

Human Rights and Women's Rights

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Mainstream feminists insist, with a degree of unanimity that is sometimes surprising, that access to abortion is an essential precondition of female equality. That feminism, which is in other respects so flexible, inclusive, and uncategorizable, should be so unyielding with respect to this particular issue seems surprising to many. It is especially surprising to those who, while sympathetic to other feminist goals, also oppose abortion.¹ Why is access to abortion so important? Why must one's views about the equality of women stand or fall on one's views about the value of unborn human life? If feminism has to have a flagship issue, why must that issue be *abortion*? In this paper, I will propose that Pierre Manent's *Natural Law and Human Rights* offers a possible answer to this question. I will argue that, to the extent that mainstream feminism assumes the truth of what Manent calls the "philosophy of human rights," it cannot *not* advocate abortion access. Similarly, I will argue that pro-life feminist attempts to defend the contrary position—namely, that abortion is antithetical to feminism—invariably assume the natural law that the philosophy of human rights rejects. My argument, if correct, suggests the pivot point in discussions of abortion and feminism occurs much further back than many acknowledge: in our very understanding of ourselves and our place in the world.

In what follows I will first briefly summarize Manent's account of what he calls the "philosophy of human rights." With this background in place,

¹ This was initially my own view. See Angela Knobel, "Why Can't One Be Pro-life and Pro-Woman?," *Washington Examiner*, January 26, 2017, washingtonexaminer.com/why-cant-one-be-pro-life-and-pro-woman.

I will consider the mainstream feminist claim that access to abortion is a necessary precondition of female equality. When “equality” is understood through the lens of the philosophy of human rights, I argue, the mainstream feminist insistence on access to abortion becomes coherent: a feminism that assumes the truth of the philosophy of human rights cannot *not* insist on access to abortion. The pro-life feminist reply that abortion harms and oppresses women, by contrast, is coherent only to the extent one assumes the framework of natural law.²

Natural Law or Human Rights?

To believe in natural law is to believe that nature itself sets the standard for human life. What the “law” commands is simply action necessary for the realization of the potential implicit in our nature. Under such a framework, Manent notes, “natural inclinations and natural differences, if they exist, constitute a kind of language of nature.”³ The fact that human beings are naturally rational or naturally social, or that biological males are (typically) attracted to biological women, helps provide insight into nature’s “law”: “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, a tendency or difference that reason once made explicit and on the basis of which it founded its commandments and recommendations.”⁴ Nature’s laws can be and frequently are violated: cultures or individuals can choose to live up to nature’s laws or not. For this reason, Manent says that, under the traditional framework of natural law, human beings are “free under the law.”⁵ Natural law is something we freely choose to follow or freely choose to reject, but because it stems from our human nature, it does not cease to bind even those who reject it.

The philosophy of human rights, by contrast, accepts the notion of freedom but rejects the notion of any overarching “law” against which our free choices are to be measured. While the philosophy of natural law is rooted in the language of nature, and thus sees human beings as free “under the law” of nature, the philosophy of human rights puts freedom prior to

² It is not my intent, however, to argue that a belief in natural law forces opposition to abortion. It is one thing to believe in natural law and another to reach a consensus about what natural law does or does not require.

³ Pierre Manent, *Natural Law and Human Rights: Toward a Recovery of Practical Reason*, trans. Ralph C. Hancock (Notre Dame, IN: University of Notre Dame Press 2020), 11.

⁴ Manent, *Natural Law*, 10.

⁵ Manent, *Natural Law*, 7.

law and recognizes law only as a means of preserving freedom.⁶ While the philosophy of natural law understands individual human beings in terms of their human nature, and thus in terms of their natural inclinations and natural differences, the philosophy of human rights rejects the language of “nature” in favor of an “impoverished common denominator,” namely equality: “Modern natural right begins with a proposition concerning nature that reduces it to identity and separation: the bearers or bases of rights are sufficiently or even exhaustively defined by the fact that they are identical, or similar, and separate.”⁷

When human beings are understood simply as “free,” rather than free “under the law,” nature can no longer provide a standard of judgment. Nature—albeit an anemic version of it—is still there, because only an appeal to what is shared by all can ground the affirmation of equality that is at the heart of the philosophy of human rights. At the same time, however, to focus only on what all share is by definition to exclude any assertion of natural inclination or natural difference.

