

Pierre Manent on Natural Law and Human Rights

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I Introduction

A book by senior French philosopher Pierre Manent was published in 2017, entitled *La loi naturelle et les droits de l'homme*.¹ Since then, an English translation of the volume has also appeared.² This paper will deal with this work, as it touches on topics that are decisive in the relationship between Christianity and human rights. In choosing the title, the author, who claims to be a Catholic, referred back in two directions at once. On the one hand, he recalled a book by Jacques Maritain, the dominant figure in French and international Catholic philosophy, written during World War II, *The Rights of Man and Natural Law*.³ The other point of reference is the famous work by Leo Strauss, a German-Jewish political philosopher from North America, *Natural Right and History*.⁴ This work was also written in the post-World War II global situation, shortly after the Universal Declaration of Human Rights was drafted.⁵ Manent's book is therefore worth reading in this context as a kind of response to the suggestions of the above two authors and to the document of global political significance.

Of course, neither of these authors represented a single direction completely. Maritain was a representative of neo-Thomist French Catholic thought, who also exerted a decisive influence on the spirituality of the Declaration itself.⁶ Strauss,

¹ Pierre Manent, *La loi naturelle et les droits de l'homme* (Paris: Presses universitaires de France, 2017).

² Pierre Manent, *Natural Law and Human Rights: Toward a Recovery of Practical Reason*. Transl. by Ralph C Hancock (Notre Dame: University of Notre Dame Press, 2020). An important difference between the two editions is that the English edition has a subtitle that assumes the reconstruction of the concept of practical reason to be the author's intention, and the English edition also includes a separate study entitled 'Recovering Law's Intelligence', as an appendix. This study was originally published in 2014 in the *Revue thomiste*, with the title 'Retrouver l'intelligence de la loi'.

³ Jacques Maritain, *Les droits de l'homme et la loi naturelle* (New York: Maison Française, 1942).

⁴ Leo Strauss, *Natural Right and History* (based on the 1949 Walgrene Lectures, Chicago: University of Chicago Press, 1971).

⁵ This context was set by José A Colen, 'What is Wrong with Human Rights?', *Interpretation. A Journal of Political Philosophy* 44, no 3 (2018), 451–469.

⁶ Ibid. 451.

on the other hand, can be seen as one of the earliest philosophical critics of the emerging human rights movement, who in turn sought to resurrect classical natural law as opposed to the modern ideal of natural rights. Interestingly, then, Manent has attachments in both directions, which means that his work also forms a bridge between Maritain and Strauss, and between supporters and critics of human rights discourse. On the one hand, he is attached to the scholastic tradition that Maritain sought to renew. On the other hand, he is very critical of the discourse that developed in the post-war Western world as a result of this Maritain-inspired Declaration. Manent does not see it as his job to form a historical reconstruction of how the Declaration was drafted, in very particular political circumstances. However, José Colen's study, which explores the possible historical contexts of Manent's book, reveals that 'consensual' is not the right term for the Declaration, which can be considered 'at best only a problematic "compromise"', although it was voted through with no votes against by the UNESCO General Assembly, only with eight abstentions.⁷

Manent starts his own story from the soul-searching which took place after World War II rather than from the Declaration. Instead, he reconstructs a larger-scale process of the history of ideas – the main stages of which need to be addressed in order to interpret Manent's narrative. The focus of this broader historical perspective is on the changes that resulted in natural law being relegated to the background in the early modern period (sixteenth and seventeenth centuries), and replaced by a rhetoric which was based on the assumption of natural human rights without questioning the basis of these rights. This historical framework is also reminiscent in many respects of Strauss's critique of modernism, although Manent does not become an anti-modernist like Strauss. Depoliticisation and dechristianisation, on the other hand, are important topics in his critique of modernism. After recounting the emergence of modernism, presented as a story of decline, Manent enters into a philosophical analysis. Presenting the logic of obedience to the world of politics in a realistic way, he attempts to explore how human rights discourse contributes to the marginalisation of this logic, and thus how it has caused a politically difficult situation – more or less since the revolutionary events of 1968.

