



**Mere Legality – C.S. Lewis on the
necessary connection between Natural
Law and the Rule of Law**

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Abstract

*In three lectures published as *The Abolition of Man*, C.S. Lewis presents philosophical arguments in favour of natural law in order to counter what he regarded as dangerous subjectivist approaches to ethics. Lewis then illustrated the contrasting worldviews of natural law and subjectivism in his novel *That Hideous Strength*. Lewis's decision to do so is consistent with his claim that the natural law has to be discovered through desire and imagination rather than irrefutable logic.*

*Lewis also addressed law expressly in “*The Humanitarian Theory of Punishment*”, in which he argued that punishment is only morally justified if and to the extent that the criminal deserves it. Once people are not punished because and only up to the extent that they deserve to be, they become patients who can be subjected to indefinite and indeterminate treatment or re-education regardless of whether they have committed any crime.*

The ideas of objective morality, natural law, and personal responsibility are essential assumptions in Lewis's other work. Lewis contends that they are indispensable to the rule of law, and to the protection of personal freedom and dignity. Lewis did not develop a comprehensive legal theory, but he did set out the essentials of mere legality.

KEY WORDS: C.S. LEWIS, SUBJECTIVISM, NATURAL LAW, OBJECTIVE MORALITY, ABOLITION OF MAN

Introduction

C.S. Lewis's interest in law may not be immediately obvious to those who only know him through the Narnia stories he wrote for children or through his works of Christian philosophy. He was, however, the son of a lawyer and he wrote about the foundations of positive law, in a series of three philosophical lectures published under the title *The Abolition of Man* and in the third novel in his scientific trilogy, *That Hideous Strength*, which Lewis expressly described as a story whose moral was "the serious "point" which I have tried to make in my *Abolition of Man*.¹

There has been a recent rise in interest in C.S. Lewis's thinking about law. John Gray has described *The Abolition of Man* as "prescient", "prophetic" and at least as relevant now as it was when it first came out.² Justin Buckley Dyer and Michael J. Watson have written a book analysing Lewis's views on politics and natural law, in which they claim that *The Abolition of Man* is "the lynchpin for understanding of all of [Lewis's] work."³ Michael Ward has recently published a critical commentary on *The Abolition of Man*.⁴

I. Objective morality is the necessary foundation for law

Lewis's writings on law mount an energetic defence of objective morality against the deadly poison of subjectivism (the belief that values are merely statements of personal emotional preferences or the sole generator of value is individual and social choices). In *That Hideous Strength*, the cold-hearted villain Frost ridicules "that preposterous idea of an external

¹ C.S. Lewis, Preface to *That Hideous Strength: A Modern Fairy-Tale for Grown Ups* (1945; repr. London: HarperCollins, 2005).

² John Gray, 'A Point of View: *The Abolition of Man*.' Aired 6 September 2015 on BBC Radio. <https://www.bbc.co.uk/programmes/b06811fk>.

³ Justin Buckley Dyer and Micah J. Watson, *C.S. Lewis on Politics and the Natural Law* (Cambridge: Cambridge University Press, 2016), 16.

⁴ Michael Ward, *After Humanity: A Guide to C.S. Lewis's *The Abolition of Man** (Park Ridge, IL: Word on Fire Academic, 2021).

standard of value”.⁵ For Lewis, commitment to the ideal of an external, objective standard of value is essential. Lewis’s big claim is that the “dogmatic belief in objective value” is necessary “to the very idea of a rule which is not tyranny or an obedience which is not slavery”.⁶ He denounces as “the disease that will certainly end our species (and ... damn our souls) if it is not crushed: the fatal superstition that men can create values.”⁷

As Micah J. Watson points out: Lewis’s challenge to his opponents is this, given your subjectivism, on what basis can you answer the following questions: “Does racism violate a truly objective and knowable principle? Or is anti-racism merely a subjective taboo that some societies have happened upon at this particular juncture of human history? What about domestic violence? Or a callous disregard for the environment? Slavery?”⁸

There was an urgency to Lewis’s concern that the rejection of objective morality would lead to tyranny and destruction. Both *The Abolition of Man* and “The Poison of Subjectivism” were published in 1943, in the midst of the Second World War. News of the mass extermination of the Jews by the Nazis had started to filter to the Allies from June 1942 onwards.⁹

In *Mere Christianity*, Lewis argues that: “If no set of moral ideas were truer or better than any other, there would be no sense in preferring civilised morality to savage morality, or Christian morality to Nazi morality. ... The moment you say that one set of moral ideas can be better than another, you are, in fact, measuring them both by a standard, saying that one of them conforms to that standard more nearly than the other. But the standard that measures two things is something different from either. You are, in fact, comparing them both with some

⁵ *That Hideous Strength*, 408.

⁶ *The Abolition of Man* (1943, Glasgow: Fount, 1978), 44.

⁷ C.S. Lewis, ‘The Poison of Subjectivism’, in *Christian Reflections*, ed. Walter Hooper (London: Geoffrey Bles, 1967), 72-81, at 73.