When our shared human nature is reduced to the “impoverished common denominator” of equality, any individual “nature” beyond our fundamental equality becomes a construct. When common nature does no more than establish basic identity and equality among each individual, when it is reduced to what each equally shares, then we can no longer be male or female, let alone “rational” or “social,” thanks to our common nature.⁸ When the common nature shared by all human beings no longer points us to a standard of behavior, then standards of behavior become ours to invent: what Manent refers to as “particular nature” takes precedence over common nature.

Although Manent does not define it, “particular nature” seems to refer to a nature constructed on the basis of the desires and inclinations a particular individual happens to have. For Manent, the rejection of common nature and the embrace of particular nature is exemplified in contemporary attitudes toward homosexuality. Under natural law, homosexuality was a disorder, and involved the willful choice “contrary to the rule inscribed in the physical and moral nature of humanity.”⁹ Contemporary culture, however, both denies that gender is determined by nature *and* insists that homosexuality is natural.¹⁰ The key to understanding the pair of assertions is this: under

⁶ Manent, *Natural Law*, 9.

⁷ Manent, *Natural Law*, 11.

⁸ Manent, *Natural Law*, 11.

⁹ Manent, *Natural Law*, 14.

¹⁰ Manent, *Natural Law*, 15.

the philosophy of human rights, gender is not a fact of the common nature shared by all human beings, but a construct, something peculiar to the particular nature of the individual: "Sexual desire . . . is determined in a random or unpredictable way according to the particular nature of each subject. It is still nature that commands or prevails, but now the nature proper to each individual and no longer human nature understood as representing an order that is valid for all members of the species." Sexual desire, or even what it means to be male or female, that is to say, are not deliverances of common nature, but constructs of particular nature.

As a direct consequence of the rejection of a common nature, we are no longer able to assert with any authority that any action, culture, or way of life is superior to any other. For Manent, this is especially reflected in contemporary attitudes toward cultural difference.¹¹ Cultural difference is evidence of human freedom insofar as it "demonstrates the almost unlimited capacity of humanity to produce itself—to produce itself *according to no rule or criterion*, whether such a rule or criterion derives its power from human nature or from human reason."¹² To condemn cultural practices, even those we consider barbaric, would be to admit that we are free "under the law," that there are good and bad uses of freedom, and that there is a human nature that can be either lived up to or violated. But having rejected the law of nature, there is only freedom. When rights are based in a freedom unconstrained by law, all cultures are necessarily equal.

Women's Rights and Human Rights

If the philosophy of human rights is at the heart of contemporary attitudes toward gender and cultural difference, then it likely also motivates other aspects of contemporary culture. In this section I will consider the implications of the philosophy of human rights for feminism, and more specifically for feminist attitudes toward abortion. A feminism based on the philosophy of human rights, I will argue, would indeed have to include access to abortion as a foundational component.

As we saw above, Manent argues that the philosophy of human rights eschews nature in favor of equality. Since the philosophy of human rights rejects the "language of nature," it rejects any claims about natural inclination or natural difference. What would it mean to pursue female equality

¹¹ As Manent makes clear, he is referring to the attitudes of "the citizens of modern democracies insofar as they adhere to the idea of justice that the progress of the Enlightenment seems to have validated" (*Natural Law*, 2).

¹² Manent, *Natural Law*, 6

in such a context? If our common nature delivers only the fact of human equality, if everything else is a construct, a deliverance of particular nature, then we should anticipate that a feminism constructed on the philosophy of human rights will be more or less silent on the question of what women “are” or of what it “means” to be a woman. To prioritize the contributions of particular nature is to anticipate that different women will have different and possibly even incompatible understandings of what femininity is. For some, femininity will be tied to motherhood and marriage or to a given tradition, culture, or religious belief; for others, it will not. For a feminism founded on the philosophy of human rights, this will be as it should be. Since such a feminism cannot look to nature or to an account of what women “are” or “want,” it can insist only that individual women be free to achieve their own version of femininity, whatever that happens to be.

If the preceding account is correct, then self-determination will be the primary vehicle of female equality. Women will be “equal” to the extent that they have the freedom to construct their femininity in accord with the inclinations and preferences of their particular natures. Such freedom will be secured partly, but only partly, through supportive social structures. Access to education, equal pay, equal opportunity, and the absence of social pressures to conform to a certain preconceived ideal of femininity will certainly all help to provide space for the construction of a particular nature. But it is equally important to notice that, if female equality is understood to consist in a woman’s freedom to construct and live her own version of femininity, then the obstacles to it are not merely social. For, when female equality is understood in this way, an important—perhaps *the* important—obstacle to female equality will be biology itself.

