Nature and Culture

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Published by Johns Hopkins University Press

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I. Conscience

The question of the moral conscience has been implied or discussed throughout the preceding chapters. If one believes the knowledge of right and wrong to be intuitive, as did the Natural Law theorists, one also believes conscience to be intuitive, since conscience is that awareness. For the same reason, there is no substantial difference between Shaftesbury's moral sense and conscience, although in this case it is conceived of as experience which is concerned with a special kind of object. On the other hand, if one holds moral judgment to be the product of experience and conditioning, then, as we have seen, we can conceive its object to be either the truths of objective relations or mere habituation and conformity to given standards. We have, then, either an a priori conscience or a generalization from subjective experience.

A reaction to Church absolutism, especially after the Council of Trent (1545–63), encouraged the rise of deism, Pyrrhonism, and even atheism. The conscience was not challenged, by these rebellious movements, as operative in the terrestrial realm (with or without metaphysical implications). Many used it, on the contrary, to support the idea that man and nature are not intrinsically evil or meaningless, and that improvement is possible. But the dominant seventeenth-century attitude was distrust of conscience, as subjective and as subservient to our powers of self-delusion.1

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Jesuits emphasized a formalistic morality in which conscience was no longer a light but a dupe. Bossuet’s pronouncement was that the Roman Catholic Church is the ultimate guide to morality, and the revocation of the Edict of Nantes was made in this spirit. The Jansenists, with their insistence on depravity redeemable only by grace, were even more hostile to the sufficiency of conscience. Nevertheless, Catholics admitted that evil, though it gives pleasure, also brings remorse.

An important part of eighteenth-century ethical thought consists in the re-evaluation of conscience. There is at first a movement—which continues unabated throughout the period—toward re-establishing the authority of conscience. One part of this movement derives from the Enlightenment’s refusal to accept the doctrines of original sin and innate depravity. A typical example is Mme de Lambert, about whom Sainte-Beuve writes:

She is also one of the first moralists who, as the seventeenth century closes, came back to the very un-Jansenist idea that the human heart is essentially good, and that conscience, if one knows how to consult it, is the best witness and the best judge: “By the word conscience, I understand that internal feeling of a delicate honor which assures you that you have nothing with which to reproach yourself.” She gives, in her way, the signal that Vauvenargues will take up in his turn, and which, in the hands of Jean-Jacques, will become an instrument of universal revolution.\(^2\)

With some important qualifications, Voltaire may be put in this group. A second part of the movement derives from the more balanced and impartial investigation of moral experience which was the necessary accompaniment of the whole movement of ideas, the growth of naturalism and rationalism, the desire to build a secular ethics. Locke and Bayle may be considered as among the chief sources. The utilitarians, in particular, found it necessary to cope with the reality of the moral conscience, and to enlist it in their program. The few but significant writers who were attracted by nihilism were obliged to diminish conscience, and especially to get rid of its manifestation as remorse.

Bayle considers conscience to be the intuition of Natural Law. In his famous “impious paradox,” he makes it the touchstone of conduct, regardless of the consequences of an act, provided it operates free of prejudice. Real morality is the result of personal

\(^2\) *Causeries du lundi*, IV, p. 231.
experience rather than of external authority.\(^3\) He maintains “that any action done against the lights of conscience is essentially bad.” Those who assert the contrary argue that a good action sometimes results from acting against the dictates of conscience. “Monstrous doctrine,” he exclaims, “which upsets all morality.”\(^4\) Intention (good will) alone is the object of moral judgment. Conscience is adviser, conso ler, witness, judge, executioner, and rewarder. Bayle’s emphasis is not on remorse; and it is especially curious that he does not mention remorse as a factor in his defense of the possibility of an atheistic society. He makes another interesting and highly valid point: although the child has no moral feelings and knows only pleasure and pain (which is the reason why punishment and enforced good habits are necessary), conscience itself is not the \textit{result} of education, either in function or content.\(^5\) The function of conscience, moreover, is not to intuit absolute qualities, or “what objects are in themselves,” but their “putative truth,” or probabilities for action in relation to our needs. This also helps to explain why, in his “impious paradox,” Bayle maintains that the erring conscience is not subject to blame.\(^6\) On the other hand, despite these speculative theories, he does not believe that in real life the conscience often operates freely, untainted by passion or prejudice. “We always judge things in relation to ourselves. What is useful to us seems just to us; but if the same thing is contrary to us, we find it unjust.” We think we are sincere and see a difference in the act, but it is “only an illusion of our heart.”\(^7\) Bayle is too much the realist to trust in conscience. He despaired of men’s ability to follow its dictates to any broad regeneration of morality. Caught in his own web, he cannot get back to the Christian God and is left with the materialist’s view that though man may know good from evil, he is incapable of governing his choices. God is as much a principle of evil as of good, and original sin is a mechanical principle forcing men to evil: “for all act criminally because of a certain corruption which comes to us from the body.”\(^8\)

\(^3\) Cf. the modern theories of Jean Piaget and Erich Fromm.
\(^4\) \textit{Dictionnaire}, I, p. 172.
\(^6\) Montesquieu satirizes this famous paradox as the delight of casuists. (\textit{Lettres persanes}, LXII.) For Bayle, it is one of the foundations of his defense of tolerance.
\(^7\) \textit{Ibid.}, II, pp. 176–77.
\(^8\) He also believes that some acts are intrinsically good or bad, according to Nat-
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Pufendorf, juridically inclined, had emphasized conscience as cognition of truth, as well as its function as judge (evoking tranquillity or remorse). Only insofar as it partakes of the law, which alone obliges, is it valid. A view such as Bayle's, according to Pufendorf, would lead straight to anarchy. We must therefore distinguish three cases: right conscience, probable conscience (in cases outside the law or where there is conflict between law and equity), and doubtful conscience, which permits of no licit action.9

The attitude of Catholic and Protestant apologists swerved notably in the eighteenth century toward the enhancement of conscience. It was impossible not to feel the imprint of the intellectual milieu and the prevailing tides of thought. Conscience is made the instrument of Natural Law, "a sure mark," the rule of our actions, and is at times clearly set up in opposition to the opinions of others—a view which at first blush might make us think of the subjectivity of Rousseau or other romanticists, but which, in the minds of the apologists, refers to an objective standard (in Natural Law or Revelation) that can be opposed to existing norms. Again the opposition is clear between this type of thinking and the experientialist approach. Conscience, writes the abbé Sigorgne, is not "the effect of prejudice or of education."10 The widely read abbé Gauchat, however, remains closer to Pufendorf. For him conscience, unless it interprets higher law, has no value and is only "a prejudice of childhood." Wishing to provide a firmer anchor than subjective experience, he thus plays into the hands of the radical materialists, by leaving anarchism and nihilism as the only alternative to supernaturalism.11


