

Instinctualism: A Theory of Law from Within

Abstract:

Legal philosophy dates to the Ancient Greek Philosophers, and it continues to be a vigorously debated subject due to the fact that there does not exist a legal philosophy that is beyond reapproach that encapsulates law's origins or purpose. This paper will introduce a new legal philosophy, which I have termed instinctualism.

Instinctualism is the idea that law originates from human instinct. Human beings are born with certain natural capacities that they learn to utilize as they mature. Examples include speaking, walking, associating, and interacting with others, and practicing faith in a divine being, the state, or some other source of inspiration and hope. Human beings don't think about the potential illegalities of speaking their minds, moving from one place to another, or engaging in conversation with their friends or associates unless they are indoctrinated to do so. Rather, human beings do these things because they have instinctual desires and the knowledge to do so. Other rights and laws such as freedom of the press are the product of peoples' instinctual rights. For example, as people learn to speak, they instinctually share information and news about their inner circles or communities. If taken a taken a step further, one begins to discuss an organized

press. Knowledge and understanding of laws, such as those limiting certain types of speech, i.e., hate speech, must be taught and learned; it is not instinctual.

This paper will introduce a subset of the most influential legal philosophies of different eras in human intellectual development, beginning with those of Ancient Greece. It will proceed to describe the shortcomings of those philosophies before introducing instinctualism as an alternative. After defining instinctualism, I will proceed to discuss how it addresses the shortcomings of other legal philosophies. Next, I will introduce rights guaranteed to the citizens of four prominent countries via relevant sources of primary law for each of those countries. Finally, I will close by reviewing the main arguments in the paper and discussing future research that I will undertake to buttress this paper's arguments.

Introduction

Philosophers, researchers, legal professionals, and other legal experts have been debating the source and purpose of law dating back to philosophy's beginnings in Ancient Greece. Since it first became a topic of interest among civilized societies, numerous theories have been proposed and studied to explain the origins and purpose of law(s) with the hope that understanding law's roots will contribute to law's acceptance throughout the modern world. The incomplete and "moribund" (John R. Shook, Comparative Legal Philosophy Categorizing Legal Philosophies Using Twelve Archetypes. 636 (2009).) nature of legal philosophy was the impetus for this paper. Furthermore, the outdated nature of many legal philosophies ripens the utility of a new theory that encapsulates contemporary scholarly research. I refer to this new theory as instinctualism.

Instinctualism argues that law develops from within. Stated differently, instinctualism argues that law is the product of the human instincts that facilitate survival and prosperity. I will create a case for instinctualism by examining the human rights laws incorporated into various founding documents of four prominent countries of distinct histories. This paper will be an initial scholarly introduction to instinctualism. I will expand upon this paper using primary and secondary research and critical feedback from experts of legal philosophy. This paper will proceed to introduce prominent historical branches of legal philosophy, introduce and define instinctualism, and begin to make a compelling case for the merits of instinctualism. I will finish with a conclusion that discusses various areas of future research that I will undertake to broaden the analysis contained in this paper.

What Different Legal Philosophies Say About the Law

Contemporary trends have focused the study of legal philosophy on two overarching questions as it pertains to law, including: (1) What justifies the existence of governments?, and (2) Which governments are most effective?. Id. at 635. The macro-level study of legal philosophy is due to sovereign governments' sole authority to create statutes and regulations, and delegate such powers. The aforementioned overarching questions originated in the political science and political theory fields, but they were assumed by legal philosophers because legal philosophy analyzes issues at a more intimate level. It facilitates "normative evaluations of the rational, beneficial, ethical, and spiritual dimensions" of law. Research results have provided for a more complete understanding of the origins of law, how it developed, and its legitimacy as an organizing principle.

Beginning with the earliest legal philosophy known to exist, Plato's *Republic*, new branches of sophisticated legal philosophy (and the closely related field of legal philosophy) have been created and relied upon to better comprehend legal jurisprudence. Id. at 633. The development of established branches of legal philosophy and the creation of new branches proceeded unabated until the great wars of the early to mid-Twentieth Century, at which point, advancements in legal philosophy slowed and even ceased in some instances. Id. at 635. Reasons for the dramatic halt in the scholarly development of legal philosophy are debated, but most philosophers believe that the battle between democracy and communism that described the post-World War II era and continued until the collapse of communism's most powerful country, the Union of Soviet Socialist Republics (USSR), was the primary proverbial anchor that slowed developments in the field of legal philosophy.