An important building block of Manent's own philosophical analysis is his proposal to build natural law on the three pillars of human motivation – namely on the concept of the pleasant (*l'agréable*), the useful (*l'utile*) and the honest (*l'honnête*). I will argue that this Thomistic-rooted idea in Manent's presentation is not really convincing, as it remains too vague and undeveloped. A more robust theory is needed, but of course developing it would significantly increase the (partly political) risk to the acceptability of Manent's natural law proposal. More convincing seems to be a critique of the Kantian position on the conceptual separation of 'is' (*sein*) and 'ought' (*sollen*), as well as a reconstruction of an Aristotelian–Thomistic terminology

⁷ Ibid. 457.

that is based on prudence or practical reason (*raison pratique*; this term was included in the subheading of the English edition) which is based on the concept of the common good.⁸ Another important element of this set of practical philosophical proposals is the juxtaposition of action based on rational considerations with that of the passion-driven individual. Manent's considerations coincide in part with the theses of an Aristotelian conservatism that I myself have offered in my book entitled *A Political Philosophy of Conservatism: Prudence, Moderation and Tradition*.⁹

II The contradiction of the contemporary human rights discourse

Manent's starting point is a striking contradiction that can be found in contemporary public discourse: While prominent human rights advocates zealously spread the word within their own ranks and culture, defining and demanding an ever widening range of human rights, they do not demand the same elsewhere. Outside Western culture, they regard as acceptable different moral approaches, referring to the necessarily different set of social rules of those cultures. The problem of the Western intellectual is, of course, not new. It is, in fact, a clash between modernist left-wing universalism and postmodern also left-wing relativism, a tension within the universe of left-wing thinking that would be difficult to resolve permanently. It is more exciting to ask why the issue outlined by Manent became topical at the time the book was published. It was published in its original language in 2017, and the author seems to have felt the growing pressure of the debates about migration in his native country. Even though by that time there were already large migrant communities, which have been living for several generations in France, the issue was still rather hot. Therefore, the external-internal division of moral judgements that the philosopher spoke about got even more confusing. It was in those years that human rights universalism was adopted within the French border so as to be applied to the members of the Muslim communities present in French society. However, according to critics, official demands to keep law and order had different standards, when applied to migrant groups and to the majority society. Manent's point is logical and not political: He compares the high moral ground of the human rights discourse at home, with a postmodern reluctance to its use in a culturally different context.

At this point, Manent detects another problem of philosophical relevance in contemporary human rights discourse. He detects the denial of a biologically given human nature, in the ever growing intensity of the exaggerated disputes over gender, manifested in the denial of inborn sexual differences or in the extension of the concept of marriage to LMBTQ+ couples. The kind of constructivist thinking

⁸ The concept of *raison pratique* appears on page 27 of the French edition: Manent, *La loi naturelle*.

⁹ Ferenc Hörcher, *A Political Philosophy of Conservatism: Prudence, Moderation and Tradition* (London: Bloomsbury, 2020).

that holds man capable of questioning and reshaping all his natural endowments is likened by the philosopher to the Transformers toy (10).¹⁰ It is at this point that he foreshadows why he thinks that natural right should be distinguished from natural law.

While natural law issued commands in the name of a teaching implicit in human nature, in a tendency of human nature to society and to knowledge, or in a natural difference among ages, sexes, and capacities, . . . modern natural right begins with a proposition concerning nature that reduces it to identity and separation: the bearers . . . of rights are sufficiently or even exhaustively defined by the fact that they are identical, or similar, and separate. (10)

In this way, natural law is identified with equal rights – everyone has the same rights, since everyone is equal and identical. As for a society characterised by such aspirations, Manent also states from the outset that ‘a society necessarily carries on a ceaseless battle against the “common sense” in which a thousand centuries of human experience have deposited the reference points of human life’ (35). Regarding the institution of marriage, for example, the view that marriage is the privilege of heterosexual couples, is common sense, based on the hypothesis that natural law is a reliable guide of human life. However, when the former is questioned by positive law, the very purpose of this shift in legislation turns out to be nothing less but convincing society that ‘there is no natural law, or that the human world can and must be organized without reference to a natural law’ (17). In this sense, the whole project of modernity will be, for him, a movement to attack and delegitimise natural law.

III Turning away from the world of natural law and practice

The book was born in response to the questions facing French society and, through them, to the abstract ideal of universal progress, which radically transforms society. It is in order to answer these contemporary questions that the French philosopher turns to a specific analysis of the history of political thought. Hence, the historical detour is not an end in itself, but has a clearly defined purpose. It aims to show the fate of natural law in the early modern period and the age of Enlightenment. Like most histories of science and philosophy, Manent’s grand narrative recognises the problem as a conflict between a worldview based on modern science and another based on Aristotle’s practical philosophy. According to him, practical philosophy and its subject, the questioning and critic of practice, are the natural fruits of human nature. According to Manent, practical philosophy has formulated, in a way that is recurrent in the book, his question ‘what must I do’, which is also the prime one in

¹⁰ I indicate in brackets in the main text the page number of the English edition. I refer to the French edition (‘fr.’) if it is relevant for comprehension.

the world of politics, in addition to morality. This is the first question of Aristotle's practical philosophy, but also of Immanuel Kant in relation to practical reason: '*Was soll ich tun?*' ('What must I do?'). Moreover, in contemporary philosophy, it obviously resonates with the contemporary realist conception of politics which is associated with the names of Bernard Williams and Raymond Geuss, through which the grand narrative points back to the Leninist '*Chto delat?*'.

