

Natural Law and Spontaneous Order in the Work of Gary Chartier

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Gary Chartier's 2013 book *Anarchy and Legal Order* begins with the claim that a just society must be rooted in peaceful and voluntary cooperation.² As the title of the book suggests, this claim implies—and the book is designed to show—that the just society has a legal order but not coercive political authority. In other words, an anarchist society, understood not as one without legal order but as one without rulers, should be our ideal. To make a case like this, one needs to show that there is an underlying morality that the social order both protects and depends on, and that such an order can exist independently of state coercion. In this essay, I intend to argue that Chartier does this, without necessarily using this language, by skillfully combining insights from two traditions not typically associated with one another: natural law theory, e.g. as found in Aquinas and Locke, and spontaneous order theory, e.g. as found in Hayek. I will begin with a brief sketch of the bridge between these theories, and then elaborate on that by showing how Chartier does this in the book.³

The central theme of the natural law tradition is that there are objective moral principles that are accessible to the human intellect but are not the product of human creation. This view has antecedents in Plato and Aristotle, is developed extensively in Thomas Aquinas and Francisco de Vitoria, and brought to bear on practical politics by John Locke. The central theme of spontaneous order theory is that while some orders are the result of deliberate, conscious planning, there are also orders that arise organically. In social theory we are concerned with the subset consisting of those orders that arise as the result of human action but not of human design. This idea is a central tenet of the Austrian School economists and is extensively developed in the work of Friedrich Hayek. Examples of spontaneous orders include: markets, prices in a market, and the customary/common law system.

Let us assume that legal institutions are evolved processes that facilitate social living. How can this be reconciled with the natural law idea that moral

principles are “out there” waiting to be discovered? Because common law is itself a discovery process—discovering the most felicitous ways to resolve disputes and find social forms of life that are conducive to fostering harmony, reconciliation, and cooperation. So is the natural law the thing that common law discovers? Possibly. An evolutionary process can be random or teleological. If the common law is evolving randomly, there’s no reason to think it’s “heading towards” some objective moral reality. But if it’s evolving teleologically, it might be. Social institutions do have a *telos*—facilitating social living. Just as we might defend teleology in ethics on the grounds that human action must be directed in the service of human flourishing, so too we might defend teleology in social institutions on the grounds that social institutions have a purpose. That they have a purpose doesn’t mean that we can deliberately plan them to achieve that purpose—this may presuppose greater knowledge than it is possible for a planner to have—so we need a discovery process which yields efficacious ways of living together that fosters harmony and cooperation, and allows individual flourishing in a pluralistic sense, and promotes reconciliation.

The full picture of natural law theory, from its antecedents in Plato and Aristotle, to its reworking by Aquinas and Vitoria, to its practical manifestation in Locke, can be seen as something that tries to tie together a theory of human nature, a conception of objective justice, and claims about the desirability of various social institutions—the latter being a function of the first two. This leads to questions about the origins and nature of social order. Natural law theory (I am focusing more on Aristotle and Locke than I am on Aquinas, though he is not irrelevant) suggests there are better and worse ways to organize society, and the principles governing this are rationally justifiable and discoverable by the human intellect.⁴ On this view, law is a discovery process, a discovery of truths about human nature and social interaction. The social order should be beneficial: one that facilitates human well-being and allows us to live together and flourish.

In chapter one, Chartier argues that there is such a thing as a “reasonable conception of the good life” (2013: 7). Human welfare, properly understood, is not a matter of mere preference-satisfaction, but rather a matter of whether what we claim constitutes it actually does provide good reason to choose those things. He argues in chapter one that “there are truths about my welfare, or yours, that are strongly independent of our preferences” and shows that this implies “living well” means “acting reasonably” (2013: 23). This is squarely within the basic tenets of a natural law view, and it combines both a claim about objectivity and a recognition of human pluralism. These are not at all incompatible. The ethical framework we see in Aristotle, i.e. a naturalist moral realism, gives us a way to understand human well-being in both its generic (i.e. universal) and individualized dimensions. While capturing that which is common to humanity, it also recognizes and accounts for the pluralism found in such diverse beings as

ourselves. The human psyche is complex enough that no two people are alike in tastes and preferences, although the functionality through which goals are achieved—rationality and self-direction—are the same for each. The human good is plural and agent-relative, although it can be understood within objective generic conditions. There isn't really "the" human good, other than a social order conducive to the many possible (but compossible) human flourishings. The classical liberal political theory that arises from this tradition, for example Lockean theory (with its self-ownership thesis), finds a robust conception of ordered liberty as the social order most conducive to human flourishing—specifically if understood as a "meta-norm," a pre-condition for moral activity, a precondition for the self-directed development of the person.⁵

