The Nature and Genesis of Moral Experience
I. A Brief Historical View

Broadly speaking, there are only three possible sources of our moral judgments. We may hold them from a direct revelation of God's will, communicated to a silent humanity by his prophets or vicars. In this case they are above all experience and are commands from a superior which may conceivably contradict our reason and our notions of utility. Contrariwise, they may be held to derive from experience and to be subsequently formulated by arbitrary custom, by affective reactions, or by rational reflection, in other words, by a purely human moral process. Somewhere between these two stands the doctrine of Natural Law. It holds moral truths to be prior to experience and yet involved in experience, to be above expediency and yet fundamentally more useful than expediency, to be set forth by the will of God and yet directly discoverable by each human being through that intuitive aspect of his rationality commonly denominated "right reason."

Natural Law may be properly considered as a doctrine, when we contemplate it as a part of the mainstream of Western philosophy and jurisprudence. In reality, it is something much more important and profound, for the doctrine only formulates an intuitive belief, rationally conceived or not, which always reasserts itself within a given tradition; namely, that there is an objective right and wrong in the very nature of things and their relationships, divorced from general utility, self-interest, or emotional
Such a belief has perforce been modified into typical forms corresponding to the peculiar outlook of a given moment or milieu. Its validity and even its existence have been denied by various philosophical sects, such as the Sophists, the utilitarians and positivists, and the Hegelian idealists, all of whom, through the exercise of discursive reason, have evolved systems to which such a notion would be inimical. Yet, like the intuition of our self or of our freedom, the belief in Natural Law persists, and even as a doctrine of jurisprudence has enjoyed a powerful revival in recent years. The historian can obviously follow it only through its written formulations. He will find it in systems of law, from Justinian's Code to the American Constitution; in literature and philosophy from Sophocles and Aristotle to Maritain and Proust.

The content of Natural Law has always been somewhat vague and imprecise. It changes somewhat according to the formulations of its various exponents and is consequently not quite the same for Cicero, Voltaire, or Burke. Some recent apologists of Natural Law, Catholics or political conservatives, have gone too far in an attempt to unify a "Natural Law tradition," from Plato up till Hobbes and Grotius—generally deriving a theory which happens to be that of Aquinas. This is a patent distortion, for the history as well as the philosophy of Natural Law is extremely complex, with significant differences not only between pagans and medieval Christians, but also among the writers of each of these groups. Nonetheless, we find throughout a consistent basic attitude toward the relation of positive law to justice and right, and a common core of prescriptions and of rights. The prescriptions involve an intuitive grasp of justice in human relations: the fulfillment of contractual obligations, gratitude, or the return of good for good, the accomplishment of other undeniable obligations in the family, in the cultural group, and even among nations. Obligations imply rights, and it is on this subject that we find the widest differences of opinion among the proponents of Natural Law, though the right to life, and to what is necessary to maintain life, would be granted by all.

Occidental thought has conceived of two rather different kinds of Natural Law. From the time of the Greeks until the middle of

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1 An intuitive notion may be true or false. No judgment is intended here.
2 Thus he will find no direct evidence of it among the ancient Hebrews, who did not work it out as a formulation, but who tacitly conceived of such a truth.
the seventeenth century, there was a major tradition, growing in
magnificence throughout that long period despite variations and
contradictions. Then, as a result of the collapse of the inherited
value system during the late Renaissance and the concomitant rise
of empirical science, a different kind of law of nature was gradually
evolved by Hobbes and his successors, one that had new and often
unexpected ramifications.3

In the major tradition, nature, and not abstract reason, is
supposedly the norm. The laws of ethics thus endeavor to escape
the vagaries of individual human reason and will which are so
often fallacious or corrupted by the egoistic propensities. And yet
the “nature” that is involved in the Natural Law concept is not
at all that nature of which we conceive in the broad and universal
sense of the word: the laws which make the planets revolve in
their courses and the plants to grow; nor yet the impulses which
govern the affective and instinctual existence, or the animal souls
in men and in beasts. It is that nature, or that part of nature, which
is perceptible alone to beings who enjoy a rational mode of exist­
ence, and its laws are applicable to such beings alone. Natural Law
is considered inseparable from the law of reason, for reason is
the natural structure, or at least the obligation of men. It is not
a law for angels, since its function is to confine, to direct, and to
regulate the impulses of the animal soul. It is, then, a law made by
God for man, independent of his will and dependent on his reason
(that is, his “right reason,” not his logical powers) only for its per­
ception and not for its existence. Reason then is a guide or dis­
coverer, but not a creator.

As a law of nature, the Natural Law is universal and immutable.
It is nonconventional and transcends culture itself. “It was con­
ceived as an ultimate law inherent in the nature of things and
centered in man himself. Clearly, belief in Natural Law assumes a
noble idea of man, of his unique value both as a free and rational
individual and as a social being.” 4 The Natural Law in sum was
immutable because it emanated from God; universal because of
the common nature of man and because its foundation was
rational. We must, however, go beyond this. Natural Law is “nat­
ural” only because of a certain concept of nature, one which holds

3See L. G. Crocker, An Age of Crisis, chap. 1. Cf. A. P. d’Entreves, Natural Law,
p. 12. The theories of Hobbes and later radicals actually had antecedents among
the early Greeks.

4P. J. Stanlis, Edmund Burke and the Natural Law, p. 8.
it to be definable in terms of proper ends, and which takes certain regularities to be indicative of those ends. "Unnatural acts" occur in nature but violate the ends conceived of as natural.

The seventeenth-century shift in viewpoint on man and the universe brought about a corresponding revision in the concept of Natural Law. The world was no longer seen, by advanced thinkers, as an ordered cosmos. The State was the highest expression of power, not of morality. And man, far from being an essentially rational being, was selfish and cruel, moved by his egoistic impulses and passions. A new idea of "natural law" dawns, reminding us of Ulpian's "regrettable" intrusion into the more comforting classical doctrine: the only universal law is "the law of nature" (as we shall call it, to distinguish it from Natural Law theories), one which does not distinguish man from beast, but embraces them both, and perhaps all living things, in the pursuit of the elemental needs of life, therefore of power. For Ulpian, however, and for others who adhered to his view, the problem was to "moralize" nature, trans­posing to it moral categories of social origin. And now it is the categories of natural science that will be applied to the social state to give it stability.

Hobbes rejected the notion that man is a political and social animal as an error of political idealism. Man is an animal mechanistically determined, living in a godless and amoral world. In such a philosophy there was obviously no place for the traditional Natural Law. "Where there is no common power there is no law; where no law, no injustice" (Leviathan, Ch. XII, 1651). Although Hobbes continues to use the traditional terminology, he revolutionizes the concept, for he starts not from natural order, but from natural chaos as the human condition. Power, will, and need now become the naturalistic components of a law which operates entirely within the human experience, and has no existence outside of it. Law, for Hobbes, "is the world of him, that by right hath command over others." 5 "Traditional natural law," writes Leo Strauss, "is primarily and mainly an objective 'rule and measure,' a binding order prior to, and independent of the human will, while modern natural law is, or tends to be, primarily and mainly a series of 'rights,' of subjective claims, originating in the human will." 6

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6 Natural Right and History, p 183.
This law, existing in the state of nature, has no ethical content, no normative function. It is based on a fundamental "nature" which results in necessary tendencies; this nature is the fear of violent death and the desire for security. The law of nature is a factual experience of man's power and faculties which lead him to seek what is good. It asserts the individual's right to life and to what he needs for life: the right to the end includes the right to the means. Since man possesses reason, he is sole judge of what is his good and of the best means to secure it. He has a "right to anything he so pursues and gets."

When men voluntarily enter into the social compact, the state of nature gives way to positive law. Hobbes, then, separates clearly the two ideas in the word "droit," law and right. A law is a command with the power to enforce it. A right is the free and legitimate use of power. And "right reason" is only the most efficient calculation. But positive law is not limited by a prior and superior moral law by which it is to be judged for its worth and moral rightness. It is the only source of justice and there is no appeal as long as power can prudentially maintain itself. Law founds right and maintains it. The State and primarily its head, the monarch, may be absolute and arbitrary (although he is in practice limited by what the sensible sovereign will do and by what the people can do against him). Hobbes, by his concepts of man and the state of nature, makes absolutism, within the realistic bounds of power, and unlimited sovereignty both necessary and morally justifiable.

Once the social contract is entered upon, relationships and, consequently, laws change. We may properly apply to Hobbes Rousseau's warning, that we must not confuse what is natural in the state of nature with what is natural in the social state. The social compact has certain essential or "natural" implications which derive from its essence and from right reason. These are obligations, "artificial" calculations which are not, however, anti-natural. They constitute a "Natural Law" which the ruler of a society may not disregard with impunity. In society, then, we have a Natural Law, but rights are dependent on positive laws. The situation of the state of nature is thus reversed. Obligation now comes into being because mutuality is expressible in society, and Hobbes, the realist, recognizes no obligation which is not an effective, external

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8 Polin, op. cit., p. 181.
What characterizes Hobbes's derivation of Natural Law in the social state is the fixity of his prescriptions, resulting from his effort to achieve certainty and stability by conceiving moral rules very much as one would mathematical axioms. For Hobbes, then, there are really two forms of Natural Law. In the state of nature, his doctrine is purely one of "rights of nature," and not one of limits upon rights, or obligations. Moral Natural Law arises only in society, out of a transformation of the conditions of egoistic self-realization. On the one hand, civil law may not contradict Natural Law (except at its own risk). On the other hand, Natural Law becomes obligation only in the form of civil laws (enforceable commands), and Natural Law itself commands obedience to all the laws of a State; so that no civil law can be charged with violating the Natural Law—it is the only interpreter of Natural Law—nor is there any prior definition of justice to limit positive laws.

The influence of Hobbes was complex. On the one hand, a strong and persistent adverse reaction denounced his concept of man in the state of nature, its lack of rational and moral law, and the absolutism which it justified. On the other hand, his imprint on Natural Law theory, with its shift to empirical realities of the human will, was indelible. Although Locke denied Hobbes's view of man and refuted his political theories, he was nonetheless influenced by him to the point of absorbing some essential aspects of the new doctrine of Natural Law. Locke, it is true, desired to reaffirm the traditional Natural Law and to put it on a sounder basis. The essential difference is that for Locke the world is a moral order in which man participates; for Hobbes it is merely a natural order, in which man is called upon to build a moral order. Because of the many natural obstacles, declares Hobbes, force is necessary to moral obligation. Locke, on the other hand, insists that even in the state of nature man was bound by a natural moral law, inasmuch as he is a ra-
tional creature, a part of the divinely established order of the world, an order operating through laws. "Natural Law" includes the free power of the rational individual, but this freedom, as a condition of its own existence, calls forth obligation. 12

On several major points, however, Locke departs from the traditional Natural Law doctrines, for instance, in his emphasis on rights. Also, man, not having innate ideas, lacks an immediate perception of Natural Law—although it is "natural" to him in the sense that it is a natural result of the use of his natural rational faculties. But it is not immediately discoverable to his conscience, not readable in the "heart," not ascertainable by a consensus gentium. Conscience and therefore the laws and customs of peoples are relative and diverse. The discovery of moral truths depends, then, on correct reasoning, and moral truths are considered to be fixed rules, as provable and ultimately as self-evident as a mathematical theorem. Furthermore, Locke's account of motivation stresses the pleasure-pain principle, leading thereby to the utilitarian criterion of the greatest happiness—which also confirms the utilitarian emphasis on rights as the means to attain this goal. (Here we must remember that for Hobbes—as for Rousseau, but under quite different conditions—society puts an end to natural rights, or at least transforms them; while for Locke, the whole purpose and justification of a society lay in the protection and enhancement of these rights.) Although Natural Law is not "justified" by its utility, the motive for conforming to it is one of self-interest. 13 Finally, Locke swerved from the main stream of Natural Law theory by rooting his theories in a presocial "state of nature." The consequences are manifold. The natural equality of this state becomes the source of natural rights. It follows also that although society is in conformity with human nature, men are not at once compelled by a social instinct to live in political communities. From this, the social contract doctrine ensues inevitably. The contract theory severs the State from nature. It assumes an individual will to establish "a relationship of mutual obligation which would not otherwise exist by the law of nature." 14

We come now to the second source which feeds into the new stream. As Hobbes is the fountainhead of the first, so Grotius is

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12 See R. Polin, La Politique morale de John Locke, p. 100.
13 Ibid., II, chap. 28, art. iv, ii.
of the second. It is the unfortunate tendency on the part of some recent writers to confound Hobbes, Locke, and Grotius into a single monstrous faction of secularists. No one, however, would have been more horrified than Grotius by Hobbes's philosophy of naturalism. He belonged to an entirely alien school of thought.

Grotius, an Arminian Protestant, was concerned with countering the doctrine of Luther and Calvin (one which had its precedent in William of Occam and the Nominalists), that law depended on the arbitrary will of God and, mutatis mutandis, on the arbitrary will of the State, as affirmed by Machiavelli and Bodin. This doctrine, ultimately, was not unlike that of Hobbes who also placed will above reason or an eternal moral order. Law, Grotius felt, must be independent of arbitrary will and of particular facts or historical experience. Natural Law is the source of obligation which in turn is the mother of civil law. It must be based on pure reason, not on power. In establishing this abstract or independent validity, he gave Natural Law a renewed vitality and restored its importance. But he did it at the price of a concession that was fraught with unexpected consequences. Like the Stoics, and unlike the Roman jurists and Aquinas, he considered law as possessing a logical or mathematical certainty which even God could not change; so that, even though it is the will of God, it is, in a sense, independent of his will. It was in this framework that Grotius wrote these famous lines:

What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him. . . . Just as even God cannot cause that two times two should not make four, so he cannot cause that which is intrinsically evil be not evil.

The consequences of this statement went beyond Grotius' intention and turned out to be the support of a humanistic ethics and a secular Natural Law. "He proved that it was possible to build

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15 In point of time, Grotius precedes Hobbes. His De Iure pacis et belli dates from 1625; Hobbes's De Cive was published in 1642, the Leviathan in 1651.
16 Luther and Calvin could not accept Natural Law as the sign of the dignity of human nature and as the mediator between man and God.
18 Prolegomena, par. 11; I, i, x. Actually this idea had already been expounded by Suárez and the group of Spanish jurists. See W. A. Dunning, A History of Political Theories, I, pp. 134, 138.
up a theory of laws independent of theological presuppositions." 19 From the traditional viewpoint, this began a schism in which Natural Law ceased to be a participation in Eternal Law and God became merely its guarantor. In Pufendorf (1672), Burlamaqui (1747), and de Vattel (1758), Natural Law becomes a purely rational construction. "What Grotius had set forth as a hypothesis has become a thesis. The self-evidence of natural law has made the existence of God perfectly superfluous." 20 Although this statement is essentially true, all these writers do express their belief that Natural Law has its source in God. Moreover, the individualism characteristic of the modern natural rights or Natural Law theory is rooted in the doctrine of the social contract, which is not accepted by Grotius (and which is, at best, only implied by Burlamaqui). Grotius intended Natural Law to be an abstract theory, not a revolutionary doctrine; he was, we recall, an upholder of slavery and the divine right of kings. It is true, on the other hand, that Grotius did reinterpret the idea of natural rights, giving them a greater importance than previously. Rights, he thought, depend not merely on eternal principles, but on qualities inherent in persons, on "that quality in a person which makes it just or right for him either to possess certain things or to do certain actions." Therefore, the end of positive law was, in part, to protect these rights. 21

In the eighteenth century, there will gradually be, after de Vattel especially, an adamant demand for specific and rigidly conceived rights, compared to the vague, pliable, and prudential rights of the earlier theory—"rights" which could be modified to suit almost any regime. The modern theory "was not, properly speaking, a theory of law at all. It was a theory of rights." 22 This momentous

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19 D'Entreves, op. cit., p. 52. Hans J. Morgenthau comments: "Thus he took the decisive step from the concept of a theological world, whose divine government is above human understanding as well as action, to the concept of an inherently rational world of which man is a part and which he can understand and act upon." (Scientific Man vs. Power Politics, Chicago, 1940, p. 13.) For J. Maritain, Grotius' error was to concentrate on the order of nature as deciphered by human reason, rather than on the relation between the order of nature and eternal reason (op. cit., p. 67).

20 D'Entreves, op. cit., p. 53.

21 For Pufendorf's attempt to "save the phenomena," see Le Droit de la nature et des gens, Amsterdam, 1734, Bk. VII, chap. 1, 2, etc.

22 D'Entreves, op. cit., p. 59. But we must recognize the fact that totally different political systems are developed: absolutist (Hobbes, Grotius, Spinoza, Pufendorf), or liberal (Locke and some eighteenth-century French writers).
change and the ensuing ambiguity of "Natural Law" rested partly
on an ambiguity of vocabulary, the words *ius* and *droit* referring
both to a system of law and to rights. On the other hand, it should
also be noted that the eighteenth-century proponents of natural
rights did not deny, as is charged, normative limits on rights and
make of them a pure experience of will and power. There was an
ethical norm inherent in their theory of natural rights, in its basic
principle of equality or reciprocity. It is therefore equally inac­
curate to assert that this theory held natural rights to be absolute.
Rather it declared them to be unalienable to other individuals or
to the State.

Now we must note a curious historical phenomenon which is
usually overlooked by historians of Natural Law. Even as the new
natural rights version of Natural Law was growing in strength,
with its valuation of individual prerogatives and satisfactions,
there was an increasing tendency, which we shall later observe in
some detail, toward theories of utilitarianism and social control
for the good of all. While with some writers (notably in England),
this concept was designed to include the *rights* of the individuals
within the purlieu of general welfare, with many others (especially
in France), the locus of these rights is displaced from the indi­
vidual to the community. In this process as we see it, for instance
in the works of Morelly, Helvétius, Mably, and Rousseau, the
"natural rights of the individual" vanish.23 It is the good of the
community which it is the absolute right of the community to
realize, even, or more exactly, necessarily at the cost of individual
rights, since private natural rights and social utility are often, in
view of the egoistic nature of man, incompatible. This new de­
mand for natural rights, combining then the social or communal
with private rights, but emphasizing the former, became that
doctrine of natural rights, absolutist in character, which Burke cor­
rectly denounced as contrary to the moral prescriptions of tradi­
tional Natural Law and as being equivalent to power, and not to
right at all.