The "moribund" (Id. at 366) state of legal philosophy, that I first introduced above, surprisingly provided some benefits. It allowed for an opportunity for modern philosophers to use the information they've learned since the fall of communism and the renewed interest in legal philosophy to develop new branches of legal philosophy that address age-old criticisms of the field and provide for more robust foundations of law(s). A starting point is to review some of the prominent legacy legal philosophies, many of which contain arguments that are defended in contemporary debates. This list below provides the most prominent legal philosophies of the past, but it is not a complete list because many of the lesser-known legal philosophies espouse ideas that have been incorporated into these leading legal philosophies.

Table 1: Pre-eminent Legal Philosophies

Natural law	Empiricism	Pragmatism	Idealism
Utilitarianism	Sociological jurisprudence	Conceptual jurisprudence	Formalism
Law and economics	Discourse theory	Rule-centrism	Critical jurisprudence
Autopoiesis	Various types of minor jurisprudence	Legal argumentation	Law as interpretation/ integrity
Legal positivism	Utilitarianism	Earth jurisprudence	Cyber jurisprudence
Global jurisprudence			

Table 1 lists the branches of legal philosophy that have had the most profound impact on the institution of law. The list is not a comprehensive list of all legal philosophies, and one can make a valid, persuasive argument that the table is not accurate. My goal is to not debate the merits of my selections, but rather to select a, illustrative group of intellectually formidable branches of legal philosophy to argue the value add of instinctualism.

From the Table, I can further narrow the selection to those philosophies that dominated the thought processes of legal philosophers for a material period. Those philosophies include (1) Natural Law Theory, (2) Sociological Jurisprudence, (3) Legal Positivism, and (4) Legal Pragmatism. Those legal philosophies are diverse enough to argue the superior merits of instinctualism.

Historically Dominant Legal philosophies

Natural Law Theory is the oldest and the most enduring legal philosophy. Its longevity is the result of its inherent ability to transform itself to speak to developments in contemporary society. Natural Law Theory comes closest to providing a legal philosophy that explains the

development, evolution, and current state of law. Accordingly, it is the branch of legal philosophy that is most closely related and has the greatest impact on the theoretical underpinning of instinctualism.

Natural Law Theory has undergone several changes since it was first posited by the Ancient Greeks' belief that we as a people and our environment are governed by an absolute law that distinguishes what is right according to nature and custom. Xingzhong Yu, *Overview of Natural Law Theories* (Presentation), in *Natural Law Theories* (2022). Slide 3. Later, Natural Law was interpreted by the Stoics as law based on the fact that nature, including human beings, is governed by reason, and that reason is the impetus for all humans' ability to follow the precepts of law. Id., Slide 3.

As Natural Law Theory continued to develop, the teleological view of nature and human comity developed. According to the teleological view, human beings, and the societies in which they live, are forever pursuing a state of perfection. Id., Slide 3. They do this because a state of perfection is their ultimate purpose, and law is the tool they use to achieve such a state. Id., Slide 3.

Modern Natural Law is the product of mass secularization brought about by the influences of the Renaissance and Reformation. Id., Slide 8. Its underlying hypothesis is that law is grounded in human reason. Id., Slide 8. Hugo Grotius, a Seventeenth-Century Dutch philosopher, political theorist, and jurist transformed Natural Law with his belief that humans are a social species that develop laws through their unique ability to reason. Id., Slide 8. Using reason, human beings developed law that would most effectively allow them to live with and among one another peacefully and prosperously. Id., Slide 8.

Finally, we come to Modern Natural Law, which has been materially influenced by global society's secular nature. Id., Slide 8. Modern Natural Law assumes that human beings possess rational thought and the need for social interactions, but not any type of social interactions, only positive social interactions. Id., Slide 8. The nature of a people's social interactions is key to law because reason dictates law that facilitates accord amongst different communities. Id., Slide 8.

An alternative way of thinking about Natural Law, but one that is compatible with the description of Modern Natural Law, was created by John Finnis. Finnis defined Natural Law as values that human beings follow to organize their life and interactions with one another, all for the common purpose of achieving the "common good." Id., Slide 11. Finnis identified seven elements of the common good. Those elements include: (1) life, (2) knowledge, (3) play, (4) aesthetic experience, (5) friendship or sociability, (6) practical reasonableness, and (7) religion. Id., Slide 12.