Even if we avoid making any assertions about the common nature all females share, it will continue to be true that only those with a certain biological constitution can become pregnant, that when they do it will take a considerable amount of time to gestate the child, and that that space of time will be inconvenient, uncomfortable, and sometimes dangerous. It will also continue to be true that (most) of those with said biological constitution will feel an inclination to bear children, that they will feel attached to the children they gestate, and so on. The philosophy of natural law holds that these biological facts provide helpful insight into the “language of nature”: they tell us something about the law that governs human beings in general and women in particular. Those facts will also tell us something about human rights and duties, and importantly about what kinds of actions will lead to or detract from human fulfillment. The philosophy of human rights as described by Manent, however, rejects what the philosophy of natural

law affirms: it rejects the notion of a language of nature and of a robust common nature. But rejecting the language of nature does not eliminate the problem of biology.

Suppose that I have constructed my own version of femininity for myself, according to the inclinations and preferences of my own particular nature, and that I have constructed it in such a way that pregnancy and motherhood have no role to play, or—as is more likely the case—have no role to play until some appointed time. If (having included in my construct the behaviors that biologically culminate in pregnancy) I nonetheless become pregnant, what then? Unless I have a way of resisting it, biology will run roughshod over the vision of femininity I have constructed, over the inclinations and preferences of my own particular nature. This, in turn, seems to imply that—at least according to the philosophy of human rights—women cannot really be equal unless and until they have the ability to refuse the burdens placed upon them by biology itself.

An excellent illustration of the intuition that female liberation requires liberation from biology itself can be found in Judith Jarvis Thompson's famous "A Defense of Abortion."¹³ Thompson argues that a woman who finds herself pregnant has no more obligations to the child she carries than she would to a passerby in need of help. Since we do not expect other members of society to offer assistance whenever they see someone in need, Thompson argues that it is unfair and unjust that society expects women to not merely offer aid to the fetus but to put their entire lives on hold to care for it.¹⁴ Although Thompson initially imagines a situation where pregnancy is forced upon a woman by circumstances outside her control, she ultimately argues that such expectations are unjust even when the pregnancy is the result of the woman's own deliberately chosen actions. If a burglar were to injure himself while invading a home, the homeowner would not be held responsible, let alone expected to assist him, even if he had neglected to lock his doors.¹⁵ Similarly, Thompson argues, a woman should not be expected to care for a developing fetus merely because she knew a pregnancy might result from her actions.

Thompson's critics charge that her examples distort and denaturalize pregnancy, depicting pregnancy as an invasion altogether distinct from the sexual act, and that she ignores the fact that the female body is meant to bear children and that the developing child—whatever its origins—is exactly

¹³ Judith Jarvis Thompson, "A Defense of Abortion," *Philosophy and Public Affairs* 1, no. 1 (1971): 44–66.

¹⁴ Thompson, "Defense of Abortion," 62.

¹⁵ Thompson, "Defense of Abortion," 58.

where it ought to be.¹⁶ But from the perspective of the philosophy of human rights, this is precisely the point. From the perspective of the philosophy of human rights, the “naturalness” of conception implies nothing whatsoever about a woman’s obligation to carry a child. If one rejects the idea of a common nature that gives a law, then it will be nonsensical to speak of obligations whose existence points back to that shared, common nature. It will be more nonsensical still to claim that one’s biological makeup brings special obligations along with it. Any attempt to make such claims will necessarily be seen as unfair and unjust.

Viewed in this light, access to abortion becomes not just one demand among others, but foundational to female equality as such. On the basis of our preceding discussion, it is clear that the philosophy of human rights has two consequences for the pursuit of female equality. First, since equality means having the freedom to construct femininity according to the inclinations and preferences of particular nature, feminism cannot advocate for a specific ideal of femininity or uphold some “ideal” of what women are. Since feminism cannot put forward any robust account what women are or want or need, the sole coherent goal of feminism will consist in ensuring that women have the freedom to construct femininity for themselves in accord with the deliverances of their particular nature. The second consequence, which is a result of the first, is that, when female equality is understood in these terms, the success of feminism will hinge on the elimination of the obstacles that get in the way of the construction of a particular nature: not just the more easily remedied social obstacles, but biological ones as well. Since there are few obstacles to the construction of a particular nature that are as dramatic, pervasive, and life-altering as pregnancy, it follows that any feminist who accepts the philosophy of human rights would have to insist on access to abortion.