11 "For after all, why should we feel a repugnance towards certain actions, remorse after having done them, secret esteem for certain deeds? Because these impressions have been instilled in us since childhood. . . . As soon as they do not express a law, they are only a sterile, deceitful image." He presses home his point, arguing that no moral link can come from men, nor from arbitrary convention or civil law. "All men, united together, would not form a degree of authority over a single one, by nature." Laws are only customs which we may violate without moral guilt. (Lettres critiques, 1755-63, XVI, pp. 216-22.) Jaucourt, in the Encyclopédie, also warns us
Chief among the Protestant defenders of a priori conscience was Samuel Formey, of the Academy of Berlin. For him conscience is a necessary consequence of the use of our faculties and is not dependent on education for its functioning. Formey, unlike Gauchat, does not deny the existence or validity of moral law without God, but only its effectiveness. What is more, defining conscience as an internal judgment of actions in relation to conceived obligations, he denies what Rousseau was later to claim, that conscience is “a sort of voice of God, different from natural lights and the exercise of reason.” It is the voice of man, he asserts, not of God. Judging and willing are a single act. There is, in fact, no separate tribunal, called conscience, nor any way of distinguishing it from the total self. Nor is it an original imprint on our soul. Conscience is simply “the development of reason, relative and proportional to the knowledge of duties.” Its judgments are not intuitive, but discursive, embodying the knowledge and application of our duties and of principles, of the circumstances of any particular act, and of the right of the agent to do it. Since conscience is proportional to reason and intelligence, “there are not two consciences exactly alike.” Which conscience, then, is best? “That which responds to the widest extent and the most exact notions of duties which man has been able to acquire.” And the standard of judgment is man; “because man is man,” he must approve or disapprove of certain acts, in view of their moral sequel. To deny the moral difference between acts is not to abjure God, but humanity. Here, certainly, is a humanistic moral outlook, although it is not clearly and consistently thought out.

While Voltaire's ideas on the conscience present no originality, they do bear a personal stamp. Conscience comes from God and is man’s universal law. In the Poème sur la loi naturelle (1752), he, too, denies that it is formed entirely by education and example; it develops rather as an instinct, or as “the first fruit of reason,” without having an instinct’s compulsiveness, however. Voltaire’s emphasis, in contrast to Bayle’s, is on remorse, as “the defender” of Natural Law, and he is at particular pains to refute the argu-

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ments of those who dismiss remorse as mere habit developed from experience.\textsuperscript{14} “The first springs come from a different hand.” The moral experience, then, is primary, not secondary. As with all adherents of Natural Law, the a priori conscience, for Voltaire, is its inseparable adjunct. We have already noted the gradual displacement of the center of gravity, in Voltaire’s thinking, toward utilitarianism. This is one of the innermost characteristics of the evolution of eighteenth-century thought. Consequently it is not surprising that in later years his idea of the conscience was modified in an empirical direction. In 1771, he wrote in \textit{Questions sur l’Encyclopédie}:

> It results from all this that we have no other conscience but the one which is infused into us by the age, by example, our temperament, our reflections. Man is not born with any principle, but with the faculty of receiving them all. His temperament will make him more inclined to cruelty or to gentleness; his understanding will make him understand one day that the square of 12 is 144, that he must not do to others what he would not want to be done to him. . . .\textsuperscript{15}

That Voltaire’s thinking in this passage is somewhat confused is all too evident. He begins with an empirical development and ends with the self-generating perception of an a priori moral truth, not of one deduced from experience. He goes on to say that a savage will readily treat others as he would not want to be treated, unless he has learned otherwise, and to balance this statement by the admission of two innate forces: pity and the power of understanding truth. We cannot therefore speak, in relation to Voltaire, of a clear and consistent concept of conscience.

While Rousseau’s concepts of the conscience also seem to lack unity, there can be no doubt about the great influence exercised by his romantic proclamations of the validity of the subjective moral judgment. In the \textit{Discours sur l’origine de l’inégalité}, as we have seen, Rousseau seems to derive virtue, and so the conscience, from sensibility, or the feeling of pity. Reason is denounced as the source of \textit{amour-propre}. But in the \textit{Lettre à d’Alembert} we are told that “Nature and reason give man the love of goodness.” In \textit{La Nouvelle Héloïse} (1761), Julie defends reason as the revealer

\textsuperscript{14} \textit{Poème sur la loi naturelle}, ed. by F. J. Crowley, pp. 240-41, 248 (1. 49-50), 251 (1. 1-8), 253 (1. 49-54), 254-55.

of right, and her own moral debates are a model for the theory of conscience as reason—not merely intuitive, but discursive. The Savoyard Vicar, in the *Profession de foi* (1762) makes conscience the sole judge of good and evil, a judge whose task is to control the instincts and the passions. Conscience is innate, therefore a natural instinct; its function, then, is to control other natural instincts.

Following my usual method, I do not take these rules from the principles of a lofty philosophy, but I find them inscribed by nature, at the bottom of my heart, in ineffaceable characters. I have only to consult myself about what I want to do: whatever I feel to be right is right, whatever I feel to be wrong is wrong. The best of all casuists is conscience; it is only when one haggles with it that one has recourse to the subtleties of reasoning. The first of all cares is for oneself; yet how many times does the inner voice tell us that in furthering our own good at the expense of others, we are doing wrong! We think we are following nature's impulse, and we are resisting it; in listening to what it tells our senses, we are despising what it tells our hearts; the active being is obeying, the passive being is commanding. Conscience is the voice of the soul, passions are the voice of the body. . . . Too often reason deceives us, we have earned only too well the right to reject it; but conscience never deceives; it is man's true guide; it is to the soul what instinct is to the body; who follows it obeys nature, and need not fear going astray. . . . The sole morality of actions is in the judgment we make of them ourselves.

In this statement we must first note that conscience or moral judgment is made to be entirely natural or instinctual. It is in no way the product of culture (although, as we saw in our earlier discussion, it is not awakened until social experience arouses all the higher faculties). Conscience has two enemies. The first is physical nature, or ego-satisfaction (which Rousseau assumes incorrectly to be identical). The second is reason, which is the child of culture and the slave of the passions.

16 *La Nouvelle Héloïse*, III, pp. 85, 65 ff.