Moving on to the second legal philosophy to dominate political thought during its era, Legal Positivism. Legal Positivism exerted an outsized influence on legal scholars and philosophers prior to the Twentieth Century. It was adhered to by most legal philosophers and referred to as legal philosophy "royalty." Ronald Dworkin, arguably the most influential philosophers since the Ancient Greek philosophers, referred to Legal Positivism as the "ruling theory of law." W.J. Waluchow, *The Many Faces of Legal Positivism*, 48(3) *The University of Toronto Law Journal*, 387, 449 (1998). Legal Positivism is the subject of many criticisms, including: (1) It is inherently false, (2) It is trivial, (3) It is amoral, (4) It is immoral, and (5) It lacks novelty as its tenets are incorporated under Natural Law Theory. Id., at 387. The attacks

on the veracity of Legal Positivism are the product of possessing many identities. Id., at 390. One must be specific as to which subcategory of Legal Positivism to which one is referring when discussing or working with Legal Positivism. To narrow Legal Positivism down to a single definition, I again refer to John Finnis. Finnis describes Legal Positivism as the idea that “state law is or should systematically be studied as if it were a set of standards originated exclusively by conventions, commands, or other such social facts.” John Finnis, On the Incoherence of Legal Positivism, 75 Notre Dame L. Rev. 1598 (1999). Bentham, Austin, and Kelsen created a subsection of Legal Positivism that did not speak to whether moral standards can be explained in a holistic way by social facts. Id., at 1598. Unfortunately, Legal Positivism’s modern influence is diluted by its many characterizations, which are studied using different systems, including conceptual, descriptive, normative, and interpretive methods. Waluchow, supra, at 407. Waluchow, a critic of Legal Positivism, suggests that the different subcategories of Legal Positivism should be classified as different philosophies, and only then will its scholarly value be enhanced. Id., at 390. Stated in layman’s terms, Legal Positivism is not a legal philosophy in its own right, rather, it is an umbrella classification for a myriad of related, yet distinct legal philosophies. Finnis draws an equally negative conclusion regarding the utility of Legal Positivism. Finnis argues that Legal Positivism stakes out a narrow view of law and focuses on a citizenry’s attitudes and behavior. Finnis, supra, at 1611. Furthermore, Finnis argues that it provides no more information about the value of law or the potential consequences associated with violating law than a streetwise observer would possess. Id., at 1611.

A third legal philosophy that reigned supreme in the early Twentieth Century is Sociological Jurisprudence. Sociological Jurisprudence was influenced by the work of

continental legal theorists and American sociology, most notably Roscoe Pound. B.Z. Tamanaha, Sociological Jurisprudence Past and Present. 45(2) Law & Inquiry. 500 (2020). Combining these influences, Pound reasoned that Sociological Jurisprudence “holds that legal institutions and doctrines are instruments of a specialized form of social control, capable of being improved with reference to their ends by conscious, intelligent effort.” Id., at 500. Pound continued, “the main problem to which sociological jurists are addressing is how to enable and compel lawmaking, and also interpretation and application of legal rules, to take better account of the social facts upon which law must take into consideration.” Id., at 500. Pound ends his expose on sociological engineering inferring that his aforementioned statements describing sociological jurisprudence require “a scientific appreciation of the relations between law and society.” Id., at 500. In order to mainstream Sociological Jurisprudence, Pound identified six questions that legal philosophers must understand, including: (1) the effects of legal institutions and legal doctrines, (2) the means of making legal rules effective, (3) sociological understanding of communities, (4) juridical method(s), (5) a sociological understanding of history, and (6) the importance of reasonable and just solutions of individual cases. Id., at 500.

Sociological Jurisprudence declined in the middle of the Twentieth Century, but, unlike other legal philosophies, it demonstrated a level of resiliency that has witnessed it regain its mainstream status. The reason for Sociological Jurisprudence’s resurgence is its functional makeup. Sociological Jurisprudence analyzes and projects law by consistently adapting to mainstream social forces. Sociological Jurisprudence teaches adherents that law is a living institution. Xingzhong Yu, *Sociological Jurisprudence (Presentation)*, in *Sociological*

Jurisprudence (2022). Slide 10. “Living law” implies a continuous restructuring of law to support changing social circumstances. Id., at Slide 10. Its success can be attributed to the plethora of social orders that exist and the need for those social orders to co-exist in a healthy manner. Id., at Slide 10.