⁸ Micah J. Watson, ‘Natural Law in *the Abolition of Man*’, in Anacker, G., and Mosteller, T., eds., *Contemporary Perspectives on C.S. Lewis’ The Abolition of Man*, (New York: Bloomsbury Academic, 2017), 25-46 at 38-39.

⁹ <https://www.facinghistory.org/resource-library/what-did-world-know> gives examples of new reports, including the London *Times* headline on p.3 of its 30 June 1942 edition: “MASSACRE OF JEWS – OVER 1,000,000 DEAD SINCE THE WAR BEGAN”. Just under a week earlier, on 25 June 1942, the *Telegraph* published an article headlined “GERMANS MURDER 700,000 JEWS IN POLAND”.

Real Morality, admitting that there is such a thing as a real Right, independent of what people think, and that some people's ideas get nearer to that real Right than others."¹⁰

A. Lewis's conception of objective morality as a universal absolute

Lewis sees objective morality is a universal absolute, binding on all human beings across time and space. In *The Abolition of Man*, Lewis calls objective morality, "the Tao". He 'lists "the law of general beneficence" and "the law of special beneficence" as the first two guiding principles' of the Tao.¹¹ Lewis chooses the term "the Tao" to highlight objective morality as a path to truth, and "in order to de-emphasize Western categories and to remind his readers that moral reality is universal."¹² "The Tao is not something that human beings simply make up; it is something they discover."¹³

Defending the necessity of objective morality, Lewis writes:

"Everyone is indignant when he hears the Germans define justice as that which is to the interest of the Third Reich. But ... this indignation is perfectly groundless if we ourselves regard morality as a subjective sentiment to be altered at will. Unless there is some objective standard of good, over-arching Germans, Japanese and ourselves alike whether any of us obey it or no, then of course the Germans are as competent to create their ideology as we are to create ours. ... Unless the measuring rod is independent of the things measured, we can do no measuring. For the same reason it is useless to compare the moral ideas of one age with those of another: progress and decadence are alike meaningless words."¹⁴

¹⁰ C.S. Lewis, *Mere Christianity: Fiftieth Anniversary Edition* (London: HarperCollins, 2002), 13.

¹¹ Ward, *After Humanity*, ix.

¹² Ward, *After Humanity*, 15.

¹³ Ward, *After Humanity*, 15.

¹⁴ 'The Poison of Subjectivism', 73.

Lewis denies that the existence of a permanent moral standard precludes progress, or by the same token, decline in the extent to which individuals and societies perceive that standard. He contends:

“On the contrary, except on the supposition of a changeless standard, progress is impossible. If good is a fixed point, it is at least possible that we should get nearer and nearer to it ... Our ideas of the good may change, but they cannot change either for the better or the worse if there is no absolute and immutable good to which they can approximate or from which they can recede.”¹⁵

B. The denial of objective morality removes all limits on the power some human beings have over others

Lewis contends that “Until modern times no thinker of the first rank every doubted that our judgements of value were rational judgements or that what they discovered was objective.”¹⁶ Lewis was vehemently opposed to subjectivism because the damage it does to practical reason, to “our judgment of good and evil.”¹⁷ “If ‘good’ means only the local ideology, how can those who invent the local ideology be guided by any idea of good themselves?”¹⁸

Once those who control society have lost the sense that they are accountable to any idea of Good they have not invented themselves, Lewis thought that these controllers will manipulate the rest of the populace. In chapter 2 of *The Magician’s Nephew*, the Magician,

¹⁵ ‘The Poison of Subjectivism’, 76.

¹⁶ ‘The Poison of Subjectivism’, 73. Lewis would agree with John C.H. Wu’s assessment that Jeremy Bentham’s philosophy of utilitarianism sought to re-defined but not to abandon the ideal of Objective Morality: Wu, “Natural Law and our Common Law”, (1954) 23 *Fordham Law Review* 13-48 at 22. He did, however, think that consequentialism was lawless in practice because it allowed for the possibility of breaking all the rules in the interests of some vague good being achieved in the unknown and remote future: *That Hideous Strength*, 192.

¹⁷ ‘The Poison of Subjectivism’, 73.

¹⁸ ‘The Poison of Subjectivism’, 81.

Uncle Andrew, says: “Men like me ... are freed from common rules”. His nephew, Digory, sees that what Uncle Andrew means is that “he thinks he can do anything he likes to get anything he wants”.

In *That Hideous Strength*, Lewis seeks to illustrate the truth of this claim. Mark Studdock is a junior academic who is seduced by wanting to be part of the in crowd, what C.S. Lewis called in a published sermon “the inner ring”.¹⁹ The first inner ring in the book is what Lewis calls the progressive element in Bracton College.

Lewis exposes the folly of attempts to become part of the inner ring. The academics at Bracton College do not really understand what is going on. They are being manipulated by Lord Feverstone²⁰, an immoral businessman who Lewis portrays as the embodiment of *homo economicus*, the rational maximiser of his own preferences who is wholly indifferent to the demands of morality, the interests of others, or the common good. Feverstone tricks the academics into selling the College’s property to the technocrats of the National Institute of Co-ordinated Experiments (“NICE”). Feverstone, in turn, for all his privilege, is just an instrument of those in the Inner Ring at NICE, and so on, with the entire system ultimately at the mercy of two individuals, Frost and Wither.