17 *Emile*, ed. P. Richard, pp. 348-49. Cf. the famous exclamation, admired by Kant: "Conscience! Conscience! divine instinct, immortal and celestial voice; sure guide of an ignorant and limited, but intelligent and free creature; infallible judge of right and wrong, which makes man like unto God, it is you that makes the excellence of his nature and the morality of his actions; without you I feel nothing in me which raises me above the beasts except the sad privilege of straying from error to error with the help of an understanding without rule and a reason without principle" (pp. 354-55). Rousseau's implied distinction between the understanding and reason is also worthy of note.
Many readers, in Rousseau's time and later, understood him to have defined conscience as feeling, and to have preached a morality of feeling. (It is also possible to interpret his conscience as a moral sense.) Although there is no doubt about his attachment to the principle of subjectivity, in this phase of his writings, the essential thing is to understand the nature of that subjective experience. And there is ample ground, in the *Profession de foi*, for the sentimentalist reading. Denouncing the empirical explanation of conscience, Rousseau admits that all our ideas are acquired; but he claims that "the acts of conscience are not judgments, but feelings." To exist is to feel, and feelings precede ideas. Feelings do not come from outside ourselves. It is by feelings alone that we know "the propriety or impropriety which exists between ourselves and the things we should respect or avoid." 18 Feelings include the ego-protective and the social or moral.19 Clearly, then, it is in part the desire to preserve the innate and natural character of conscience, in view of the sensationist theory of knowledge, that has impelled Rousseau to sever it entirely from the rational or intellectual aspects of the self.

But Rousseau does give a role to reason. Feeling cannot "know." Man "does not have the innate knowledge" of right and wrong; "but as soon as his reason gives him that knowledge, his conscience impels him to love it. It is this feeling which is innate." God has given us "reason to know the good, conscience to love it, and freedom to do it." 20

However there is a second fatal weakness in rationalistic moral theories which has led Rousseau to the severance of reason and conscience. Reason, he holds, cannot refute the nihilist—as Diderot had tried to do in "Droit naturel." 21 Reason cannot successfully establish the essential of morality:

19 "It is from the moral system formed by this double relationship to oneself and to one's fellows that the impulse of conscience is born." (P. 354.)
20 This phrase also appears in *La Nouvelle Héloïse*, Part 6, Letter 7. In his defense of *Emile*, in the *Lettre à M. de Beaumont* (1762), Rousseau equates conscience with love of order and again declares that it is developed and functions only with "lumières," which enable it to know order. Once it is known, conscience makes us love it.

21 As Charles Frankel has put it, "reason could never argue anyone into having a feeling of obligation." (*The Faith of Reason*, New York, 1948, p. 78.) Rousseau's preoccupation with the challenge of nihilism is frequently apparent. In *La Nouvelle Héloïse*, for example, Julie searches her soul, admits the beauty and usefulness of
There is no use trying to establish virtue by reason alone; what solid basis can we give it? Virtue, they say, is the love of order. But can this love, and should it, win out in me over love of my own good? Let them give me a clear and sufficient reason for preferring it. At bottom their supposed principle is a mere play on words; for I say also that vice is the love of order, taken in a different sense. There is some moral order wherever there is feeling and intelligence. The difference is that the good man orders himself in relation to the whole, and the wicked man orders the whole in relation to himself. The latter makes himself the center of all things; the former measures his radius and limits himself to the circumference. 22

This thought, concerned now with God as the center of concentric circles, continues to this conclusion: "If God does not exist, only the wicked man reasons, the good man is just crazy."

The whole point for Rousseau is, then, precisely this: reason does not supply us with the reason (or motive) for being virtuous, for adhering to a principle of limit (the "circumference"). It only lets us know what virtue is. The instinctive principle of conscience urges or compels our adherence, so that there is no need to refute the nihilist by reasons; nature itself refutes him, aided by faith in God.

Nevertheless there is a lack of consistency in Rousseau's presentation. At the outset, he made conscience more than a motivating force toward the right. It seems rather to be concrete perception of what is right or wrong, either an intuitive judgment or a moral sense, and not merely an admonition telling us, "Do this which reason says is right," or "You are doing what reason says is wrong, therefore I disapprove and you are doing wrong." Rousseau's frequent declarations, in his own defense, to the effect that he feels he is right, indicate a conscience which discriminates. But that is not his theory as he outlines it in the Profession de foi. Nor is it the theory of an "enlightened conscience," according to which reason would transform conscience from a sentimental impulse to something that can be reasoned about. By separating conscience from reason and giving to the latter sole power to discern what is right and wrong, and to conscience the power to move the affective virtue, then asks: "but what does all that count in comparison to my personal interest, and which, at bottom, matters most to me, my happiness at the expense of all other men, or the happiness of others at the expense of mine?" (III, p. 67.)

22 P. 356.
allegiance of the self, he transforms conscience from a cognitive or a judicial faculty to a sentimental impulse.

Rousseau here seems to believe in the intuitive value of reason in discerning right and wrong—the process being apparently immediate, for the more one reasons, the more one falls into error. But frequently, too, he denies any value to reason, and opposes it to conscience and feeling. "In all difficult moral questions . . . , I have always found it well to solve them by the dictate of my conscience rather than by the lights of my reason: the moral instinct has never deceived me." 23 And so we are brought back to the immediate judicial power of conscience, or to its cognitive function as a moral sense.24 However he also writes of himself (speaking in the third person) that he was not virtuous, that is, not able to overcome his self-interest in favor of his duty. "How could he be, always having for his guide only his own heart, never his duty nor his reason?" 25 This leads into still another confusion. He has told us that conscience is our real nature, or again, that part of our nature whose function it is to control our animal nature. But in this same passage he says that nature can only make people good (that is, disposed to taking pleasure in doing good), but not inclined to the sacrifice which is virtue. "The law of nature, its voice at least, does not go that far. Another must then command, and let nature be silent." Virtue requires reason. Does this oppose conscience to nature? Or does it indicate that nature (including the individual conscience) must be superseded by culture?

It would perhaps be a kind of rough summary to say that reason (rationality) awakens the moral conscience, and then prepares its own abdication to the conscience; it also assists the conscience and justifies it. "Thus my rule to abandon myself to feeling more than to reason is confirmed by reason itself." Conscience is an immediate perception of a special kind of truth.

By and large, Rousseau's subjective ethics is one of sensibility and not of reason, but there are strange confusions which result

23 Réveries, Oeuvres, IX, p. 350, also p. 357.
24 We find the same uncertainties in Emile. First he writes: "Reason alone teaches us to know good and evil. Conscience, which teaches us to love one and hate the other, although independent of reason, cannot then develop without it." (P. 48.) And later: "I know only that truth . . . is not in my mind which judges [things] . . . and so my rule, to give myself up to feeling rather than to reason, is confirmed by reason itself." (P. 327.)
25 Dialogues, IX, p. 209.
from the lack of rigorous thinking. Moreover, he is aware of the uncertainty of the power of one natural instinct (conscience) to control another. Consequently, it is not surprising that the same uncertainties persist in his other writings. In the CONTRAT SOCIAL, though the focus is social, distrust of the individual conscience is implied in his theory of the “guide.” In LA NOUVELLE HÉLOÏSE, we have both the contrast between natural goodness and social morality, and the symbolic alliance between Julie and Wolmar. Convention, the opinion and esteem of others, as well as reason (as in the problems of dueling and suicide, among others) time and again prove Saint-Preux to be wrong in following his conscience. If Rousseau’s purpose is to change man into an artificial social being, then natural instincts like conscience are not sufficient to the task. Nevertheless, he will at the same time maintain the absolute validity of conscience.