The final legal philosophy that deserves mention due to its historical influence on civil society’s understanding of law is Legal Pragmatism. Legal Pragmatism developed into the controlling legal philosophy of its day before losing many of its adherents to new legal philosophical developments and later regaining its foothold in the mainstream. Brian Tamanaha argues that Legal Pragmatism’s history is the story of two waves of popularity. B.Z. Tamanaha, Pragmatism in US Legal Theory: Its Application to Normative Jurisprudence, Sociolegal Studies, and the Face-Value Distinction, 41 Am. J. Juris. 315 (1996). Legal Pragmatism experienced its golden age due to the work of Oliver Wendell Holmes and founders of Legal Realism. Id., at 315. Holmes’s vision was that legal rules should be created and shaped to address human needs. Id., at 315. Holmes’s idea transformed law into an institution of practical ideas at the expense of abstract ideas. Id., at 315. Additionally, emphasis was placed on evaluating law’s success in meeting society’s objectives and modifying it where it failed to do so. Id., at 315. In layman’s terms, Holmes’s vision was to develop legal philosophy to address the needs of social policy. Id., at 316.

Legal Pragmatism’s influence fizzled out for much of the latter half of the Twentieth Century but witnessed a second wave of influence in contemporary times. Legal Pragmatism’s renewed popularity was due to Holmes’s efforts to create legal philosophy that responds to social needs. This instilled, within Legal Pragmatism, a capacity to support divergent social

views and movements, such as those we are witnessing today. *Id.*, at 316. Legal Pragmatism is perfectly structured to thrive during the contemporary age of multiplying social movements.

Ronald Dworkin analyzed Legal Pragmatism in a different light. Said Dworkin, “Pragmatism...denies that people ever have legal rights; it takes the bracing view that they are never entitle to what would otherwise be worse for the community just because some legislature said so or a long string of judges decided other people were.” Dworkin’s view is a good place to stop our overview of Legal Pragmatism because it hints at the many variations of Pragmatism that have developed or are in the process of developing.

Legacy Legal Philosophies on the Origin, Development, and Meaning of Law

I now turn my attention to analyzing the legal philosophies outlined above and bring the analysis full circle with my argument for the need for a new legal philosophy. Each of the legal philosophies laid out above is deficient in its ability to understand and explain law, including answering questions such as: (1) What is law? (2) How it historically developed?, and (3) How it provides insight into future law? These deficiencies make the need for a new legal philosophy that addresses the weaknesses of legacy legal philosophies. Instinctualism, I argue, is that new legal philosophy, and I will demonstrate how it addresses the deficiencies of established legal philosophies.

I begin with Modern Natural Law Theory. Modern Natural Law Theory argues that human beings have the capacity to reason, which they use to create societies or a community in which they live in harmony. Yu, *supra*, at Slide 8. I don’t dispute the argument that human beings have the capacity to reason, nor do I disbelieve the fact that they use their reasoning

abilities to create an atmosphere in which all human beings can coexist comfortably and prosperously. My critique of Modern Natural Law is that it does not answer the primary question, how do we explain law or, to rephrase, from where does law originate. In order to answer those questions, one must dig deeper and discuss the origins of reason. Reason is a secondary right that describes the origins of law. A legal philosophy needs to be able to speak to the primary right that gives rise to humans' ability to reason.

Legal Positivism is focused on another intermediate factor, social facts, or social reality. Finnis's account of Legal Positivism is the most concise and accessible definition. As discussed in a previous section, Finnis believed that state law is a set of principles brought into being by social facts. Finnis, *supra*, at 1598. As with Modern Natural Law Theory, Legal Positivism fails to grasp the true origin of law. Social realities do influence lawmaking, but they do not possess answers to the questions, what is law and how does it originate. Law must come into being before it can be influenced by outside forces.

Sociological Jurisprudence is, for a second time since it was first hypothesized, a popular legal philosophy, and one that has swayed many opinions because of its "living law" status. New social orders or movements seem to come into being on a daily basis, putting pressure on legal philosophers to make sense of and explain them. The pressure is intense because law must be developed to allow for those social movements' peaceful coexistence, and law cannot be created without first understanding law and how it develops and functions as an institution. One can begin to see a pattern among social movements. They each latch onto intermediate human rights to gain viability and acceptance. Sociological Jurisprudence's ability to adapt law to facilitate the peaceful existence of numerous social movements fails to examine the

underlying reason(s) tying all of these social movements together, and thus fails to answer the questions, what is law and from where does it come.