Let us summarize the two divergent doctrines, remembering
that this résumé is schematic and that there are many important

23 "Morelly and Mably completely rejected the current individualism and declared
that happiness is to be found only in an organized society where the individual
satisfaction is deliberately subordinated to the public good." (K. Martin, French Lib­
eral Thought in the Eighteenth Century, Boston, 1929, p. 242.) Mably, however, also
asserts the rights of individuals, and even the right to revolt.
variations in each. The classical-Christian theory maintains a God-
given moral law which is prior and superior to the individual and
his claims. It is "known by human reason, but human reason has
no part in its establishment." It includes certain general rights of
the individual inasmuch as he is a moral being. Although these
rights inhere in nature and will (subjective motivation), their ulti-
mate source and justification is God's moral law. Willed personal
interests are irrelevant, unless they are reconciled with objective
reason which does not derive from self-interest and is the correc-
tive of self-interest, the latter being an atomizing and not a societal
force. However, there is no antithesis between nature and society,
and therefore no "natural rights" claim against society. Society is
given equally with the person. Social institutions are part of the
natural order and must respond to the Natural Law which is
superior to them, but not antecedent or separate from them. They
must, then, take into account man's natural rights as a moral being
under Natural Law. However, these rights do not exist independ-
ently of the social context or against it, but rather achieve their
reality and their realization within a specific cultural context, and
their concrete forms are modified thereby. No rights can be as-
serted, on an individual, natural, or communal basis, against the
moral law or the social institutions which properly reflect it; for
those rights, like man himself, do not exist prior to them or in-
dependently of them. Natural Law, social institutions (properly
conceived), and human rights are one complex, inseparable and
indivisible. The individual is not independent of history or of
institutions, and to think of him in this way is invalid. We must
therefore separate civil rights from natural rights: the former de-
rive from civil society, not from nature or God.

The "modern Natural Law doctrine" emphasizes the individual
and the empirical reality of his actual experience, needs, and
claims. It is really an exaltation of human will for human ends,
without a contemplative participation in divine reason. Yet it is
not, as conservatives charge, a pure doctrine of will and power. It
is a theory of right, one which involves the use of power for its
realization; but power is not made equivalent to right. The right is
to the means or power. The whole sense of the doctrine is precisely a
revolt against force or power, as embodied in existing institutions.
It leads to a demand for abstract, that is, for rigid and specific
rights which are held to be natural and God-given. Although
natural rights are admittedly only a corollary of Natural Law, in some writers, notably Locke and numerous partisans of the French Revolution, they acquire the primary importance; they are ultimately, in the nineteenth century, severed from Natural Law which is abandoned by positivist sociology and jurisprudence as a metaphysical doctrine. The "modern theory" assumes a state of nature as a historical or a hypothetical reality. The state of nature concept inevitably throws emphasis on natural freedom and equality. It makes rights (and with some writers, obligations) both prior to and independent of any given society. The natural rights theory emphasizes the break between nature and culture or convention (between nature and art, as it is sometimes phrased). The traditional Natural Law theory had distinguished the two without making them antithetical—in fact it had usually emphasized that the realization of Natural Law came about naturally through conventional institutions. For the theorists of the later view, individual rights inhere in each individual as a human being and are limited or conditioned only by the same rights of all other individuals, according to the principles of equity and equality. Their source is human nature and will alone, that is, the natural desire for satisfaction and self-fulfillment, although these may be held ultimately to derive from God. Our rights remain valid and unmodified (though limited) in society, which is a voluntary association whose only justification is their furtherance. Therefore they are superior to any particular established form of government, which must adhere to them, failing which, revolution becomes legitimate. The mere existence of institutions is, then, no argument for their validity or for their conformity with Natural Law. One might well say the contrary, for history is the history of irrationality and error. But reason is capable of creating a rational and just society, de novo. It has the right and the duty to do so. The historical outcome of this theory was the severance of juridical law and moral law (already evident in Montaigne, Descartes, and Pascal)—a process which has begun to be reversed only in recent years.

There remains an important point, one that has also been usually overlooked. What we have called the secondary source of modern Natural Law theory, stemming from Grotius, was essentially not a theory of rights or of voluntarism, but a theory of moral knowledge and of the origin of moral experience. In Eng-
land, this factor was relatively unimportant, because of the influence of Hobbes and Locke, and also, perhaps, because of the empirical shape of mind. As a result, many English defenders of innate objective moral truth turned away from Natural Law to what seemed like more empirical solutions, such as the moral sense theory, moral intuition, or natural sympathy. In France, however, where Hobbes was also universally condemned, there was no Locke to transform appealingly and to perpetuate certain elements of his doctrine, for in that country Locke was known and admired for his metaphysical more than for his political thought. Rousseau, who absorbed much of Hobbes, wrote after the middle of the century and, moreover, went in an opposite direction from Locke. Consequently, Natural Law could still flourish in France, even if with some secularization, as a true ethical theory, and there was no need to resort to the moral sense hypothesis which, as we shall see, had little appeal to the French. And yet when the French Revolution broke out, the Natural Law doctrine was no longer the chief support of moral certitude. Just as in England, it terminates in the natural rights doctrine, in the Déclaration des Droits de l’homme. French and Anglo-Saxons fuse in Thomas Paine’s ardent support of the Revolution, and in his unforgettable rebuttal of Burke. How extensive, then, and how deep did the Natural Law current remain in eighteenth-century French ethical speculation? This is the question we must principally examine. Why and when did it cease to be an ethical theory and become one of voluntarism and natural rights? This question, too, although outside the scope of pure ethical inquiry, demands at least a brief reply.

II. Natural Law in Eighteenth-Century France

What thief will abide a thief?—Saint Augustine

The Christian apologists had found themselves ever since the rise of the seventeenth-century libertin movement in an ambivalent position. On the one hand, they desired to confirm the status of Natural Law as a part of the Christian tradition and structure, and a needed defense against amoralism and immoralism. On the other hand, in response to the new foe, it became equally urgent to limit the role of Natural Law, or at least, to decry its supposed
sufficiency and self-sufficiency; for freethinkers and deists were now asserting that Natural Law made revealed and institutionalized religions superfluous, and some went so far as to find it independent of divine establishment.

The apologists' defense of Natural Law combines a basic unity with significant divergences of approach and argumentation. We have already noted the existence of such disparities among Christians before the eighteenth century, despite the superficial appearance of a unified traditional Natural Law doctrine. Now they will become more marked, and are characterized by their reflection of and response to certain current notions and problems. Among the most important of these are the pervasive belief in a unique self-interest motivation and the state of nature theories deriving from Hobbes.

One of the main threats to Christian Natural Law was the development of a naturalistic Natural Law which asserted the same moral principles but divorced them from God and a moral universe, predicing them solely on the kind of utilitarianism which was later to be embodied in the theory of natural selection. Another danger came from a small group of thinkers who admitted only a "law of nature" which amounted to a denial of any moral Natural Law. Against both of these groups the apologists had to maintain the existence of a moral order in the world duplicated by a moral realm in man, which, in effect, became the explanation of the genesis of moral judgments and obligations.

The problem in relation to the first group was clearly set forth by the apologist Postel, from the vantage point of the year 1769. "There is almost none of our philosophes who does not admit a Natural Law. But several of them make it consist of that innate human tendency to seek in everything our welfare and what is useful to us; others, with a more refined and spiritual feeling, make it consist of that inspiration of reason which prescribes certain principles to every reasonable creature. . . ." 2

As for the second group, it is most interesting to see Crousaz, in his refutation of Pope (1737) written before radical materialism had received much expression outside of clandestine manuscripts, attacking its basic position as he found it expressed in the writings

1 The exception to the unity was the Jansenists. "They were the only group who consistently refused to see in Natural Law a standard of right and wrong . . ." (Palmer, Catholics and Unbelievers, p. 28).
2 L'Incrédule conduit à la religion catholique, Tournay, 1769, pp. 135-58.
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of the Leibnizian optimists. Pope had argued that if such natural disasters as earthquakes do not upset the natural order, why should the existence of a Borgia or a Cataline? The implication is that everything is natural and necessary in a necessary world, the best world possible. And Crousaz correctly points out that such words confuse the moral with the physical and make pleasures, virtues, and vices the inevitable results of an eternal chain.3

As early as 1692, Abbadie assumed a connection between Natural Law and self-interest. By this time, the self-interest reduction of motivation was already a widespread theory, as a result of the writings of Pascal, La Rochefoucauld, the libertins, and certain theologians.4 The full implications and “dangers” of this position were not yet evident. Abbadie, attempting to establish the origin and validity of obligation, is concerned rather in showing that it does not come from education. He finds two innate forces in man. The first is sensitivity to pleasure and pain which is attached to self-preservation; the second is reason. The error, he argues, is to dissociate the two; whereas the natural use of reason is the proper direction of self-love. From this it is clear that duties and moral laws have a natural derivation as mechanisms of self-preservation, and such virtues as temperance, justice, moderation, beneficence are the result.5 Abbadie in this fashion resolves the dilemma of nature and reason. Yet he seems acutely aware that the moral problem is not solved thereby; that, as Hobbes and Pascal had made plain, law exists only insofar as it is realized and enforced. For he adds at once that the validity of his concept is conditioned by our immortality. The tendency to lasciviousness, injustice, and greed are also so natural that the law deriving from “reasonable nature” is ineffective by itself. “Thus the Natural Law is in man, but the perfection and extent of that law is in man immortal.” 6 Abbadie thus reaches an accord with Christian doctrine and simultaneously rejects the libertin appeal to the sufficiency of Natural Law.

Two or three later apologists also bowed to the pressure of the current psychology. Nicolas Bergier, one of the most able Catholic writers and one who for a while frequented the d’Holbach clan,
inquired into the nature of obligation, which he properly saw as the nucleus of the moral problem. Man therefore has two orders of judgment, moral and selfish. Why, he asks, should the moral win out over the selfish? Why should I sacrifice my happiness? “The reason will be the foundation of moral obligation.” And it is this: I am happy when I have made the sacrifice. Bergier’s answer is not only a *petitio principii*, but is (as Kant was to show) unmoral. He thinks only in terms of interest. And yet he fails to ask the main question: suppose that in making the sacrifice my happiness and self-interest come out less well than in *not* making it, then where is my obligation? But Bergier makes matters even worse by the assumption which enables him to avoid this question. The sacrifice is a reasonable pleasure, he avers, not madness, because of God’s future rewards and punishments; and if this is not true, then “man has no other laws or duties than those of animal packs in the forest.” After this, his statement that Natural Law—pity, beneficence, justice—is written in our conscience loses the force of a moral imperative.

In this utilitarian confirmation of Natural Law by means of a supposed virtue-happiness (and vice-unhappiness) equivalence, we have one of the key ideas of the century, and we shall later find it interesting to follow its fortunes among the opponents of Christianity. Other apologists, however, took a different tack and either denounced the utilitarian trap or shied away from it. The littérateur and apologist, Denesle, for one, tried to separate moral experience and pleasure by considering as quite distinct the pleasure felt in doing good. This brings us to a moral dilemma which could not be solved in eighteenth-century terms of the “unique pleasure motive,” which would have required action to be unpleasurable in order to be moral. Eighteenth-century thinkers were unable to distinguish between the pleasure, immediate or consequent, we take in an act, and the pleasure (or satisfaction) we experience in contemplating ourselves as the subject of that act (which may itself be unpleasant), according to a projected ego-

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8 Similar concessions were made by Ph.-Louis Gérard in his *Comte de Valmont* (I, pp. 454–67), a work that went through fifteen editions.

Such an image may be of ourself as a moral being, who selects higher values and performs obligations inherent in the relations of things.\textsuperscript{10} In their defense of Natural Law as the origin of our moral experience, most apologists took care to emphasize the necessity of Revelation as a completion and corrective to the intuitively perceived moral law which characterizes man as a rational animal. Reason, says the abbé Sigorgne (who was also a professor of philosophy and a physicist), adds something to animality, imposes requirements of its own. Man has his own destiny.\textsuperscript{11} Yet, he adds, reason is obviously insufficient as a principle of conduct.

The more astute apologists also denied a state of nature. The motive is evident in the refutation of Helvétius' \textit{De l'Homme} by the theologian Pichon.\textsuperscript{13} Helvétius had demonstrated that there could have been no virtue before society, since virtue is only respect of mutual obligation. Therefore the larger number of the


\textsuperscript{11} This statement is not intended to exclude the possibility of loving the right for its own sake.

\textsuperscript{13} Helvétius had demonstrated that there could have been no virtue before society, since virtue is only respect of mutual obligation. Therefore the larger number of the

defenders of Natural Law insisted that men have always been social. Even this hedge was insufficient in the eyes of most apologists, since it only made Natural Law coextensive with men. Consequently they insisted further on the imposition of Natural Law by God; and a few, placing the existence of Natural Law above the danger of its self-sufficiency, even asserted its independence from God.

Defense of Natural Law continued, then, throughout the century. It acquired renewed force in the writings of Bernardin de Saint-Pierre, who was concerned about the danger of nihilism. For this reason he condemns Locke. "He did not suspect that by denying man innate ideas, he was supplying arguments to anarchism and materialism" by making moral judgments conventional. But we have been provided with Natural Law which identifies personal interest and the general interest. These reflections lead Bernardin to a practical law, analogous to Kant’s: "Do you desire to know whether a maxim is just in relation to others? apply it to yourself. In relation to yourself? apply it to others, extend it to all men: if it cannot be applied to all, it can be applied to none." 

Bernardin’s most significant and best-reasoned piece on ethics is one that has generally been overlooked. Entitled “De la Nature de la morale” (1798), it is really a report on a prize contest of the Institut National in which he was a judge. He is critical of papers which placed the basis of morals in education, laws, or “our so fickle heart.” He will not allow morals to be derived from self-love, which is tied to our passions; nor from the social order, which is often oppressive, unjust, and conducive to unhappiness; nor from the general interest, which is frequently contrary to private interest (a notable admission, for the time!); nor from Adam Smith’s sympathy, since it omits duties toward ourselves. The fact is that we are subject to two kinds of morality, explains Bernardin. There is a human kind, deriving from passions and varying with customs; and a divine morality springing from reason,

14 Harmonies de la nature, in Oeuvres posthumes, 1833, pp. 259–60.
15 Ibid., p. 295. The posthumous Harmonies were left-overs from the Etudes de la nature (1784), therefore contemporaneous with Kant. Note also the use of the word “maxim.” The treatment in the published Etudes is less interesting, declamatory, poorly reasoned. (Oeuvres complètes, 1818, V, p. 4 ff.)
16 Oeuvres, VIII, pp. 423–41.
17 Compare with his attack on reason in the Etudes, loc. cit.
"an intuition of the laws which God has established between men . . . a conscience given by nature." The first, the morality of passion, Bernardin declares, embracing in anticipation both Freud and Adler, has two parts, love and ambition. It separates men; whereas the morality of reason unites them in harmony and shows them that the reward of virtues is in heaven. The rational law does not vary with special interests but is immutable. Thus Bernardin, like Kant, reacts against the winds of eighteenth-century doctrine by reaching for a rigoristic moral absolutism. 18

Samuel Formey, the prolific Protestant apologist who flourished in the middle of the century at the Academy of Berlin, offers the rather curious case of a defender of traditional Natural Law who has fallen under the influence of Christian Wolff's new interpretations. As early as 1745, Formey seems to have been swayed by Wolff, whose monumental *Ius naturae methodo scientifica pertractatum* had appeared in 1741. In a paper read before the Académie de Berlin ("Sur la Loi naturelle"), Formey asserts that the denial of God has nothing to do with the validity of moral law: "the foundation of rectitude is in the nature of man. . . . It is not enough to deny God, you must also deny and strip humanity." 19

By making Natural Law purely "natural" and also by his emphasis on rights, Formey takes an important step toward the newer conceptions of natural right doctrine. He advances still further in that direction in a later work, *Le Bonheur* (1754), by defining the propriety of acts as a relation with our happiness, this relation forming Natural Law or moral law. It is obvious that the accent is now completely displaced. "Since man can be motivated (déterminé) only by his appetite for good and his aversion for ill, 20 and since nonindifferent actions have a fixed and determinate relation with man's happiness [an assertion not substantiated by Formey],

18 We must note Marmontel's statement: "Man's duties, if we take away the law imposed by God, are only conventions, calculations of a free intercourse, in which each would have the right to protect his own interests and to break agreements whenever he felt himself hurt." If God were eliminated, then Marmontel would find himself in accord with the most rebellious of atheists, and he virtually admits this. (*Leçons d'un père à ses enfants sur la morale*, in *Oeuvres complètes*, 1819, XVII, pp. 232–34, 276.)


20 Formey uses the words "le bien" and "le mal," terms which have a utilitarian as well as moral denotation.
it follows that our actions have immutable relations with our happiness. . . . Consequently, natural laws are immutable laws." 21 If all men are moved by the same motives, and if this relationship is fixed, it is obvious that "given the same circumstances, what obliges one obliges all." Formey thus attempts to prove the universality and immutability of Natural Law in a way which, though still a priori in its reasoning, rests on utilitarian and naturalistic premises more than on divine.22

Among the deists, too, and among those nominal Christians who cannot be classified as apologists or theologians, we easily observe the persistence of traditional Natural Law throughout the century, though with a definite falling off in the last decades, and with the same traces of infiltration by the new doctrines.

Bayle, as might be expected, both confirms and weakens Natural Law. In chapter CLXXII of the *Pensées diverses sur la comète*, he assures us that "there are ideas of honor in the human species, which are the work of nature, that is, of general Providence." But in the *Continuation des Pensées diverses*, he declares that "nothing is more confused" than Natural Law, for every moral law is contradicted by opposite usages. On a later page, however, he adds, "Even scoundrels have the idea of justice." 23 Bayle's principal statement in support of Natural Law is found in the *Réponse aux questions d'un provincial*. "We must be virtuous" is a proposition, he says, which is "as eternally true, necessary and immutable as this other one, man is a reasonable animal." Natural Law is thus grounded on rationality; but Bayle turns away from the usual concomitant support, its origin in God's will. God cannot change the essence of things—of a sphere, of arithmetic, or of

21 In Formey's Preface to his abridged translation of Wolff, the statement is even more radical. Morality is not a matter of self-sacrifice or altruism. All a man does for his neighbor makes himself better and happier; or else, "we must strike [such acts] out from the category of duties." (Principes du droit de la nature et des gens, Amsterdam, 1758.)