Thus, in addition to Aristotle, Kant, Vladimir Lenin and the contemporary realist school are also featured in Manent's free floating discussion. On the other hand, he is rather critical about scientism, a view of science that is considered by him to be too abstract, while it also has unpronounced political aims. Manent speaks in a Burkean and Oakeshottian manner of the 'hypertrophy of theory' (24), which overturns the order of everyday thinking and creates an isolated liberal individual, an individual who no longer acts but merely triggers causes; who does not have features characterising only him, but who, in essence, is completely identical to others. The creature imagined in this way is denoted by Manent using the concept of *conatus*. This term means effort or experiment, and when he identifies the individual with it, he actually means the deprivation of a political being of politics: He turns out to be a being who is essentially driven by mere self-love, by selfishness, but who is not even compelled to Kantian 'reflective' action. This individualised person is obviously no longer able to read commands from the book of nature – for him, nature is an object of cognition, and knowledge becomes the most important characteristic of man in this paradigm. In this connection, the biblical story is worth recalling that accuses Adam of sin in failing to keep the divine commandment when, at the encouragement of the serpent and Eve, he ate of the tree of knowledge. It seems that the man of the early modern age commits precisely this sin, according to Manent, when, turning away from the practical world, he becomes a believer in theoretical knowledge, instead of living and acting according to God's revealed commandments.

IV The birth of human rights discourse – from Machiavelli to Hobbes

Manent highlights three thinkers from the early modern era: Niccolò Machiavelli, Martin Luther and Thomas Hobbes whom he regards as chief protagonists creating a new way of thinking about rights. They turn their backs on the divine commandment in order to become priests of a new form of knowledge. Manent's reading is original, putting his heroes in a new light that, while plausible, allows us to better understand his own thinking. Although Manent's story begins in chronological order with Machiavelli, as is customary in histories of political thought focusing on the birth of modern liberal principles, yet a passage about Hobbes still precedes his detailed account of Machiavelli. Hobbes emerges here as a thinker in favour of a political order that is based on the concept of *conatus*. According to Manent, the British thinker employs a fatal simplification. He homogenises all human

motivations, and suspects that the desire for power lies behind them all. By thus falsely representing man as a prisoner of his desire, he obviously rejects the classic category of practical reason. Manent begins this story with him because, for him, practical reason will remain the central value to be defended and renegotiated. For him, moreover, the political actor remains the basic unit of political thought rather than the individual, distinguished from the latter by the fact that he is not addicted to his own desires and is accordingly able to apply practical reason and take rational, reflective action. But this is only a cautionary prelude to Manent's detailed interest in the history of ideas. The early modern train of thought really begins with Machiavelli. He considers Machiavelli to be the founder of the realist or scientific point of view. Manent starts from a famously challenging excerpt from *The Prince*:

But since my intent is to write something useful to whoever understands it, it has appeared to me more fitting to go directly to the effectual truth of the thing. . . . [I]t is so far from *how one lives to how one should live* that he who lets go of *what is done for what should be done* learns his ruin rather than his preservation. For a man who wants to make a profession of good in all regards must come to ruin among so many who are not good. Hence it is necessary to a prince, if he wants to maintain himself, to learn to be able not to be good, and to use this and not use it according to necessity.¹¹ (25–26, italics added.)

According to Manent, Machiavelli's starting point is the gap (the French thinker quotes Machiavelli's Italian expression in the original language, *tanto discosto*), which separates the way one lives from the way one should live, or at least from the way one is supposed to live. Manent himself agrees with this description of the human condition, but he believes that Machiavelli drew the wrong conclusion from his correct statement. He did not draw the lesson that, therefore, man is a sinful being who is to (or should) nevertheless strive towards the set goal (after all, how one should live is a requirement of the natural law itself). Instead of that, he tries to shrug off the confusing expectation that the acting individual is better than he is now, as a whole, because he thinks it will kill the action outright. William Shakespeare also shared this belief in the uselessness of examining one's conscience in connection with actions in certain situations. See, for example, the statement in Hamlet's famous monologue: 'And thus the native hue of resolution / Is sicklied o'er with the pale cast of thought, / And enterprise of great pitch and moment / With this regard their currents turn awry / And lose the name of action.' However, it would be difficult to say of Shakespeare that his plays displayed some kind of Machiavellian acceptance of human fallibility. The playwright often showed what sins those in power must 'commit', but did not question the validity of natural law. However, in Manent's reading, Machiavelli undertook something like this. Although he did not make explicit his denial of natural law, he denied that society could be cohesive through the presumption of natural law.