To end our analysis of the shortfalls of legacy legal philosophies, we examine Legal Pragmatism. Like the other legal philosophies discussed in this paper, Legal Pragmatism tries to examine and explain law at a secondary or tertiary level. It fails to examine the root cause of law. Instead, Legal Pragmatism focuses on Oliver Wendell Holmes and some of his early Legal Realism colleagues' views that legal philosophy, Legal Pragmatism in this case, must address human needs. Holmes and Legal Realists used practical lenses to study and discuss law to bend Legal Pragmatism in ways that would allow for it to understand society's legal objectives. Tamanaha, supra, at 315. A legal philosophy that is practical and transforms itself to address changing human needs again speaks to peoples' abilities to analyze and reason. Law is a result of the human abilities to analyze and reason, but the ability to analyze and reason comes from humans' abilities to assemble, communicate, and learn. Each of the latter three abilities are human instincts or primary-level explanations for law.

Instinctualism and Law at its Core

Legacy legal philosophies all fail to identify the core source of law. Human rights are internal to every human being, and, as a result, law originates from inside of every human being. Admittedly, laws may be the direct result of a secondary or tertiary factor of the original human right, but the fact is, the genesis of every law begins with an instinct shared by the human population. Legal philosophy, unlike political theory or political science, must focus on the building blocks of law. Modern Natural Law Theory is the most logical place to begin our

analysis because it comes closest to exploring the real core of what is law and from where does it come.

To expound upon Modern Natural Law's argument that law comes from human beings' ability to reason and create a cohesive, cordial environment, I am developing a new legal philosophy, which I have termed instinctualism. When scientists and other related scholars study animal behavior, what they are studying are preprogrammed responses of an animal to its environment. Scientists and academic researchers understand and accept a nonhuman organism's actions as instinctually motivated. It has long been demonstrated that animals respond to stimuli in similar ways, whether the stimuli be positive or negative. When faced with the presence of a predator, an animal's fight or flight instincts take over, and they either battle their unwanted guest to claim superiority or rely on their skills (i.e., ground speed for cheetahs) to evade the danger represented by the predatory counterpart.

Surprisingly, experts in animal behavior do not widely accept the idea of human beings being instinctual creatures. Scientists point to an extensive list of factors that distinguish us from our animal brethren, including, but not limited to, speech, language, consciousness, tool use, art, music, material culture, commerce, agriculture, and non-reproductive sex. Adam Rutherford, [The Human League: What Separates us from Other Animals](https://www.theguardian.com/books/2018/sep/21/human-instinct-why-we-are-unique), The Guardian (Sept. 21, 2—18, 4:00 PM, <https://www.theguardian.com/books/2018/sep/21/human-instinct-why-we-are-unique>). Scientists call this behavioral modernity. Rutherford, [supra](https://www.theguardian.com/books/2018/sep/21/human-instinct-why-we-are-unique), <https://www.theguardian.com/books/2018/sep/21/human-instinct-why-we-are-unique>. Instead, they attribute human behavior to human beings' singular ability to reason and their ability to communicate with each other, providing humans with the ability to pass on

knowledge to other human parties, in turn creating the ability to establish conducive environments for cohabitation and societal cooperation. Rutherford, supra, <https://www.theguardian.com/books/2018/sep/21/human-instinct-why-we-are-unique>. These widely held beliefs are even more surprising due to the indisputable proof that human beings are more likely to act via instinct than via reason. That fact is attributed to a small section of the brain called the amygdalae, which affects human beings' behaviors and emotions. E.E. Benarroch, The Amygdala: Functional Organization and Involvement in Neurologic Disorders, Neuroscientifically Challenged (Dec. 19, 2014), <https://neuroscientificallychallenged.com/posts/know-your-brain-amygdala>. It is especially known for its role in processing fear and behaviors associated with fear. Benarroch, supra, <https://neuroscientificallychallenged.com/posts/know-your-brain-amygdala>. The amygdalae is responsible for the more commonly known "fight-or-flight" response. Benarroch, supra, <https://neuroscientificallychallenged.com/posts/know-your-brain-amygdala>. The more important fact is that information reaches the amygdala before it is processed by the cerebral cortex, the part of the brain responsible reasoning. Benarroch, supra, <https://neuroscientificallychallenged.com/posts/know-your-brain-amygdala>. Because the amygdala receives and processes information prior to the cerebral cortex, it's logical to conclude that the instinctual responses precipitated by the amygdala play an outsized role in human behavior. If one takes a minute to think through the actions one may take during a day, one will realize that "fight or flight" responses are responsible for the majority of people's responses to environmental stimuli. From mechanically fastening one's safety belt, locking one's household doors while inside, placing grips on the floor of the bathroom tub or shower,

or double checking the stove, coffee maker, or iron to ensure they are powered off are instinctual actions. If instinctual actions occur before our prefrontal cortex has had the opportunity to process information, then logic holds that instincts always play an initial role in our actions. The effects of human beings' ability to reason are secondary.

