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Review: 'Immovable Laws, Irresistible Rights: Natural Law, Moral Rights, and Feminist Ethics'

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IMMOVABLE LAWS, IRRESISTIBLE RIGHTS: NATURAL LAW,
MORAL RIGHTS, AND FEMINIST ETHICS

By Christine Pierce, University Press of Kansas, 2001

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This collection of Pierce's essays traces the evolution of her thinking about natural law theory—and, more broadly, about talk of “natures” as normatively significant—over a period of 30 years. We see her move from a wholesale rejection of such talk, in her influential 1971 piece “Natural Law Language and Women,” to a qualified admission that it can have its liberatory uses. Yet she maintains throughout that, progressive potential or no, natural law is far inferior to Kantian notions of rights and autonomy as a foundation for ethical thought.

Pierce's early argument in “Natural Law Language and Women,” revised and updated for this collection, stands out for its clarity and force. Its influence on later commentators such as Richard Mohr is plain; that its core argument is by now familiar does not detract from its importance for any attempt to ground morality in conceptions of the “natural.” As Pierce shows, there is no automatic positive value attached to what is natural, except when “natural” is used teleologically to describe something's function or purpose. But in that case, she argues, the positive valence is not necessarily moral: a good bomb is one that performs well its function of destruction, but knowing this tells us nothing about when (if ever) it is morally good for that function to be performed.

In her essays on gay marriage, AIDS, homosexual sex, and women's roles, Pierce shows that natural-law-based arguments still make regular appearances in court cases and elsewhere in public discourse. Those who believe that the charge of “unnaturalness” functions more often as a tool of oppressive social control than as a substantive moral criticism will find plenty of fodder here.

Her most philosophically compelling argument against natural law theory, however, is outlined in Chapter 3 (“Natural Law and Moral Rights”). Responding to Alan Donagan's attempt to incorporate elements of traditional natural law within a Kantian framework, she argues con-

vincingly that any such attempt is doomed to failure. She outlines several ways in which the core of Kantian moral theory is irreconcilable with that of traditional natural law theory. Most fundamentally, natural law theory is incompatible with “Kant’s fundamental insight about the nature and worth of persons”—namely, that they are ends in themselves, possessors of autonomy, and sources of law.

As she recognizes, this is most clearly true of the Thomist tradition of natural law thinking, with its emphasis on the “great chain of being” in which each class has the natural function of serving the class above it in the chain. As Pierce points out, such a view clearly licenses treating some classes of persons as mere means to others’ ends. Granted, we could rescue the account from some of its most egregious implications by granting that all persons belong to the same class (so that women, for instance, are not deemed the natural servants of men). Even so, the metaphysical (and hence moral) damage is done—persons, like other beings, are here seen essentially as means (to God’s ends, presumably) rather than as ends in themselves. Relatedly, Pierce charges, the natural law tradition casts the virtue of persons in the same mold as that of objects; a good person is one who fulfils well the function of persons, just like a good car fulfils well the function of cars. There is no sharp dividing line here between persons and things; hence, it is not surprising that the view licenses (indeed, it seems, requires) treating persons as mere means. Pierce concludes that “the Kantian doctrine of moral personhood should lead us to a rejection of the natural law tradition of Aquinas and Aristotle.”

Pierce usefully contrasts this tradition of thought about “natural functions” with Plato’s competing account. In Plato’s version, there are no separate functions for different classes of people; rather the function of human beings in general is reason, and the function of each is to do what he or she is good at. The wisest and most able persons, then, fulfill their functions by leading and guiding; superiority here yields responsibility rather than entitlement to others’ service. In these respects, as Pierce says, Plato’s account is far more attractive than that of Aristotle and Aquinas. Regrettably, however, she says little about the extent to which her criticisms of natural law theory apply to Plato’s account (or to suitably updated versions of it). Granted, as she notes, the Thomist version has had far greater historical influence; nonetheless, there is surely theo-

retical interest in whether and how this historically significant competing version of “natural function” talk in moral discourse can be reconciled with modern conceptions of autonomy and rights.

Pierce does observe that, even on Plato’s account, individual choice about one’s roles and activities must take a back seat to performing one’s proper function. While this restriction of personal autonomy is unlikely to appeal to contemporary liberals, it seems qualitatively different from that required by Aristotle’s view, since here one’s function is at least defined according to one’s individual qualities and abilities. Neither is it clear, to me at least, that Plato’s view licenses treating some persons as mere means to others’ ends.

In any case, Pierce’s comparison of these two ancient versions of natural-function talk sets the stage for further discussion—by Pierce or others—of whether Plato’s view runs afoul of core Kantian norms in the same ways that the Aristotelian/Thomist tradition does. Her arguments in this chapter, of course, are to some degree preaching to the choir, since they are unlikely to convert any natural law proponents who are not already at least proto-Kantians. But in showing that we cannot have it both ways—that, again, synthesizing efforts such as Donegan’s are misguided—Pierce nonetheless makes a significant contribution.

In the final chapter (“Natural Law Today”), Pierce assesses several contemporary attempts to rehabilitate natural law theory. After convincingly criticizing Cristina Traina’s attempted integration of natural law with feminist philosophy, she turns her attention to two very different authors who base substantive ethical conclusions on observations of the natural world: sociobiologist Edward O. Wilson and biologist Bruce Bagemihl.