Doubtless Rousseau feels that in an ideal social order, the unity of presocial man would be restored, with the significant difference that it would be established on a moral level. Virtue would then unite reason and feeling, each strengthening and guiding the other, feeling animating reason, and reason illuminating feeling. In the present social state, which is itself a contradictory dualism of nature and culture, this unity is impossible.

Typical of the attacks on Rousseau’s ethical conceptions were those of Charles Bordes and of Bouchaud, a professor of theology. The former, in a biting satire, writes: “The wicked have passed the word around: this man delivers us from the yoke of laws and religion; he reduces everything to conscience, which tells us nothing.” Bouchaud points to the inconstancy and uncertainty of conscience. To act against conscience is to violate Natural Law; “but it does not follow that someone who followed all the impulses of conscience would always be doing just actions.”

Jean Starobinski’s solution is that “reason appears dangerous to him only insofar as it claims to grasp the truth in a non-immediate way.” Reason and feeling are not contradictory insofar as they are immediate. (Op. cit., p. 50.) This explanation is correct and most helpful, but it does not resolve fully the multiple facets of the problem.

In one and the same letter, it is both categorically denied and affirmed. Cf. LA NOUVELLE HÉLOÏSE, ed. D. Mornet, III, pp. 67, 77. There are similar uncertainties about reason; e.g., II, pp. 110, 1263, 297, 300; IV, p. 245 n. 3.

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Bergier and Bouchaud, PRINCIPES DE MÉTAPHYSIQUE ET DE MORALE, 1780, p. 18-19. The theory of conscience as subjective sentiment was developed further by Bernardin de Saint-Pierre. See “De la Nature de la morale,” OEUVRES, 1818, Vol. 7. Some
The empiricists, taking a diametrically opposing position, considered conscience as nothing more than the internalization of outside standards and pressures. (How conscience originated is a matter we have examined in the preceding chapter.) Face to face with this fact, it was still possible to accept the validity of conscience. But there were some who chose to view moral judgment as a question of experience, with conscience as variable and as flexible as any other human reaction. They did not deny the existence of conscience, but rather its validity.

Citing many examples of enormities practiced in good conscience, either in other cultures, or in any culture when the threat of punishment and censure is removed, Locke had supported both the empirical formation of conscience and its cognitive and moral unreliability. For Hume, conscience was more a matter of the approbation of others than of self-approval. Unlike Rousseau, he does not confuse the role of conscience (or that of reason) in its function in motivation with its function of cognition, denying only the latter in moral matters. Collins argued that conscience went well with determinism, but he reduced it to remorse, that is, fear of or regret for the consequences of what a person necessarily did.

This emphasis on remorse dominates the materialistic approach. The key is given in some of the early manuscripts. In one we find remorse dismissed as the result of instilled prejudices and “a particular disposition of our organs,” a view which the author attempts to substantiate by citing varying reactions to the same deed. If we could get rid of these prejudices, we should be free from remorse. Boulainvilliers, an important writer and circulator of skeptical manuscripts, thought that shame indicates weakness. It befits souls which lack greatness and the courage to be evil. Remorse applies only to the past and is useless for the future. He calls it “an importune and painful sensation, which is the first

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further proponents of the a priori conscience: Meister, *De la Morale naturelle*, Londres, 1781, pp. 73–79; Mme Necker, *Nouveaux Mélanges*, 1801, II, p. 98; Du Pont de Nemours, *op. cit.*, pp. 99–101; Delisle de Sales, *op. cit.*, I, pp. 21–22. In England, Butler and Reid, but they were little known in France. For Kant’s concept of conscience as the judiciary faculty, related to God, see *op. cit.*, pp. 173, 182 and especially 321–22.

30 Essay, Bk. I, chap. II.


33 *Examen de la religion*, Londres, 1761, pp. 121–22. The manuscript dates from about 1711.
punishment of the guilty." 34 This tendency is continued in Vauvenargues, but with a peculiar admixture of elements. Vauvenargues makes light of conscience as a changing and uncertain rule of conduct. He also belittles reason. "The mind is the eye of the soul, not its force. Its force is in the heart. . . . I rarely take the cause of feeling before the tribunal of reason." But he uses this attitude as a weapon against remorse, which, he thinks, derives from reflection. Remorse makes us unjust toward ourselves. 35

All of these writings may be considered as preparations for the principal theorist of materialism in the first half of the century, Julian Offray de La Mettrie. Fundamentally a nihilist in his moral theory—although admitting the necessity for society to impose arbitrary standards—La Mettrie considers remorse the principal obstacle to the emancipated individual. He poses this problem as the starting point for his reflections: if moral principles are arbitrary and human, why are men tortured by remorse? 36 There is no Natural Law. Remorse is instilled during childhood and in adults is a retrogression to childhood. "At first it was only a simple feeling, received without examination and without choice, and which engraved itself as deeply into the brain as a seal into soft wax." Passion stifles it temporarily; but then it returns, "for then the first principles which form the conscience, those with which it has been imbued, come back, and that is what we call remorse. . . . It is, if you will, a brain-path which is renewed, and consequently an old prejudice which voluptuousness and passions do not put to sleep well enough for it not to reawaken sooner or later. Thus man carries his greatest enemy within himself. . . . Fortunately this cruel enemy is not always the winner. Any other habit, either more permanent or stronger, must necessarily conquer it. The best trod path becomes effaced." A new mechanism abolishes earlier structure.

In this way La Mettrie, the medical scientist, dispassionately analyzes the origins and power of remorse (we should say "guilt"), to which he reduces conscience. Then the moralist steps in. The

34 Réfutation des erreurs de Spinoza, Bruxelles, 1731, pp. 208–9. The manuscript predates 1722. See Wade, op. cit., p. 116 ff. and the revealing article by N. L. Torrey, "Boulainvilliers, the Man and the Mask."