Although Lewis’s analysis would apply equally to the party in a one-party state, he deliberately sets his novel in the West because he believes that the loss of the commitment to objective morality can occur whatever a country’s political system. He chose a university because he wanted to show the deadly consequences of the rejection of the idea of objective morality being taught by his academic colleagues. What Lewis seeks to show in *That Hideous Strength* is the logical consequence of the philosophy of logical positivism which was in vogue

¹⁹ C.S. Lewis, *The Weight of Glory* (1941; repr. New York: Simon & Schuster Touchstone, 1980), 115-116.

²⁰ Lord Feverstone is Richard Devine in the first novel in the science fiction trilogy, see *That Hideous Strength*, 257.

in Oxford University in his day.²¹ Not that Lewis accused the logical positivists and their popularisers of intending the technocratic dystopia of the NICE; but, he argues, there was not a single doctrine practised at the NICE which had not been preached by some lecturer at Edgestow (the fictional university in the novel).²²

Lewis's critique is not, however, limited to a single Anglo-American philosophy. Lewis identifies that the replacement of the pursuit of truth by mere power can happen for a number of reasons. Some, such as Feverstone and Frost delight in the pursuit of power for its own sake. Others, such as Wither, succumb the reductive fallacy that power is the only reality because they have lost faith in objective truth.²³ They have fallen prey to the mistake of assuming that because people's physical and economic situations influence their moral values, morality can be reduced to a mere subjective by-product of the physical and economic situations of different human beings.²⁴ Logical positivism was just one manifestation of this,²⁵ the idea that value judgments and statements of moral condemnation are simply expressions of emotional preferences, of things I like or do not like.²⁶

Lewis thought that the poison of subjectivism had opened the door to "the Power philosophies of the Totalitarian states", but he saw the poison as "something that goes deeper and spreads wider"²⁷ and as infecting the liberal democracies of the West as well as their fascist and communist opponents. "Many a popular 'planner' on a democratic platform, many a mild-eyed scientist in a democratic laboratory means, in the last resort, just what the Fascist means. He believes that 'good' means whatever men are conditioned to approve."²⁸ In *The Abolition*

²¹ *That Hideous Strength*, 409, 518. He takes the same approach in 'The Humanitarian Theory of Punishment', (1953) 6 *Res Judiciae* 224-230, at 228. Originally published in (1949) 3 *Twentieth Century: An Australian Quarterly Review* 5-12.

²² *That Hideous Strength*, 371.

²³ *That Hideous Strength*, 276, 490.

²⁴ *That Hideous Strength*, 277.

²⁵ Michael Ward describes logical positivism as 'the fashionable metastasis of a long-standing philosophical malady: the chronic condition was what Lewis sought to address': *After Humanity*, 6.

²⁶ *That Hideous Strength*, 365.

²⁷ 'The Poison of Subjectivism', 72.

²⁸ 'The Poison of Subjectivism', 81.

of *Man*, Lewis offers a trio of a mild-eyed scientist, a popular dramatist, and an amateur philosopher as the stalking horses for the abolition of objective morality.²⁹ In his biography of C.S. Lewis, A.N. Wilson suggests that Lewis had in mind Sigmund Freud as the scientist, George Bernard Shaw as the dramatist, and A.J. Ayer as the philosopher.³⁰ If Lewis were writing today, he would add the CEO of the multinational company or the technology guru “armed with science but not driven by any philosophy of human nature or societal good”³¹ as examples of threats to our humanity.

For Lewis, nothing less than the future of the human race is at stake.³² The humanity Lewis thought was being destroyed was the understanding of human beings as free, as moral agents, and as possessing inherent dignity. His fear is that once objective morality has ceased to be acknowledged and ceased to be taught, subsequent generations will be so blinded that they will be unable to see objective morality at all.

The loss of belief in objective morality will also result in the loss of rational moral and political argument. As Ward explains: “only by recognizing objective value does one have grounds for hoping that a resolution of moral differences can be obtained through reasonable and peaceful means. Without such a shared premise as a bedrock, we cannot dispute matters rationally with one another, but only assert our particular subjective preferences and try to shout down those whose preferences conflict with our own.”³³ This is, as we shall see, devastating in its consequences for the rule of law.

Alasdair MacIntyre’s *After Virtue* can be read as extending Lewis’s argument one step further. MacIntyre contends that advanced modernity has lost *both* its conviction in the

²⁹ *The Abolition of Man*, 44.

³⁰ A.N. Wilson, *C.S. Lewis: A Biography* (London: Collins, 1990), 199.

³¹ Janelle L. Aijian, ‘The Abolition of Risk: C.S. Lewis in *the Island* and *Gattaca*,’ in Boone, M.J., and Neece, K.C., eds., *Science Fiction and the Abolition of Man: Finding C.S. Lewis in Science Fiction Films and Television* (Eugene, OR: Wipf & Stock, 2016), 237-250 at 247.

³² *That Hideous Strength*, 70.