22 In another piece published the same year, Formey lays greater weight on the voice of conscience. "It is, then, a divine voice, it is the eternal voice of truth which is speaking within me." This voice coincides with Natural Law. ("Du vrai bonheur," in Mélanges philosophiques, Leyde, 1754, II, p. 74 ff.) The little known Bernard Lambert, whose writings appeared under the name of Frère Thomas Jacob, pointed out the "dangerous" implications of Formey's theorizing. Jacob's work is valuable as a criticism of all the important Natural Law doctrines of the seventeenth and eighteenth centuries. See *Essai sur la jurisprudence universelle*, 1779, pp. 15-91.

23 Oeuvres diverses, La Haye, 1737, III, p. 221. On pp. 405-8 he gives us a closely reasoned argument supporting the traditional Natural Law doctrine which is too long to reproduce here.
virtue. “Virtue was therefore morally good before God knew it to be such, but God has known it to be such because it was such.” Otherwise, before God willed virtue and vice in acts, it must be admitted that he saw them indifferently, that he might have willed the vicious to be virtuous, and that he may, some day, change his mind and abrogate existing moral laws. In such a view, $3 + 3 = 6$ only so long as it pleases God and may be false elsewhere in the universe. Bayle thus carries forward Grotius’ “paradox,” and in this regard, at least, helps prepare the way for new ideas of Natural Law.

Bayle’s comparison of Natural Law with mathematical laws overlays his basic skepticism. Unlike physical laws, mathematical laws do not necessarily correspond to reality. Bayle never doubts the truth of moral precepts, any more than he does the properties of an ideal geometrical figure, but their existence is in an ideal world, one without passions. “I mean that, without exception, all moral laws must be submitted to that natural idea of equity which . . . illuminates every man as he comes into the world.”

But then he goes on to hint that, unfortunately, this “illumination” fades before the brighter light of passions, self-interest, custom, and education. We must always bear in mind both domains, abstract right and the world as it is, for each has its own reality. “Natural Law differs from all other laws in that what it commands is good in itself, and what it forbids is bad in itself, whereas other laws make something illicit by forbidding it, or good by commanding it.” Clearly, then, Bayle realistically recognizes the need for both concepts of law, that of essential right, that of pragmatic command.

A group of writers in the middle years of the century support, in one way or another, the traditional approach to Natural Law.

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24 Ibid., III, pp. 987, 675.
25 Ibid., II, p. 369. See also the strong statement, ibid., III, pp. 964-65, which is almost identical with Voltaire’s defense of Natural Law. Also, IV, pp. 258-60.
26 Ibid., IV, p. 262.
27 Among lesser writers, we should note Père André’s formalist absolutism, which is in many ways close to Shaftesbury. (Essai sur le beau [1741], Amsterdam, 1749, pp. 98-74.) Richer d’Aube’s stout defense of Natural Law against Carneades, Grotius and Hobbes anticipates Diderot’s “Droit naturel.” He attributes to the “social body” the right of decision in moral matters; unless, indeed, “stripping himself of the prejudices which self-interest might have given him, he [the individual] puts himself in a position to decide as the social body would, if it were assembled.” (Essai sur les principes du droit et de la morale, 1743, pp. i-xix.)

Morelly, the deistic totalitarian communist, assumes the Natural Law in his Code de la nature (1755), but treats it more fully in his earlier work, Essai sur le coeur
Strube de Piermont's *Ebauche des loix naturelles et du droit primitif* accepts pleasure and chagrin as related to the experience of obligation.28 However, they are not necessarily related to the utility of an act, according to Strube, but rather to its propriety for a man. The interesting fact about Strube is that while, on the one hand, he reaffirms traditional Natural Law, stating, for instance, that the union of men in society supposes a pre-existing order, and that men have a deep desire to be useful to their fellows even at their own cost; on the other hand, he takes a step forward toward a naturalistic view. He does this when he declares that the unity of the *genre humain* is only an intellectual, not a real, notion; 29 the only real union is that which derives from common needs and the need for mutual help, the latter being a variable.30 From this he concludes that Natural Law must be looked for not in the intellect, but in the passions of love (leading to acts of self-preservation) and hate (prevention of destructive acts). Strube carries this interesting analysis one step further when he notes, "We must however admit that there are some cruel men who, insensitive to the keenest sufferings of their fellows, seem even to take joy in inflicting suffering on them." 31 Thus men are instinctively propelled to proper acts of self-preservation, and, in "perverted" cases, to improper destructive acts. But there can be no natural principle authorizing us to treat others any way we wish, or else "there would be no more injustice or wrong in anything we do, whatever hurts and sorrows we may cause others. The rule, or rather the privilege, which would result from such a principle, would make us the judge of all our acts, and we would no...
longer be accountable to anyone.”\textsuperscript{32} Strube, in this remarkably clairvoyant statement, poses the problem of nihilism, especially in its sadistic form.

Burlamaqui, writing in 1747, exercised considerable influence through his \textit{Principes du droit naturel}. A comparison with Montesquieu’s \textit{De l’Esprit des lois} would illuminate some of the dichotomies and disparities of that complex of ideas which is embraced under the phrase, “Eighteenth-century political thought.” In regard to Natural Law, Burlamaqui holds it to consist of rules which are imposed by God through human reason.\textsuperscript{33} But \textit{droit} is an idea relative to human nature and must be deduced from it. From reason and its judgments, inasmuch as they indicate the way to perfection and happiness, arises obligation, “for to approve is to recognize that one should do something; and to condemn is to recognize that one should not do it.”\textsuperscript{34} Obligation may be defined, then, as “a restriction on natural freedom, produced by reason. . . .”

Right is defined as “the power which man has to use his freedom and natural forces in a certain way . . . insofar as this exercise of his powers is approved by reason.”\textsuperscript{35} Reason, then, is one link to the normative character of \textit{droit}. It distinguishes our “right” from our power; and Hobbes’s definition, or Spinoza’s, is avoided by the inference of the moral character of this reason. And so, “anything which man can reasonably do becomes for him a right.” A second link to \textit{norma agendi} is the essential indivisibility of right and obligation. If reason approves an act, that is, grants it to be a right, it simultaneously imposes the idea of obligation on others. Obligation, now, is derived only indirectly or ultimately from reason, but immediately from rights. We have an obligation \textit{because} men have rights. Burlamaqui does not say, like the traditional theorists, that because men are obliged to certain duties, rights (usually in some vague and uncertain way) are involved in these moral commands.

As soon as we go outside man’s essential nature and consider his various states and relations of dependency, we see him subject to the will of a superior. “This is the right we call law.” Law must be in accord with reason, however, to be obligatory,

\textsuperscript{32} P. 50.
\textsuperscript{33} \textit{Principes du droit naturel}, Amsterdam, 1748, II, p. 2.
\textsuperscript{34} \textit{Ibid.}, I, p. 92.
\textsuperscript{35} \textit{Ibid.}, I, p. 101.
that is, in accord "with the nature and constitution of man, and [must] be ultimately related to his happiness, which reason requires him to pursue." 36 Law, when it conforms to the conditions of legitimacy, is the highest source of obligation.37 The morality of an act is its conformity to the law which should rule it. Nevertheless the sole supposition that a creature is reasonable, and that it is reasonable to do or not to do certain things, constitutes obligation and suffices to establish a system of moral duties. A father must care for his children, since their welfare depends on it; the approval of his reason makes the act morally good. Therefore, the common arguments that the person who obliges and who is obliged cannot be one and the same, and that a superior is necessary so that one may not release himself from obligation, are untenable.

In this way Burlamaqui unfolds a theory of obligation and of Natural Law which is in many respects classical, but which also contains some new ideas. The emphasis on rights and the right to happiness and on the self-sufficiency of reason are among these. He also brings to the fore the vexed question of the relation of "right" to "good" or "useful." Although he is obviously not a utilitarian, there is no doubt in his mind that the word "right" is indissolubly related to a functional end, human happiness and welfare. It consists, however, of general and immutable rules. The coincidence of the right and the good is the working of Providence.

Montesquieu is closer than Burlamaqui, in some regards, to the classical doctrine of Natural Law, and yet, in a more important sense, he is further away from it.38

In the Lettres persanes (1721), he asserts his belief in the universality of physical laws and in the existence of natural economic laws.39 There are also moral natural laws, whose principle is summarized in his defense of justice. "Justice is a relationship of propriety, which really exists between two things; this relation is always the same, regardless of the being who contemplates it,

36 Ibid., I, pp. 115-16.
37 Ibid., I, p. 141.
38 The Essai touchant les lois naturelles (Oeuvres, III, pp. 175-99) is probably not by Montesquieu. See R. Shackleton, Montesquieu, p. 249n. This essay, perhaps by a disciple, emphasizes the involvement of self-interest in moral judgments, alongside the objective distinction between right and wrong. It also separates virtue (right action) from obligation, which derives from laws (of God or men) that effectively oblige.
be it God, angel, or man.” 40 Justice is eternal and independent of human conventions—if it were dependent on them, “this would be a terrible truth, which we should hide from ourselves.” Our experience of justice involves an inner feeling, but also requires rational intuition. It is inhibited by self-interest and the passions. It does not depend on this other important truth: “justice to others is charity to ourselves.” 41 Thus moral value, while not separated from self-interest, is made independent of it, prior and superior to it.

As Montesquieu’s thought matures and evolves, his interest in Natural Law recedes.42 In the *Esprit des lois* (1748), he is preoccupied almost exclusively by the dynamic power forces of statecraft, and by the nonmoral physical and historical factors. The art of government is seen as a pragmatic art. Basically, Montesquieu believes as firmly as ever in Natural Law, and his conception of it is close to that of Aquinas—or to that of Burke; in other words, it is the traditional view. It is still a matter of basic laws to be discovered in objective relationships stemming from human nature and needs, and linked with a rational universe ordained by God.43 The moral and political spheres, as well as the physical, are considered subject to natural laws, and there too the order of nature is constant. The moral laws are normative; the physical and political laws, though descriptive, may become normative, judging from Montesquieu’s subsequent treatment of them. These relations, abstractly considered, are absolute, prior to intelligent beings and their positive laws.44 Such laws may therefore be unjust.

Here Montesquieu’s analysis and his interest in the subject come to an end. He seems almost to wish to point out the place of this inherited, rationalistic basis of politics and to be rid of it.45 He draws no precise political precepts nor does he attempt to

40 Lettre LXXXIII. Also in 1721, in the *Traité des Devoirs* (Pensée 1226).
41 Lettre XII.
42 As Shackleton remarks, “he is not interested in speculation on the presocial condition of mankind or the mode of its emergence from that condition into the State” (*op. cit.*, p. 249). This, however, is in accord with the traditional doctrine.
43 Livre Premier, chaps. 1, 2.
44 “To say that there is nothing just or unjust except what positive laws command or forbid is to say that before a circle had been drawn, all the radii were not equal.” (*De l’Esprit des Loix*, ed. Jean Brethe de La Gressaye, 1950, I, chap. 1.) The formulation is, of course, old. Cf. Samuel Clarke, *A Demonstration of the Being and Attributes of God*, Part II.
45 L. Stapleton points out that the comparative and historical method tended to discard the idea of universal law applicable to “men of different habits and customs, living in different stages of development.” (*Justice and World Society*, p. 82.)
apply Natural Law to any of the real problems of government. He is aware that the concrete, effective forms of law vary, and these conditions are the ones that seem to him really significant. The basis of any morality, for Montesquieu, is a metaphysical assumption about the world and man which overrides individual and cultural differences; but his practical morality is founded on human psychology. Inasmuch as this is so, the natural laws relating to human behavior and needs are always present in his mind. But the positive form which they take and the concrete conditions in which they are given form and in which they operate are his immediate concern. Natural Law thus recedes to a background, even to a nominal position as Montesquieu advances toward the positivist, utilitarian view which, paradoxically, was to arouse the hostility of other utilitarian political theorists who followed him.

G. H. Sabine, consequently, errs in claiming that Montesquieu “had never considered Natural Law with any care.” On the other hand, he is correct in stating that this was “a conventional way of getting started,” and that “what interested him was the idea that this fundamental natural law in society, which he identified in the usual way with reason, must operate in different environments and so must produce different institutions in different places.”

Sabine also accuses Montesquieu of including in his concept of Natural Law “disparate features,” moral, social, physiological. Sabine is here involved in a serious confusion which occurs again in Sergio Cotta’s treatment—a confusion of the laws in the second chapter of the first book with those of the first chapter. As a result of this confusion, Cotta himself accuses of confusion critics who have found a Natural Law concept in these opening pages. In the first chapter Montesquieu does sketch a theory of Natural Law, including its metaphysic, its juridical logic, and its specific content (in the ninth paragraph). None of the latter is physiological; it is explicitly referred to as “the intelligent world,” in open contrast with the physical world. It is clearly a matter of equity; of the “ought,” not of descriptive law.

“The effort of reason should therefore bear less on abstract, general, uniform, immutable law, flowing directly from human nature, than on positive law which a given society has made for itself under the influence of certain factors.” (I, chap. 18.) 47


Montesquieu e la scienza della società, p. 356 ff.

“We must therefore admit relationships of equity prior to the positive law which establishes them: such as, for example, supposing there were a society of men, it would be just to obey their laws; if they were intelligent beings who had
Montesquieu uses the phrase, "loi naturelle." The second chapter, however, headed by a significantly different phrase, "Des Loix de la nature," no longer treats this subject, as Sabine and Cotta have erroneously assumed. It refers rather to the laws which "derive solely from the constitution of our being," or as he has put it in the preceding paragraph, from man "as a physical being." The laws in the first chapter, however, constituting Natural Law, are outside of these factors—in their origin and import. They are rational, not empirical-naturalistic. It is for this reason that Montesquieu is obliged in the second chapter to postulate a hypothetical state of nature in which he does not believe, in order, like Rousseau later, to conceive for a moment of a presocial, premoral, physical man-animal. Cotta's amazing "discovery" that Montesquieu's natural laws, as sketched in chapter II, are physiological and not moral rests, then, on two misconceptions: first, that there can be no Natural Law theory without a belief in a state of nature; second, that Montesquieu is writing about the same kind of law in chapters I and II, when, in fact, he is opposing to positive laws (which he goes on to treat in the third chapter) two kinds of prior law, moral Natural Law (chapter I) and the laws of (physical) nature (chapter II). It is much more accurate to say, with Brunschvicg, that the conflict in Montesquieu is between a Natural Law deriving from man's reason and moral nature (a law superior to positive laws) and his continuing demonstration that laws are only the result of conditions of fact. It is therefore important to recall once again the distinction between the doctrine or theory of Natural Law and the fact that there are "laws of nature." In the latter sense, Montesquieu's whole object is to discover natural laws which are pure descriptions of what is indispensable as a result of the nature of the State in question; such laws are normative only in the quite different sense that they are necessary if the State is to survive.

received some benefit from another being, they ought to have gratitude for it; if an intelligent being had created another intelligent being, the created being ought to remain in the dependency which he had from his origin; an intelligent being, who has done harm to an intelligent being, deserves to receive the same hurt, and so on with the others." (Italics added.)

50 Shackleton's list of Montesquieu's natural laws (op. cit., p. 250) refers to these laws, and to their development in Book XXVI. So do his astute comments on the character of these laws as descriptive rather than normative, characterizing in simple principles "the activities of man in relation to nature." Montesquieu then proceeds to "treat them as normative principles."
The second of the century's great figures in whose thought Natural Law theory is interwoven was Voltaire. His writings are especially fascinating in regard to this subject, for they are the clearest testimonial to the difficulties traditional Natural Law was experiencing in the intellectual medium of the Enlightenment. Voltaire desired most earnestly, even desperately, to maintain the truth of Natural Law and also the existence of God and freedom of the will, in order to provide a secure foundation for ethics. A reading of *Candide* or several of his other tales or poems reveals how well he appreciated the menace of moral nihilism. His intellectual life was a struggle within himself. He had to give up freedom; he clung to God as a drowning man to a timber; and he defiantly asserted Natural Law, time and again, with a varying admixture of alien emphases.

The difficulty was that such a doctrine involved him in conflict with other aspects of his ideology. As a "purist" believer in sensationism, he assumes the *tabula rasa*, which was precisely (and more logically) the fount of antithetical theories, such as Helvétius', that men are susceptible to conditioning without any limitation from Natural Law. Voltaire was quite aware of the difficulty. In the second part of the *Poème sur la loi naturelle* (1756), he attempts to refute four objections to a universal morality. Two of the four are variations of the problem inevitably raised by sensationism: that remorse and conscience may be only a habit. That Voltaire's own philosophy might well have been pointed in the same direction is evidenced by his later article, "Imagination," in which he maintains that all our abstract ideas are based on concrete representations and concrete experiential images. In the *Poème*, he poses the problem frankly.

On insiste, on me dit: "L'enfant dans son berceau
N'est point illuminé par ce divin flambeau;
C'est l'éducation qui forme ses pensées;
Par l'exemple d'autrui ses moeurs lui sont tracées;
Il n'a rien dans l'esprit, il n'a rien dans le cœur;
De ce qui l'environne il n'est qu'imitateur."

The other two are the variability of laws and customs, and the prevalence of crimes.


Compare the verses in *Zaïre* (1732, I, p. i):

Je le vois trop: les soucis qu'on prend de notre enfance,
Forment nos sentiments, nos moeurs, notre croyance. . . .
L'instruction fait tout, et la main de nos pères
Grave en nos faibles cœurs ces premiers caractères. . . .
In his reply, Voltaire does not belittle the power of environment, but insists on the real existence of an unchangeable basis for the reception or interpretation of experience.

Mais les premiers ressorts sont faits d’une autre main; 
Leur pouvoir est constant, leur principe est divin.

These “springs” are the instincts, which in man include a “moral instinct,” or the necessity of reacting morally to experience, that is, of making moral judgments. Such judgments are, although a result of experience, generated necessarily.

Il faut que l’enfant croisse, afin qu’il les exercise; 
Il ne les connaît pas sous la main qui le berce.

Comparisons with animals follow to sustain the argument. “Tout mûrit par le temps, et s’accroît par l’usage.” Voltaire thus rejects what he conceived to be Descartes’ innate ideas, already present at birth; but since certain universal ideas are necessarily generated, although as a product of experience, the terminal result is substantially the same with a difference only in the process. As he puts it in the *Éléments de Newton* (1738), all ideas come from the senses, but identity of senses produces the same needs and feelings which give rise to roughly the same notions. To express the matter differently, it is obvious that an action cannot appear just or unjust, cannot evoke a moral reaction, unless we are equipped to bring such a category of judgment to bear on the data of experience. Consequently, moral experience may be spoken of as natural, as well as derived from culture; it is not secondary, but imposed on culture by the same human nature which makes culture.