36 Anti-Sénèque, ou Discours sur le bonheur, pp. 127–33, 100.
moralist condemns remorse as the "executioner" of happiness. If we want to be virtuous, moreover, it should be by reason, not by habit. The irony, for La Mettrie, is that it is the good who are tormented by remorse, while the wicked have learned to stifle it. Besides, he asserts, remorse does not prevent crime, but only puts in an appearance post facto. The best thing for us to do, he urges, is to throw off this yoke. "Since remorse is a vain remedy for our ills, since they trouble even the clearest waters, without clearing even the least troubled, let us then destroy it; let there be no more chaff, mingled with the good grain of life, and let this cruel poison be expunged forever. . . . We have, then, every right to conclude that if the joys drawn from nature and reason are crimes, the happiness of men lies in their being criminals." To be sure, happiness can come from not doing what will provoke remorse. But we are necessarily determined, not only in our actions, but in our way of finding happiness. The result of a moralistic course, for many men, would be to give up pleasure, and to repent of pleasure is a mere puerility. From another viewpoint, since virtue is a simple matter of arbitrary social institution and is enforced by policemen, remorse is unnecessary to society.

In these statements, La Mettrie has not yet revealed the full power of his speculative nihilism, as we shall see in a later chapter. However his nihilism was obvious to his contemporaries. Voltaire wrote his Poème sur la loi naturelle at least partly to refute him. Diderot mentioned him only with an angry detestation exasperated by the fact that he was himself unable to write the refutation he would have liked to write. Gauchat, who could speak from a different viewpoint, did undertake a refutation. He concludes that La Mettrie is himself one of those "mad dogs" which he gives society the duty to destroy.37

37 Op. cit., I, pp. 190–201. In L'Homme machine, La Mettrie's analysis of the nature and power of remorse is substantially the same, though briefer and attenuated in its nihilistic tendency (pp. 100–3, 133–34). See also Discours préliminaire. To attribute La Mettrie's tendency to "irony" or "paradox" is to deny the essential meaning of his thought and to fall into the trap which he set out in self-defense. It is true that many of his observations may be taken as positivistic descriptions of fact rather than as value statements, but he often crosses the line.

We should note in passing an opinion expressed by Turgot, in a letter to Du Pont de Nemours, that there is no remorse for injustice when that injustice is not condemned by prevailing opinion. (Cf. Locke.) Where slavery is established, there is no remorse. "Do you think that Philip felt any for crushing Greece, and Alexander for conquering the kingdom of Darius?" This statement is of interest, for it implies
In Diderot’s references to the question we encounter the bifurcation of his thought, according to whether he is donning the bonnet of the defender of morality or of the radical with speculative nihilistic tendencies. In “Loi naturelle,” he proclaims the universality of conscience, although he does not inquire into its origin. In “Droit naturel,” his appeal to the general will comes dangerously close to nullifying the personal responsibility he is trying to establish. But the general will is reached through the conscience of individuals, and in his thinking he approaches a form of categorical imperative. “There is no quality essential to your species except the one you require from all your fellows for your happiness and for theirs.” Without this universal, conscience will become confused. Here, as elsewhere, Diderot is aware of the precarious balance of a morality which has only the human as its foundation; yet, this is our lot. His formalistic view of conscience is most evident in his repeated insistence on the virtue-happiness equivalence, a belief which implies that actions are good in themselves. In *Jacques le Fataliste*, a work in which Diderot puts his divergent theories to the test of experiment, the characters, “without taking into account the very deterministic wherefore which would have to be known for complete explanation . . . instinctively know that such an act is desirable, another to be discouraged and punished.”

Elsewhere Diderot pursues a different line of thought. The abbé Hayer warned his readers that although the article “Conscience” in the *Encyclopédie* (by Jaucourt) was acceptable, they should beware of “Fragilité” (by Diderot). Indeed, some of the remarks a permanent, universal right which has been violated—Turgot, we recall, supported Natural Law; and yet the conscience is not always aware of, or affected by the wrongs one does. We have, then, the unusual combination of an a priori moral law and an empirical conscience (*Oeuvres*, III, p. 378).

Condillac’s statement is equivocal. He follows Locke in making all knowledge, and so moral knowledge, the result of experience. “One consequence is that good and evil are not absolute: they are relative to the character of the person who is judging, and to the manner in which he is organized.” (*Traité des sensations*, Part IV, chap. 3, par. 9.) In a note, however, Condillac protests that he is contemplating only a state of isolation. But since he does not allow even innate mental faculties or structures, no other conclusion is possible. His views could not help but lead others toward determinism and exclusive self-interest. We recall other statements: “The statue can love only its self.” “Sensations force it to flee pain and to seek the pleasurable.” The social and moral are therefore superimpositions. In the earlier *Traité des systèmes*, Condillac opposed conscience as a criterion of certitude, inasmuch as that would imply innatism. (*Oeuvres*, II, pp. 98–99.)

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38 See the next chapter and L. G. Crocker, *Two Diderot Studies*, pp. 15–17.
in the latter article are not unlike the views of La Mettrie. In Le Neveu de Rameau, Diderot's protagonist finds no place for conscience in his nihilistic view of man and the world. In the Entretien d'un père avec ses enfants, remorse is characteristically reduced to fear. Diderot rarely speaks of the conscience, but if we follow his materialism, it seems evident that we are no more responsible for the feeling of shame after wrong-doing than for the desire to do what society has chosen to call wrong.

It scarcely need be said that for Helvétius conscience is entirely introjected and is a result of conditioning; this fact he considers a most useful mechanism for society. Like the other materialists, he makes a strong attack on the notion of an innate conscience and is most concerned with remorse. Remorse, he assures us, "is only the foresight of the physical punishment to which crime exposes us." If a man is without fear or above the law, he will indulge in bad actions without remorse, provided he has not contracted the habit of virtue. Remorse (conscience) depends on custom and education and varies widely. This proves that it is nothing more than fear of punishment or shame—which, in turn, is always reducible to physical pain.

D'Holbach, like Diderot, believes in the universality and the efficacy of conscience and in the reduction of remorse to fear. There are only two elements in behavior according to his analysis. Our passions are a natural part of our temperament; the use we make of them depends on our habits and ideas, which come from education and society. "These are the things which necessarily decide our conduct." Remorse is the "painful feeling aroused in us by the present or future effects of our passions." If the effects are useful to us, we have no remorse. But we become worried, dissatisfied with ourselves, and feel shame, if we fear the hatred, scorn, or punishment of those whose esteem, favor, or affection we need. Here d'Holbach's conclusion is like that of the moralistic Diderot and unlike that of Helvétius. There is no wicked man who is not ashamed of his conduct and who does not suffer more than he

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40 Oeuvres, V, pp. 295-96.
41 De l'Homme, pp. 83-84. All supposedly psychic phenomena are only physical.
42 Système de la nature, I, pp. 254-58.
43 In Le Système social, d'Holbach describes conscience as putting ourselves in the place of others and judging ourselves from their viewpoint. "Thus conscience is in man the knowledge of the effects which his actions produce on others."
gains. He feels shame, despises and hates himself, and is always ashamed in his conscience. (On this point Diderot's speculative nihilism is far more radical.) But there is an important reservation: all this depends on what our society approves or blames; we do not blush for actions which are not disapproved. Conscience is, then, purely a function of the cultural milieu. In a licentious country, no one is ashamed of adultery; no thief has remorse in the company of thieves—we may add, no murderer where murder is condoned. However, d'Holbach makes still another qualification: all men necessarily approve useful actions and disapprove harmful ones, which are called vices. This last statement does not fit very well with the preceding ones. Nor does what follows: that even in the most vicious and corrupt societies, the fundamental distinctions remain alive in each conscience; so that once more we may say, no wicked man can be happy. D'Holbach returns, indirectly, to universals and formal values of acts, although he has sought to evade the a priori conscience by a utilitarian determinism. "Thus the system of determinism," he concludes, not very convincingly, "establishes morality on an unshakeable basis."

