

## Canadian Right to Arms

Part Three

### Know your Opposition

Ed Hudson

I wholeheartedly indorse everything in Dr. Robson's video.

Especially Professor Robson's comments that we

"own ourselves, own our labour."

And that we have a Natural Law, inherent Right to self-defense.

For as John Locke wrote:

Self-preservation is:

Self-preservation

“not simply or primarily a right, but ... a duty to God.”

It being reasonable and just I should have a Right to destroy  
that which threatens me with Destruction.

John Locke, *Second Treatise on Government*

But as part of the "educational" portion of this seminar

I need to point to a problem we have.

And we have an enormous problem.

However much we may esteem the Natural Law philosophers,  
we need to understand

Not everyone believes in Natural Law.

To be more specific,  
the theory of Natural Law has been replaced by

Legal Positivism

Legal positivism is now the “ruling theory of law.”

Legal positivism holds:

“that the truth of legal propositions consists  
in facts about rules that have been adopted  
by specific social institution,  
and in nothing else.”

Said another way,

Legal Positivism

is the

Sworn Enemy of Natural Law

To understand how the legal profession moved away from Natural Law to Legal Positivism we can look back to the Fourth of July 1776 when the American Colonists were evoking the Natural Law philosophy of John Locke in their Declaration of Independence,

That is:

"When in the Course of human events it becomes necessary for one people to dissolve

the political bands which have connected them ... and to assume ... the separate and equal station"

"to which the Laws of Nature and of Nature's God entitle them."

The Declaration continues:

We hold these truths to be self-evident,  
that all men are created equal,  
that they are endowed by their Creator  
with certain unalienable Rights,  
that among these are  
Life, Liberty and the pursuit of Happiness.

However not all people agreed with them.

Chief among Natural Law dissenters was Jeremy Bentham.

Jeremy Bentham

Jeremy Bentham holds the record as the most prolific writer in Great Britain.

The philosophy of legal positivism begins with Bentham.

And Bentham's philosophy allows no place for Natural Rights in law.

Jeremy Bentham wrote a

Short Review of the Declaration

1776

Jeremy Bentham

In this article Bentham belittled the theory of Natural Rights:

Bentham wrote:

"Of the preamble I have taken little or no notice.

"The truth is, little or none does it deserve."

Bentham says,

In this preamble ...

they attempt to establish a theory of Government;

a theory, as absurd and visionary,

as the system of conduct ... is nefarious.

Bentham scathingly dismisses Natural Law.

Bentham refers to Natural Rights as:

"bawling upon paper"

and

"nonsense upon stilts".

To Bentham,

"The notion of a right not created by law is a contradiction like

a 'round square',  
'a son that never had a father',  
'a species of cold heat',  
'a sort of dry moisture',  
'a kind of resplendent darkness'."

Bentham declared:

"Rights are the fruits of the law  
and of the law alone;  
there are no rights without law  
– no rights contrary to law -  
no rights anterior to law."

What Bentham began,  
his student, John Austin continued.

John Austin

1832

*The Province of Jurisprudence Determined*

Austin significantly advanced the development of the theory of legal positivism.

And like Bentham,  
Austin totally rejected the concept of Natural Law:

According to Austin:

"Laws ... are commands:  
laws which are not commands, are laws improper.  
"Every positive law ... is set by a sovereign person  
or a sovereign body of persons ...  
to a person or persons in a state of subjection to its author."

The modern version of legal positivism, was developed by British legal philosopher and Oxford University professor H.L.A. Hart in *The Concept of Law*,

H. L. A. Hart

1961

*The Concept of Law*

Professor Hart disavows the concept of Natural Rights.

To Hart,

Legal Positivism denies the idea:

that legal rights can pre-exist any form of legislation;

it rejects the idea that individuals can have rights in law other than the rights explicitly provided in the collection of explicit rules.

In his dismissal of Natural Law,

Professor Hart submits:

there are not necessary conceptual connections  
between the content of law and morality;  
and hence morally iniquitous provisions  
may be valid legal rules or principles.

It is a gross understatement to say that “legal positivists” reject the concept of Natural Law.

To say it more emphatically,

legal positivists both mock and scorn Natural Rights.

Therefore, in Canada

in 1993 Justice Cory of the Supreme Court of Canada could declare;

Canadians,

unlike Americans

do not have a constitutional right to bear arms.

And the Firearms Act 1995

through the scheme of licencing firearms owners  
puts that declaration into action.

\*\*\*\* END PART THREE \*\*\*\*