¹¹ Niccolò Machiavelli, *The Prince*. Transl. by Harvey C Mansfield, Jr (Chicago: University of Chicago Press, 1985), 61.

As Manent interprets him, Machiavelli saw outright that only fear can really bind people together. Moreover, from the fear-motivated human world, Machiavelli excluded Aristotelian practical action because, paradoxically, it would precisely restrict the freedom of action of the actor by confronting him with the distance between the 'is' and the 'ought to'. The political leader, the prince, is given essentially complete freedom; his action may not be compared with any ideal norm. In doing so, Machiavelli 'invites us to reconstitute the political order from top to bottom' (33). The driving principle of the re-created order is fear – the prince arouses fear and the citizen is afraid. This system of relations organised from the top, based on fear, takes over the logic of obedience to command, which was previously based on the natural law. However, with this simplistic solution, which ignores the finer circumstances, the Renaissance thinker adopted an abstract scheme that is unable to account for the questions of practical life that are characteristic of the thinking and acting man. Of course, compared to Aristotle's way of thinking, Christian thought has already passed over the issues of practical philosophy. More specifically, instead of bypassing the gap between 'is' and 'ought to' (which was Machiavelli's strategy), it sought to conceptually separate the two as with Saint Augustine of Hippo's two conceptions of cities. The purpose of the distinction was that one should not abandon the divine commandments, acknowledging, of course, that man is by nature a fallible and sinful being, so that biblical commandments will probably never prevail in earthly life. In Christian moral theology, commandments remain a constant requirement for political actors.

A special mix of influences from Machiavelli and the teaching of Christianity appeared in Luther's socio-political thinking. According to Manent, Machiavelli renewed the virtue-based conception of ancient philosophy, while Luther rethought the moral theology of Christianity. While Christian doctrine had until then retained much of the Aristotelian tradition and left room for the Christian political agent, Luther left only the believer – that is, he left out the whole dimension of practical action and practical wisdom. For him, the law no longer set a specific goal for action, but was a source of knowledge about sin and virtue. Conscience could no longer become a direct driving force for action. Instead, faith became primary. As Manent paraphrases Luther: 'The virtue of faith tends to become an art of believing, and the believer a virtuoso of faith' (39). Christian liberty no longer respects the laws but makes decisions without taking laws into account.¹² This freedom, through faith, lifts the Christian believer out of practical life. Thus, like Machiavelli, Luther successfully postulated a situation in which we could ignore the system of practical concerns so characteristic in human life. Based on the bold conceptual innovations of these three thinkers, a new kind of human being emerges, leaving behind the traps of the practical life and avoiding the gap between real life and the law. Manent seems to view these developments with serious reservations, as a result of which we

¹² Manent here refers to Calvin rather than to Luther.

have forgotten about the gap between the 'is' and the 'ought to', and also for what purpose and from what we have freed ourselves. While Machiavelli destroyed the Aristotelian tradition, Luther destroyed Thomist teaching with great efficiency. As a result of their thinking, a new kind of vision was born, which turned away from natural law; Hobbes and Machiavelli substituting it with the logic of fear, Luther demanding a leap of faith from man. But how does Manent's analysis of Hobbes develop this train of thought further?

It was Hobbes who worked out the concept of the state for early modern political thinking. While Machiavelli freed the prince from all forms of bondage and Luther chose the believer as the subject of Christian freedom, Hobbes' main concern was not the prince, nor the believer, but institutionalised politics. He was interested in identifying the role of the state in the service of the new type of man outlined by his predecessors. For Hobbes too, fear organised society, and it was elevated by the philosopher's theory to a society-shaping force. Namely, the fear of death played a key role for him, suppressing the boasting of selfishness and futile vanity, thus forcing the individual to live within the framework of the state. There is another peculiarity of the Hobbesian natural law in addition to the fact that everyone is at war with everyone, which the state can remedy precisely by arousing fear. The other peculiarity of the Hobbesian state of nature was that it also presupposed rights – that is, it attributed such rights to each human being, and these rights can be extended to essentially everything. This underdetermined notion of natural law, according to Hobbes' idea, also deprives the state of its morality – it merely functions as a neutral organisation that brings together power and justice. What remains was irresistible, fearsome power and equal justice, without having its own characteristic morality. This state without *telos* was completely novel, fundamentally different from the teleology assumed by Aristotle, for example, but also from the mediaeval Christian ideal of the common good.