Women’s Rights and Natural Rights

So far I have argued that, to the extent that feminism presupposes the truth of the philosophy of human rights, it must also advocate access to abortion.¹⁷ But if Manent is correct, allegiance to the philosophy of human rights is so widespread, as to be the *de facto* assumption of citizens of modern

¹⁶ See, e.g., Gilbert Meilander, “The Fetus as Parasite and Mushroom,” *Linacre Quarterly* 46, no. 2 (1979): 126–35.

¹⁷ I have not argued that mainstream feminism does in fact ascribe to the philosophy of human rights. Given the complexity and variety of feminism, such a claim would be difficult to establish.

democracy.¹⁸ If both Manent and I are correct, then the gap between mainstream feminists and pro-life feminists is wider and deeper than it at first appears: it is not a disagreement about how to achieve mutually agreed upon goals, but a disagreement about ourselves and our place in the world. If the roots of the disagreement reach all the way to human nature itself, then it will be impossible to both assume the truth of the philosophy of human rights and oppose abortion. In what follows, I will argue that—even if they themselves are unaware of it—the truth of this consequence is reflected in the very rhetoric of pro-life feminism: their claims are coherent only to the extent one assumes the truth of natural law.¹⁹

Pro-life feminists commonly respond to the claim that access to abortion is a necessary precondition of female equality by insisting that abortion is not a “choice” but an act of desperation. Women *want* the child, they argue, but are they forced into seeking abortion because society fails to sufficiently support them. Frederica Matthews Green, former vice president of Feminists for Life, has famously argued that abortion is always an act of desperation on the woman’s part: “Like an animal caught in a trap, trying to gnaw off its own leg,” says Matthews Green, “a woman who seeks abortion is trying to escape a desperate situation by an act of violence and self-loss.”²⁰ Abortion, she claims, “is not a sign that women are free, but a sign that they are desperate.”²¹ And the New Wave Feminists website, declaring “no woman ever wants to have an abortion,” states that its aim is to make abortion unthinkable by making abortion unnecessary.²²

The problem with claims like those above is that—at least if they are taken at face value—they are clearly false. This becomes clear when we consider the ambiguity inherent in the word “want.” Let us take it as a given that no woman “wants” to have an abortion. But “want” can mean different things. Consider the difference between “not wanting” to have a cavity filled, on the one hand, and “not wanting” to give a valuable heirloom to the thug demanding it a gunpoint, on the other. Cavities arise in the normal course of things, and having them filled is unpleasant, but we freely and willingly

¹⁸ Manent, *Natural Law*, 2.

¹⁹ Some pro-life feminists explicitly couch their arguments in nature. See for instance Erika Bachiochi’s *The Rights of Women: Reclaiming a Lost Vision* (Notre Dame, IN: University of Notre Dame Press 2021).

²⁰ Frederica Matthews Green, “When Abortion Stopped Making Sense,” *National Review*, January 22, 2016, nationalreview.com/2016/01/abortion-roe-v-wade-unborn-children-women-feminism-march-life/.

²¹ Green, “When Abortion Stopped Making Sense.”

²² newwavefeminists.com.

seek to have them filled because we know our lives will be very much better with the unpleasantness removed. Considered narrowly, we “don’t want” the cavity filled (we do not want the pain, temporary inconvenience, etc.), but considered broadly, we very much *do* want the cavity filled. The loss of the heirloom, on the other hand, is something we “want” in neither the broad or the narrow sense: it is taken from us under great duress and we grieve the loss of it. Our sacrifice of the heirloom is also “chosen,” but the choice is thrust upon us in a way the other choice is not. So, when pro-life feminists insist that no woman “wants” an abortion, what sense of “want” are they using?