³³ Ward, *After Humanity*, 22.

existence of objective morality *and* its sense of a shared conception of the good, with the devastating results for moral enquiry and argument.³⁴

II. Natural Law: Revelation of objective morality is to be found in Nature

Lewis's Tao is the equivalent to the natural law, a term he also used on occasion. Natural law is, for Lewis, the ordered rhythm of the universe (epitomised in the music of the planetary spheres) and the origin of all right demands. Political scientist Francis Fukuyama sums up Lewis's basic point as the suggestion that "nature itself, and in particular human nature, has a special role in defining for us what is right and wrong, just and unjust, important and unimportant."³⁵

Lewis insisted that Objective Morality was not an unknown transcendental, but something human beings had access to through the "Natural Light".³⁶ His close friend Owen Barfield "convinced Lewis that, 'if thought were a purely subjective event,' there could be no way to secure a trustworthy awareness of truth, goodness, or beauty. There must be a more fundamental connection between the human mind, as informed by sense impressions, and the world at large."³⁷ Philosophically speaking, "both inward consciousness and outward reality are irradiated by 'Absolute Mind.'"³⁸

C.S. Lewis was a trenchant critic of what he called chronological snobbery, the idea that newer ideas were of greater value than old wisdom simply because they are newer. In *That Hideous Strength*, NICE is opposed by the wisdom of the ages (symbolised by the wizard Merlin) and of the natural world (embodied in the bear Mr Bultitude).

³⁴ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* 3rd ed. (London: Duckworth, 2007).

³⁵ Francis Fukuyama, *Our Posthuman Future: Consequences of the Biotechnology Revolution* (New York: Farrar, Straus and Giroux, 2002), 7.

³⁶ 'The Humanitarian Theory of Punishment', 225.

³⁷ Ward, *After Humanity*, 31.

³⁸ Ward, *After Humanity*, 32.

In *The Abolition of Man*, Lewis appeals to common themes in morality across different cultures not in order to establish the ontological existence of natural law³⁹ but rather to assert that moral truth is not unknowable: in diverse places, and diverse times, and in diverse schools of thought something of the contours of moral truth and therefore the outline of a shared conception of the human good has been recognised.

Lewis is clear, however, that he is “not trying to *prove* [the *Tao*’s] validity by the argument from common consent. Its validity cannot be deduced. For those who do not perceive its rationality, even universal consent could not prove it.”⁴⁰

Lewis did not think that the Law of Nature was obvious. In his final book, *The Discarded Image*, he wrote: “when changes in the human mind produce a sufficient disrelish of the old model, and a sufficient hankering for some new one, phenomena to support that new one will obediently turn up. I do not mean that these new phenomena are illusory. Nature has all sorts of phenomena in stock and can suit many different tastes.”⁴¹

Gilbert Meilaendar explains that “The precepts of the Tao ... express fundamental truths – which we may or may not learn - about human nature. Those of us who do learn them will ... just ‘see’ them.”⁴² Thus “the need for *moral* education is a major element in [Lewis’s] overall argument; the Tao may be self-evident, but it is not obvious, and must be carefully taught.”⁴³

The existence of the Law of Nature was not contradicted in any respect by the differences in the ways different cultures understood it, nor even by “blindnesses in particular cultures”.⁴⁴ Lewis contended, however, that “the pretence that ... no outline of universally

³⁹ If morality is objective, it must be mind-independent, and therefore its existence is not the result of a consensus nor does any rejection of its principles, no matter how widespread, refute it.

⁴⁰ Ward, *After Humanity*, 183-84.

⁴¹ *The Discarded Image: An Introduction to Medieval and Renaissance Literature* (1964; repr. Cambridge: Cambridge University Press, 2000), 221.

⁴² Gilbert Meilaendar, ‘On Moral Knowledge’, in MacSwain, R., and Ward, M., eds., *The Cambridge Companion to C.S. Lewis* (Cambridge: Cambridge University Press, 2010), 119-131 at 123.

⁴³ Ward, *After Humanity*, 44.

⁴⁴ ‘The Poison of Subjectivism’, 77.

accepted value shows through – is simply false ... Far from finding a chaos, we find exactly what we should expect if good is indeed something objective and reason the organ whereby it is apprehended – that is, a substantial agreement with considerable local differences of emphasis and, perhaps, no one code that includes everything.”⁴⁵

Lewis’s contention that the objective nature of morality and something of its content can be inferred from the similarities between the ethical codes of different civilisations across the globe has found support from a 2019 study by Oxford University anthropologists across 60 societies.⁴⁶ The anthropologists concluded that seven forms of co-operative behaviour (helping kin, helping your group, reciprocating, being brave, deferring to your superiors, dividing disputed resources, and respecting prior possession) were considered morally good in all cultures.

For Lewis, the Natural Law is to be discerned not merely by reflecting on nature in general, but by thinking about human nature in particular. As Michael Ward explains: “Lewis ... believes that Man is ... a real ‘universal’ and that Man’s integrity as a species is founded on life within the Tao. ... Lewis considers acceptance of the Tao as a necessary condition of anthropological identity, both for each person singly and for humanity overall.”⁴⁷ “The maxims of the *Tao* are expressions of truths about human nature. They express ways in which the dignity of any human being ought not to be violated.”⁴⁸

Lewis is less successful in providing an adequate philosophical explanation for the reasons why human beings come to recognise the natural law. Nuttall suggests that “Lewis’s argument [in *The Abolition of Man*] swings between ethical naturalism (either ‘Do this because

⁴⁵ ‘The Poison of Subjectivism’, 77-78.