For Manent, Hobbes's assumption that a person in a natural state already has rights is something that is not only contradictory and therefore unfeasible, but also explicitly empties the notion of human rights. If we consider human rights to be extensible to anything, it will truly remain a mere empty form. As Manent writes: 'Once established in its exclusive legitimacy, the idea of rights tends to become an empty form in search of its matter, and everything, literally everything, can become matter for this form' (48). Such vagueness in the content of human rights leads Manent to the statement that the concept does not really refer to anything, or more specifically it refers to nothing: 'Thus, whether we define the human being as "the being with rights" or as "having always and everywhere the right to claim human rights", we say *nothing* concerning what *constitutes* or *gives form* to human life' (51). Then he puts it even more succinctly: 'The truth is that *nothingness* haunts this definition' (51).

This hollowness appears in Manent's analysis of Hobbes not only in relation to rights but also in relation to the state. Manent refers back to Strauss and his notable Hobbesian analysis when he argues that the state lost its own morality

with Hobbes.¹³ This is obviously Hobbes, read back from the liberal state, who attributes to the state the ultimate basis of legitimacy that it secures man's natural right to survive (and other rights, too), but does not have any other purpose for its operation. According to Manent, Hobbes emptied the state not only morally, but also in a political sense. It became a kind of abstract mechanism, an administration, no longer dominating and governing the members of a community. Politics as a practical activity implemented in and for the community gives way to a concept of politics in which it becomes mere state theory or political science: 'Modern political science is a science of the state; at the same time it is, inseparably, a science of obedience' (63). The crux of the matter is that, although the individual appears to be freed from arbitrary domination over him, the state still gains power over him, against which the state itself must empower the individual with rights. This contradiction leads Manent to the theorem that a society organised by the state is not transparent, but opaque (*l'opacité spécifique de la société moderne*) (82, fr.); in a sense a hypocritical form of organisation. It claims something different about itself to what it actually accomplishes.

V Politics as a world of command and obedience

After his demonstration of the nature of state hypocrisy, let us turn to Manent's own philosophical theorems describing natural law. It is first necessary to discuss the very emphatic pair of concepts: command and obedience. When Manent explains his concept of politics, he ultimately builds on this conceptual dichotomy. In a system of political relations, one can always distinguish between the two forms of action of command and obedience. Command is attached to the leader(s) of a given community as a form of action, and obedience responds to this on the other side, by those they lead. In the conceptual rearrangement that he traces from Machiavelli to Hobbes and beyond to Jean-Jacques Rousseau, Manent claims that a forgetfulness concerning the forms of action of command and obedience has arisen, which derives from or supports the system of the state (67). Through the authority (legitimacy) acquired by the state, both command and obedience are obscured and pushed into the background; 'the state obliges members of society to live in a social-political world in which neither commanding nor obeying is any longer clearly visible' (67). It is not difficult for the citizen to comply with the orders of the state – instead, he becomes easily shaped by the moulds of society.¹⁴ However, he also loses control of himself – in fact, the political actor disappears from the stage, and the political community becomes a faceless mass, trying to conform to an impersonal mechanism.

¹³ Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and its Genesis* (Chicago: University of Chicago Press, 1952).

¹⁴ *Pli de l'État*, 76, fr.

This construction, which Manent calls a man-made masterpiece,¹⁵ is given legitimacy by the fact that it cannot only provide the individual with order and security (albeit via intimidation) but also with the freedom of the moderns.

The abolition of the order of norms, external to the state, which constituted natural law, made it possible to liberate the individual – the concept of natural human rights supported this process of liberation. Yet the relationship of the new concept to the state was contradictory. On the one hand, it was from the state of nature prior to the state that human rights were deduced; on the other hand, it is through the state that it becomes possible to implement and enforce these rights. The state does no more than liberate the tendencies inherent in nature: '[M]odern freedom was born as nature liberated, as nature unbound' (86). As an example of the latter, Manent cites the example of sexual freedom: '[W]hat is this freedom if not the suppression of all material, legal, and moral obstacles to the satisfaction of sexual desires?' (86). In this sense, it represents a radical transformation of the concept of nature. While nature has earlier appeared to be the source of order and law, in the eye of modern generations, nature is the world of unlimited freedom. While, in earlier times, power used to act on the basis of laws read from nature, the new form of power, that is the state, serves to guarantee a natural law understood as natural freedom. While previously the state commanded on the basis of natural law and the individual obeyed, the modern state does not command. Instead, its main task is to guarantee the individual's freedom given by nature, even vis-à-vis the state, to himself.