Pierce’s discussion of Wilson’s attempt (in his *Consilience*) to shift ethics toward “a science-based material analysis” shows clearly that her own points in “Natural Law Language and Women” still need reiterating thirty years later. Wilson contends that by using empirical methods to discover the biological forces that predispose us to make certain kinds of choices, we can reveal a new kind of foundation for ethics. He himself grants, however, that there are some “natural” human drives and preferences that we should follow and encourage, and others we should suppress. As Pierce points out, it is not at all clear how empirical methods are to help us distinguish between the two. She locates an illuminating

example in Wilson's contention that men's attraction to heavily made-up women is a result of male animals' natural preference for "supernormal stimuli," that is, for images of females whose physical features are exaggerated (ironically enough) beyond those typically found in nature. Wilson contends that "the entire beauty industry can be interpreted as the manufacture of supernormal stimuli"; the clear implication is that the industry is therefore natural, inevitable, and beyond criticism. Pierce responds by reminding us of the many ways in which the beauty industry harms, shames, and constrains women in order to conform them physically to male expectations—showing once again that a preference's "naturalness" does not exclusively establish its moral credentials.

Pierce's discussion of Bagemihl's *Biological Exuberance* exemplifies another of the book's recurring themes: the use of "nature" to support liberal or radical moral positions rather than conservative ones. Although Bagemihl is not a philosopher, his observations of widespread homosexual behavior and orientation among nonhuman animals is clearly meant to debunk the centuries-old claim that homosexuality is morally wrong because unnatural. Bagemihl suggests that, on the contrary (in Pierce's words), "homosexuality, transgender, and nonreproductive heterosexuality are all part of biological diversity, which is intrinsically valuable."

Pierce is suitably restrained in her assessment of the moral import of Bagemihl's work. "Even though there is no logical entailment between 'what is' and 'what ought to be'," she says, "there is generally an impact on people's lives and attitudes that comes from knowing what seem to be the facts." For instance, accounts like Bagemihl's may assuage gay people's experience of "loneliness in the universe . . . feeling like an aberration in nature." A realistic perception of facts about the natural world (including humans as biological organisms) can thus aid our reflection about our place within larger systems, comforting and challenging us in turn. While Pierce's comments on this phenomenon are suggestive, I would have liked to hear more about how, if at all, "nature" bears on our actual moral obligations and entitlements. Granted, nature does not generate immutable moral laws based on the natural kind to which one belongs; nor does it provide a foundation for ethics. But in what ways (if any) does it shed light on what we ought to do, or on what counts as a morally admirable human life? Are facts about nature and our place in it

morally significant in ways that go beyond their effects on our beliefs and attitudes?

The moral force of Bagemihl's account, it seems, lies not just in the fact that animal homosexuality is a naturally occurring phenomenon, but rather in the fact that biological diversity (of which it is a part) is beneficial and indeed necessary. Ultimately, then, the implicit moral argument is a consequentialist one: biological diversity—including sexual variation, including among humans—is good in that it contributes to a thriving biosphere and hence has beneficial consequences for beings (including human ones) within that biosphere. The themes evoked here are similar to those of several other contemporary progressive movements, such as those against genetically modified food and against some of the new reproductive technologies. The common theme is that altering and interfering with nature in certain ways is morally wrong, not simply because it is unnatural but because it is seriously *harmful* to humans and other animals (and, depending on one's theory of moral status, to the earth or biosphere itself). My suspicion is that, in many of the contexts in which appeal to nature yields progressive conclusions, the true basis for those conclusions is not any kind of updated natural law theory, but rather an informed and enlightened consequentialism.

As a feminist, Pierce is concerned throughout with the implications of various theoretical frameworks for women and other oppressed groups. Her comments on such matters are uniformly cogent, often shedding light not just on the shortcomings of natural law theory but also on the political necessity of rights theory and other foundations of Enlightenment liberalism. For instance, Chapter 6 ("Rights and Responsibilities") reminds us that rights talk is especially appropriate and necessary in relationships of unequal power and authority, where the more powerful party cannot simply be assumed to be trustworthy or interested in fulfilling his responsibilities to the less powerful party. In Chapter 7 ("Postmodernism and Other Skepticisms"), Pierce offers a limited defense against claims that feminist philosophy is or should be unequivocally aligned with postmodernism. Particularly welcome is her clear explanation of the distinction between universal explanatory theories (often, and rightly, criticized by feminists as excessively totalizing and hence exclusionary) and universalization in ethics. The latter, as Pierce points out, "does not fail to tell the stories of some because it tells no stories at all."

One of the book's most interesting claims is found in Chapter 2, "Eros and Epistemology." In a single deft move, Pierce both defends Plato against certain accusations of sexism and charges some of the critics themselves with heterosexism. In response to the claim that Platonic metaphysics excludes women, Pierce contends that in fact, "platonic metaphysics in its very nature excludes heterosexuals. Throughout the *Symposium* and the *Phaedrus*, the eros that is required for the achievement of knowledge is homosexual." She thus denies that the eroticism aiding our ascent to knowledge of the Forms has to be male, but she also rejects the view that it could be any old eroticism at all. The latter view, she notes, has sometimes been seen as "the only way" to let women back into the picture; therein lies the heterosexism. It is unclear to me whether Pierce believes that Plato was *correct* in claiming special epistemic virtues for homosexual eroticism as such. Marilyn Frye's well-known claim of such advantage for lesbians seems more plausible at first glance, in that it trades on the political position of women and lesbians rather than simply on the bodily "sameness" of the partners.