D'Holbach's theory is further rationalized in La Morale universelle, where he writes: "Only profound and persistent reflection on the immutable relationships and duties of morality can enlighten the conscience and show us what we ought to do, or avoid, independently of the false notions which we find established." It seems that we can, then, after all, rise above the empirical formation of our conscience, to the rational perception of objective truths. But what is the motivation for such reasoning? Only the necessarily determined results of an education which has instilled the desire to please and be approved (elsewhere d'Holbach considers these motives as necessary constituents of human nature). Thus d'Holbach seems to have trapped himself in a circle. One may nevertheless conclude that for d'Holbach conscience is a hybrid. It is not in itself natural or innate, but rises necessarily out of other natural feelings and social experience. It is irrational, since it absorbs contrasting and contradictory values from the

"In Le Système social, he puts the same idea this way: "A collective shame, or one which is spread over many heads, becomes a light burden for each one of those who bear it. When public opinion is vitiated, we end up by glorifying vice and infamy." (Ibid., pp. 155–56.) For similar ideas in La Morale universelle, see I, pp. 58–59.

44 Ibid., I, pp. 59–61.
Corollaries

milieu; but the intellect can enlighten it and make it autonomous and critical. Objective values exist, but conscience is not necessarily a perception of those values.

The chief weakness and danger of the eighteenth-century empirical view is brought out most clearly in d'Holbach (and in Helvétius). The conscience and its operations can no longer be spoken of as a moral experience. It is reduced to a calculation of self-interest, more or less habitual or reflective. It leaves the door wide open to the rebellious amoralist. And in fact, the foes of the new philosophy were quick to seize on this deficiency in their refutations of d'Holbach. Holland denies that remorse and shame are “reasonable ideas after a disadvantageous act.” We have none for involuntary disadvantageous acts, or for acts committed by error or ignorance, but only on the feeling of freedom, of the possibility of having acted otherwise. Richard insists on the conscience’s power of autonomous judgment, regardless of approval or the absence of social disapproval. Le Franc de Pompignan also asserts that self-reproach is based on a different principle, on a predisposition antecedent to experience and reflection. The opinion that our actions are necessary would obviate remorse. D’Holbach’s “morality,” he concludes, is only calculation of self-interest.

Sabatier de Castres, Sade, and Rivarol, despite vast differences, are related by their opposition to a liberal, humanistic philosophy. The young Sabatier was associated with the philosophic group. At that time he could write: “One does not stifle at will the lights of reason, nor in consequence the voice of conscience. Love of order is and will always be written in all hearts. If man were naturally wicked, as some philosophers have claimed, he would never have remorse.” Sabatier, the cynical and opportunistic counter-Revolutionary exile, expressed a different opinion. Conscience now is only conformity with established opinions. There is no “Silver

\[\text{Op. cit., pp. 209 ff., 281–92. Saint-Lambert’s analysis of conscience is, in practically all respects, extraordinarily close to d’Holbach’s. There are similar gaps in logic. He assigns happiness as the functional goal of conscience, but assures us that it cannot be reached by one who separates his own happiness from others’. However, according to his own reasoning, this is so only if a person’s experience, and the kind of generalization he has developed the habit of inferring from it, have led to the formation of that type of conscience. See Catéchisme universel, II, pp. 18–19, 51; Analyse de l’homme (written 1788, publ. 1797), I, pp. 133–36, 159.}\]
\[\text{Dictionnaire des Passions, 1769, II, pp. 349–50.}\]
Rule” written in all hearts. Is it not all too clear that neither natural nor civilized man follows it? “Virtue is so little natural to man that its very name designates an effort.” As for the Golden Rule, it is so positively contrary to Natural Law, that compliance can be obtained only at the price of violence and threats.

Sade’s principal target, like La Mettrie’s, is remorse (and honor and reputation), the great difference being that he is a practicing nihilist, in open revolt against society. In his early and superficially moderate Les Infortunes de la vertu (1788, unpublished), he puts into the mouth of the first of his line of female corrupters of virtue an exhortation to her victim to recondition herself against remorse. “Repeat often what gives you remorse and you will soon dissipate it.” Since the prohibition of crime is against nature, there is no crime; consequently remorse comes only from the prohibition and not from the act. Elsewhere he analyzes conscience as flexible, molded by education, and denounces “the heart” as the “falsest guide we have received from nature.” Curiously, but logically, the terminus of Sade’s nihilism is also remorse, but in reverse.

That is, then, an enjoyment lost (une jouissance manquée), for those of crime do not tolerate restrictions. I know them; if the imagination has not conceived everything, if the hand has not executed everything, the delirium cannot have been complete, because there always remains the remorse: “I could have done more than I did.”

Antoine de Rivarol’s evolution was not unlike that of Sabatier. Before the Revolution he was an independent thinker who rejected both traditional Christianity and systematic deism. In his early work, written in refutation of Necker’s Importance des idées religieuses (1787), “he preaches a life attuned to the order of nature as revealed by reason; a religion independent of the institutions of God and man.” At this stage, he is closer to Rousseau and declares that “through direct communion with the

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50 Pensées et observations . . ., Vienne, 1794, pp. 36–37.
51 Les Infortunes de la vertu, 1930, pp. 171–73.
inner forces of nature, an individual may discover moral laws which have been distorted or subverted by institutions." Conscience "is the light which instructs each man coming into the world," though it must be developed like all our faculties.

Later on, however, Rivarol's attention became riveted on the need of controlling the masses and the dangers of "philosophy." Then he writes that conscience derives from education and easily withers away, so that "men and entire peoples may be brought to a frightful point of immorality." Rivarol is of course thinking of the Reign of Terror, but we can find twentieth-century analogues. "There are examples of men who have lost their remorse, and of men who have never had any." Nature cannot be trusted; it is not she who teaches men that it is better to be unhappy because of misfortune than because of remorse. There is no absolute justice. There is only usefulness, need, fear. Our justice cannot therefore be God's, and we are free "to turn our reason and our conscience to our own profit. There is no morality except from man to man." Nature is a jungle, war is its law and victory of the strong is its only code. "If nature suddenly produced a race superior to ours, we should at once be as guilty as sharks and wolves." Under these conditions, there is only one safeguard. Without the conditioning of small children, who could say what would become of the human race? In all this we can already see the seeds of totalitarian nihilism (as opposed to Sade's anarchistic nihilism).