It is fitting that the chapter in which Manent discusses this topic is entitled *laissez-faire, laissez-passer*. He argues that the individual pays a heavy price for winning these new rights and freedoms. He loses his own decision-making capacity, the potential through which he was considered a political actor at all; instead he is now only a passive recipient, as it were, a sufferer of what the state does, in principle, to him, the individual. It is small wonder that when he relies on this modern notion of freedom to explain the new arrangement of power, the birth of the modern state, Manent identifies the modern state, in essence, with the liberal project. Moreover, he also mentions not only Rousseau but also Baruch Spinoza and Pierre Bayle as followers of Hobbes.¹⁶ All this is important because Manent boldly criticizes this image of the nature and conception of the state that he calls enlightened. He confronts both state-centred political thinking and the presumed overemphasis on individual rights.

His confrontation takes place in two phases. He deliberately returns to earlier epochs in the history of thought. First, in connection with Christian natural law, he attempts to reconstruct a minimal concept of it, with the intention of setting some kind of external, and to an extent non-voluntaristic, standard against which to measure

¹⁵ 'L'artifice le plus puissant . . . construit par les hommes', 70, fr.

¹⁶ These authors also play a key role in Strauss's interpretation of modernity. See Winfried Schröder (ed.), *Reading Between the Lines: Leo Strauss and the History of Early Modern Philosophy* (Berlin: De Gruyter, 2015).

the completely meaningless, emptied natural rights. After that, he carries out a specific reconstruction of antique practical philosophy, rehabilitating its central concept: prudence. The truth, however, is that the first step in particular, the reconstruction of natural law, remains undeveloped to some degree, as if the author did not want to dig deeper into the substantive analysis of natural law. Of course, it is a great challenge, in the current phase of the debate over secularisation-laicisation, to stand up for natural law, it is risky not only as a philosophical task, but also in connection with the debates of the contemporary public, whereby the thinker acquires many discussion partners.¹⁷ Compared to the discussion he offers of natural law, his analyses of prudence are much more convincing and, especially after the current renaissance of virtue ethics, are likely to generate even more interest than natural law reasoning. Overall, even the bold, Catholic-conservative theory of Manent's has retained a cautious, moderate level, which is far from Strauss's own one, which is in many respects much bolder, more controversial as a rhetorical performance.

VI The minimal concept of natural law in Manent's theory

Manent begins to outline his conception of natural law only after the above-mentioned contemporary critique and ideological reconstruction. According to him, natural law 'presupposes or implies'¹⁸ that we have the ability to judge human conduct according to criteria that are clear, stable, and largely if not universally shared' (106). Natural law, thus defined, is only possible if there is indeed a human nature that can be considered relatively permanent. This constant human nature is revealed by analysing how people act, understanding their intentions, and shaping our judgement of those actions based on all of our experiences.

Manent separates the three defining motivations of permanent human nature conceptually (and two more features in parentheses). He believes that an action is successful if it can properly balance these three (plus two) factors. They are, as mentioned earlier, being pleasant, useful, and honest (*bonnête*) (as well as fair and noble). This definition can be traced back to Thomas Aquinas, who wrote about the three varieties of good: '*honestum, utile et delectabile*'.¹⁹ These terms have traditionally been translated as follows: 'The useful good (*bonum utile*), the pleasing good (*bonum delectabile*) and the moral good (*bonum honestum*).'²⁰ The question is whether these concepts can really fulfil the task that Manent assigns to them. He argues that the useful and the pleasing can be determined

¹⁷ For my attempt to rethink natural law today, see Ferenc Hörcher, *Prudentia Iuris: Towards a Pragmatic Theory of Natural Law* (Budapest: Akadémiai, 2000).

¹⁸ *Suppose ou implique*, 119, fr.

¹⁹ Saint Thomas Aquinas, *Summa Theologiae*. I, Q 5, A 6, <https://aquinas.cc/la/en/~ST.I.Q5.A6>.

²⁰ Alfréd Turay, *Az ember és az erkölcs. Alapvető etika Aquinói Tamás nyomán*. <https://mek.oszk.hu/08700/08783/html/etika.htm>.

with universal validity and sufficient precision, and can be regarded as objective in that respect. This is not so for the moral, which he also admits to be a much more plastic concept, together with the fair and the noble (which presumably means that it is much more difficult to define them with universal validity).