⁴⁶ Scott Curry, O., Austin Mullins, D., and Whitehouse, H., ‘Is It Good to Cooperate? Testing the Theory of Morality-as-Cooperation in 60 Societies’, (2019) 60 *Current Anthropology* 47-69.

⁴⁷ Ward, *After Humanity*, 154.

⁴⁸ Ward, *After Humanity*, 177.

it is in your nature to do it' or 'Do this because it is what people usually do') and non-naturalism ('This is what you ought to do, and no reason can ever be given')".⁴⁹

In two other essays, 'The Poison of Subjectivism'⁵⁰ and 'On Ethics', Lewis adopts a presuppositionalist approach.⁵¹ In 'On Ethics', a piece that remained unpublished until 1998, Lewis wrote that "ultimate ethical injunctions have always been premises, never conclusions. Kant was perfectly right on that point at least: the imperative is categorical. Unless the ethical is assumed from the outset, no argument will bring you to it."⁵²

What is missing in Lewis's argument in *The Abolition of Man* is any appeal to "God or Supernature" as the critical "missing factor."⁵³ Lewis's own view, based on his own personal experience, was that "As soon as [John] attempts to live seriously by Philosophy, it turns into Religion".⁵⁴

It is important to recognise that in *The Abolition of Man*, "Lewis is not trying to establish all the contours of a viable natural law *theory*. He is trying to reawaken his readers to the reality of the natural law itself."⁵⁵ A key part of his argument is that it is as impossible for human beings to invent new values as is it for them to invent new primary colours. Therefore, all subjectivist appeals to felicity, welfare, choice, autonomy, or whatever other value are disguised appeals to a norm which is being attributed objective status.⁵⁶

⁴⁹ A.D. Nuttall, 'Jack the Giant-Killer', in George Watson ed., *Critical Essays on C.S. Lewis* (Aldershot: Scolar Press, 1992), 269-284.

⁵⁰ 'The Poison of Subjectivism', 75.

⁵¹ Also, *The Abolition of Man*, 27: "All the practical principles behind the Innovator's care for posterity, or society, or the species, are there from time immemorial in the *Tao*. But they are nowhere else. ... You cannot reach them as conclusions: they are premises."

⁵² 'On Ethics', in Lesley Walmsley ed. *C.S. Lewis: Essay Collection and Other Short Pieces* (London: HarperCollins, 2000), 313.

⁵³ Nuttall, 'Jack the Giant-Killer', 283-284.

⁵⁴ Ward, *After Humanity*, 21, citing Lewis's marginal comments in the Wade Annotated Edition of *The Pilgrim's Regress*.

⁵⁵ Watson, 'Natural Law in *The Abolition of Man*', 38.

⁵⁶ *The Abolition of Man*, 21, 28-29.

A. The role of education, the emotions, imagination and desire in the discovery of the Natural Law

Lewis's argument for objective morality is part of his broader defence of objective truth, goodness and beauty. The key concept is Desert, the claim that there are 'objective realities *meriting* certain responses'.⁵⁷ Obedience to the natural law was, for Lewis, about discovering which things were worth enjoying – or rather, which things were worthy of being enjoyed, and learning to how to enjoy them appropriately not excessively. In making this claim, Lewis was expressly following Augustine of Hippo who saw virtue “as *ordo amoris*, the ordinate condition of the affections in which every object is accorded that kind and degree of love which is appropriate to it.”⁵⁸

Lewis was convinced that “the right defense against false sentiments is to inculcate just sentiments.”⁵⁹ Just sentiments derive from a right understanding of our relationships, with our family, our neighbours, our country, and the natural world both locally and as a whole. As Ward explains: “Moral value is objective – that is to say, it has a reality which is not merely the subjective projection of my will – but it must not be *objectified*, i.e., reduced to a thing which I am not in a personal relationship with. ... Rather, subject and object need to be held in a dynamic tension.”⁶⁰

Reality's demands are not deductive conclusions about what is necessary, but indications about what actions and responses are fitting. In *That Hideous Strength*, Wither's Logical Positivism had caused first the ability to respond appropriately to reality, and ultimately the ability even to recognise reality, to atrophy. The moral demands of an objective

⁵⁷ Ward, *After Humanity*, 9; *The Abolition of Man*, 14, 16; for a recent defence of the same idea, see Iain McGilchrist, *The Matter With Things: Our Brains, Our Delusions and the Unmaking of the World* (London: Perspectiva Press, 2021), 1164.

⁵⁸ *The Abolition of Man*, 14.

⁵⁹ *The Abolition of Man*, 13.

