder ce que pense l'autre.*

Yes, it is always better to read the book before you write a commentary and critique. At the core of a Piketty argument are the following assumptions:

1. People who make a great deal of money do not deserve it. The system must be rigged.
2. The Government has the exclusive right to take the money and do with it what it sees fit.
3. The Government creates greater social and/or economic value with the money so earned than the individual who earned it could.
4. Those who work in the Government are free from any bias or prejudice so that their actions are in no way disadvantaging others.
5. Capitalism is a poor distributor of capital since capitalism rewards success and punishes failure. Those who fail, often perforce of a failure to try, suffer at the hands of those who have succeeded, often due to the capitalist.

However, Piketty in so asserting, denies then the basic Natural Rights we have so strongly argued for. His world is a world of confiscation, of a select band of world governors who decide who gets to keep how much. This is a blatant attack on the Natural Right to succeed. As we have noted, this Natural Right is a

fundamental genetic component of each human. Yet due to the genetic variation amongst humans the drive may be at varying levels. Success thus is an amalgam of drive and circumstances, namely luck. Both are required. But the Natural Right to try and possibly succeed cannot be denied, and cannot be stole in the name of equalizing all people.

## 6 OBSERVATIONS

We now make several observations resulting from this brief analysis.

### 6.1 UNDERSTANDING OCKHAM AND HIS TIME IS ESSENTIAL TO UNDERSTANDING THE DEVELOPMENT OF NATURAL RIGHTS.

We have argued that understanding Ockham and in turn Natural Rights demands an understanding his times and the place he played in it. Many writers refer to Ockham and others in a rather summary and I would contend false fashion. Boyce has argued as follows:

*We are only now beginning to appreciate the complexity and diversity of the intellectual matrix from which the constitutional right to property emerged. The notion that property, as a natural and pre-political right, is the source and paradigm of all other rights is commonly associated with Locke. Certainly, this notion exerted a critical influence on the framers, not only in America, as has long been realized, but also in France, as has more recently was recognized. Locke's assertion that the preservation of property was the "great and chief end" of government' resonated profoundly in both countries. Nonetheless, the Lockean rhetoric of property as a natural and absolute right, with its roots in Aristotle and Aquinas, was by no means universally embraced by the eighteenth-century revolutionaries.*

*Alongside this tradition flourished another that regarded the right to property as conventional and thus subject to regulation by society. This competing view can be traced from Plato and the Hellenistic philosophers, through Augustine and William of Ockham, all the way to the Enlightenment. In France, it found expression in Rousseau and his followers, and in America, in the "civic republican" tradition that profoundly influenced figures such as Franklin and Jefferson. Indeed, even within the natural law tradition, to insist that Grotius, Pufendorf, and Locke regarded property as an unqualified natural right is an oversimplification. For Grotius and Pufendorf, property was both natural and conventional, while for Locke, property was*

*natural in the state of nature, but conventional in civil society.*

If I am to read Boyce correctly, he may have misinterpreted Ockham, for Ockham and his followers saw property as a natural right emanating from the loss at the Garden of Eden and the assembly of humans into societies wherein they could now take dominium over the property that was held in common in the prior time.

### 6.2 NATURAL RIGHTS IS THE CONJUNCTION OF NATURAL AND RIGHTS. EACH HAS THEIR OWN MEANING, AND MEANINGS HAVE EVOLVED OVER TIME. YET THE OCKHAMIST REVOLUTION IN UNDERSTANDING INDIVIDUAL RIGHTS SET THE CONTEXT FOR CURRENT DAY UNDERSTANDING.

Natural Rights exist perforce of human desires for certain things. Consider a young child just learning to speak. Two words come to mind. "No" and "Mine". The "Mine" is an expression of a right to something, property or whatever. The child, actually infant, did not gain this from his environment. It is a Kantian a priori construct. It is, in my opinion, an expression of a Natural Right to Property. Now, no 15-month-old has any such construct, but it is a primal and "natural" expression of the "nature" of this human. Second, is "No" an expression of self-autonomy, an expression of individualism and an expression of doing what the child wants. Exasperating as a parent may be there are a multiplicity of these glimpse into the primal Natural Rights.