The empiricists, then, for the most part saw moral experience as a question of expediency, with conscience as variable and as flexible as any other human reaction, although objective needs and relations, when related to the goals of self-interest, provide some consistent tendencies. A few extreme immoralists denied not the existence of conscience, but its validity. Both viewpoints have been carried forward into the twentieth century, a succession of nihilists representing the latter, and the main body of psychology supporting the former.

The most important figure in modern psychology is Freud. He accounts for conscience in terms that are in some respects a newer version of eighteenth-century theories, the great difference being

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Ibid., p. 252.

De l'Homme, 1800, pp. 175-76, 143-44, 211 ff. R. G. Law's article ignores this aspect of Rivarol's thought. He does not note how the statement "We may train a child for virtue as a falcon is trained for the hunt" follows in the radical philosophical line. (Op. cit., p. 253.)
the concept of the unconscious or subconscious mind. In Freud’s theory, conscience is something quite irrational and a complex phenomenon. Its origin lies in resistance to the Oedipus complex, in “instinctual deprivations,” and its torments “correspond” to the child’s dread of losing his parents’ love. It includes characteristics and traditions of the race, “repetitions of some primeval phylogenetic experience,” and an inherited cultural deposit in the id.\(^{57}\) Freud thus apparently admits some universals. In its individual genesis, the conscience is the internalization of the super-ego, an identification with the father or father-substitutes.\(^{58}\) For the most part, the content of conscience varies with that of the superego, that is, with the age and the culture, and therefore reflects folkways. “During the whole of a man’s later life it represents the influence of his childhood, of the care and education given to him by his parents. . . .”\(^{59}\)

One may question whether Freud’s theory really accounts for the existence of moral experience, for the jump, which he presupposes, from fear to wrong, from must to ought. There are many actions which follow Freud’s pattern and produce no moral experience. A child is told not to touch a hot iron, and perhaps he does. The result of the experience is a “must,” or a fear, but not an “ought,” or a wrong. Or we may suppose that the child has been told not to torment a dog; he does, is bitten, and the same result ensues as with the iron. But suppose the mother explains to the child that “it is not nice,” or right, to torment a dog, because the animal has feelings, too, and “you would not like someone to do it to you,” etc. Then the result eventually is different. Eventually—because this type of experience cannot take place in a very small child. Why is this so? It cannot take place until the child has reached a stage of mental development at which he is capable of objectifying the world—of treating other beings as subjects, existing in and for themselves, and not only as objects, related to his own subjectivity.\(^{60}\) It is this, and the power of abstraction, which

\(^{57}\) An Outline of Psychoanalysis, New York, 1949, pp. 121-23. Civilization and its Discontents: “Conscience is the result of instinctual renunciation, or: Renunciation (externally imposed) gives rise to conscience, which then demands further renunciations” (p. 114).

\(^{58}\) Civilization and its Discontents, pp. 120, 114 ff.

\(^{59}\) Outline, loc. cit.

\(^{60}\) Jean Piaget has shown that the small child lives in a purely subjective world of space, time, and cause. Piaget holds the moral experience to be associated with the development of the imagination, which creates the power of projection or empathy. (Op. cit., pp. 417-35.)
Corollaries

lead to the suprapersonal view which characterizes the uniquely human moral experience—judgment (or indignation) on "the principle of the thing," concern for values which we would not like to see disappear from the face of the earth. The empirical explanation leaves no room for "the sense of fairness" which we see even in a child, for the difference between the cry of the child who is punished and the cry of the child who is punished unjustly, for the distinctive reaction of the human spectator who says, "This is not fair, not right." Digestion cannot take place without eating, but this does not make eating an explanation of digestion; so it is with Freud's description of the formation of the conscience.

More recently, some new schools of psychology, including the Existentialists, have thrown off or gone beyond the Freudian analysis. Erich Fromm is dissatisfied with the reduction of moral experience to "a reaction-formation against the evil inherent in man." He dubs Freud's concept "the authoritarian conscience." It exists, to be sure, but it is not the only moral conscience. "Properly speaking, these people do not feel guilty but afraid"—the repetition of the eighteenth-century radicals' view is striking. The authoritarian conscience represents an arbitrary, repressive tyranny. Fromm makes a convincing case for a "humanistic conscience," one based on the positive potentialities for good, on our reaction to ourselves, on being true to ourselves. This conscience is characteristic of a productive person living at a higher level than mere social adjustment.

Eighteenth-century theories of conscience correspond, in general, to the a priori and empirical views of moral experience, but the analyses offer sufficient variation to justify the further examination we have undertaken. Eighteenth-century thinkers essayed the first serious exploration of the origin and nature of conscience. Many of their conclusions, transformed by modern psychology, can be recognized in twentieth-century theories. The empirical view was an important step forward to a scientific understanding and methodology. Nevertheless, the fact that conscience originates in childhood conditioning is not a complete explanation of conscience, but rather a description of the process of its forma-


$^{62}$ Note also: "Guilt feelings have proved to be the most effective means of forming and increasing dependency; herein lies one of the social functions of authoritarian ethics throughout history." (P. 155.)
Guilt and remorse are indeed forms of fear, induced by external authority; but they are also self-generated reactions toward the functioning of our self. Often they are weakness, leading to crippling guilt neuroses; but they are also the mechanisms whereby we develop the distinction between right and wrong. We can understand the materialists' concentration on reducing conscience to remorse, and remorse to fear and habit, in the light of their desire to deny the existence in men of any a priori, or of any special psychic faculties that would separate them from the universal kingdom of nature.

To ask why in ethics is frequently useless, at least in regard to subjective moral experience; to find an explanation, we have to leave the field of moral experience, and then we are not really explaining. Why do we have esteem for ourselves and a feeling of pleasure when we satisfy our conscience (and shame or guilt when we do not)? To reply: because we were given approval or praise when we were helpless, irrational children, and this gave us pleasure (and the reverse, pain) may be the psychological explanation of the genesis of conscience; though it is perhaps insufficient, since we must go back a step further and account for the need for approval and the aversion to blame, as products of the insecurity of our being. These steps describe our development. But would there be such a development if man were not first, in essentia, a moral being? To offer as an explanation of conscience the fact that we are moral beings is of course tautological. And yet, is there another satisfactory answer?