⁶⁰ Ward, *After Humanity*, 159.

state of affairs no longer registered. Not only the imperative mood, but also “The indicative mood now corresponded to no thought that his mind could entertain.”⁶¹

III. Natural law is the foundation of the rule of law

A. *Natural law as the critical norm against which laws and rulers are to be judged*

Lewis sees the objective morality of the natural law as the indispensable foundation of the rule of law. “Only the *Tao* provides a common human law of action which can over-arch rulers and ruled alike.”⁶² In the final essay he wrote before his death, Lewis asserted: “behind the laws of the state there is a Natural Law ... I hold this conception to be basic to all civilisation. Without it, the actual laws of the state become an absolute, as in Hegel. They cannot be criticised because there is no norm against which they should be judged.”⁶³

Lewis fears that once the idea of objective morality has been repudiated, “there will be no recourse for the powerless people, partly because the powerful will no longer recognise the rule of law, and partly because the powerless *themselves* will no longer recognise the rule of law. ... The elite and the masses *together* are complicit in lawlessness because of their shared disregard for the *Tao* ... Before that epoch of lawlessness was entered upon, people were still unequal in power, but those with the superior powers saw themselves as under a responsibility to use those powers for the common good.”⁶⁴

Lewis chose to name the College in *That Hideous Strength*, Bracton College. His choice of name was not accidental but pregnant with meaning. Henry de Bracton was one of the

⁶¹ *That Hideous Strength*, 491.

⁶² *The Abolition of Man*, 44.

⁶³ ‘We have no right to happiness’, first published in *The Saturday Evening Post*, 21-28 December 1963, re-printed in Lesley Walmsley ed. *C.S. Lewis Essay Collection: Faith, Christianity and the Church* (London: HarperCollins, 2002), 388-92.

⁶⁴ Ward, *After Humanity*, 153.

earliest writers on English law, described as the “Father of Common Law”.⁶⁵ Bracton wrote, in the thirteenth century, “the law makes the king”, and there is no king where “will” rules rather than “law”.⁶⁶ In *The Horse and His Boy*, King Lune takes up Bracton’s words when advising his long-lost son about the duties of kingship.⁶⁷ In his academic *magnum opus*, *English Literature in the Sixteenth Century Excluding Drama*, Lewis emphasised how Bracton, in common with Aquinas, saw political rule as answerable to the deeper laws of established custom, natural law, and divine reason.⁶⁸

Bracton also adapted Ulpian’s formulation of justice *honeste vivere, alterum non laedere, suum cuique tribuere* to emphasise that justice involves both being treated as worthy by others but also rendering to the community, adding “*recta contributione reddatur*” so that justice consisted of living honestly, not injuring others, receiving one’s due and making one’s reasonable contribution in return.⁶⁹

Lewis’s commitment to natural law does not lead to a crude equation of law and morality. Lewis’s position is that the natural law forms an objective framework within which human law-making, law-following, and law-breaking must take place. This idea of laws as binding even the powerful comes to a crescendo in Lewis’s most popular book, *The Lion, The Witch and the Wardrobe*, where one way of understanding the Deep Magic and the Deeper Magic is as the *law* of Narnia.

B. Natural law and the nature of freedom

The rule of law defends freedom by specifying the circumstances in which subjects can expect violence from rulers and the circumstances in which subjects can expect to be protected

⁶⁵ John C.H. Wu, ‘The Natural Law and our Common Law’, (1954) 23 *Fordham Law Review* 13-48.

⁶⁶ Henry de Bracton, *De Legibus et Consuetudinibus Angliae* [*On the Laws and Customs of England*] (SE Thorne tr, Harvard University Press [ca 1235–1260] 1968–1977) II, 304.

⁶⁷ *The Horse and His Boy* (1954, London: Fontana Lions, 1980), 187.

⁶⁸ C.S. Lewis, *English Literature in the Sixteenth Century Excluding Drama* (Oxford: OUP, 1954), 48.

⁶⁹ Henry de Bracton, *De Legibus et Consuetudinibus Angliae* (Woodbine’s ed., 1915), 107.

by rulers from violence committed by others.⁷⁰ Lewis thinks that the Natural Law plays an even more important role in defending and defining freedom. “The very idea of freedom presupposes some objective moral law which overarches rulers and ruled alike. . . . But if there is no Law of Nature, the *ethos* of any society is the creation of its rulers, educators and conditioners; and every creator stands above and outside his own creation.”⁷¹

Michael Ward explains that Lewis is insistent on the distinction between tyranny and the lawful and proper exercise of power.

“True and effective rule consists of a *relationship*, a relationship that might be pictured as a two-way street, connecting ruler to ruled and ruled to ruler. Tyranny is only one abuse of this relationship. There are three other abuses, namely servility, rebellion, and remissness. If tyranny consists in ruling natural equals, *servility* consists in obeying natural equals, when you serve those whom you should not serve. Power can also be abused through *rebellion*, by failing to obey a natural superior, as when a child disobeys its parents, or when an airline passenger disobeys the requirements of the cabin crew. *Remissness* is the failure to rule a natural inferior, as when a schoolteacher lets the class run riot, or when a dog-owner allows the dog to jump up and snatch food from the table.”⁷²

For Ward, following Lewis, power can work to the benefit of everyone if both the weaker and the stronger parties are bound by, and act in accordance with the mutual duties and rights inherent in the relationship.

⁷⁰ D.H. McIlroy, ‘How is the Rule of Law a Limit on Power’ (2016) 29 *Studies in Christian Ethics* 34-50 and *The End of Law: How Law’s Claims relate to Law’s Aims* (Cheltenham: Edward Elgar, 2019).