Thus, whence do they arise. We have argued that these Natural Rights arise in the limbic system of the brain. It is here where we find the complex signalling that forms desires, anger, and a multiplicity of emotions which distinguish the human. However, each human is different genetically and thus there may be different levels of intensity set in each brain. However, the intensity relating to say the phrase "mine", the construct of private property, may be intense to almost non-existent. Yet it is present and it is a physiological and not a Divine attribute. Natural Rights we therefore argue is a natural result of the wiring and intensity of the functioning of the human limbic system.

Thus, when we examine "Natural Rights" we see Natural as an expression of the limbic system and Rights as the specific operation of that system in a specific individual. Unlike like Locke who see the right to property as uniform, we see this right construct as variable, but existent.



6.3 NATURAL AND NATURE HAVE BEEN USED AS A CATCH PHRASE PREDICATED ON THE ASSUMPTION THAT SOMEHOW HUMANS AS PART OF THEIR NATURE HAVE AN UNDERSTANDING OR KNOWLEDGE OF THESE THINGS INDEPENDENT OF EXTERNAL PERCEPTIONS.

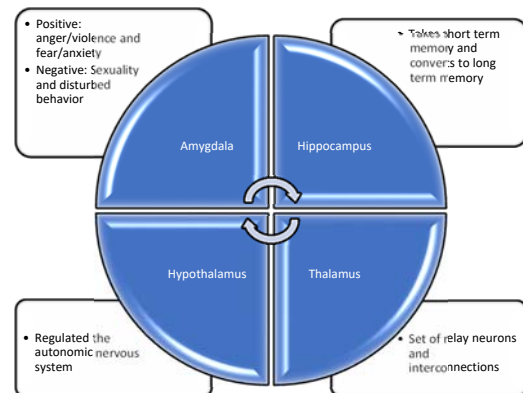
We have just examined the process of the limbic system in determining the Natural Rights profile of an individual. We argue that Nature or Natural are artifacts of the time gone by where we had no knowledge of how the human brain functions and what the emotions are related to this process, and from whence we see a "right". It is natural in the context to it being a natural part of the human structure. It is not natural in the context of some abstract attribution of some common and equal facility in each human.

This limbic variant is natural and is independent of external perceptions, that is a priori, but it may not be ascertained unless initiated by an external stimulant. Thus the "mine" is evoked when someone sees something being intermediated in some manner.

6.4 IN FACT, NATURAL OR NATURE HAS A FIRM FOUNDATION IN THE GENETIC MAKEUP OF THE HUMAN SPECIES ALONG WITH THE VARIANTS OF INDIVIDUAL GENETIC DIFFERENCES. AS SUCH THE GENETIC BASIS FOR NATURAL AND NATURE ALSO ESTABLISHES A FIRM SCIENTIFIC UNDERSTANDING FOR INDIVIDUALISM.

This statement is fundamental to our current construct. My existence argument, not proof, regarding the genetic basis of "natural" as an element of the human genetic fabric focuses on the limbic system, as merely a putative example. The limbic system is composed of a multiplicity of elements, of which we shall focus on just four; the hippocampus, the thalamus, the hypothalamus, and the amygdala. These four areas of the central part of the nervous system as best we know preform several critical functions.

Specifically, we can say that the functions of these parts can be shown below<sup>13</sup>:



Thus, these functions are preprogrammed in the human brain, genetically established to control behavior for better or worse. They are the very nature of the human by definition. Thus, it may be worth speculating, as we become better aware of the human brain and its functioning, to consider what we consider "natural" to be what the brain, especially the limbic system, is programmed to do. Limbic valence is a powerful imprinter of human behavior.

Fundamentally if one accepts what we have posited above, then the field of epistemology is vacuous. It is empty because it must be based upon the physiological operations of the human brain, not speculation of what may be part of a thought process.

In fact, if one accepts the functioning of the brain, its genetic constructs and what we call rational approaches, in a Kantian sense it would be synthetic a priori, then we can push the boundaries of empiricism and rationalism further to a quasi-empirical state, namely the genetic makeup of the limbic system response.

6.5 NATURAL LAW FOLLOWS, RATHER THAN PRECEDES, NATURAL RIGHTS. NATURAL RIGHTS MAY REQUIRE DELIMITATION IN A SOCIETAL CONTEXT AND THUS THE NEED FOR NATURAL LAW, THE SOCIETAL CONTROLLING OF NATURAL RIGHTS

Natural Rights as we have described them as primal. They are in our DNA. Natural Law is Law that controls the Natural Rights. Take property rights. If we were all allowed to say "mine" without some rules we would have chaos. Thus, humanity has evolved a set of rules predicate on Natural Rights. This description is counter to many previous authors who see Natural

<sup>13</sup> <https://www.youtube.com/watch?v=GDIDirzOSI8>

Law as Divine Law. Divine Law which supersedes Natural Rights. I am arguing that it is the other way about. It is the Natural Right and its distribution amongst humans that needs and ever-changing set of rules to avoid conflicts.