If the application of practical reason to self-directed action is a necessary condition of human flourishing, then a social order will be beneficial to human well-being only if, in practical terms, people in that society have a sphere of freedom whereby self-directed activity can be exercised without invasion by others. This freedom is subject to the compossibility condition in a social setting (where we can understand compossibility as maximum equal freedom for all)—otherwise conflict is created. It's not so much that rights are necessary conditions of human flourishing, it's that rights make possible and protect the necessary conditions of human flourishing. Rights protect the possibility of self-directedness in a social setting. Cooperative schemes by which we can jointly pursue common ends and greater achievement need facilitation just as peaceful individual pursuits do. Thus both our individuality and sociality are protected and promoted. Chartier claims that

The point of morality is to acknowledge, in tandem with an awareness of the reality and variety of the modes of flourishing and fulfillment, (i) the irreducible diversity of those affected by our actions... and at the same time, (ii) their common possession of those characteristics that render them (equally) morally considerable.... The point of morality is, in short, a life lived well. Such a life is a life lived in accordance with reason. (2013: 40-41)

So a proper understanding of human flourishing reflects both a recognition of objective criteria for rightness and the facts of real pluralism in the human condition. Chartier takes this to imply that moral principles can "referee conflicts among different people's attempts to flourish" and that this yields a principle of nonaggression common to natural law-based classical liberalism (2013: 43).

One way to think about natural law is "whatever has rational authority, independent of contingent interest." What would it mean for a claim about the social order to have rational authority? It would mean that the structure or policy

being described is efficacious with respect to the final end of the social order. So, why do we have society in the first place? Aristotle famously noted the natural sociality of our species, as did Adam Smith. This sociality has at least two distinct dimensions. First, there is the role of community and friends for development of virtue and the importance of loving relationships in what Chartier calls a life well-lived. Second, this sociality also plays a role in promoting prosperity—the well-documented advantages of division of labor, specialization and trade, and mechanisms for channeling dispersed knowledge. So a reasonable account of human flourishing involves economic interdependence in addition to moral interdependence. Of course, many have taken this as evidence that we must have a state—i.e., centralized coercive authority. Chartier’s point is that such coercion is actively detrimental to human flourishing, not least because it interferes with the natural mechanisms by which we cooperate peacefully (2013:157-59).

In any event, given this account of human sociality and its role in human flourishing, a claim about the social order would lack rational authority if it were detrimental to, rather than conducive to, these ends. Locke, for example, recognizes this when he notes that we can’t consent to tyrannical authority—indeed to any social order the basic structure of which is not respectful of our natural liberty.⁶ But Locke didn’t have the benefit of appealing to the insights of classical economists such as Smith and Ricardo. On the model of classical economics, if we’re allowed to trade, we can be of greater benefit to each other than if we cannot. But these gains are not the product of human design. They are a different kind of order, an organic one.

Spontaneous order theory suggests that the social order evolves on its own, without necessarily being guided by human planning. But is the evolution random or teleological? If it were random, then these really would be incompatible ways of understanding social order! But if it is teleological, then the theories are, or at least might be, complementary, and it is not circle-squaring to try to reconcile them. This is what I see Chartier as trying to do, and I think he is correct: the natural law theory’s conception of social order points in the same direction as the organic order arising in spontaneous order theory. Chartier argues that an evolved legal order would be a polycentric one, and that this is what is required by the natural law conception of human flourishing. Polycentric legal orders both instantiate the moral principles Chartier thinks we get from natural law, and are in fact the product of evolutionary processes as explained by, e.g., Hayek.⁷