A second difficulty for Voltaire was the unity of human nature. Both in the *Traité de métaphysique* (1734) and in the *Essai sur les moeurs* (1753–56), he emphatically denies the unity and common descent of mankind, qualifying the differences between whites, Negroes, and Indians or other races as greater than, or as great as, that which separates families or species of animals. “Moreover,” remarks one commentator, “he not only assigns to what he

54 *This is a misinterpretation of Descartes, who held innate ideas to arise, not at birth, but with the developing mind; they are self-generating, however, and not contingent on experience.*

55 *Oeuvres*, Vol. 22, p. 419. He is astonished that “the wise Locke” concluded that because there are no innate ideas, there are no universal notions of good and evil. He correctly and astutely remarks that savages may eat their parents as a way (which he calls “perverted”) of demonstrating their love, that is, to deliver them from old age or enemies. (He might have added, to give them immortality.)
calls the various human species ‘a character different from ours,’ but he also attributes to them different outlooks. For instance, he explicitly says about the natives of India that ‘since their physical nature differs from ours, their morality must also necessarily be different from ours.’ 

However, this statement, however, gives a rather inaccurate account of Voltaire’s thinking. The morality which is “different” is customary, or related to what we should now call instrumental values. Apparently Voltaire does not think physical differences so great as to exclude unity of terminal values. For he also writes, concerning the Indians: “All these people resemble us only by their passions, and by the universal reason which counterbalances the passions, and which imprints this law in all hearts: ‘Do not do unto others what you would not want them to do unto you.’ Those are the two characteristics which nature impresses in the many different races of man, and the two eternal links by which she unites them, despite all which divides them.”

We must remember that Voltaire’s opposition to the unity of the races was largely motivated by his polemical attitude toward Christianity, here involving the myth of the Creation in Genesis, and perhaps also, to a lesser degree, by his opposition to the newly-rising theories of evolution.

Be that as it may, the essential fact is that Voltaire does unflaggingly maintain the immutability and universality of the basic moral judgments and terminal values which constitute Natural Law—the supremacy of the group interest, the parent-child relation, the “silver rule,” the right to the fruit of one’s labor, the sanctity of the pledged word, the prohibition of unjustified murder, the return of good, not evil, to one who has done us good. In the *Epître à Uranie* (1722), the *Remarques sur les Pensées de Pascal* (1734), the *Traité de métaphysique* (1734), the *Poème sur la Loi naturelle* (1756), these ideas are well known. We must emphasize that they are proclaimed in many other writings and at all periods of Voltaire’s life. In the *Eléments de Newton* (1738), he writes, “I understand by natural religion the principles of morality which are common to the human kind . . . for, all having the same reason, the fruits of that tree must sooner or later resemble others.”

In *Le Philosophe ignorant* (1766), he still marvels that


58 Oeuvres, Vol. 22, p. 419.
despite all the differences between men, they all have the same fundamental ethics ("le même fond de morale"), a rough notion of justice; and all, he says, have acquired it "at the age when reason unfolds, as they acquire naturally the art of lifting loads with sticks. . . . It seemed to me then that this idea of just and unjust was necessary in them. . . ." If the Egyptian and Scythian have the same basic ideas about justice, it is because God has given to both "that reason which, as it develops, makes them perceive the same necessary principles, just as he has given them organs which, when they have reached the degree of their energy, perpetuate necessarily and in the same way the races of the Scythian and the Egyptian." 59

Voltaire's opinion has not changed in forty years. To be sure, some of his statements now betray the influence of materialism: body and mind both undergo analogous and necessary development, and there is an ultimate identity. The moral law is comparable to the law of gravitation. This materialism does not diminish one whit his belief in a good God as the creator of matter, of its laws of development, and particularly of Natural Law—although there is another area of shadow in this notion, too, of God's goodness. 60 The coexistence of materialism and belief in God is perhaps Voltaire's deepest dilemma, and we have already referred to this uneasy partnership. 61 But as he needed Natural Law to establish the primacy and objectivity of moral experience, so he needed God to establish the certainty of Natural Law. Its precepts are always, for Voltaire, from beginning to end, "engraved in our hearts by God," who "speaks to us" in this way. 62 In the Philosophe ignorant, it is "the supreme intelligence which. . . has therefore willed that there be justice on earth, so that we could live there a certain time." He mocks Pufendorf's idea that men

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59 Oeuvres, Vol. 26, pp. 77-79. Cf. L'Orphelin de la Chine, Oeuvres, Vol. 5, p. 318. Compare the verses that end the first part of the Poème sur la loi naturelle:

Le Ciel fit la vertu; l'homme en fit l'apparence.
Il peut la revêtir d'imposture et d'erreur;
Il ne peut la changer: son Juge est dans son coeur.

60 See the discussion of Voltaire and the problem of evil, in An Age of Crisis, pp. 63-67.

61 Ibid., p. 65. In Le Philosophe ignorant, he declares that even if there is only matter, "whoever thinks must be just, because the atom to whom God gave thought can have merit or demerit, be punished or rewarded. . . ." (Vol. 26, p. 77.)

62 The same phrase is used in the Epître à Uranie (1722, Vol. 9, p. 361) and in La Henriade (1723, Vol. 8, p. 172).
can create moral values ("moral entities"), or "certain modes which
intelligent beings attach to natural things or physical movements,
in order to direct or restrict the freedom of man's voluntary acts,
so as to put some order, propriety and beauty into human life." 63
All of Voltaire's ideas are renewed in the article "Loi naturelle,
" in the Questions sur l'Encyclopédie (1771). Differences in moral
ideas? "Laws of convention, arbitrary usages, fashions which pass:
the essential remains forever." 64 Man, it is unhappily certain—for
Voltaire has not forgotten the lessons of life and of history which
he expounded in Candide and the Essai sur les moeurs—can be
diabolical. But he can also be noble. "Well," asks Voltaire, "do
storms prevent us from enjoying a fine sun?" It is natural to be
one-eyed, lame, misshapen—or vicious; but we prefer well-shaped
people. Yet there is a logical defeat in this conclusion. Is it not to
admit what the materialists had been saying, that if a supposed
Natural Law is natural, so is its opposite? 65
Voltaire, we have noted, was aware of the arguments for an
amoral universe and an immoral mankind, aware, that is to say.
of what seemed to him the menace of moral nihilism. Another
indication of this unavowed apprehension is clear, if disguised,
in the verses near the close of the first part of the Poème sur la
loi naturelle.

Jamais un parricide, un calomniateur,
N'a dit tranquillement dans le fond de son coeur:
"Qu'il est beau, qu'il est doux d'accabler l'innocence,
Déchirer le sein qui nous donna naissance!
Dieu juste, Dieu parfait! que le crime a d'appas!" 66

These lines seem to be almost a protest aimed at the writings
of a Duclos or a La Mettrie. But his reassurance that no one would
give either theoretical or personal approval to such deeds is con­
tingent on the existence of Natural Law. Without this law, men
might indeed say and do such horrible things.

Voilà ce qu'on dirait, mortels, n'en doutez pas,
S'il n'était une Loi terrible, universelle,
Que respecte le crime en s'élevant contre elle.

63 "Droit" (1771), Oeuvres, Vol. 18, p. 426.
64 Oeuvres, Vol. 19, pp. 604–6. See also article, "Lois," Vol. 19, pp. 623–24, and
65 This was pointed out in refutations of the Poème sur la loi naturelle. See
66 Verses 69–74.
Voltaire's struggles and dilemmas are again visible in his dialogues, *L'A, B, C* (1768). At this time, utilitarianism and naturalism are strong in his outlook, but he still feels the need of saving Natural Law. In a long note to the first dialogue he refutes Horace's line, "Nec natura potest iusto secernere iniquum" ("Nature cannot discern the just from the unjust"), by citing another verse of Horace: "Iura inventa metu iniusti fateare necesse est" ("It must be admitted that laws were invented because of fear of injustice").

Justice, then, was conceived of before convention and is natural. Actually, there is no contradiction in Horace, as Voltaire asserts. It only seems one to him, because he confuses (as was typical both of eighteenth-century naturalism and of Natural Law thinking) cosmic nature with human nature. This confusion accounts for the ensuing statement: "If nature made no distinction between right and wrong ("le juste et l'injuste"), there would be no moral distinction in our actions; the Stoics would apparently be right in contending that all crimes against society are alike."\(^{67}\) While the nihilist made the error of considering cosmic nature as all nature, and thus, accepting the truth of the condition in Voltaire's first phrase, asserted the truth of the conclusion; Voltaire apparently makes the contrary error of extending what is true of human nature to cosmic nature.\(^{68}\) In reality, however, all he intends to assert is that such distinctions are necessary and natural to any reasonable being. In the third dialogue, however, Voltaire himself takes the contrary position. He now asserts—in contrast to the traditional Natural Law doctrine which he usually upholds—the radical opposition between nature and art. Hobbes was right: "everything is convention or force."\(^{69}\) Is there, then, no Natural Law? "There is one to be sure, self-interest and reason." This definition puts Voltaire in the naturalistic camp, but he avoids Hobbesian radicalism by denying evil in man and by the implicit emphasis on reason. He does not, however, solve the contradiction


\(^{68}\) The source of the confusion is rather obvious. The nihilist observes the non-teleological character of natural events (of the motion of planets, for instance); recognizing that human nature is also natural, he concludes that human nature refuses a teleological analysis, which is a non-sequitur. Voltaire, observing the necessity of a teleological analysis of human behavior, remarks that man is natural and that the rest of the universe is, too. He concludes that moral purposes must have a basis which extends beyond the sphere of human experience—which is also a non-sequitur.

\(^{69}\) P. 272.
between a natural moral law which is prior to convention and a
moral law which arises (however "naturally") from convention.
Furthermore, his own utilitarian definition of virtue as obedience
to law makes all crimes offenses against society or convention, and
only indirectly, if at all, against nature.

Natural Law is, then, for Voltaire, the source and the guarantor
of our ethical life, a criterion of judgment for other moral and
legal notions, and also a substitute for religious ethics. It is the
universal essence of justice from which we derive our ideas con­
cerning justice. Voltaire's strategy, in the hope of erecting an
unassailable foundation for moral values, is to unify reason and
nature, and at the same time, the natural and the transcendental,
in the truth of the traditional doctrine of Natural Law. For Vol­
taire's Natural Law theory, as he expresses it, is the traditional
document, relatively free of contagion. The moral law is posited
directly on right and only indirectly on the right to happiness;
there is no stress at all on a natural rights theory; and there is no
claim for rigid specificity in all situations or for mathematical
certitude.70 And yet, the greatest problem for our understanding
of this aspect of Voltaire's thought is his growing emphasis on
utility. No act, for Voltaire, has an intrinsic or formal value, its
effect on men alone confers value on it.71 It cannot be judged out­
side of its results in a specific situation. The theory of Natural
Law, as I have made clear, and indeed any theory of moral right
or justice, is ultimately related to the welfare of human beings—
even a theory which justifies evil on earth as a test of merit for
future reward. Utilitarianism, however, makes a specific good
the immediate and pragmatic test of right—which is a quite differ­
ent matter. Elements of utilitarianism are visible in Voltaire's
thinking relatively early, as when in 1738, he cites as a proof of
Natural Law the fact that in any society "one gives the name of
virtue to what is believed useful to society." 72 And it can be said,
in a more general way, that Voltaire's espousal of Natural Law
is to some degree at variance with his constant belief in limited
pragmatic solutions, with his refusal to pretend that we can attain
to abstract truths, to metaphysical or cosmic certainties.

70 In the article "Souverain Bien," of the Dictionnaire philosophique, Voltaire re­
jected the current belief that virtue was in itself a source of happiness.
71 He explicitly states this in the Traité de métaphysique, ed. H. Temple Patter­
son, Manchester, 1937, p. 60.
72 Eléments de Newton, Vol. 22, p. 421.
However, while utilitarianism will assume a dominant position in Voltaire's outlook, I do not think it correct to say that Natural Law gives way before it or is supplanted by it. On the contrary, he never ceases to reassert his belief in Natural Law, even as late as 1775 in the *Histoire de Jenni.* Nor, it must be further stressed, is it a case of Natural Law terminology masking a new meaning given to old words. The fact is rather that the two theories accompany each other without overtly coalescing. Is this a contradiction of which Voltaire is unaware? It is rather, I believe, that Voltaire, rightly or wrongly, conceives of them as complementary and not contradictory. It is partly that for him the universality and immutability of basic moral judgments are the evidence of their usefulness. But even more, the very indefiniteness of traditional Natural Law precepts allows him to conceive of modifications relative to the needs of a specific circumstance. The laws which God has put into our hearts are only tendencies and forms, with variable content. "Do unto others" is an immutable law, but its implications may differ somewhat. Laws change; but virtue, everywhere, is obedience to law. General tendencies, equated with what is universally useful to human society, may preserve the consonance of formal and utilitarian value. Value judgments, for Voltaire, cannot escape an objective human reality which is largely immutable. This reality may be conceived of as "laws" (ethical judgments), now concrete, now only tendentious. In obeying them we carry out God's wisdom which makes our notion of right coincide with our good. This ground of reality may also be viewed as the welfare of society, which has some basic, immutable elements, and others that are variable. We are bound in all that regards the former. Seeking what is useful, we will encounter invariant Natural Law. If we look into our hearts, we will find that the same law, though we may not realize it, represents what is most useful. If Voltaire goes beyond Natural Law, it is because he is not satisfied that it is a sufficient or effective solution to the moral problem. How he goes beyond it we shall see later.

Returning now for a rapid glance at other writers of the second half of the century, we shall once more note the persistence of Natural Law theory.

In the *Encyclopédie,* according to René Hubert, the main ques-

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73 The latter sentences are taken from my article, "Voltaire's Struggle for Humanism" in *Studies on Voltaire in the Eighteenth Century,* Geneva, 1957, IV, p. 157.
tion is whether there is a natural morality "prior to the social institution and to laws, or whether all moral notions, virtues and vices, appear only with the State." Jaucourt ("Loi naturelle," "Devoir") contends that the prescriptions of Natural Law "derive solely from the constitution of our being before the establishment of societies"; they are religion, self-love, sociability, and beneficence. He, too, quotes Cicero's definition. Boucher d'Argis offers no significant variation in the article, "Droit naturel." He defines the prescriptions as the duty to hurt no one and to give to each what belongs to him. While Jaucourt is closer to Grotius, Boucher holds to the orthodox theories without deviation.

The abbé Yvon's articles are in some respects similar to Voltaire's thinking. In "Bon," he contends that our organs are "in proportion to the rank which we occupy in the universe." This is more than a figurative expression. It assumes the hierarchy of a scale of beings, a finalism and Providentialism that sees to it that a man gets what he needs in order to be a man, and a dog what he needs to be a dog. "We are obliged to recognize the goodness and wisdom of Providence equally in what it gives and what it refuses." It follows that God has provided us with moral rules and an awareness of them, making social life possible.

Yvon's article, "Athée," is largely a refutation of Bayle in which he actually weakens the structure of Natural Law by diminishing the role of right reason and objective relations, and by making God not merely its origin and support, but the effective agent in each moral act. He is forced to admit that his system is formally similar to Hobbes's.

74 Les Sciences sociales dans l'Encyclopédie, 1923, p. 270.
75 Rousseau's fellow Genevan, E. Beaumont, attributes obligation to relationships and reason; the will must prefer the good, that is, "anything which can contribute to the self-preservation, protection and pleasure of man." The dangerous implications are avoided by the arbitrary assertion of "true" and "false" values—a notion Sade will shake. Interestingly, Beaumont, a year before Rousseau's Discours sur l'inégalité, contrasts natural with instituted relations; the latter are derived from new needs developed by society, which produces new passions—some to be satisfied, some to be repressed. (Principes de philosophie morale, Genève, 1754, pp. 17, 26.)

Condillac's theory reminds us of Voltaire's in its combination of experience, utility, and divinity. Mutual needs give rise to moral conventions, but as a result of God's planning. "There is therefore a Natural Law, that is, a law founded on God's will and which we discover by the sole use of our faculties." (Traité des animaux [1755], Œuvres, 1798, III, p. 587.)

In the same year Sulzer read a paper on Natural Law at the Academy of Berlin (reprinted by Robinet in his Dictionnaire universel). It is a strange paper, in which he affirms that Natural Law differs from morality in that its prescriptions, being more specific, are obligatory. It tells us, for instance, to return what we have bor-
The year 1758 brings us to the publication of another landmark in Natural Law theory, the *Droit des gens* of the Swiss jurist, de Vattel. The emphasis on happiness as the function or goal of Natural Law instead of on moral duty (although happiness was never totally separated from the latter concept), an emphasis which we have noted from time to time in this chapter, is expressed even more strongly by de Vattel. The laws which man, as man, must naturally obey arise from the basic axiom, as he terms it, that "the chief end of any being endowed with intelligence and feeling is happiness." Even more, obligation itself depends on this axiom. "It is solely by the desire for this happiness that a thinking being can be bound, that we can form the knots of obligation which are to submit him to some rule." Natural Law is nought but "the rules which man must follow to reach his goal, to obtain the most perfect happiness of which he is capable." The rules are fixed and obligatory and derive from his nature, regardless of God's existence. Of course God does exist and has willed these rules for our happiness. God and nature coincide in us. Together they oblige us, that is, oblige us to be happy. Inasmuch as de Vattel draws a continual analogy between Natural Law and international law (*droit des gens*), the following declaration is particularly significant for the rise of the "modern" or "revolutionary" doctrine of Natural Law.

But duties towards oneself being incontestably prior to duties to others, a Nation's first and overriding duty is to do all it can for its own happiness and development [perfection]. . . . So that when it cannot contribute to another's welfare without essentially hurting itself, its obligation in that particular occasion ceases. . . . Nations being free and independent of each other, since men are naturally free and independent, the second general law of their society is that each nation should be allowed the peaceful enjoyment of that freedom which it has from nature. The natural society of nations cannot subsist, if the rights which each has from nature are not respected. From

rowed, whereas the moral rule, "Give to each what is due him," fails to tell us what is due. Sulzer's conclusion is one which announces an autocratic society. The legislator must demand all the duties he can; "he must leave to the citizens' pleasure only what, by its very nature, cannot be required by force. For the more that is left to the will of the members of society, the more one risks seeing duties badly fulfilled, and the more widely one misses the ultimate goal of civil society" [happiness]. It is interesting to compare this formula with Rousseau's in the *Contrat social*. *(Histoire de l'Academie de Berlin, XII, pp. 459-58, 1756.)*

*droit des gens*, 1835 edition, I, pp. 87-89.
this freedom and independence, it follows that it is for each nation to judge what its conscience requires of it . . . what is proper or improper for it to do. . . . The right of constraint against a free person belongs to us only when he is obligated towards us in a specific thing, which does not depend on his judgment. . . .