Evidence of Instinctualism: Common Provisions Among Founding Documents

Every functional country in the modern, civilized world contains a set of founding documents, such as the U.S. Constitution, Bill of Rights, and Declaration of Independence. Founding documents empower the state to serve various functions as well as prohibit the state from infringing on the rights of its own citizens. It is the latter on which I will focus. Citizens' rights are often the result of arduous struggles against authority figures for the same individual freedoms that a child, who has not been indoctrinated as to what he or she can or cannot do, would take for granted. Appendix A includes excerpts from the founding documents of four prominent countries with very different histories. The countries that I have chosen are stable, modern countries with democratic governments and relatively elevated standards of living. Authoritarian governments and countries with low economic development are not representative because they have not begun or completed the process of establishing a functioning, stable state. Choosing functioning, stable states with the aforementioned characteristics is necessary to ensure an apples-to-apples approach in our analysis. Countries represented include: (1) the United States, (2) France, (3) Switzerland, and (4) Russia. One may argue that Russia does not belong on this list, but, while it may not be representative in reality, its founding documents are so.

If my hypothesis is accurate, then the founding documents of developed nation-states with stable governments and civilized societies will contain comparable basic human rights. To reiterate why I make this argument, human rights originate from within individuals. One is born and matures without thinking about the potential legal consequences of certain actions such as speaking one's mind or settling disputes where one has been wronged. People of all nation-states, cultures, religions, ethnic backgrounds, and sexes believe in the existence of certain "unalienable rights," to quote Thomas Jefferson. The fact that the same rights, even though they were forged at different times and in different geopolitical environments are present in the founding documents of developed, stable nation-states demonstrates the instinctual nature of such rights.

Rights that were Granted by Nation States Overlap because They Are Instinctual

Reviewing the rights granted to each of the test countries' citizens, there is discernible overlap. Many of the same rights are included in each country's founding documents. Common rights include provisions that guarantee the right to: (1) equality before the law; (2) free speech (3) worship; (4) fair representation before the law for crimes citizens accused of crimes; (5) address their grievances' (6) free movement within their borders; and (7) select their own leaders. Overlap among rights includes additional rights, but the aforementioned rights include many basic human rights and is sufficient to prove the instinctual nature of rights.

Thomas Jefferson's "inalienable rights", as alluded to earlier, best encapsulates instinctualism. Other philosophers and political scientists refer to those same rights as human rights or natural rights. What makes these rights instinctual is the process through which one

comes to believe those to be his or her rights. They are rights encoded in human DNA, which every child learns through the maturation process. They don't require instruction from a civics teacher or a law professor. Without any outside influence, human beings would communicate, join associations, anoint leaders, worship, and believe in the equal right to "life, liberty, and the pursuit of happiness." Thomas Jefferson, The Unanimous Declaration of the Thirteen United States of America, National Archives (July 4, 1776), <https://www.archives.gov/founding-docs/declaration-transcript>.

Opponents will rightly argue that many rights, included in government constitutions and statutes of rights, do require instruction. While I do not dispute the need for instruction to understand certain rights, I do dispute the implied argument that such rights are not also instinctual rights. They are instinctual rights, not in a primary sense, but rather in a secondary nature. Secondary rights are rights born of primary, instinctual rights. For example, Freedom of the press is a common right in democratic countries. It is also a secondary right. It is not instinctual because human beings do not develop a right to a free press via maturation. Rather, children learn, through the educational process about society's right to a free press. The direct lineage the right to a free press shares with the right to free speech makes it an instinctual right indirectly.

Conclusion

Human beings are born with instincts that are natural and "inalienable." Jefferson, supra, <https://www.archives.gov/founding-docs/declaration-transcript>. Speaking, moving, associating, interacting, and faith are encoded in every child's DNA, and, as they grow and

mature, they begin to utilize these abilities and rights. Unless they are taught otherwise, children are not aware of prohibitions against the use of these natural rights and abilities. They are not aware of the consequences that some nation states impose upon their citizens for exercising these rights. People use these rights free of fear when they are young and unless they are indoctrinated otherwise because they are instinctual rights or secondary or tertiary to instinctual rights, making those removed rights likewise instinctual. Laws and rules are created to both empower the nation state to serve its citizens and limit the nation state from intruding upon human rights. Laws and rules are created to accomplish that task, and those laws and rules emanate from people's instincts. That is instinctualism in a nutshell. Geopolitical conflict is never ending because, no matter how powerful a nation state maybe, it cannot take instinctual rights away from its citizens because those rights reside internal to every human being.