Hayek distinguishes two senses of order: *taxis* and *cosmos*, the former being imposed or designed order, and the latter being emergent or spontaneous or evolving order. He also distinguishes two senses of law: *thesis* and *nomos*. The former is the kind of law imposed by the sovereign, in what he describes as top-down, coercive, process; the latter is evolved, a spontaneously-emerging (or

bottom-up) process. Hayek's example of this is the evolution of the English common law and customary law. Other examples include emergent norms for property rights in the American west pre-1885, and international merchant law in the Middle Ages and Renaissance.⁸ While *thesis* reflects primarily the interests of the sovereign (or ruling class generally), *nomos* arises organically out of human interaction—the many iterations of people seeking to more effectively coordinate their actions and resolve disputes peaceably. The “law” that develops organically, *nomos*, represents *cosmos*. In the famous example, we see the pencil, which requires for its production more information than anyone could possibly have, involving hundreds of crafts and skills and such a vastly complex web of interaction that it's hard even to describe, let alone coordinate.⁹

But now let us go back to natural-law theory's view of law as discovery: if the *nomos* is discovering mechanisms of social interaction which produce peace and prosperity, i.e. human flourishing, then it is doing what natural law theory says it should be doing. Since the spontaneous order arises out of the many iterations of people seeking to more effectively coordinate their actions and resolve disputes peaceably, then over a long period, greater success is achieved despite the appearance of random trial-and-error. Chartier notes in chapter four that an imposed order of the sovereign is not only likely to be wrong, but less adaptable to new information (2013: 244). Whether teleologically or not, the *nomos* produces institutions that promote peace and prosperity, facilitate cooperative ventures, and protect ordered liberty. This is the convergence point between the two branches. On node 1, rights protect the possibility of self-directedness in a social setting, so the “natural law” should come out to be a political/legal order in which people can pursue their diverse ends, bounded by the compossibility criterion. That looks like a liberal order. On node 2, people's attempts to work out ways of living together result in evolved norms such as impartial dispute resolution, legal protection of socially-acknowledged property rights, and established and equal enforcement mechanisms. That also looks like liberal order. The evolution of the evolved orders isn't random—it tends towards the development of institutions that promote peace and prosperity. That is the *telos*. Our most successful experiments are those that in fact do promote human flourishing. State actions are not only inconsistent with the basic morality Chartier finds in natural law by being intrinsically aggressive or treating persons unequally; they are also not necessary for the production of things like conflict resolution and mutual cooperation. Tyrannical societies result in material impoverishment and human death and suffering. So Chartier's argument demonstrates not only that natural law theory is compatible with spontaneous order theory, but also that what this confluence points to is a voluntary, polycentric legal order. The book is thus valuable not only for offering a robust defense of polycentrism, but for doing so in a way that ties together two

important threads from the liberal tradition, natural law and spontaneous order, and in doing so, enhances our understanding of both.

Notes

¹ Bridgewater State University

² Cambridge University Press, 2013.

³ Another task Chartier sets himself in this book is to show that anarchism is best understood as being a part of the left. I address this component of his project in “Is Anarchism Socialist or Capitalist?” *Reason*, April 2013.

⁴ Natural law theory is frequently associated with religious doctrines, as it is in Aquinas, but it need not be.

⁵ See Douglas Rasmussen and Douglas Den Uyl, *Norms of Liberty* (Penn State University Press, 2005).

⁶ See John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge University Press, 1967 [1690]).

⁷ See Friedrich Hayek, *Law, Legislation, and Liberty* (University of Chicago Press, 1973).

⁸ See, e.g., Terry Anderson and P.J. Hill, *The Not So Wild Wild West* (Stanford Economics and Finance, 2004), Bruce Benson, *The Enterprise of Law* (Pacific Research Institute, 1990), and Harold Berman, *Law and Revolution* (Harvard University Press, 1983).

⁹ Leonard Read, “I, Pencil” (FEE, 1958); see also Friedrich Hayek, “The Use of Knowledge in Society,” *American Economic Review* XXXV no. 4, 1945.

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