A Very Short Essay on Mormonism and Natural Law

by The Lawyer

I was recently talking with a friend of mine at Harvard Law School who describes himself as an ex-Mormon. He left the church in his teens, but has always been very respectful toward the church and me. In truth, I am not sure how much Mormonism he has learned beyond what one gets in Junior Sunday School.[1] We were talking about legal theory, and he said, "You believe in some sort of natural law of course." He was shocked when I said that I am genuinely agnostic on this question. He seemed to assume that LDS teachings required some sort of natural law. He raises a question that seems worth discussing.

Does Mormon theology commit us to some notion of natural law? The classic formulation of natural law by St. Thomas Aquinas posits that the order of nature, being a product of divine will and reason, reflects a morally binding normative order. He goes on to argue that law, properly understood, consists of the realization of this moral order in the organization of the polity and that practices that do not conform to this order are not really law.[2] The Latin maxim capturing this conception – which stares ironically down at me everyday in the Harvard Law Library – is "lex est ratio instansia in natura" (law is the reason instantiated in nature).

Mormon theology problematizes this view because we deny ex nhilio creation. Accordingly, nature is not simply a reflection of divine will. Indeed, some Mormon philosophers – Roberts, McMurrin, Madsen, Ostler, and Paulsen – have attempted to

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1 His situation reminds me of the remarks of Noel Reynolds: "Having lived many years in university communities, I have had that sad experience of working with members who have grown too sophisticated, in their own view of themselves, to remain faithful to a gospel which they really only understand on a grade-school level." Noel Reynolds, *Reason and Revelation*, in A THOUGHTFUL FAITH 202, 217 (Philip L. Barlow ed., 1986).

2 *See* Ernest L. Fortin, *St Thomas Aquinas* in HISTORY OF POLITICAL PHILOSOPHY 248, 259-68 (Leo Strauss & Joseph Cropsey, eds., 3d ed. 1987).

"solve" the problem of evil by arguing that metaphysical constraints on God's power (e.g. intelligence neither can be created nor destroyed; matter cannot be created from nothing, but exists coeternal with God) mean that there are genuine evils in the world that God cannot prevent.[3] As useful as this move may be for constructing a theodicy, it seems that accepting the presence of real and genuine evil in the fundamental fabric of reality makes appeals to nature as a normative warrant difficult for Latter-day Saints.

Some LDS writers have departed even farther from the classical formulation of nature as a reflection of divine reason. Professor Frederick Gedicks of BYU Law School (in a heart rending essay about he death of his son) has claimed:

> Reason and rationality are human attributes, not divine ones. Unlike Roman Catholics, Latter-day Saints do not believe that reason is a reflection of the divine law written in our hearts [or in nature?]; to the contrary, our scriptures suggest that God condescends to human reason because we can't seem to understand him in any other language.[4]

This line of reasoning suggests that reason may well be an inadequate guide for moral deliberation because it can only partially reflect the divine.[5]

There is another strand of LDS theology that seems to "rescue" natural law. Among our other heretical doctrines is the claim that there are plural and progressing (or at least formerly progressing[6]) gods. If "as man is, God once was," then it seems to follow that there is some order of things external to God that accounts for his "godness."

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3 *See, e.g.,* David Paulsen, *Joseph Smith and the Problem of Evil*, 39 BYU STUDIES 53 (2000, no.1), TRUMAN MADSEN, ETERNAL MAN 53-61 (1966), STERLING M. MCMURRIN, THE THEOLOGICAL FOUNDATIONS OF THE MORMON RELIGION 91-113 (1965), 2 B.H. ROBERTS, A COMPREHENSIVE HISTORY OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 403-06 (BYU ed. 1965).

4 Frederick Gedicks, *Irony and Grace*, 40 BYU STUDIES 213, 215 (2001, no. 2).

5 Other thinkers have read Mormonism as being much more friendly to reason and less accommodating of a supra-rational deity. *See, e.g.,* JOHN A. WIDTSOE, RATIONAL THEOLOGY 4-8 (1915). However, other thinkers, while not making precisely the same claims as Gedicks, have argued that rational theology and ethics are inconsistent with Mormon beliefs in the priority of continuing revelation. *See, e.g.,* HUGH NIBLEY, THE WORLD AND THE PROPHETS (3d ed. 1987), Louis Midgley, *The Search for Love: Is Zion to Be Built on a Natural Morality or on Prophetic Revelation?* in PERSPECTIVES IN MORMON ETHICS (Donald G. Hill ed., 1983).

6 This is a contested point. Brigham Young clearly taught that God was progressing. Bruce R. McConkie vehemently denied the claim. I am inclined to side with Brigham for reasons that need not be elaborated here.