Now de Vattel would undoubtedly have admitted that the social contract creates what he terms “external obligation” (i.e., not dependent on conscience) toward others, and he might have been willing to admit—had he been pushed to it by the abbé de Saint-Pierre—that a “social contract” between nations would be desirable; but the development of his theory obviously represents a marked shift in emphasis, by justifying morality only in terms of happiness. There is an equally important (and logically connected) departure in his stress on natural rights. Men “are naturally equal, and their rights and obligations are the same, as coming equally from nature. . . .” And again, he states that a nation has a right to whatever it needs for its self-preservation. “For Natural Law gives us a right to all things without which we cannot satisfy our obligation [and we recall how he has defined that word]; else it would obligate us to do the impossible, or rather would contradict itself. . . .” De Vattel would probably not have denied that positive law and custom produce distinctions—even as Burke was to insist—but it is difficult to guess how he would have resolved the problem of the correspondence of Natural Law, as he conceived of it, to positive law.

Mably, as might be expected, is interested in the political applications of Natural Law as well as in moral theory. In the *Entre-tiens de Phocion* (1763), he praises Lycurgus for ending unrestricted exploitation and oppression—an accepted but false idea of happiness. Instead, he consulted nature, “descended into the depths of the human heart, and penetrated the secrets of Providence.” In those dark chambers Lycurgus found the need to repress passions and to be guided by reason. In his *Doutes sur l’ordre naturel des sociétés politiques* (1768), a work written in refutation of the Physiocrat Le Mercier de la Rivière, Mably agrees with

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77 Ibid., pp. 93–94.
78 Ibid., p. 95.
79 Ibid., p. 109. The argument, of course, was by now old. He does make the reservation that the means must not themselves gainsay Natural Law, which is to argue in a circle.
80 *Oeuvres*, Londres, 1789, X, pp. 42–43.
the latter that Natural Law is the basis and criterion of positive laws, but denies its sufficiency: "it is not enough to urge us to make just laws; never has a precept been both more widely known and more neglected." This is nowhere more obvious, claims Mably, than in Le Mercier's own treatise, which establishes property and inequality of wealth as basic natural laws, thereby making just political laws impossible. Mably is more positive in his later work, *Droits et devoirs du citoyen* (1783). There he tells us that natural laws, being only the precepts of reason, are simple, clear, and luminous, and command assent when we are not blinded by the enemy of reason, passion. The most stupid peasant finds the "silver rule" self-evident.

In his longest development on the subject, Mably has one interlocutor in the same dialogue assert, following Hobbes and Rousseau, that in the state of nature the egoistic search for happiness was the only law and guilt did not exist. Obligation, and the human moral life, began only with the social contract. "By obliging himself to respect in others the rights he wanted respected in himself, the citizen undoubtedly set narrow limits to the unlimited power he had as a man." But Mably's clear intention is to refute the modern versions of Natural Law. Having set up this argument, he proceeds to demolish it. If there ever was such a time in mankind's infancy, it was only a brief moment of physical development, and such creatures were not really men at all. "What can this situation matter to us? It is not ours and perhaps never existed." As soon as pleasure and pain produced ideas, and reflection grasped relationships, then distinctions of good, propriety, and justice and the limits of rights became self-evident, and even more, became operative by virtue of the authority of reason. "Before any civil conventions, good faith was distinguished from perfidy, cruelty from beneficence; since man was made in such a way that he had to feel pleasure or pain from the beneficent or cruel actions of his fellows, and thereby has to develop that moral instinct which honors our nature." If this were not true, men would never have thought of making laws. How would they have known what should be forbidden or commanded?

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81 Ibid., XI, pp. 53-54. A similar view had been expressed in Morelly's *Code de la nature* (1755), ed. Chinard, 1950, p. 211, but this work was little read in the eighteenth century.

82 Oeuvres, XI, pp. 334-35.

83 Ibid., pp. 253-58.
Although Mably reaffirms the traditional doctrine, or intends to, there are significant differences. To begin with, he makes no mention of God, or of a rational or moral universe. Natural Law seems confined entirely within the human experience. It is, moreover, a result of sense experience; it does not exist as a priori judgments, but as logical conclusions. Most telling of all, Mably's emphasis, as he proceeds to apply his exposition, is on what "the citizen has a right to require" from society. He must obey laws and rules, but only "so long as he knows nothing wiser." He is not condemned to sacrifice himself to error. "If citizens have made absurd conventions; . . . if in seeking the road to happiness they have taken the opposite road; if unfortunately they have let themselves be led astray by perfidious and ignorant leaders; will you condemn them inhumanly to be the eternal victims of error or wandering? Shall the quality of 'citizen' destroy the dignity of 'man'? Shall the laws made to aid reason and support freedom degrade and enslave us?" The flow of eloquence runs on, foreshadowing already the orators in the Revolutionary tribunes.

Mably's position may be contrasted with that of the youthful Sabatier de Castres, who, in 1769, insists that Natural Law is of divine, not human, institution. The traditional theory is also reasserted by Barbeu du Bourg, in 1774, and by Du Pont de Nemours, in 1792. The same may be said of Delisle de Sales, who in 1796 bitterly assailed the French Revolution for having crushed Natural Law, which provided "a morality independent of social laws."

We may close our investigation of this phase of eighteenth-century Natural Law theories with the widely read deist Volney. In 1793 Volney published his La Loi naturelle, ou Principes physiques de la morale. This little essay, coming at the end of the period, is an excellent indication of an average state of mind among liberal thinkers.

According to Volney, Natural Law depends on general and

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84 In another work, Principes de morale, Mably sketches a completely empirical or experiential explanation of the genesis of obligations (Oeuvres, X, pp. 280-81).
85 Dictionnaire des passions, II, pp. 24-26, 31-22.
87 De la Philosophie du bonheur, II, p. 78; see also his earlier work, De la Philosophie de la nature, Amsterdam, 1770, I, pp. 1-83. On the other hand, J. N. Moreau, the arch-conservative author of the notorious diatribe, Mémoire pour servir à l'histoire des Cacouacs (1757), expounds a Natural Law theory which is infused with naturalistic viewpoints. See his Variétés morales et philosophiques (1785), pp. 142-57.
constant rules of conduct which inhere in the order of things. It comes from God, is "presented" by him to each man, through his reason, and is the criterion of all positive laws, in all times and places. Thus far, then, Volney gives us the classical doctrine. He then declares that Natural Law, by itself, suffices to make men happier and better. Furthermore, he adds, it is not obvious, except "in its bases," but forms "in its developments and consequences, a complex ensemble, which requires the knowledge of many facts and all the sagacity of reasoning." When these are understood, it forms "a science as precise and as exact as geometry and mathematics." The basic principle of Natural Law is self-preservation, and not happiness, which is "un objet de luxe." Pleasure and pain are the mechanisms by which it works: pleasure is "an encouragement to live," as pain is "a warding off of death." Men can have no awareness of these principles when they live alone, but only in society which is, however, man’s true natural state, since it is necessary for his self-preservation, while in the state of nature he was only a miserable brute. The purpose of Natural Law and of all our moral ideas is, then, the development of our faculties toward the sole natural end of self-preservation. Thus Volney’s theorizing reveals clearly the infiltration of naturalistic viewpoints into Natural Law theory. The new doctrine is grafted on to the old and effectively "corrupts" it. The whole moral dimension of human life is squeezed down into a basic animal law, and all of morality becomes a narrowly utilitarian self-seeking.

88 Compare Volney’s Les Ruines: man in the state of nature “did not see at his side beings descended from the heavens to inform him of his needs which he owes only to his senses, to instruct him of duties which are born solely of his needs.” (Oeuvres complètes, 1821, I, p. 29.)

89 The development of Natural Law theories in eighteenth-century England is far less interesting than in France. When adopted as a reaction to Hobbes, Mandeville or later utilitarianism, the traditional theory is expressed. See the following: S. Clarke, A Demonstration of the Being and Attributes of God (6th ed., London, 1725, p. 116; Pt. 2, Prop. 1); Shaftesbury, Characteristsicks . . . (6th ed., n.p. 1737 [1711], I, p. 109, etc.); William Wollaston, The Religion of Nature Delineated (London, 1727, p. 26); Joseph Butler, A Dissertation upon the Nature of Virtue (Appendix to I, chap. 3 of the Analogy, 1730); Kames, Essays on the Principles of Morality and Natural Religion (Edinburgh, 1751, pp. 122-126); William Blackstone, Commentaries (referred to in D. J. Boorstin, The Mysterious Science of the Law, Boston, 1958, p. 47 et passim). Kames, however, really belongs to the moral sense group. Nor does Butler proclaim a Natural Law, and we can properly speak only of a kinship. For Burke’s theories of Natural Law, understanding of which has recently been clarified, see Charles Parkin, The Moral Basis of Burke’s Political Thought, Cambridge, 1956, pp. 10-28, and P. J. Stanlis, Edmund Burke and the Natural Law, Ann Arbor, 1958.
III. Variations and Vicissitudes of Natural Law Theory

The influence of Hobbes and the inferences that could be drawn from a similar naturalism are attested to by a defender of traditional Natural Law, the Swiss Protestant, Claude-Marie Guyon. In his _L'Oracle des nouveaux philosophes_, he refers to those who claim that primitive rights still subsist, “and that it is permissible to enjoy them whenever we can without danger.” These errors, he continues, were introduced into France about twenty years ago, and since then we have been “assailed by books which teach them.” It is absurd, according to Guyon, to suppose centuries of a state of nature during which men “knew no internal law which taught them to distinguish order and disorder, humaneness and ferocity.” It is equally absurd to say (with Rousseau, of course) that people had no idea of property, or that only pity and not obligation, marked the limit of egoistic aggressiveness.

Guyon seems acutely aware of the menace of nihilism. He attacks the view that love of domination, being natural, is therefore legitimate, or that right and wrong are no more than ways of thinking. It is unnatural, precisely, to say that respect and gratitude to parents (or other prescriptions of Natural Law) are only conventional obligations. Before Burke, he affirms that the state of nature concept is the chief weapon against Natural Law, since it dehumanizes man, and turns ideas of rightness into conventions devised for general utility, and dependent on education. He comes finally to the point of his charge. The _philosophes_ have nihilistic intentions. They wish to destroy “the innate idea of general principles of moral truths,” destroy the moral order, “by putting all the vices in the place of, and on the throne of virtue.” Guyon’s paroxysm carries him so far that, although he believes in the most traditional Natural Law, he ends up by denouncing it and crying out against the “blind and interested partisans of Natural Law.” Natural Law is not enough; men cannot or will not contemplate it. It is evident that he must have been thinking of another kind of Natural Law, propounded by the secularists.

Inevitably, many writers in the second half of the century were

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more or less under the influence of a naturalistic view of the universe and man. Those who were thoroughgoing naturalists were not, with few exceptions, immoralists, but were trying to reconstruct a more human ethics, a more valid and efficacious ethics—more valid and efficacious because of its adherence to natural laws. While some of these writers scoffed at any idea of a moral Natural Law having a place in a purely physical Nature, others concluded that human nature, in its distinctive moral development, did possess a natural moral law. This being so, the phrase “Natural Law” is appropriate and meaningful in describing their theories.

The points of difference with the traditional doctrine, and also with its “modernizers,” are marked but not fatal. First, the notion of a moral universe outside of man himself is excluded. Second, the moral law is not necessarily a law of God, nor is it necessarily apprehended by conscience; it is, rather, a derivation of experience and reflection. It is these suppositions, more fundamentally than an emphasis on rights or subjective will (as it is often argued), which distinguish the empirical rationalists. Cassirer summarizes the problem in this form: “Do our logical and ethical concepts express definite objective content existing by itself; or are these concepts merely verbal symbols which we arbitrarily attach to contents?”

It would be more exact to say that there are two separate positive ideas involved, and not to reduce the choice to the Platonic or Sophist. The traditional Natural Law doctrine is indeed Platonic, since the just is absolute, independent of and prior to human experience. Furthermore, as Cassirer has aptly indicated, the “newer” doctrine of Grotius and Pufendorf is even more Platonic in its transposal of the concept of law from the realm of empirical reality or application to that of arithmetical ideality or logical definition, in which demonstration is possible. The naturalistic viewpoint, on the other hand, limits the moral reality of right and just to human experience, but attempts to seat their reality on natural (therefore objectively ascertainable) facts of

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3 “Just as the mind is capable of constructing the realm of quantity and number entirely from within itself by virtue of its 'innate ideas,' so it has the same constructive ability in the field of law. Here too the intellect can and should begin with fundamental norms, which it creates from within itself, and then find its way to the formulation of the particular.” (Ibid., p. 238.) Cassirer errs in considering the Natural Law as “created” by the mind, which only “discovers” it. The pure reason involved in Natural Law is common to God and man, and might be spoken of as a manifestation of the Logos, therefore not dependent on God’s arbitrary will.
human nature, needs, relationships. In other words, the two earlier groups held moral distinctions to be absolute, or the same for every possible rational being, while the eighteenth-century naturalists who perceive the necessity of a Natural Law consider it to be a derivative of the particularities of human nature and experience, rather than a body of abstract truths. It is only the few, but historically important, nihilists who will renew the Sophist position, and this is precisely their role. They are the ones who do not fall into Cassirer's formulation: "The philosophy of the Enlightenment at first holds fast to this apriority of law, to this demand for absolute universally valid and unalterable legal norms. Even the pure empiricists and the philosophical empiricists are no exception in this respect."  

D'Alembert believed in an empirical genesis of moral judgments. Inasmuch as he also believed in Natural Law, he furnishes a clear example of the possible confluence of the two approaches. There is no doubt that for d'Alembert a moral law exists. "That which belongs essentially and uniquely to reason and which consequently is uniform among all peoples, is our duty toward our fellow men. Consciousness of this duty is what is called morality." The principles involved are therefore objective and discoverable to reason. Their function is "to procure for us the surest means of being happy by showing us the intimate connection between our true interest and the performance of our duty." In this work d'Alembert gives us no clear statement as to the genesis of obligation, though he doubtless means that the pursuit of happiness is not merely its function but its origin. He does clarify this matter in his Discours préliminaire to the Encyclopédie, which we shall examine in greater detail in another context. There he shows that moral judgments arise from experience, from the egocentric sensation of injustice perpetrated by a stronger individual. No independent moral sphere, conceived of as coexisting with the physical, is allowed. But once men enter into the realm of moral experience, universal notions deriving from human needs, relations, and sensual experience become a self-evident Natural Law. 

5 Éléments de philosophie, in Oeuvres, 1821. I. Sec. VII.
6 Sylvain Maréchal is an example of a notorious atheist who supported a natural moral law, related to the calculation of happiness (Examen des critiques du livre intitulé "De l'Esprit," Londres, 1760, pp. 103-5, 117 ff., 152 ff.) The mystical philosopher-scientist, Charles Bonnet, derives moral experience from
While Count Honoré de Mirabeau does allow that everything in the chain of beings has its particular law which comes from God, the source of Natural Law, as he describes it, is purely physical. Duty is the fulfillment of law; law is order, and order is founded on physical sensations and needs. Natural Law, consequently, does not have its source in our reason, but is beyond it. It hinges on our necessary dependency. Now, the work of culture, for Mirabeau (contrary to Rousseau), is not to supersede or abolish nature, but to protect it. Society must therefore “give the greatest possible liberty to the individuals who compose it,” and extend their jouissances (pleasures, enjoyment of rights). The formation of society is no more than “the extension of primitive relations, not their abolition.” It so happens that the first relations are those of mutual assistance, rooted in utility, whence the dependency from which Natural Law results. There is some logical confusion in Mirabeau’s writings. If natural and human institutions, as he also claims, contradict each other, it is difficult to see how his main premise is tenable. And if nature is not reason, is it the passions? There is no other choice; and yet Natural Law tells us to dominate our passions.

With d’Holbach, we have an excellent example of a radical naturalist who formulates a notion of Natural Law, derived a posteriori from the facts of experience. He assumes that “experience and reason” lead to general truths and judgments. These, he assures us, are “not founded on conventions among men, and still less on the chimerical will of a supernatural being, but on the eternal and invariable relations which subsist among beings of the human species living in society. . . .” For d’Holbach these laws are based exclusively on utility. His fellow atheist, Naigeon,

the fact that our rationality and freedom give us a different way of being in nature, one which inevitably puts all our mutual relations, necessary or voluntary, in a unique light of right and ought, the moral plane of existence. “From this there arises a new order of actions; among these are the ones called moral, because they are subject to a law. This law is Natural Law, which is in general the result of the relations man has with the beings around him.” (Essai sur l’âme, Sec. 272, Oeuvres, Neuchâtel, 1781, 1782.)

For the association of Natural Law with anarchism, see Dom Deschamps, Le Vrai Système, p. 169. For a version with egalitarian socio-political overtones (equality is the foundation of duties), see the article “Etat de nature,” in Robinet’s Dictionnaire universel.

7 Essai sur le despotisme (1772), in Oeuvres, 1835, VIII, pp. 29–32, 40.
uses the interesting phrase, "revealed by nature to every reasonable being"—an obvious transposition of the traditional phrasing. Indeed, for Naigeon and for d'Holbach, the end result is no different. "This voice of nature and of reason," continues Naigeon, "speaks in the same tone to all inhabitants of the earth. It teaches love between husband and wife, between father and son, friendship, humaneness, justice." He then adds, "if they desire to obtain for themselves the attitudes [on the part of others] which they need to make themselves happy here below." There is, of course, much more to be said about the theories of these naturalists, but we must leave this for our third chapter.