⁷¹ ‘The Poison of Subjectivism’, 81.

⁷² Michael Ward, ‘An Experiment in Charity: C.S. Lewis on Love in the Literary Arts’, in Monika Hilder, Sara Pearson, and Laura Van Dyke eds. *The Inklings and Culture: A Harvest of Scholarship from the Inklings Institute of Canada* (Newcastle: Cambridge Scholars Publishing, 2020), 60-67 at 65-66.

IV. Natural law is the foundation of dignity, freedom, duty, and rights

For Lewis, natural law is the unified, objective, moral order within which the recognition of human dignity, the discovery of what freedom truly means, and the acknowledgment of the duties and rights we have in relation to one another are harmonised.

A. The importance of desert in the protection of dignity and freedom

In ‘The Humanitarian Theory of Punishment’, Lewis warns that the apparently humane view that punishment is *solely* justified if the aim is to reform the criminal or to deter others “disguises the possibility of cruelty and injustice without end.”⁷³ Lewis seeks to defend the idea that punishment is only morally justified if it is deserved, and may only be inflicted to the extent that it is deserved. Although he does not refer to the *lex talionis* expressly (the idea that an eye may be taken for an eye, and a life for a life),⁷⁴ Lewis is arguing that the concept of Desert implicit in the idea of retributive punishment imposes an upper limit on the punishment that may be justly imposed for a given crime.

However, Lewis is not a crude retributivist. The idea of desert imposes an upper limit on punishment but does not make the enforcement of retributive punishment mandatory. Mercy, and even pardon, is desirable, but its pre-condition is “the recognition of guilt and ill-desert in the recipient.”⁷⁵

Lewis expressly disavows any intention to defend the legitimacy of capital punishment in cases of murder,⁷⁶ but the effect of his argument is that the concept of desert rules out the

⁷³ ‘The Humanitarian Theory of Punishment’, 224.

⁷⁴ Exodus 21:24; Leviticus 24:20; Deuteronomy 19:21.

⁷⁵ ‘The Humanitarian Theory of Punishment’, 229.

⁷⁶ In a short letter to the *Church Times*, Vol. CXLIV (1 December 1961), C.S. Lewis wrote: “I do not know whether capital punishment should or should not be abolished, for neither the natural light, nor scripture, nor ecclesiastical authority seems to tell me. But I am concerned about the grounds on which its abolition is being sought.”

possibility of capital punishment being justified for any lesser offence than homicide. If Lewis is right, then vindictive minimum terms, “three strikes” rules and indefinite sentences terminable only by the word of an expert⁷⁷ of some carceral policies are unjust and contrary to the Law of Nature.

For Lewis, human beings are free, responsible agents, possessed of dignity, who could properly be held accountable for their actions but who could not be treated as mere means to another’s ends.⁷⁸ Lewis contends that what a theory of therapeutic punishment “really means [is] that each one of us, from the moment he breaks the law, is deprived of the rights of a human being.”⁷⁹ “The first result of the Humanitarian theory is ... to substitute for a definite sentence (reflecting to some extent the community’s moral judgment on the degree of ill-desert involved) an indefinite sentence terminable only by the word of those experts”.⁸⁰

For Lewis, therapeutic punishment is indistinguishable from slavery. “Thus when we cease to consider what the criminal deserves and consider only what will cure him or deter others, we have tacitly removed him from the sphere of justice altogether; instead of a person, a subject of rights, we now have a mere object, a patient, a ‘case’.”⁸¹

The contrast between remedial treatment and retributive punishment is a repeated theme in *That Hideous Strength*.⁸² The point is made concrete in the case of Mr Maggs. Mr Maggs, a petty thief who has served his sentence finds that, on the day of his release, he is instead transferred for reparative treatment to a NICE institution.⁸³

Moreover, “If the justification of exemplary punishment is not to be based on desert but solely on its efficacy as a deterrent, it is not absolutely necessary that the man we punish should

⁷⁷ Lewis actually uses the third of these examples in his essay.

⁷⁸ ‘The Humanitarian Theory of Punishment’, 227.

⁷⁹ ‘The Humanitarian Theory of Punishment’, 225.

⁸⁰ ‘The Humanitarian Theory of Punishment’, 226.

⁸¹ ‘The Humanitarian Theory of Punishment’, 225.

⁸² *That Hideous Strength*, 83, 174, 301, 470, 487.

⁸³ *That Hideous Strength*, 417, 440.

even have committed the crime.”⁸⁴ This is particularly dangerous given that “every modern State has powers which make it easy to fake a trial.”