This point is reinforced by the idea – suggested by scripture and current among many Latter-day Saints – that if God were to act wickedly he would "fall" and cease to be god. Thus, if one could isolate the structure of this god creating system, one might use it as a warrant for moral argument. Note the way in which this inverts the classical formulation: "nature" (conceived of as the ontological frame of the gods and the gods in embryo – i.e. me and thee) provides a warrant because it "makes" God, rather than because it is made by him. Scandalous![7]

However, I am not sure what to make of this kind of thinking. A controversy between Brigham Young and Orson Pratt in the 1850s and 1860s seems to problematize any claim to the moral priority of godness in the abstract rather than the person of the god Elohim. Basically, Orson claimed, inter alia, that Mormons really worshipped the attributes or "godness" of God, rather than the person of God himself. This claim seems to suggest the priority of whatever meta-process accounts for God's deification. However, Brigham Young violently rejected Orson's doctrines, vehemently insisting that Latter-day Saints worshiped persons not attributes. Brigham went so far as to threaten Orson with expulsion from the Twelve and excommunication if he did not recant. Orson eventually backed down, and the First Presidency issued a statement in the 1860s formally condemning the doctrine.[8] Thus, it seems that eternal progression cannot rescue natural law from LDS denials of ex nhilio creation.

Given this context, is it possible to make some sense of natural law with LDS theology? Does it even matter? Traditionally, natural law has been the great opponent of

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7 On the importance of scandal for true religion, see John S. Tanner, *Of Men and Mantles: Kierkegaard on the Difference between a Genius and an Apostle*, 40 BYU Studies 149 (no.2, 2001).

8 *See generally* Gary James Bergera, *The Orson Pratt-Brigham Young Controversies: Conflict Within the Quorums, 1853 to 1868*, 13 Dialogue 7 (1980, no. 2). To read Pratt's wonderfully bizarre – and often penetratingly insightful – theological musings on this subject see, e.g., *Great First Cause, or the Self-Moving Forces of the Universe*, reprinted in Orson Pratt, The Essential Orson Pratt 173 (David J. Whittaker ed., 1991).

legal positivism – stated roughly, the belief that law and morals are analytically distinct

and that any pronouncement that accords with proper procedures (the famous "rule of

recognition") is law.[9] The natural lawyers argue that the divorce of law and morals is

analytically impossible and practically dangerous (e.g. it leads to "legal" regimes like

Nazi Germany or apartheid South Africa). The positivists in turn claims that the moral

theory underlying natural law is at worst incoherent and at best insufficiently certain to

decide legal disputes.[10] In any case, they argue, making the analytic distinction between

law and morality does not mean that morality is irrelevant. Rather, it simply distinguishes

the question of "what law is" from the "how law ought to be justified" or "what law is

best." Professor Lloyd L. Wienreb of Harvard Law School has characterized the whole

debate this way:

> Considered on its own terms, the contemporary debate has a curiously arid quality.
> Everything seems to depend on the narrow question: Is law necessarily obligatory
> or not? If it is, then the natural law theories are correct, for we cannot be
> obligated to do what is immoral. If not, then the criteria of legal validity are
> sufficient and the legal positivist is correct. Can it possibly make so much
> difference whether we say, 'This enactment is too immoral to obligate us;
> therefore, it ought not to be followed,' or 'This law is too immoral to obligate us,
> therefore, it is not law'? It is sometimes claimed that one position or the other
> subverts a community's will to resist an iniquitous regime. Can anyone believe
> that so fine a distinction could have that effect? The suggestion sounds like an
> effort to impart practical significance to a debate that has lost its speculative
> worth.[11]

Thus it seems that the entire question of the possibility of natural law within

Mormonism raises another, perhaps deeper question. Is this entire inquiry pointless, even

by legal philosophy's generally low standards of practical significance.[12] Even if it were

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9 See JEFFRIE G. MURPHY & JULES L. COLEMAN, PHILOSOPHY OF LAW: AN INTRODUCTION TO JURISPRUDENCE 19-33
(2d ed. 1990).

10 To which the first year law student responds incredulously, "And positive rules like material breach or
the Rule Against Perpetuities *are* certain?"

11 LLOYD L. WIENREB, NATURAL LAW AND JUSTICE 4 (1987).

12 *But see* MURPHY & COLEMAN, *supra* at 1-5 (making a not especially compelling argument for the great
practical significance of legal philosophy).

possible within Mormonism to formulate some coherent moral theory based on nature, is there any reason within Mormonism to subscribe to the second prong of Aquinas's formulation, that the ratio instantiated in nature is lex?