The Physiocrats were a solidary group representing the most important segment of economic thought, a nascent laissez-faire capitalism in a broad philosophical setting. While their doctrine may be considered as a link between the two concepts of Natural Law, naturalism and utilitarianism predominate in it. Thus the Marquis de Mirabeau writes: "Moral principles are linked to physical principles, as the soul is to the body. . . . It is not from the civil or public order that I derive my principles; it is in the very nature of things, in the physical compatibility, or incompatibility, of human conditions, and not, I say, in the moral and positive constitution of society, always subject to interpretations and debate." Laissez-faire flows from a belief in the natural harmony of nature's workings: "It is clear that each of your subjects fills your [i.e., the King's] coffers in looking after his own interests." If you believe in a natural order, writes Mirabeau, if you believe in a law governing the growth of plants from a seed, then you must also believe that happiness depends on constant laws of movement, imprinted in matter. The individual, as a part of "the universal concert," cannot escape from it without hurting himself and his kind, without producing chaos. It is therefore useless to study Natural Law, as has usually been done, divorced from its base, the physical order, as if we were purely intellectual beings. Like Helvétius, d'Holbach, and the other materialists, Mirabeau and all the Physiocrats insist on the close connection of physical

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9 Le Militaire philosophe, Londres, 1768, pp. 181–82. (This work was edited by Naigeon from an earlier anonymous ms.)


11 Ibid., I, pp. xxxiv–xxxvii.

and moral laws, and the derivation of the second from the first. This natural order does, it is true, dictate that the strong shall grab what belongs to all; but it also creates dependence, commerce, and competition, and therefore a limit to cupidity. Thus each, working for himself, works for all by the linkage of reciprocal needs. (This thesis is typical of the failure of laissez-faire theorists, including Adam Smith, to foresee the capacities for monopoly in capital and labor.)

Mirabeau also attempts to combat nihilism, or what he terms "moral pyrrhonism." The metaphysical reality of Natural Law, he contends, cannot be denied without a simultaneous rejection of a physical order.

Although Mirabeau, like the other Physiocrats, refers to God as the creator of all natural laws, his concept clearly relegates the deity to a shadowy and figurative position. His emphasis on scientific exactness and discursive reason is not traditional doctrine; and, though he predicates a universal human reason and nature, they exist only as forms or functions of the physical world, not as a self-existent moral world. In no place does he substantiate the rise of the moral from the physical. His argument is the naturalistic or "evolutionary" view, that self-interest produces a reciprocity of interests; right and wrong, rights and obligations, are no more than these.

Unlike the proponents of what some have called "the revolutionary natural rights theory," the Physiocrats did not put much stock in a state of nature. Le Trosne, for instance, argues that once we realize that man is naturally social, la conclusion s'impose: there are natural laws to govern him in society. The whole function of society is "to protect all the rights by the observation of all

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13 Any moral order is subject to "the primitive, essential and fundamental law of physical necessity." (Baudeau, quoted by Weulersse, *Le Mouvement physiocratie en France*, II, p. 111.)
16 The Divinity is fused and confused with the natural order, as is Providence; its legislation is only "the code of nature." (Weulersse, *op. cit.*, II, pp. 115–16.)
17 Similar concepts are found in Quesnay's article, "Droit naturel," and in the second chapter of Lemercier de la Rivière's *L'Ordre naturel et essentiel des sociétés*, which Diderot so admired and which Mably caustically criticized. For Du Pont de Nemours, writing in the *Éphémérides du citoyen*, immutable physical laws "constitute exactly the droit naturel of all men." (In Quesnay, *Oeuvres*, 1888, p. 645.)
For Mably's important criticism of the Physiocrats, see *Doutes sur l'ordre naturel des sociétés politiques*, *Oeuvres*, XI, pp. 25–28.
18 *De l'Ordre social*, 1771, p. 19 ff.
the duties.” All this is inscribed in the great book of nature. “Indeed, all is physical in this matter, and everything works by physical means.” The laws of social order are only deductions from the same laws that make plants grow. Le Trosne does say, however, that there are also “moral affections,” natural ideas of justice, duty, and rights. All that is needed is to grasp the connection between the physical laws of reproduction and moral truths, and to deduce “an exact and calculated science.” Were Le Trosne able to substantiate such a mechanical connection, the moral problem would be solved, and, indeed, “moral” would become a merely figurative word, since nothing “physical” or “natural” would have to be contravened. But he can “prove” this linkage only by a dubious appeal to self-interest—properly conceived, of course.19

Le Trosne’s emphasis on rights is typical of the newer theories. The first right, and the source of all others, is the right to life. It involves the use of the natural physical means to enjoy it, property and mobility. These rights are absolute (i.e., unalienable), and universal.20 Being such, they imply the obligation of each to respect the same rights in others. It is impossible, Le Trosne avers, to separate rights and duties. We may conclude, then, that for Le Trosne, moral obligation has its source in the possession of rights, rather than the reverse. “Men cannot therefore reflect on themselves without discovering what they owe to others. They cannot demand their rights without recognizing the extent of their duties, without admitting they are prescribed by their own interests.”21

19 Ibid., pp. 73-75.
20 “Personal freedom and personal property are then two social laws, primitive, indispensable, and self-evidently deduced from the right to life” (p. 29). The right to real property is deduced from agriculture. Cf. M. Albaum, “The Moral Defenses of the Physiocrats’ Laissez-faire,” Journal of the History of Ideas, 16:179-97, 1955, p. 182: “Whatever made for the greatest pleasure in a world governed by natural law was justified by natural rights.”
21 Le Mercier de la Rivière also emphasizes the principle of the priority of rights to society (which serves to protect them), and to justice and injustice. “There are no duties without rights,” adds Le Mercier, “the latter are the fount and measure of the former duties, in short can be established in society only on the fact that they are needed for the preservation of the rights which result.”

Le Trosne criticizes collectivistic or anarchistic theorists who, because self-interest is a cause of disorder, think that men can be stripped of it by abolishing property. He seems to realize to what extremes conditioning would have to be carried, and how disastrous would be its consequences—even if it could succeed. “To deprive man of this passion is to denature him, and reduce him to the state of a purely passive and inert being.” (P. 35.) Rousseau, precisely, will demand that we denature man. (Op. cit., p. 8)
This maintenance of self-interest is, in effect, another illustration of the Physiocrats' fundamental naturalism, of their negation of transcendence over nature.\textsuperscript{22} As long as the natural order is not disturbed by man, it will tend toward his happiness. They therefore deny that nature's law leads to oppression or exploitation, to the happiness of one at the expense of another, but see it rather as a process of conciliation. \textit{Ex natura, ius.} "Where will justice be found," inquires Roubaud, "if it is not in the natural course of things?"\textsuperscript{23} Man, then, must submit to the natural order. The result, following Malebranche, is to make love of order "the unique virtue." The ultimate aim and effect of the Physiocratic philosophy is to reconcile, if not to fuse, nature and culture. It does so only by making morality secondary and derivative. As Baudeau writes, "Virtue, modesty, justice, beneficence are of course worthy of the deepest respect; but subsistence, freedom, property are names which awaken more attractive ideas, those of the real values (\textit{biens}) with which men are concerned. . . . Net product, such is the infallible touchstone of justice and injustice."\textsuperscript{24} As with d'Holbach, there is only one natural law—pursuit of our own advantage, which is automatically countered by another: fear of reprisals. Injustice carries the seeds of its own destruction and cannot perpetuate itself—as even Sade was to show, despite himself.

Leaving the theories of Rousseau until a later point in our inquiry where we shall be able to examine them to better advantage, there remains for us to analyze Diderot's attitude toward Natural Law. With Diderot, we must always remember that we are dealing with a man whose real convictions are not always readily ascertainable. He was an experimenter in ideas, and his thinking follows along several different lines, which not only evolve across the years, but which, at any given time, may be both extremely radical and conservative or conventional. That he would oppose the traditional foundations of Natural Law is obvious from his atheism. Richard Hooker had written, "The being

\textsuperscript{22} In theory they accepted the transcendence and adhered to "a modified Cartesian dualism largely derived from Malebranche" (Albaum, p. 184). The realm of spirit, however, is not scientifically knowable; and apparently, it does not really signify in actual existence, since it is assumed to be in perfect agreement, or even identity, with the physical, which we can know.

\textsuperscript{23} Weulersse, \textit{op. cit.}, II, p. 113.

\textsuperscript{24} Quoted by Weulersse, \textit{op. cit.}, II, p. 108.
of God is a kind of law to his working; for that perfection which God is, giveth perfection to that he doth." 25 Diderot makes it quite clear in the Lettre sur les aveugles (1749) that the world, if we look at it as it is, cannot, for this very reason, be the work of God. Earlier, it is true, in his translation of Shaftesbury's Essai sur le mérite et la vertu (1746), he had apparently espoused a rationalist, innatist Natural Law, rooted in the universal wisdom which governs the universe, and linked to the happiness of each person.26 In the following year the same theory is maintained in De la Suffisance de la religion naturelle, but it is more directly pointed in the direction implied by the title.27 It is after this initial period that Diderot's atheism asserts itself.28 He does not, however, cast off his belief in Natural Law along with that in some kind of God. As a pure naturalist, he will continue to assert that law (as well as to deny it), but finds it embedded in nature itself.

There are two articles in the Encyclopédie in which Diderot treated this subject; and there is ample evidence from other aspects of his ethical thought that they represent his sincere opinions. In "Droit naturel," he declares that almost every man has a subjective intuition of the self-evidence of Natural Law. The average person, however, can only refer to his conscience when challenged, while the philosopher, in his attempts to define droit, is frustrated by finding himself engaged in a vicious circle. Here Diderot postulates a premoral state of nature ("in which perhaps a distinct idea of obligation would not yet exist").29 The philosopher's sequence of ideas would be: right (in the sense of "rights") is the foundation of justice; justice is the obligation to give to each what belongs to him—but what, if anything, belongs to any one? "It is at this point that the philosopher begins to feel that of all notions of ethics, that of natural right is one of the most important and one of the most difficult to determine." This Diderot now attempts to do. It is necessary to break out of the circle. First, unless man is a free and responsible agent (and not merely a voluntary one), there is no justice or injustice, no virtue or vice, no obligation or right, but only "animal goodness or malice." Second, man is

26 R. Legros, "Diderot and Shaftesbury," p. 188 ff.
27 Oeuvres, ed. A. Assézat et Tourneux, 1875-77, I, pp. 261, 269.
28 See Aram Vartanian, "From Deist to Atheist," in Diderot Studies, pp. 46-63.
29 Oeuvres, XIV, p. 297.
wicked, since he is impelled to find happiness at the expense of others; he must, moreover, either recognize his wickedness, or grant to others the same privilege toward himself. Third, on what basis could we reproach a man who freely accepts this reciprocity of evil and who, "to acquire the right to dispose of others' lives, offers up his own?" What shall we reply if he has the honesty and courage to say:

I realize that I am bringing terror and chaos to mankind; but I must either be unhappy or make others unhappy; and nobody is more precious to me than I am to myself. Do not reproach me for this abominable predilection; it is not free. It is the voice of nature which is never clearer and louder in me than when it speaks in my own favor. . . . Who is there among you who, on the point of death, would not buy back his life at the price of most of the human species, if he were sure of impunity and secrecy? But . . . I am equitable and sincere. If my happiness requires me to destroy all lives which are an obstacle to me, then any other individual should be able to destroy mine if it hinders him. . . . I am not so unjust as to require of another a sacrifice that I am unwilling to make to him.

This is a very important statement. It draws a clear consequence from materialistic determinism—which even the moralistic d'Holbach was to accept as a basic postulate and problem. It indicates Diderot's awareness of the challenge of moral nihilism and sets forth that challenge in terms that are not only clear, but entirely representative of the formulation given to it by others in this period, from La Mettrie and d'Argens to Sade, and in several of the novels of the time. Foreshadowing Sade, especially, is the frank willingness to incur the risk of similar treatment, if in the game of war which is life another should assert superior strength. In this passage, the rights of nature or the laws of nature (as contrasted with Natural Law) are given full statement and undisputed sway. The prerogatives and constrictions of culture are denied any validity.

The question of the origin of moral value, and of its validity, is now dramatically at stake. Diderot has assumed the role of defender and will attempt to assert moral "right" over the "right" of nature, the latter phrase, it must be noted, being construed in

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Diderot is in a sense begging the question here, since the "must" and the reciprocity, as well as the notion of wickedness already contain the essence of Natural Law.
its egoistic or biological sense. He approaches his defense indirectly, in his fourth step. The nihilist's speech reveals that man is "a reasoning animal," one who must reason. (Diderot is careful not to say, "essentially" or "exclusively"; and he means that man cannot escape the activity and judgments of reason.) The nihilist is therefore obliged, like any other man, to seek the truth, under the penalty of giving up his human status—which would justify others in treating him like a wild beast and exterminating him. In his fifth point, Diderot reaches the core of the problem. "What shall we reply then to our violent reasoner, before strangling him?" Diderot now adroitly points out the implicit admission of a moral law in the very concept of reciprocity, even in evil-doing. "His entire speech comes down to discovering whether he acquires a right over others' lives by abandoning his to them." This argument for reciprocity, this self-justification, reveals a desire to be not only happy, but also to be equitable, and not to be termed wicked. But Diderot only makes this point in passing. He is more interested in another thrust: the nihilist "has no legitimate authority" to make others accept the deal; and he is offering only one life in exchange for many. This argument is valid only on Diderot's assumption that the nihilist, by wishing to justify himself, wishes to be just. The assumption is indeed contained in the hypothesis as stated; and the nihilist who does not wish to justify himself is taken care of by the assumption that he would lose his human status and could be destroyed like a wild beast.

But suppose, after discovering the truth, he will still refuse to conform to it? Diderot realizes this crucial difficulty; "whoever refuses to conform to it is mad or wicked with moral wickedness." (P. 298.) That is, once right is established (and known), its existence and our awareness of it carry their own power of obligation. The nihilist would probably reply that the part of his nature which urges him to selfish happiness is necessarily more powerful, and more precious to him, than the other part. And so we are brought back to the question of freedom, to that of happiness, etc. Rousseau, we shall later see, understood this weakness in Diderot's position and proposed a radically different solution.

Sade's heroes rejoice in being wicked but display the same need for self-justification. But Diderot again begs the question: if the nihilist did not desire to be equitable, "we should have to strangle him without a reply." Diderot has logically indicated that such a recourse would be justified if the nihilist refused to use reason, but he has not proven that the nihilist would lose his human status by refusing to be morally good, since this is the whole point at issue. Such "strangling" could, then, be only an arbitrary (though self-protective) use of force against force and would in itself confirm the nihilist's contention.

The idea was inspired by Cicero; see chap. 1, supra. See Kant's argument supporting constraint of those who do not treat others justly. It is summarized by
With perspicacity, Diderot realizes the further consequence of what he has established. It is simply this: the individual has been deprived of the right of subjective determination of right and wrong. Where, then, will this determination lie? This is Diderot's sixth point. In reply, he proposes his notion of a "general will." The general will alone is right, and always right, and so it automatically overrides the individual will. And this general will is Natural Law, "an order of knowledge and ideas peculiar to the human species, which come from and create its dignity." It encloses both the obligation and the privilege implied by the phrase droit naturel. It sets the limits of duties and gives to each person "the most sacred natural right to whatever is not denied by the entire species." But how can we know this general will? The answer, this time, is more vague; it demands both rational inquiry and emotional introspection. The general will is partly a consensus, consisting of "universal principles of right" of civilized nations, social actions of primitive peoples and tacit conventions of moral anarchists and partly, subjective feelings of resentment. All of this is, of course, abstract, vague, and scarcely usable. The consensus supposes a unity which many, in the eighteenth century and since, have denied, but which probably does exist at a basic level, such as Voltaire conceived of in his Natural Law theory. Perhaps because he realizes the abstractness of his solution, Diderot also offers a more convenient modus operandi: our subjective decision that an act is "in the common and general interest," that is, "whatever you require for your happiness and theirs"; a decision which is "a pure act of the understanding which reasons in the silence of passions on what man may require of his fellow, and on what his fellow has a right to require of him." 

In this fashion, then, Diderot explains the basis of obligation in Natural Law, and the obligation to fulfill it. Its rule obtains in all societies, as the very condition of their being, "not excepting those which are of a criminal nature"—a truth which Sade's "societies for crime" were to confirm. This Natural Law inheres,

E. F. Carritt: "This infringement is justified, because either they recognize the obligation to justice and know they are doing wrong, and therefore approve, while disliking, the constraint, or they do not recognize it; and on neither alternative have they any right to be 'treated as ends.' . . . We are justified, then, in compelling rational beings to behave justly." (Morals and Politics, p. 94.)

35 For modern confirmations, see An Age of Crisis, chap. 7.
36 This criterion is also Rousseau's, but the means of discovering the general will and other implications are radically different from Diderot's.
then, in the species and would change if it did. Unfortunately, Diderot's Natural Law has no prescriptive content. It is an effort to base the rights of culture, or moral law, in nature, and thereby to counteract the nihilism which the analysis of human nature and motivation, the submersion of man in nature, and the supremacy of a "natural" criterion encouraged. Whether or not it be regarded as a satisfactory logical reply to the nihilist's argument, as set forth by Diderot himself, here and elsewhere, it is nonetheless of very limited value. In its abstractness—which was the very character and weakness of most eighteenth-century thinking—it fails to come to grips with the existential claims, experiences, and realities of both individual and social life.\textsuperscript{37}

Diderot's later article, "Loi naturelle," also carries the stamp of his personal thinking, as is obvious especially in the image drawn from painting.\textsuperscript{38} To be sure, the definitions are much closer this time to the traditional doctrine. But they do tally with the ethical formalism which consistently marks one aspect of his moral theorizing. "Natural Law is the eternal and immutable order which should serve as a rule for our actions. It is founded on the essential difference between good and evil." Diderot admits a diversity of opinion and difficult boundary cases, but this fact does not "prevent there being, really and essentially, a very great difference between right and wrong." The proof is in our conscience, which always tells us when we are doing wrong, and approves when we do the right. Diderot repeats approvingly Cicero's dictum, that Natural Law is not an arbitrary, human invention, but "the impression of the universal reason which governs the universe." We may take this as a conventional phrase, or as a figurative expression of Diderot's belief in rational natural laws and immutable truths of reason.

That Natural Law and formalist moral concepts form one essential current in Diderot's ethical speculations is confirmed by their recurrence in one of his last and most significant works, the

\textsuperscript{37} "Droit Naturel" was probably written (and Rousseau took it to be written) in reply to the individualistic rebelliousness of the \textit{Discours sur l'origine de l'inégalité} against social sanctions and limits. We must remember that Diderot's defense of Natural Law—like much of his speculation—is a hypothesis, and that he is not necessarily committed to it. But, contrary to Vaughan's hostile criticism, there is no reason to doubt his sincerity, either in the development of his reasoning or in his opposition to Rousseau's.