The existence of instinctual rights is demonstrated by the inclusion of common rights in the founding documents of countries with very different histories. I have provided excerpts of the human rights provisions of the founding documents of the United States, France, Russia, and Switzerland. Using these documents, I demonstrated the overlap that exists pertaining to certain rights, those that I consider instinctual rights. Other rights that are not listed are secondary rights derived from human instinctual rights, and thus are indirectly instinctual rights. The key in my argument is that the separate development of human rights laws in the foundational documents of different countries with vastly different geopolitical situations and historical developments does not affect the rights included in those documents because these

rights reside inside of all of us, and no amount of propaganda or brainwashing will remove the instinctual push to exercise those rights.

Future Research

Future research focused on instinctualism will include a few different goals. First, I will expand the number of countries whose founding documents I examine to provide more definitive proof of the commonality found among different countries' human rights documents. Second, I will conduct some original and secondary research to expand the scholarly evidence buttressing my argument for instinctualism. Finally, I will use surveys, conducted as part of my original research, to gather data arguing against instinctualism, and counter that evidence with the evidence supporting the hypothesis of my instinctualism argument.

Appendix A: Universal Rights of Human Beings in the United States of America, France, Russia, and Switzerland

Listed below are the rights enumerated in the founding documents of the aforementioned countries. Common rights include:

1. **United States of America (Bill of Rights)** James Madison, The Constitution of the United States, Legislation Online (Sept. 17, 1787), <https://www.legislationonline.org/documents/action/popup/id/8869>.
 - a. Amendment I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
 - b. Amendment II. "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."
 - c. Amendment IV. "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."
 - d. Amendment V. "No person shall...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life liberty, or property, without due process of law..."
 - e. Amendment IX. "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."
 - f. Amendment X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."
 - g. Amendment XIII(1). "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."
 - h. Amendment XIX. "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."
 - i. Amendment XXIV. "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."
 - j.

2. France (Declaration of Human and Civic Rights National Assembly, Declaration of Human and Civic Rights of 26 August 1789, Legislation Online (Aug. 26, 1789), <https://www.legislationline.org/documents/action/popup/id/8810>.

- a. Article 1. "Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good."
- b. Article 2. "The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression."
- c. Article 4. "Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law."
- d. Article 6. "The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, shall be equally eligible to all high offices, public positions and employments, according to their ability, and without other distinction than that of their virtues and talents."
- e. Article 9. "As every man is presumed innocent until he has been declared guilty, if it should be considered necessary to arrest him, any undue harshness that is not required to secure his person must be severely curbed by law."
- f. Article 10. "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order."
- g. Article 11. "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law."
- h. Article 16. "Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no constitution."
- i. Article 17. "Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid."

3. The Constitution of the Russian Federation Representatives of the Russian Federation, The Constitution of the Russian Federation, Legislation Online (July 21, 2014), <https://www.legislationline.org/download/id/6193/file/Constitution%20of%20the%20Russian%20Federation%20as%20of%20July%202014.pdf>.

- a. Article 2. "Man, his (her) rights and freedoms are the supreme value. The recognition, observance, and protection of the rights and freedoms of a man and citizen are duties of the state."
- b. Article 3(3). "The supreme direct expression of the power of the people shall be referenda and free elections."