Lewis has one final concern about what happens if the necessity for guilt before a programme of treatment or re-education is offered. “once the concept of desert is abandoned, ... [the] criminal justice system thus becomes a branch of academia (of sociology, psychology, and medicine) and is no longer ‘common human law’ overarching rulers and ruled alike.”⁸⁵

B. Freedom under law

Henry de Bracton’s conception of human beings was as “free and lawful men”. This is the conception the misguided fellows of Bracton College in *That Hideous Strength* were fatally undermining. For Lewis, like Bracton, freedom and law balance one another. Freedom is nonsensical if elevated to a value above the constraints practical reason imposes on how we should treat others and the natural world. As Meilaender explains:

“If the Tao is the reality within which human life must be lived, it is destructive of one’s humanity to claim autonomy over against its maxims. It is, in fact, *self*-destructive. ... The person who tried to stand outside the Tao is not whole; his humanity has been shattered by his refusal to see it in any terms but freedom.”⁸⁶

Lewis explains something of his vision in his discussion of what the framers of the American Declaration of Independence meant by proclaiming the right to the pursuit of happiness. Lewis says:

⁸⁴ ‘The Humanitarian Theory of Punishment’, 227.

⁸⁵ Ward, *After Humanity*, 171.

⁸⁶ Gilbert Meilaender, *The Taste for the Other: The Social and Ethical Thought of C.S. Lewis*, 2nd ed., (Grand Rapids, MI: Eerdmans, 1998), 209-210.

“It is quite certain what they did not mean. They did not mean that man was entitled to pursue happiness by any and every means—including, say, murder, rape, robbery, treason, and fraud. No society could be built on such a basis.

They meant “to pursue happiness by all lawful means”; that is, by all means which the Law of Nature eternally sanctions and which the laws of the nation shall sanction.

Admittedly this seems at first to reduce their maxim to the tautology that men (in pursuit of happiness) have a right to do whatever they have a right to do. But tautologies, seen against their proper historical context, are not always barren tautologies. The declaration is primarily a denial of the political principles which long governed Europe; ... It demands that whatever means of pursuing happiness are lawful for any should be lawful for all, that “man,” not men of some particular caste, class, status, or religion, should be free to use them.”⁸⁷

C. Duties and rights

Lewis describes jurisprudence as “a science which deals with rights and duties, and which in origin at least, was consciously accepting guidance from the Law of Nature, and from Scripture.”⁸⁸ Lewis readily acknowledges that “in the actual penal code of most countries at most times these high originals were so much modified by local custom, class interests, and utilitarian concessions, as to be very imperfectly recognizable.” But that represented a failing to live up to an acknowledged ideal, rather than the rejection of the belief that there was any external point of reference for positive law.

In sketching out his account of natural law, Lewis does not discuss the question of whether there are any exceptionless moral rules and only hints at how conflicts between

⁸⁷ ‘We have no right to happiness’.

⁸⁸ ‘The Humanitarian Theory of Punishment’, 225.

different moral duties are to be reconciled. Lewis would doubtless rely on Aristotle's view of the importance of wisdom and practical reason,⁸⁹ as well as on Augustine's insistence that we need to learn to rightly order our loves.⁹⁰ Above all, he would point out that his arguments were designed to proclaim the necessity of objective morality rather than preaching to the converted. However, in chapter 4 of *The Voyage of the Dawn Treader*, we get an indication of how the natural law applies to one particular issue. King Caspian abolishes the slave trade that has developed in the Lone Islands. Gumpas, the governor of the Lone Islands, seeks to defend the slave trade on the grounds of economic necessity. Caspian challenges this assertion, but then rules that even if the slave trade were necessary to bring into the islands "meat or bread or beer or wine or timber or cabbages ..., it must be stopped."⁹¹ Treating people as the instruments of others can never be justified on economic grounds.

Lewis recognised the importance of recognising equal rights as protections against one another's greed.⁹² Lewis's main contributions on Natural Law were made before the adoption of the great international human rights instruments of the mid-twentieth century. He died before the full effects of the Sexual Revolution in the West in the 1960s had been seen. It is possible, however, to anticipate what he would have said in response to the transformed way in which human rights are understood by many today. G.K. Chesterton wrote that "The virtues have gone mad because they have been isolated from each other and are wandering alone."⁹³ C.S. Lewis would have agreed, and would have commented on today's debates that rights have "swollen to madness"⁹⁴ because they have been isolated from one another and from duties. Moreover, Lewis would remind us that "When all that says 'it is good' has been debunked,

⁸⁹ *The Abolition of Man*, 23.

⁹⁰ *The Abolition of Man*, 12, 14-15 .

⁹¹ *The Voyage of the Dawn Treader*, (1952, repr. Glasgow: William Collins, 1980), 49.

⁹² *That Hideous Strength*, 196,

⁹³ G.K. Chesterton, *Orthodoxy* (New York: Dodd, Mead & Co., 1908), chapter 3.

⁹⁴ *The Abolition of Man*, 29. Dyer and Watson, *C.S. Lewis on Politics and the Natural Law*, 79.

what says ‘I want’ remains.”⁹⁵ The rejection of objective values leaves us with no point of reference beyond our subjective wills.

V. Conclusion

C.S. Lewis’s most famous work of non-fiction is *Mere Christianity*, in which he does not develop a systematic theology but instead presents an apologia for what he called mere Christianity. Those looking for a fully worked up legal theory in Lewis’s thought will not find it. What he offers, instead, is a defence of objective morality as the necessary precondition for law and for the rule of law. We might, without distortion, refer to Lewis’s interest in law as an interest in “mere legality”, in the essentials of law as it must be understood if it is to be authoritative but not tyrannous.

⁹⁵ *The Abolition of Man*, 40.