\textsuperscript{38} \textit{Œuvres}, XVI, p. 1.
Réfutation d'Helvétius (1773–76).\textsuperscript{39} Even in the earlier and also unpublished Réflexions sur le livre de l'Esprit (1758), Diderot had objected to Helvétius' reduction of justice to the mere dictates of self-interest. Helvétius has been deluded by \textit{facts} and their apparent relativism. His paradox is false:

false because it is possible to find in our natural needs, in our life, in our existence, in our organization and our sensitivity which expose us to pain, an eternal basis for right and wrong, whose notion general and personal interest then vary in a hundred thousand different ways . . . but its essence is independent of them.\textsuperscript{40}

The proof is another fact: there are universals; giving water to a thirsty man is approved in all times and places. In the \textit{Réfutation} Diderot develops his argument in more concrete form. There is a knowledge of moral right and wrong built into the human animal—this is the sum of Diderot's refutation of Helvétius' moral doctrine. If a primitive man steals the fruits of another's labor, he will run away. What does his flight denote, if not consciousness that his action is bound to evoke resentment, in other words, his awareness of an injustice, subject to punishment? The robbed man, on his side, will feel indignation, and be conscious of a wrong done to him. It is not a mere contest of force, unaccompanied by emotions or ideas pertinent to moral distinctions. "It seems to me that between these two savages there is a primitive law which characterizes actions, and of which the written law is only the interpretation, the expression, and the sanction. The savage possesses no words to designate right and wrong; he cries out, but is his cry empty of meaning? Is it no more than the cry of an animal? The thing would take place, as [Helvétius] paints it, between two wild beasts; but man is not a beast [and] we must not overlook this difference in the judgments we make of his actions." \textsuperscript{41}

The greatness and depth of Diderot's humanism glow in these

\textsuperscript{39} One should also refer to his statement in the \textit{Plan d'une Université} (1775), III, p. 493.

\textsuperscript{40} \textit{Oeuvres}, II, p. 270. A similar idea is expressed in the \textit{Entretien d'un philosophe avec la Marechale} (1776), \textit{ibid.}, p. 517, and in the \textit{Fragments échappés} (1772), VI, pp. 444–45.

\textsuperscript{41} \textit{Oeuvres}, II, pp. 387–88. Helvétius' position is stated in the opening paragraph of chapter VIII of Section IV of \textit{De l'Homme}. The savage knows only force and has no glimmer of an idea of justice or injustice, since there are no positive laws.
lines. It is a conviction rooted in the distinctiveness of the human, and that distinctiveness lies, more than anywhere else, in man’s moral life. To sacrifice that would indeed be to do what he had threatened the nihilist with, in “Droit naturel”—to retrogress from the human to the animal status. This is precisely the threat of moral anarchism, of a narrowly conceived naturalism, such as Helvétius had developed to a logical fullness, and no feat of logic can overcome Diderot’s resistance to it. “I should very much like,” he concludes, “not to authorize the wicked man to appeal from artificial, conventional law to the eternal law of nature; I should much like that he not be enabled to say to others, and to himself, ‘After all, what am I doing? I am returning to my first rights.’ ” From this it is clear that Diderot is not asserting the supremacy of culture over nature. He is seeking rather to establish their underlying identity, by discovering the moral law of right and wrong inscribed in nature itself, in that Natural Law which for him is the human appanage. This law is not created by societal organs or structures; it is what Montesquieu described as “the necessary relations which derive from the nature of things”—as things are experienced by men. For Diderot, the humanist, we are obliged to behave like human beings because we are human beings; unless, indeed, like the theorists of nihilism, such as Sade and Stirner, or its practitioners, such as the Nazis, we wish to cease to hold that title.

As it may be expected, Natural Law theories, even in their most secular dress, had their opponents. These were to be found among the more radical materialists. The ambiguity of the words “law” (descriptive, normative) and “nature” (universal, human, physical, moral) made it possible to interpret them in opposing senses. We

42 I have inverted the original order of these phrases in order to express the exact meaning of the French.

43 This discussion should make clear the erroneous syncopation of Diderot’s thought which is expounded by Cassirer (The Age of Enlightenment, pp. 246-47). Cassirer turns into an evolution what is a persistent dualism. The abstract command of reason does not simply give way to a solely biological uniformity of inclinations, instincts, and appetites. (The Cartesianism of the philosophes has been recognized by Talmon in The Rise of Totalitarian Democracy, Boston, 1952, pp. 28-29, and by others.) Cassirer does not seem to realize that the “natural law” of the Rêve de d’Alembert is not a moral law. We shall return to this. It is correct to say that for Diderot “no mere obligation can presume to annul or to alter fundamentally the empirical nature of man.” But Diderot’s whole purpose, in this aspect of his thought, is to prove the existence of obligation, by making it an essential part of his empirical nature. Cassirer therefore fails to understand the real sense and character of Diderot’s moral philosophy.
can observe this clearly in the work of two consistent mid-century materialists, d'Argens and La Mettrie.

In his *Sanges philosophiques*, d'Argens asserts that men should live "according to the laws of nature . . . the only ones that can make creatures fortunate and that can deprive them of nothing which belongs to their happiness." The language is guarded, but the implication clear. "All those [laws] made by certain men, who have pretended to rise above their sphere, are only unbearable bonds; but those of nature give only what is needed and forbid only what should be forbidden." One can scarcely doubt the import of these words. Men are denied the power or the right to rise above their physical or instinctual demands, except as those same demands may themselves dictate. Human laws are good, or valid, only insofar as they support those demands, invalid and onerous whenever they contradict them. A precise application of this principle is to be found, in more outspoken terms, in d'Argens' anonymous novel, *Thérèse philosophe*. In this story—a most immoral testimonial to amoralism—Thérèse's confessor advises her to practice onanism to assuage her desires: "those are sexual needs ("*des besoins de tempérament*") as natural as those of hunger and thirst. . . . Now, as we know that natural law is of divine provenance, how would we dare to fear to offend God by relieving our needs by means which he has given us . . . ?" There is no offense in any act, as long as the social order is not disturbed.

La Mettrie, with his usual logical consistency and unwillingness to halt halfway, came to see an effective discrepancy between determinism and a natural law of "ought." That is why in 1751 he added to his *Histoire naturelle de l'âme* (1745) this comment on Spinoza: "In Spinoza's system . . . good-bye to Natural Law, our natural principles are only customary principles! . . . According to Spinoza again, man is a true automaton, a machine subject to the most constant necessity. . . . The author of *L'Homme machine* seems to have written his book purposely to defend this sad truth." 46

In 1747 in *L'Homme machine*, La Mettrie had emphasized his contention that there is no special natural law or way of being which puts man into a different category from beast. Both are

44 Berlin, 1746, pp. 45–46.
45 La Haye, s.d. [1748], pp. 70–71, 86.
entirely subject to the determinism of natural laws, and these are identical for all animals. To establish this contention, it was necessary to face the objection of a natural moral law perceptible only to human rationality. As a positivist, La Mettrie's appeal is to experience. "There is, it is said, a Natural Law in man, a knowledge of good and evil, which has not been engraved in the hearts of animals. But is this objection, or rather, this assertion, founded on experience, without which a philosopher may reject anything?" 47 Our only experience is a subjective one of remorse. From outer signs we assume an identical experience in other men. Since the behavior of gods and other animals give us similar signs, we must again assume an identity of experience or feeling. By this logical but simplistic reasoning, La Mettrie thus tries to extend a natural law of "moral" reactions to animals.48 He is on firmer ground when he points out that men are capable of being fiercer and more inhuman "than all the lions, tigers and bears." This fact, moreover, would give weight to the opposite assumption: animals do not have a Natural Law, but neither do men. "Man is not fashioned from a more precious clay; Nature has used a single and same dough, in which she has varied only the leaven."

La Mettrie, however, prefers the first conclusion. Evidence abounds that normal men must make distinctions between virtue and vice, and approve or blame others. The distinction, it seems to La Mettrie, is an easy one, being merely a matter of pleasure or repugnance, which are the "natural effects" of virtue and vice. And such a reaction belongs to animals as well as men, for it is one of the "prerogatives of animality"! More even than a prerogative, it is indestructible like any law of nature. Even tigers have their moments of remorse. La Mettrie has, of course, performed a simple but fallacious reversal of what is, to begin with, a dubious formula. The judgment of virtue is assumed to be one of pleasure, that of vice, one of displeasure. By reversal, an experience of pleasure or displeasure is assumed to contain a judgment of virtue or vice. Nor does he stop to inquire whether the objects of pleasure and of displeasure are identical or belong to entirely different categories.

La Mettrie has degraded moral experience to the level of a

47 L'Homme machine, ed. Solovine, p. 95 ff.
48 We might also point out that he forgets what he himself has said about differences resulting from greater complexity of brain structure.
mechanical pleasure-pain reflex, like that of hunger or sex. This is essential to an understanding of his naturalistic, nonmoral definition of Natural Law—one which actually annuls any of the usual meanings of the phrase. "It is a feeling which teaches us what we should not do, because we would not want others to do it to us. Shall I dare add to this conventional idea that it seems to me that this feeling is only a kind of fear or fright, as salutary to the species as to the individual." By this process of reduction, La Mettrie takes what is doubtless one genetic factor of moral experience—the self-protective reaction—and makes of it the totality of that experience. Natural Law is therefore "only an intimate feeling which again belongs to the imagination. . . . Consequently, it evidently presupposes neither education, nor revelation, nor legislation. . . ." There is nothing moral in La Mettrie's definition of Natural Law. It is not an innate idea nor an acquired idea, but an innate affective reaction. We shall shortly see that for d'Alembert the idea of right originates in oppression by power, as an innate reaction. For d'Alembert, however, there is a leap from power to the ought; an idea of right is immediately implied. In La Mettrie there is only a doctrine of prudence—fear of retaliation, fear of remorse. Ultimately, the Natural Law concept is an impossible contradiction for La Mettrie. It unites two different and opposing realms of being: nature and moral-social conduct. Nature refers to the physical, and in this realm we can indeed speak of truths. Culture, however, is the domain of human action, and here we can speak only of the useful. Morality is an invention of man, of culture.

In England, meanwhile, Hume (Treatise of Human Nature, 1739–40) was subverting the whole edifice of Natural Law "by questioning the epistemological validity of rational self-evidence in this field," in an analysis which was to provide the basis for nineteenth-century positivistic thought. By analyzing the opera-

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49 In his Anti-Sénèque, ou Discours sur le bonheur (1748), La Mettrie reduces Natural Law to ideas received in childhood (Oeuvres philosophiques, Amsterdam, 1774, II, p. 177). "People think they do great honor to nature by trying to ornament it with a supposed law, born with it, as with so many other acquired ideas. It is not the dupe of that honor . . . a well organized soul disdains everything attributed to it over and above what really belongs to it . . . ." In his Discours préliminaire (1751), he affirms that the principle stated in his definition of Natural Law "is rarely natural"; it comes from fear or self-love (Oeuvres, Berlin, 1764, I, p. 36).

50 Sampson, Progress in the Age of Reason, pp. 149–50. The ensuing discussion follows in part Sampson's excellent analysis.
tions of reason in the formulation of ethical beliefs, Hume sought to destroy the possibility of universal moral truths intuited by right reason. Causal relationships and value statements are not provable by the operations of reason, nor do they result therefrom. They are only “conventions,” or convictions of “common sense,” which are inescapable, useful, and customary, and so seem rationally valid. They imply more regularity than is certain. They are not necessary since “the contrary could always be assumed.”

While common sense makes us think that acts are in themselves right or wrong, Hume, like Spinoza and other naturalists, considers all such qualifications to be the expression of subjective approval and disapproval which are unverifiable expressions of taste. Consequently ethical terms are deemed by Hume to have no abstract or universal validity. They must be defined as psychological and emotional phenomena, as responses to their assumed consequences in terms of our desires and aversions (which may include benevolence, as well as egoistic pleasure and pain). Right and wrong, however, are not merely individual subjective preferences. They can be distinguished, but only empirically, by investigating the reactions of the majority of men to establish which actions do in fact evoke approval or disapproval. In this way Hume intends to introduce the experimental method into morals.

The result of Hume's analysis is to confer a “divine right” upon the majority. It is also to eliminate any meaningful distinction of “ought” and “is.” Might may become right, the degradation of men in such institutions as slavery may become legitimate, and mankind is condemned to be the prisoner of its given cultural moment. Such thinking leads to a nihilism of social arbitrariness or tyranny. Since the whole problem in morals is to determine what actions give “to a spectator the pleasing sentiment of approbation,” Hume does not so much “overcome the conflict between the is and the ought,” as Sampson says, as he eliminates any true

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62 Sabine, op. cit., p. 601. This statement is not certain, nor empirically verifiable! Can one imagine a society based on a law of returning evil for good, or a law of deliberate deception and breaking of contracts, on doing hurt to other persons?


64 Sampson points out that Hume's hedonism is benevolent rather than egoistic. It is true that he does not fall into the simplified view of human nature characteristic of French hedonism. On the other hand, the French went beyond him in their analysis of evil in human nature. “Absolute, unprovoked, disinterested malice,” writes Hume, “has never, perhaps, place in any human breast. . . .” (p. 150).

significance of the latter term, since it can indicate only conformity to what is, reason being powerless to generate or to justify values.\textsuperscript{55}

Hume effectively unseats reason as “the arbiter and authority for our ethical knowledge.”\textsuperscript{56} Reason, by calculating results, can adjust means and ends, but it cannot determine the ends we should follow, and only our emotional constitution may (or may not) determine us to follow ends that are benevolent rather than malevolent. Here, as elsewhere, one of the weaknesses of Hume’s analysis is its restrictive definition of reason, one which narrowly confines its operative function to the determination of fact rather than of value, and to analytical deduction of a mathematical type. The result is to exclude judgment from the sphere of norms, leaving moral beliefs “at the mercy of caprice, impulse, prejudice or habit.”\textsuperscript{57}

“The periods of greatest concern with questions of natural law,” writes Georges Gurvitch, “have coincided with critical epochs in which the established order has been beset by new currents of thought and new social aspirations.”\textsuperscript{58} The importance of the controversy over theories of Natural Law was recognized by contemporaries. Hume warns his readers that he will not enter a

\textsuperscript{55} Ibid. “Where a passion is neither founded on false suppositions, nor chooses means insufficient for the end, the understanding can neither justify nor condemn it. It is not contrary to reason to prefer the destruction of the whole world to the scratching of my finger.”

\textsuperscript{56} Ibid.

\textsuperscript{57} Ibid., p. 154. Moreover, Hume’s argument that in moral enquiry you must ultimately reach a final end-in-itself, desirable on its own account with no possibility of rational justification outside of human sentiments evades the real moral issues of choice which confront us. Is it certain that reason is impotent to bring wants and sentiments under rational control, through judgment on conflicting wants in terms of causes and effects? This process is the transformation of wants into values, which Hume mistakenly identifies with satisfaction or enjoyment. Reason goes beyond desirability (already given in the term “desire”) and enables us to judge whether a desire, or a propensity, is worthy of becoming a value, or the determining motive of our behavior. Hume has underestimated both the cognitive and the empirical functions of reason. In the broadened view of empiricism in our own day, experience and reason are not held to be necessarily separate. “Reason is itself empirical when it observes and respects experience and weaves it into some coherent meaning.” (V. Ferm, “Varieties of Naturalism,” p. 43g.) We should also note Adam Ferguson’s criticism of Hume. A moral judgment, he contends, is an act of a peculiar nature. Not a mere desire or aversion, it is rather “a censorial act in the mind of man, having cognizance of a right or a wrong in the measure or tendency of his own desires or aversions even when they have most entirely determined his will.” (Principles of Moral and Political Science, Edinburgh, 1792, II, p. 116.) Ferguson, like Kant, notes the transcendent character of reason. He also places the locus of moral approbation in good will, not in utility or sympathy (pp. 119–26).

\textsuperscript{58} “Natural Law,” p. 285.
polemic, "which of late years has so much excited the curiosity of the publick, whether these moral distinctions be founded on natural and original principles, or arise from interest and education." 50 Natural Law, in one of its forms or another, was one of the principal recourses of those who felt the need to reaffirm and to secure the validity of moral distinctions by methods outside the arbitrariness of Revelation. For this reason it was accepted on both sides, by orthodox and by freethinkers. The former, as we have seen, were somewhat worried by the latter's claim for the sufficiency of Natural Law. Deists, on the other hand, embraced the doctrine in order to ward off both Christians and amoralists. The extremists, on both sides again, rejected Natural Law (in any of its shapes); these included Jansenists, convinced of the total corruption of nature, and atheistic nihilists, who shared a similar conviction.

Doubtless one of the reasons why many deists, like Voltaire, did not drift into atheism was the support for moral values provided by God's existence. The traditional Natural Law doctrine was built on that belief. It implied a universe which included the "ought" as a phenomenon natural to any rational being. It was far more secure—provided the original premise was accepted—than the modern versions, grounded solely in nature. The function of traditional Natural Law "was no less than to provide the original and fundamental premise from which the central tradition of European values was derived." 60 With the scientific revolution and its mechanistic explanation of the world, God was no longer needed to explain natural phenomena, and no longer was he narrated to all eyes by the glories of the heavens; but he was still needed as the source and protector of ethical values. Natural Law kept the command and the certainty of God, yet removed him from the universe and its day-to-day functioning; it made of him a remote Creator and law-giver rather than an immanent force. The moral command of the Natural Law was contained in the nature of things, as created by God's will and reason, before the birth of human will or law. It placed the origin of moral obligation outside of an autonomous experience, in which the creativity of the individual or the species would be controlling. It was conducive to the dependence of the individual, and thus to harmony. The

50 Treatise of Human Nature, Bk. II, Sect. VII.
60 Sampson, op. cit., p. 143.
universal took precedence over the particular, and reason over nature, but in the name of nature. An act of discovery, by reason in its intuitive aspect, revealed certain relationships in which a proper course of action inheres objectively. The advantage of Natural Law was thus to take morals outside of human will and constructive reason, to give them a cosmic status, a certainty, indisputable, eternal, readily known. This advantage the naturalistic versions weakened or destroyed, by placing law within man, like will itself, though objectivity was still sought.

Natural Law required, then, an assumption of a universal human nature and rationality. If there were only particulars of individual experience, there could be no laws governing human phenomena, especially conduct. To the partisan of this view, it seemed clear enough that to say there is only positive law is to make the latter entirely arbitrary and devoid of a necessary validity from a universal viewpoint. One might even go further and challenge its validity in a given local situation, argue that since it is arbitrary, it cannot compel respect and thus drift into nihilism.