- c. Article 6(2). "Every citizen of the Russian Federation shall enjoy in its territory all the rights and freedoms and bear equal duties provided for by the *Constitution* of the Russian Federation."
- d. Article 7(2). "In the Russian Federation the labor and health of people shall be protected, guaranteed minimum wages and salaries shall be established, state support ensured for the family, maternity, paternity and childhood, for disabled persons and the elderly, a system of social services developed, state pensions, allowances and other social security guarantees shall be established."
- e. Article 17(3). "The exercise of the rights and freedoms of man and citizen shall not violate the rights of other people."
- f. Article 19(1). "All people shall be equal before the law and courts."
- g. Article 19(2). "The State shall guarantee the equality of rights and freedoms of man and citizen, regardless of sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and also of other circumstances. All forms of limitations of human rights on social, racial, national, linguistic, or religious grounds shall be banned."
- h. Article 19(3). "Men and women shall enjoy equal rights and freedoms and have equal possibilities to exercise them."
- i. Article 20(1). "Everyone shall have the right to life."
- j. Article 21(1). "Human dignity shall be protected by the State. Nothing may serve as a basis for its derogation."
- k. Article 23(1). "Everyone shall have the right to the inviolability of private life, personal and family secrets, the protection of one's honour and good name."
- l. Article 23(2). "Everyone shall have the right to privacy of correspondence, of telephone conversations, postal, telegraph and other messages. Limitations of this right shall be allowed only by court decision."
- m. Article 24(1). "The collection, keeping, use and dissemination of information about the private life of a person shall not be allowed without his or her consent."
- n. Article 25. "The home shall be inviolable. No one shall have the right to enter a home against the will of those living there, except for the cases established by a federal law or by court decision."
- o. Article 27(1). "Everyone who legally stays in the territory of the Russian Federation shall have the right to free travel, choice of place of stay or residence."
- p. Article 28. "Everyone shall be guaranteed the freedom of conscience, the freedom of religion, including the right to profess individually or together with others any religion or to profess no religion at all, to freely choose, possess and disseminate religious and other views and act according to them."
- q. Article 29(1). "Everyone shall be guaranteed the freedom of ideas and speech."
- r. Article 31. "Citizens of the Russian Federation shall have the right to assemble peacefully, without weapons, hold rallies, meetings and demonstrations, marches and pickets."

- s. Article 32(2). "Citizens of the Russian Federation shall have the right to elect and be elected to state bodies of power and local self-government bodies, and also to participate in referenda.
- t. Article 34(1). "Everyone shall have the right to free use of his (her)abilities and property for entrepreneurial and economic activities not prohibited by law."
- u. Article 35(1). "The right of private property shall be protected by law."
- v. Article 37(1). Labour is free. Everyone shall have the right to freely use his (her) labour capabilities, to choose the type of activity and profession."
- w. Article 47(2). "A person accused of committing a crime shall have the right to the examination of his (her)case by a jury court in cases envisaged by federal law."
- x. Article 48(1). "Everyone shall be guaranteed the right to qualified legal assistance. In cases envisaged by law the legal assistance shall be free."
- y. Article 49(1). Everyone accused of committing a crime shall be considered innocent until his (her)guilt is proved according. To the rules fixed by federal law and confirmed by the sentence of a court which has come into legal force."
- z. Article 51(1). "No one shall be obliged to give evidence incriminating themselves, a husband or wife or close relatives the range of whom is determined by federal law."

4. Federal Constitution of the Swiss Confederation The Swiss People and the Cantons, Federal Constitution of the Swiss Confederation, Legislation Online (April 18, 1999), https://www.legislationonline.org/download/id/8558/file/Swiss_constitution_as_of_2020_eng.pdf.

- a. Article 7. "Human dignity must be respected and protected."
- b. Article 8(1). "Every person is equal before the law."
- c. Article 8(2). "No person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability."
- d. Article 10(1). "Every person has the right to life. The death penalty is prohibited."
- e. Article 10(2). "Every person has the right to personal liberty and in particular to physical and mental integrity and to freedom of movement."
- f. Article 11(1). "Children and young people have the right to the special protection of their integrity and to the encouragement of their development."
- g. Article 13(1). "Every person has the right to privacy in their private and family life and in their home, and in relation to their mail and telecommunications."
- h. Article 15(1). "Freedom of religion and conscience is guaranteed."
- i. Article 16(1). "Freedom of expression and of information is guaranteed."
- j. Article 17(1). "Freedom of the press, radio and television and of other forms of dissemination of features and information by means of public telecommunications is guaranteed."
- k. Article 22(1). "Freedom of assembly is guaranteed."

- l. Article 23(1). "Freedom of association is guaranteed."
- m. Article 26(1). "The right to own property is guaranteed."
- n. Article 27(1). "Economic freedom is guaranteed."
- o. Article 28(1). "Employees, employers and their organizations have the right to join together in order to protect their interests, to form associations and to join such associations."
- p. Article 29(1). "Every person has the right to equal and fair treatment in judicial and administrative proceedings and to have their case decided within a reasonable time."
- q. Article 31(1). "No person may be deprived of their liberty other than in the circumstances and in the manner provided for by the law."
- r. Article 32(1). "Every person is presumed innocent until they have been found guilty by a legally enforceable judgment."
- s. Article 34(1). "Political rights are guaranteed."
- t. Article 35(1). "Fundamental rights must be upheld throughout the legal system."