However, one should consider a more serious criticism of the reduction of the natural law to these three values (plus two). These concepts present only a very constrained definition of human nature, the theory being somewhat unambitious in this sense; not taking risks, as opposed to the much more abundant raw material of the mediaeval natural law. As such, it remains undetermined and therefore less convincing.²¹ An example of when this definition appears to be insufficient can be found in Manent's critique of communism. Manent maintains that a society, regime or institution can be well judged by these three 'marks' or criteria. A society or system of power that does not provide adequate opportunities for the development of these three motivations can be said not to function in accordance with the natural law (107). As he saw it, in communism too little attention was paid to the useful and pleasing, and on the basis of its disregard of these criteria one can state that the communist system was contrary to the natural law. While admitting that this criticism is not complete, he says it allows for a clear assessment of the system. I spent the first quarter century of my life under communism, and on the basis of this experience I cannot confirm that the deprivation of the pleasing and useful is a sufficiently convincing hallmark of the communist regime. A more robust description of the system is that it lacked honesty and justice. But even this does not define the particular way in which the communist order cynically widened the gap between its ideology and its everyday practice and institutional system, and maintained an everyday culture of institutionalised violence with which it was able to keep individuals under constant control. Obviously, this everyday practice of state and party violence eroded every natural sense of justice, and it seems that only a richer description of natural law can give us the key to a more convincing definition of this system – which, of course, is obviously not within the purview of this chapter.

As well as the three (five) motivating forces that characterise human nature, Manent adds another important element to the image that he paints of natural law. This concerns the relationship between the 'is' (*l'être, sein*) and the 'ought to' (*devoir-être, sollen*). According to him, modern philosophers unfoundedly cast their eyes on their predecessors, and even some of their contemporaries, to blur these two spheres, and thus they commit the fault of naturalism (*sophisme naturaliste*). '[I]n reality there is neither a leap nor a chasm nor an abyss between "is" and "ought", but only a gentle slope (*pente douce*) along which

²¹ This critique draws on the distinction between the 'thin' and 'thick' descriptions of human-social phenomena in philosophy (Gilbert Ryle), anthropology (Clifford Geertz) and, more broadly, in the social sciences. In particular, the criticism formulated by the communitarian critique of liberalism serves as an example to me. See, for example, Wojciech Sadurski, *Equality and Legitimacy* (Oxford: Oxford University Press, 2008), in particular the chapter entitled 'Self: Thick and Thin'.

we can walk with modest confidence' (107).²² The opposition between 'is' and 'ought to', of course, refers to the well-known conceptual opposition of David Hume, which Kant 'solved' (*sein-sollen*). However, for us now, the significance of this remarkable episode in the history of philosophy is provided by the fact that it serves as the basis for the usual distinction between natural law reasoning and positivism. The positivists argue that we cannot know from the description of a socio-political phenomenon what to do in a given case, that is, the norm for a solution cannot be read *from* the situation, or digged *out of* the situation. This norm is created by the 'arbitrariness' of the legislator, who does not infer from the 'is' to the 'ought to', but acts to fulfil a legislative intention – presumably for the common good. However, Manent does not share this modernist-positivist position and believes that classical natural law was not characterised by such a sharp separation of the two spheres. He claims instead that, 'to consider attentively the way in which human beings act, to grasp the reasons of their actions, and from this to discern the best way to judge and guide such actions – this . . . constitutes the only way to proceed if we want to escape the alternative of deciding arbitrarily what rule, norm, or law we will declare valid' (107).

The natural law is an alternative and defining element of positivist voluntarism, by the norms of which it can be judged, and out of which the actions and the arguments concerning them can be read. While we did not find his idea of the three attributes of the human motivational basis really and fully convincing, Manent's picture of a slight ascent between the 'is' and the 'ought to' seems indeed convincing. Of course, this only holds if we accept the tradition of Aristotle's practical philosophy, and especially its parts concerning practical wisdom and the common good. Therefore, in the last part of the paper, I will explain Manent's idea of Aristotle's *phronesis* and the common good.

VII Manent's rehabilitation of practical philosophy

The key concepts of practical philosophy are only included in the English version of the book, in an appendix that the American editor attached to the original French book. Interestingly, this very important text is missing from the original French edition. Yet it is indeed a powerful summary of the main theme of the book, the Manentian reconstruction of natural law, tracing it back to Aristotle's practical philosophy. Moreover, the appendix is closely linked to the main text, at the end of which we read that natural law does not make any exhaustive list of the institutions of thriving human life, and this flexibility liberates our thinking from the 'tyranny of the explicit'. Manent does not conceal the fact that he interprets natural law in contrast with the doctrine of human rights. The latter is explicit and exhaustive, and consists of absolute propositions, in connection with which there is no chance of practical deliberation. The natural law, on the other hand, excludes all dogmatically explicit claims and leaves

²² The source of the last four French terms: 120, fr.

room for the ‘play’ of practical life (111). Here Manent explicitly contrasts natural law with the rigidity of Kantian moral philosophy: ‘So conceived, natural law is not like Kantian moral law, in relation to which the agent must always necessarily fall short. Natural law guides action but does not determine it, and thus does not command it’ (111). He later adds: It ‘does not define an ideal, but rather helps us to find the point of equilibrium and the optimal rule for a happy life, that is to say a reasonably pleasant, useful, and noble life’ (112).²³ Later, Manent adds to this formulation the thought that the dogmatism of rights has not only destroyed the architecture of practical life, but has also become an obstacle to political law, thus hindering the logic of political obedience, without which no well-functioning human community can survive.