The doctrine of Natural Law is one of man's great attempts to unite reason and nature by making moral judgments natural. This is clearly expressed in Raynal's summary of Confucianism: "His code is only Natural Law. . . . Reason, says Confucius, is an emanation of Divinity; the supreme law is only the accord of nature and reason. . . ." "61 But while Natural Law reconciles nature with reason, in the sense of intuitive moral judgments (and thus, indirectly, reconciles nature with the requirements of culture), it definitely separates the moral and the physical world by its selective definition of nature. It corresponds to the rest of nature only in the sense that the principles of both, originating in God's mind, are rational. For human beings, to be "natural" is to be moral. On the other hand, Natural Law did not pretend to make angels out of men. It did not refuse properly controlled physical satisfactions. It recognized legitimate (nonharmful) egoistic needs, such as the acquisitive impulse. Its legitimation of property was a defense of natural instinct as opposed to rationally conceived anti-property-right ideas. We again see that Natural Law serves to unite nature with reason, though on a selective basis for both terms, one which its opponents could denounce as arbitrary.

On the other hand, Natural Law had various weaknesses and

shortcomings, as a support for the moral life. Some of these took on importance for men of the eighteenth century especially, others had always been obvious. The sanctions and penalties for infraction were vague and remote—reputation or reciprocal treatment; they acquired somewhat more force, if no more immediacy, for the Christian. At all events, few were so optimistic as to believe that the added support of religion or of institutions of the State was not necessary. We may say, in other words, that Hobbes's and Pascal's analysis of law was a realistic appraisal. Natural Law did not contain sufficient motivating or coercive force. Bayle, Montesquieu, Rousseau, and others recognized the difference between goodness and virtue. Many who believed that men were moral beings, in the sense of having natural knowledge of moral distinctions, admitted that passions and self-interest are the more powerful and more usual motivating forces.

The word "natural," in traditional Natural Law and in other applications, was often corrupted. It was likely to signify, in actuality, the civilized rather than the original or primitive. It could, on one interpretation, become conducive to conservatism and resistance to change. Rousseau was aware of both these characteristics when he attacked Natural Law and the usual concept of the state of nature. These transformations of meaning resulted from another characteristic trait. One might venture to say that the strength (as well as the weakness) of Natural Law lay in its vagueness. The result of this vagueness was precisely what we have indicated—to tend to make Natural Law the simple equivalent of the moral conscience or level of a given cultural complex—despite its supposed absoluteness. What, indeed, was the content of Natural Law? Sanctity of word and contract, and of life, the law of reciprocity, the preference of justice and beneficence over excessive egoism (or the right to pursue one's own good provided there was no trespass of the right of others), the right to property or the fruits of one's labor. Clearly, several of these are variables. While Natural Law sets up an ostensibly objective "ought" besides the objective "is," it tended, in practice, to merge the prescriptive with the descriptive, and to define the "ought" in terms of the "is." An outstanding example of this was the doctrine of Blackstone and Burke, who tried to arrive at Natural Law through a study of history and of present institutions. A principal ground for the

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opposition of many *philosophes* to Montesquieu was that he found his “laws” of what ought to be and what had to be in what “was.” This is one reason why a new absolute version of “natural rights” arose, and why conservative writers attacked the latter and preferred the former. Traditional Natural Law was a conservatism, and modern Natural Law a reform movement in which law “ceases to be mainly a regulating principle, and becomes mainly a liberating principle.”

Our reference to criticism of Montesquieu involves a related cause for hostility to traditional Natural Law. While cosmic status was a support for moral values, in the minds of some men, like Rousseau, it was a limit as well. It also ran counter to the most advanced trends of scientific thought. It postulated a finalism and Providentialism which see to it that a man gets what he needs to be a man. It assumes that what we are was given to us from the outside, not developed by the dynamism of the organism itself seeking a *modus vivendi* with its natural context. In both senses, natural and willful, man’s power to construct his own world was limited. The modern Natural Law theories, as we can already observe in Locke’s “revolutionary” version, have confidence in man’s creative capacity and consider it a sign of human nobility. They do not merely accept nature, but consciously seek to modify it. They insist on the antithesis of nature and art, or culture.

The human dynamism which thus forms one aspect of opposition has a wider bearing. The naturalistic, or biological view of life is directly connected with the ultimate ambivalence of the word “natural,” which we have already touched on, and which is the core of weakness in Natural Law. By particularizing among all the meanings of that word, and only by so doing, Natural Law makes it possible to apply the attribute “unnatural” to acts, with both descriptive and prescriptive connotations. By its selection of a rational-moral sphere of human experience, it delegates that sphere to be the defining, therefore the prescriptive or law-making meaning of “natural” for man. The naturalist was aware, even in the eighteenth century, that there are other laws of nature, that

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*Willey, op. cit., p. 16.

* Eighteenth century transformism replaced externally imposed finalities with inherent, organic, natural finalities. Natural Law theory conflicts as well with Darwinian forms of evolutionism, which replace organic finalism with “chance” or “random variations” whose effects are perhaps equally mysterious and magic.

the most perfect point of impartiality and disinterestedness in human reason "remains in organic relation to a particular center of life, individual or collective, seeking to maintain its precarious existence against competing forms of life and vitality." 67 Man’s nature and reason, or natural reason, cannot escape this situation, if they are to function. They are ambivalent: reason is more than an instrument of self-interest, but it can never be entirely disassociated from it; it can be an instrument of justice, but not a pure instrument of justice. It is a deceptive short cut to conclude that because man is endowed by nature with reason, life in accord with reason is life in accord with nature—just as it is to reverse the proposition, as the nihilist does. 68 On the other hand, if nature is to be our criterion, and if we are immersed in nature, why do we need rules to prevent deviations from nature when it is impossible for action to deviate from nature? Is slavery, for instance, natural? It is opposed to moral Natural Law, but Aristotle thought it was natural, and so it is. 69 To critics of the philosophes, the confusion was obvious. Sabatier de Castres taxed them with being ridiculous when they qualified as "loi naturelle, as religion naturelle, what is most opposed to nature and its demands.” 70

The idea that rational will must transcend given nature becomes more important as the great countercurrent to Natural Law first takes shape and then swells almost unchecked in the second half of the century. This counterforce was utilitarianism. In regard to theoretical ethics, the utilitarians urged, "be good so that you will be happy," whereas Natural Law said, "if you are good, as you should, you will also be happy." In practice, there was inextricable confusion between the two viewpoints and the distinction tended to fade into the utilitarian perspective, especially in the "modern" or "naturalist" theories of Natural Law. But there were other points of opposition. As Natural Law involves the transcendence of an intuitive rational nature over irrational nature

68 According to Franz Neumann, Natural Law theories “destroy the unity of the whole of human relationships; they arbitrarily elevate one aspect of human nature, one impulse, one drive, to the rank of the absolute, and deduce from it a whole set of postulates for the ordering of human society.” (Op. cit., p. 71.) On the other hand, we must not forget Kant’s view that this aspect is the ordering function in human nature, the aspect which is naturally able to give a law to the whole; however it is not the only kind of “natural law” we find operative in man.
69 Freedom and equality were made parts of Natural Law by canon lawyers, but ius gentium and positive law legitimized slavery.
70 Lettres critiques, morales et politiques, F'urt, 1802, pp. 88-89.
Natural Law

(the superego over the id), so does utilitarianism assert the supremacy of analytic reason over intuitive reason. Nevertheless, the basis of utilitarianism, before it reaches the stage of social judgment and social planning, is a natural instinct, one associated precisely with that aspect of irrational nature which Natural Law is supposed to check and to confine within the limits of its disciplinary rule. "I shall prove," declares Helvétius, "that in all times, in all places, in regard both to morals and to intellect, it is personal interest which dictates the judgment of individuals, and general interest that of nations." 71 To utilitarians, it seemed that the compass of a Natural Law or a natural government was too circumscribed and would produce a static society, when nature itself was process and change, which human will could channel into what was called progress. They did not mean, however, that nature was to be ignored or disregarded, but rather that it was to be known and used, that the social machine was to be reduced "to a few easily controllable forces." 72 Paradoxically, in the systems of certain utopian writers like Morelly and Rousseau, the goal was a relatively static pattern of social institutions.

Natural Law was thus opposed to the idealistic hopes of many in the second half of the eighteenth century. It was also opposed to the growing positivistic spirit. In those later years it was not only the other meanings of "nature" which came increasingly to be noted, but also the relativism of facts. Both history and travelers' accounts brought home that variability of conscience which Montaigne, Locke, and Bayle, as well as countless travel books, had already asserted, but which now acquired renewed force. What was right and wrong for modern European civilization had not always been so for ancient peoples, nor was it presently for the primitives of the island of Bougainville. Facts did not seem to tally with the idea of Natural Law, or the voice of God speaking through the conscience. In the third section of Le Rêve de d'Alembert, for instance, Diderot challenges the idea that there is such a thing as normal or natural human sexual behavior. Natural Law was particularly alien to the rising spirit of historicism which remained, however, in a subordinate position. The historical outlook on the march of human affairs is either cyclical or dialectical. There is no absolute pattern of social organization which corre-

71 De l'Esprit, p. 47.
sponds to an absolute nature or right. From the absolutist viewpoint of Natural Law, the past has been a series of errors and crimes. Pessimists might conclude that this would always be so, and traditional Natural Law did not encourage reform. Paradoxically, however, optimistic political thinkers were often opposed to historicism, though not to the idea of progress in history. Optimists of a certain kind hoped to utilize natural laws in willful rational patterns to reach a new and sometimes static state. History would have to be disregarded and by-passed, and a rational pattern imposed. Partisans of modern Natural Law theories, with their emphasis on natural rights, political conservatives like the Physiocrats, or pure utilitarians like Helvétius, all were impervious to historicism, all believed, in contrast with their avowed empiricism, in a natural or rational order that was the basis of a perfect society. Montesquieu, Voltaire, Turgot, and Condorcet, on the other hand, did possess the historical viewpoint. Since their attitudes to Natural Law were not identical, we must conclude that although Natural Law is in essence superhistorical and anti-relativistic, the question of historicism is a broader one which involved other political and intellectual attitudes. Moreover, to be paradoxical again, traditional Natural Law was in a sense more historical than the modern, since it held that natural rights (however weakly and vaguely it conceived of them) can be conceptualized and realized only in a given historical context and are relative to particular situations. It led to that historicism, to which Burke came perilously close and into which Blackstone fell, according to which “things are right either simply because they already exist, or because they occupy a certain place in the process of historical development.” 73 Thus Natural Law could be either anti-historical or excessively historical, according as one chose to interpret it.

What is spoken of as modern (or by some, revolutionary) Natural Law is a loose conglomeration of theories which were a partial response to the shifting tide from a priori thinking to empiricism and experience. We must take special care to distinguish those theories which stem from Grotius, Pufendorf, and Locke, and which are, after all, a “heretical” offshoot or variation of the traditional doctrine from the naturalistic theories discussed in this chapter. To be sure, they have much in common. But the

naturalistic views have Hobbes as their true ancestor. They considered men to be ruled not "by an abstract command of reason but by the uniformity of their inclinations, instincts and appetites. It is here that we must look for the true organic unity of man. . . ." 74 As the empiricists viewed it, the same faculties and tendencies everywhere develop according to the same laws, and reason progresses toward the same level. Different ways of thinking and feeling are only accidents due to external factors. The general laws of life apply to man as to other species; he too is essentially the faculty of feeling and desiring.75

Such naturalistic theories made happiness the motivating force of duty, rather than its result. There was no question, however, of giving free rein to nature. Moral law, it seemed indubitable, inheres in the objective natural and social relations of rational beings. As Spinoza had written, "a law which depends on natural necessity is one which necessarily follows from the natural, or from the definition of the thing in question." 76 If man is endowed with a fundamental nature which determines necessary tendencies, moral distinctions and laws are among these tendencies and, as a regulatory agency, are related to their fulfillment. That is to say, the natural tendencies toward the welfare of society and of the individual require and clearly indicate the necessary restrictions and sacrifices. Natural Law, then, is man's natural law which can supersede "the law of nature." In other words, while utility might be held to be the basis of moral law, it was also accepted that there are universal and unvarying factors in utility. The two notions were not deemed to be basically exclusive. The moral judgment, it seemed, though developed by education and culture, is not—despite sensationist psychology—enslaved to them. No Leviathan

74 Cassirer, op. cit., p. 246.
75 We can do no better than repeat R. R. Palmer's formulation:
"The philosophes could not feel law as an obligation imposed from on high. They were deferential, indeed, to nature and the natural law, but they included themselves in nature, and thought that the natural law legitimized the empirical facts of their existence, their needs, wishes, impulses, and capacities for enjoyment. Law, natural or divine, was not for them a rule to which men must force themselves; it was a cosmic authorization for them to do what gave them happiness in the world. It was a charter of liberty, under which men as individuals need observe only the rights of each other, and men as a whole, free from obligations not fixed by themselves, had the right to master the world and do with it as they pleased, and to make such changes in their government and society as they might suppose would be useful to these ends." (Op. cit., pp. 204-5.)
or totalitarian state can define justice in such a way as to extirpate it. That is why these utilitarian theorists were believers in unalienable natural rights. Moreover, whereas traditional Natural Law, lacking a rigorous determinism, was unable to satisfy a scientific concept of law, the newer theories contained more objective (and, some pretended, quantitatively formulable) elements. One major difficulty, however, is that these natural rights were rooted in the presocial state of nature, whereas the "ought" involved in Natural Law pertained, in good part, to the relations of society. Nevertheless, for the adherent of this type of theory, any attack on Natural Law "resulting in a weakening of belief in the self-evidence of rights grounded on Natural Law would necessarily leave a wide hiatus concerning the fundamental status of moral and political values." 77

Christian apologists were aware of the dangerous connotations of the newer theories; yet, as so often happened, they absorbed some of the novelties in the very effort to blunt their force. The ideas of Hobbes and Grotius were not utterly without impact. An objective right is conceived of, independent of God's will. Self-interest and utility infiltrate into all corners. And a desperate note is sounded in the oft-repeated claim that we must accept God and Natural Law or remain with nothing—nothing, that is, but might and success.

In the wider view of Natural Law, there still remained an unresolved problem of attributes. Is Natural Law natural, considering its denial of powerful instincts and drives? Is it rational when it denies constructive reason in favor of intuitive reason? Is it teleological when it asserts a formalism opposed to the utilitarian, while claiming to be designed for human good and human needs? The intuitionist, moreover, goes beyond subjective feeling, despite his insistence on the immediate nature of the moral experience. He asserts that this experience provides knowledge, and so removes the arbitrary from the subjective immediate experience. To justify this viewpoint, however, a supporting metaphysic becomes necessary, one that can establish values as self-existent essences. Only supernaturalism could provide one, and supernaturalism, precisely, was waging a losing battle in the course of Western cultural history. The eighteenth century was moving in various directions that were bound eventually to weaken Natural Law. It moved

77 Sampson, op. cit., p. 144.
toward the emotional, toward systematic rationalism, radical naturalism, dogmatic utilitarianism. Scientific positivism, the development of relativism and historicism, the all-pervasiveness of the happiness criterion, all undermined traditional Natural Law. The influence of political reconstructionists, culminating in Rousseau, with their inquiries into the requirements of society, the demand for political and civil rights, fostered most of all by the American Revolution and the spirit of 1776, were powerful forces working in the same direction. Very deeply, there was a cleavage between the belief in culture’s struggle for enlightenment and the belief in a natural moral rationality or in conscience the voice of God, which did not stem from culture and perhaps made its efforts supererogatory. Traditional Natural Law was too intimately associated with the crumbling metaphysical and social structure of the Old Regime not to be involved in its downfall.

Natural Law theories of one type or another were nevertheless one of the two great efforts of the moderate group to protect moral values, to ground them in objective truth, to unite nature and reason in the service of culture. This they did by accepting as “natural” the impulses and emotions that are harmonious with culture. By selecting as ultimate criterion that aspect of nature which is involved in reason, they were able to assert the validity of the moral and social imperatives by which culture denies the claims of other natural instincts that are inimical to its survival. Duty, they maintained, was not merely a general obligation to use discretion in the pursuit of personal good. There are rules, fixed in our nature, that give structure to our conduct and qualify some ways of reaching our ends as definitely right or wrong. This statement applies to all but the most radical of the empiricists. The empiricists ridiculed innatism; but the belief, to which most clung, in a human nature and in some universal moral laws and judgments was really another way of eating the same cake.78 The “experimental” (experiential) was for them, in the final analysis, only an efficient cause of a predetermined end. Their supposed inductions from experience were most often rational constructs. The result was in many ways substantially the same, if formally different. They knew that pure ethical relativism would neces-

sarily result from a moral life entirely formed and determined by local experience, and that experience itself belies such a complete relativism.\textsuperscript{79} Thus Maupertuis, for instance, criticizes Montesquieu for asserting that equity is the ultimate basis of law, instead of the principle of greatest happiness; but he admits that the two principles produce the same basic legislation.\textsuperscript{80}

The strength of Natural Law was in its correspondence to common sense. The restrictive power of culture and its laws—-it is generally felt—-would be arbitrary were it not informed by a general principle of justice definitive of the right order of life in a human community. All societies, it is felt, have some notions of justice beyond their laws, which laws must embody under penalty of condemnation by the conscience of the just. Basically, Natural Law asserted that moral obligation must arise from the freedom and responsibility of a moral being to act in accord with his own nature.\textsuperscript{81}

\textsuperscript{79} "The \textit{philosophes} obtained the advantages of theology by appealing to an absolute humanity." A primary virtue was benevolence. "The \textit{philosophes} somewhat altered the idea, making it not a commandment but an inclination, and teaching . . . that men in particular \textit{should} be humane because men in general \textit{were} humane, thus keeping up the appearance of deducing values from facts, and duties from actual behavior" [more exactly, from what we actually approved]. (R. R. Palmer, op. cit., pp. 191–92.)

\textsuperscript{80} \textit{Eloge de Montesquieu}, \textit{Oeuvres}, III, pp. 404–8.

\textsuperscript{81} The powerful revival of Natural Law theories, especially since World War I, is a phenomenon of more than passing interest to the student of intellectual history. While on the one hand, traditional theories are reasserted in the course of the so-called "Catholic Renascence," naturalistic theories have been revised in the light of recent psychological, anthropological and juridical thought. One noteworthy example of the latter (among others) is the theory of F. S. C. Northrop, as expounded in his article, "Ethical Relativism in the Light of Recent Legal Science" (\textit{Journal of Philosophy} 52:649–62, 1955).