If the pro-life feminist claim is to be taken seriously—if it is really true that abortion is an act of desperation, if it is really an act of self-harm and self-loss—then the claim that no woman “wants” an abortion has to be taken in the second sense. But when “want” is understood in the second sense, the claim is unsustainable. It is at least unsustainable as an assertion about the *conscious* attitudes and feelings every woman has toward her choice to have an abortion. For, while many women do experience anguish, regret, and feelings of loss, and while many women do choose abortion unwillingly and in despair, still others do not.²³ One could always acknowledge that there are women for whom the choice for abortion is like the choice to have a cavity filled, of course, and simply insist that those women are outliers: statistical anomalies that occur too rarely to be noteworthy. But a rebuttal like this is unlikely to withstand scrutiny. A 2016 report which reviewed official state statistics across America, as well as several other collected statistics, found that women report economic hardship as their primary motivation in only 20–40 percent of abortions.²⁴ A whopping 48 percent said that they chose abortion because they felt unready for motherhood or else did not want the lifestyle changes it would require. That study also found that the numbers of so-called “hardship” abortions reported by places like the Guttmacher Institute are inflated by as much as four times the actual amount.²⁵

Taken as an empirically verifiable assertion about the conscious desires and motives of any and all women who seek abortion, then, the pro-life feminist claim that no woman wants an abortion is clearly false. But if we take “want” not as a claim about the conscious wishes of women choosing abortion, but as a claim about nature, as a claim about “wants” we ourselves might be unaware of, then the pro-life feminist claim that no woman “wants” an abortion suddenly becomes coherent.

²³ See, e.g., shoutyourabortion.com.

²⁴ See Wm. Robert Johnston, “Reasons Given for Having Abortions in the United States,” last updated, January 18, 2016, johnstonsarchive.net/policy/abortion/abreasons.html.

²⁵ Johnston, “Reasons Given.”

So far, in speaking of our “wants,” I have contrasted different kinds of conscious desires: the sense in which one does or does not “want” to have a cavity filled or does or does not “want” to hand over a valued possession to a thief. But there is no need to think we are conscious of everything we want. Or, more precisely, it is conceivable that one could consciously desire something general, like “happiness,” and yet be mistaken about how to achieve it. And the more mistaken one is, the more self-defeating one’s attempts to obtain what one “wants” will be. Consider, for instance, the familiar claim that money does not buy happiness. This claim, at least as it is commonly used, assumes the third sense of want: people *want* to be happy, they *think* the acquisition of money will enable them to become happy, and they are wrong—there is something that happiness consists in, and money is not it.

This third meaning of “want” is, of course, tied in a deep way to a recognition of the language of nature. Does money buy happiness? If there is no nature shared by all human beings and no truth about what fulfills it, then it is impossible for “money does not buy happiness” to be true across the board. If nature is mine to construct according to the inclinations and preferences I happen to have, then money *might* buy happiness. To put the point differently, we cannot be mistaken about what we want unless it is possible to get things wrong. If nature is mine to construct according to the inclinations and preferences I happen to have, then it is hard to see how I could be mistaken about what fulfills me. If the only nature I have is my particular nature and my nature is my own construction, then it is not clear that I can really make a mistake. Can I really be mistaken about the inclinations and preferences I currently have? But, if the inclinations and preferences I currently have can conflict with or come apart from something more substantial, can come from something other than what I *am* most fundamentally or different from whatever it is that truly fulfills me, then mistakes are possible: I might, by pursuing what I think I want, do real damage to my ability to achieve what I “really” want.

The pro-life feminist claim that no woman “wants” an abortion makes a great deal of sense if we understand “want” in this third way, in a way that presupposes the language of nature. Then, the claim is no longer empirically false, and it no longer sounds silly and idealistic. If “want” refers to what fulfills one’s nature, then it might well be true that many or indeed most women who seek abortion *consciously* “want” the abortion in the way they want a cavity filled. But the empirically verifiable fact of their conscious motives will have nothing to do with the truth or falsity of the assertion. To the contrary, the claim will be that, whether knowingly or not, women harm themselves when they choose abortion, because it is contrary to the

fulfillment of what they are most fundamentally. One can ascertain the truth of the claim only by examining nature itself.

“Want” used in this third way is not empirically false, but it is also not empirically verifiable: one will find such ways of speaking plausible only to the extent that one is sympathetic to the language of nature. But perhaps this is the lesson of Manent’s book: our culture wars cannot be fought and won within the confines of contemporary culture. To the contrary, any significant opposition must seek to question our culture’s very self-understanding.

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