The last part of the text, after a critique of the rigid human rights discourse, presents the framework of the practical life within which we must take decisions in individual life situations, following the guidelines of natural law. Manent argues that human action seeks to improve human conditions, and therefore we need to get a detailed knowledge of its natural medium, which it can influence. Among other things, we need to re-learn what the concept and meaning of the law itself is. The role of law (divine or natural) in human society has been pushed into the background during the modernist era and has been replaced by the discourse on human rights (120). By putting individual freedom on a pedestal, we have forgotten that, without common norms, a peaceful and orderly form of coexistence is inherently hopeless. Manent cites examples such as the conservation of nature, the institution of marriage and the protection of the family.

Human action follows rules, so when one begins to flee from the rules, the meaning of this action becomes vague. However, the modern concept of freedom, which serves the gratification of desires claims that the individual is his own creation and therefore does not tolerate legal limits. Nevertheless, for example, ‘laws of marriage and of filiation in a way make up the original laws of the human world’ (122–123). This remark, referring to the Old Testament, makes it clear that Manent’s starting point is a concept of law which is present in both Christianity and Judaism. His approach also involves a moment inherited from antiquity, according to which the law also serves as a measure; that is, without a law, one cannot find the right decision. In contrast, today we are without a ‘rule or measure’. This absence of a rule or standard means that ‘we are finally living . . . outside the law’ (123).

For Manent, the standard is Saint Thomas, more precisely his dissertation on law.²⁴ He believes that it has caused great trouble that the teaching of this work has been relegated to the background over the centuries – along with the Catholic Church, he adds. He believes that today we have fatally forgotten Saint Thomas’s way of thinking. To regain the natural law, it would first be necessary to assess what led to its marginalisation; then we should try to reconstruct the notion of law

²³ *Agreable, utile et noble*. 120, fr.

²⁴ Saint Thomas Aquinas, *Summa Theologiae*, I-II, Q 90–108, <https://aquinas.cc/la/en/~ST.I-II>.

as a manifestation of practical reason that encourages and governs human action, especially human action that is directed at the common good (124).

Manent is aware of the difficulty of seeking to restore the natural law and recover a lost concept of law. As he puts it, all modern political thinking, which focuses on rights and self-interest, is built against this concept of law. Hobbes, the 'confessor' of the modern state, developed his own conception in opposition to Aristotle and Saint Thomas. According to Manent, in the early modern era, a 'coup' took place, the essence of which was that the state no longer derived its legitimacy from supporting the public good, but instead by being able to protect the rights of every single person. The French philosopher does not, however, propose to return to a premodern state, for example to reverse the separation of state and church – he would merely reinvigorate the original meaning of the concept of law which would allow the renaissance of natural law.

Manent warns that it is our concept of law, and through it the ideal of the rule of law, that is in danger today. The ideology of the unrestricted rights of the individual has destroyed not only the actual idea of democratic government, but also the accountability of the government by its political community. This ideology, according to Manent, is quite divorced from the idea of a government representing the community of citizens. Instead of the rhetoric of the language of rights, which leads to passivity, we need to recall the idea of human bonds, common action, and the command of the law – that is, the concept of practical reason, in which the law commands.

When Manent encourages Catholics, who he thinks have been passive for too long, to take action in this regard, he is certainly not taking over the role of a political activist. In this sense, Manent's teaching is not an ideology, but a political philosophy that appeals to our political responsibility and wants to sharpen our political judgement, no matter, if we are believers or not. It is not by chance that the author emphasises the virtue of sobriety. But, as we saw, he also returns to the central concept of the Aristotelian–Thomist practical philosophical tradition, the virtue of prudence, diagnosing the 'disappearance of all political prudence in Europe' (130). Manent argues that, ultimately, the practical virtue of communal self-government based on individual responsibility is needed, in agreement with the traditional Thomistic teaching of natural law. Moreover, this cooperation is needed not only within a nation, or even smaller political units but also between European nations if we accept the 'civic and Christian' (130) perspective offered by the concept of Europe.

VIII Manent's Catholic realism

If we want to remain true to the spirit of the book, we should close this analysis by simply quoting the concluding sentence of the volume. According to Manent, the destiny of Europe is 'as precarious as all human things, that is, as dependent equally on our wisdom and on our prayers' (130).

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