#### 6.6 JUSTICE IS THE UNIFORM AND EQUITABLE APPLICATION OF NATURAL LAW.

Justice as a construct has been considered for millennia. In our understanding we relate it to Natural Law which follow from Natural Rights. Thus, Justice applies Natural Law, the law of consensus, to the balance of the Natural Rights of the parties. This is a description of Justice which is in contrast to some of the left-wing thinkers of today.

Consider the review of the work of Rawls, already somewhat extreme left, by Sandel, in a paper by Baker:

*After describing the theory of the person to which he finds Rawls committed, Sandel claims that Rawls-and deontological liberalism generally-fail because of the inadequacy and extreme individualism of this notion of the person.*

*This individualism does not allow for the role of community in constituting the person, nor does it allow for the possibility that a person's meaningful identity is more a matter of cognition than choice. Sandel develops each objection into a major line of critique.*

*In the **first critique**, Sandel argues that the theory of the person to which Rawls is committed is inconsistent with Rawls' difference principle. The difference principle requires that basic societal institutions maximize the position of the worst off. **Sandel claims that if the moral subject is an individual, then the difference principle will involve the conscription of some people's talents in order to benefit the worst off; the difference principle thereby treats those subjects as means.***

***Only a group or community subject could both choose the difference principle and, since each person's talents would belong to this larger subject, avoid treating the moral subject as a means. Thus, the Rawlsian theory of the moral subject as an individuated person is inadequate to support his theory of the right.***

*Sandel's **second critique** emphasizes that Rawls is committed to a thin, denuded notion of the person-a person separate from all ends, commitments, and capacities. This self is so sparse that it cannot*

*constitute an object for self-reflection. It can only be a subject that is, at most, capable of arbitrary and ultimately meaningless choice. The arbitrariness and meaninglessness of this choice result in another fault-an inadequate theory of the good. In combination these two critiques argue that Rawls' notion of the person is neither appealing, consistent with our understanding and experience of ourselves, nor adequate to support Rawls' theory of justice. Specifically, the Rawlsian theory is inconsistent with selves who are constituted by their values, character, commitments, and practices, who are partially constituted by their membership and participation in communities, or who engage in deep self-reflection.*

Rawls was moving to Group Justice and Sandel has taken it all the way. From Sandel we see the true underpinnings of Social Justice, a Group dynamic and control. Yet who gets to decide who is in the Group.

#### 6.7 SOCIAL JUSTICE IS THE APPLICATIONS OF LAWS TO BENEFIT GROUPS OR CLASSES RATHER THAN INDIVIDUALS. SOCIAL JUSTICE IS FUNDAMENTALLY THE MANY CONTROLLING THE FEW TO BENEFIT THE MANY.

Social Justice is a recent construct. Fundamentally it may be connected to the Aristotelian constructs but it is materially different. Social Justice is Group Justice,

#### 6.8 SOCIAL JUSTICE IS THE ANTITHESIS OF NATURAL RIGHTS

Natural Rights is individualism expression of individual humans. Social Justice is the law of the Group. Natural Rights are what each person has a right to whereas Social Justice is the Groups redistribution of those Natural Rights according to a formula which the Group determines. It is fundamentally a total abnegation of Natural Rights.

#### 6.9 IF NATURAL RIGHTS ARE BASED UPON A GENETIC STRUCTURE THEN WHY DOES ONE SEE SUCH A VARIATION IN SOCIETAL NORMS ACROSS VARIOUS CULTURES?

We have argued that the basis of Natural Rights is fundamental to human genomic makeup and specifically driven by the human limbic system. The question may be paraphrased a bit by saying; Is it not true that in China one may consider different "rights" than in say England? The answer is; of course. It is thus not a weakness in the proposed causative nature of genomics on Natural Rights but a clear reflection of it. The genomic structure of one ethnic group differs from another. Thus, we would expect differences in

perceived "Rights". In fact, we would argue that this very difference demonstrates a negation of a Divine attribution to a common Natural Right independent of genomic mixes.

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