A final word on the relation of conscience to moral nihilism. The standards of the group never become ethical standards merely by being required or approved by others, but only when we personally experience them as morally right. A person may say, "I am not interested in honor, duty or virtue. I find my happiness, without remorse or guilt, in so-called immoral actions. I make no apologies, for this is the way nature has made me." Such a person would seem to be in a fairly impregnable position. Perhaps there is no reply, other than the arbitrary punishment justified by La Mettrie. Or perhaps we may say that the self is not entirely self-sufficient, but depends, for its very existence as well as for its happiness, on the whole of which it is a part. Our acts take place

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in a context of institutions and relations from which it cannot, even if it will, dissociate itself. Even if we proclaim an anarchic right to happiness, we cannot conceive of happiness except in the framework of social existence.

II. Justice and Law

An important question which was debated throughout the seventeenth and eighteenth centuries concerns the relation between justice and law, and especially a particular aspect of that relation, that of logical priority. We shall not investigate the concept of justice itself. On that score there was general agreement that justice is giving to each his due—though Meister once queried whether the predicate of the definition was any clearer than the subject. ¹ There was agreement, too, that justice was the cardinal virtue, the source of duties, though benevolence, humanity and "public spirit" gradually became its rivals. Some, it is true, associated justice with the principles of equality and reciprocity, while others, following Locke, held to the narrower view that it was bound to the right of property. The question of priority, however, is of particular interest, because of the highly significant division of thought which it evoked. It is closely related to the theory of the genesis and nature of moral experience, and has political implications, as well. The latter will be manifest in our discussion. As for the former, we may briefly say that precedence should be accorded to justice by those who hold an a priori theory, like Voltaire's, which makes experience a mere occasional cause for the development of latent judgments. Priority should logically be given to law by those who consider experience as effectively formative, since there are no predetermining abstract truths in the mind. Another way of posing the question might be this: does unfairness come from rules, or do rules derive from notions of unfairness? ²

In general, the expected pattern is followed. Partisans of Natural Law, or, those who claimed mathematical demonstrability for

¹ De la Morale naturelle, p. 157.
² Sumner, Westermarck, and other modern relativists hold to the first thesis. In actuality, there is no either-or; the two propositions are complementary.
ethical laws, maintained the priority of justice. Locke, Cudworth, Cumberland, and Wollaston were among this group in England. “To pretend by a law,” writes the latter, “to make that just which before and in itself was unjust” is to ordain that what is true shall be false. In France, Meslier pointed out that if there are immutable moral laws, like mathematical truths, no one can change them. Montesquieu was deeply concerned with this problem. In his *Pensées* he notes, about Hobbes’s making law the source of justice: “I am sorry for it; for, being obliged to live with men, I should have liked there to be in their hearts an inner principle which would reassure me about them...” A review of the lost *Traité des devoirs* informs us that Montesquieu “shows that justice is not dependent on human laws, that it is founded on the existence and sociability of reasonable beings, and not on the personal inclinations or will of those beings.” The same viewpoint is apparent in the *Lettres persanes*. However, the ardor of this faith does not quite coalesce with Montesquieu’s political realism, which is far more concerned with the “is” than with the “ought.” The theory is fine; but in practice, the conservative holds laws sacred. It is a “bisarrerie” of human nature that, unfortunately, sometimes makes it necessary to change them, but then only with the greatest precautions and solemnity. And then, the remedy is likely to be worse than the ill. “Whatever the laws are, we must always obey them, and regard them as the public conscience, to which private consciences must always conform.” This does not effectively coincide with *Pensée* 1906: “A thing is not just because it is a law, but it should be a law because it is just.”

In a paper read before the Academy of Berlin in 1745, the indefatigable Samuel Formey took up the question, starting from the disagreement between Grotius and Pufendorf. Grotius had said that justice is independent of law, and prior to it. His successor had asserted that, on the contrary, actions are morally indifferent without law. Formey tries to conciliate the two views. The dispute, he claims, is only a logomachy. Taking “just” to mean

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7 Lettre LXXXIII.

8 *Ibid.*, Lettre CXXIX.
the morality of actions, then it is indisputably prior and fundamental to law. Taking the term to signify the obligation to conform our actions to moral qualities which have been established by rules and laws, then it is of course posterior to law. In fact, "equity," and not "justice" is the term Grotius should have used; but in all other respects he is right and Pufendorf is wrong. A law can most surely be inequitable, even if it cannot be unjust. Formey's reasoning leads one to wonder whether a law can, then, make what is inequitable "just." He sees the difficulty and replies in the negative, but does not dispose of the logical problem which grows out of the separation of the two terms.9

Voltaire's thinking on this question is once again characterized by the coexistence of Natural Law and utilitarian tendencies. In the Traité de métaphysique (1734), he denies an absolute justice, one unrelated to men; "we have no ideas of justice other than those we have formed of any action useful to society, and in conformity with the laws established by us for the common good." 10 But in the same chapter (IX) in which this empirical relativism of fact is expounded, Voltaire also affirms an immutable justice founded on Natural Law. We have seen that he expresses this view frequently throughout his life. He declares specifically that laws properly depend on a prior, immutable justice.11 However, he constantly defines virtue, in the Traité and elsewhere, as conformity to established laws. The difficulty is obvious to the reader, if not to Voltaire. If justice, or being just, is a virtue, and justice is prior to law, then obedience to law cannot be a universal virtue, for obedience to an unjust law will make a man unjust, although, according to the definition of virtue, he is just. To obviate the dilemma, we must either make the further assumption that laws do, in actual fact, establish the justice demanded by Natural Law—an assumption which is empirically false or unverifiable, as Voltaire's own battles testify; or else make the definition conditional upon the fact. Voltaire does neither. As a pragmatical conservative,

9 Histoire de l'Académie de Berlin, Berlin, 1746, I, pp. 97–101. A similar distinction had earlier been made in the anonymous ms. Difficultés sur la religion, fol. 63. When Toussaint, however, asserts the independence of laws and justice, he means only that laws may be in contradiction with the immutable Natural Law and, like religion, may push people to barbarities. (Les Moeurs, [1748] 1749 ed., pp. xxiii–xxxv.)
10 Traité de métaphysique, ed. H. T. Patterson, p. 16. (Italics added.)
he believes in obedience to laws. As a crusading reformer, he strives constantly to make laws conform to an ideal of justice which they did not represent. There is no contradiction whatsoever in his mind; both are requisite for the good of society, which remains his immutable lodestar.

The *Encyclopédie* defends the priority of justice.\(^{12}\) The Physiocrats, believing in an absolute justice and "an order of duties and rights which are physically necessary, and consequently absolute," adhered strongly to this group.\(^{13}\)

We have reserved for separate mention two men whose theory of moral genesis would have led us to expect their adherence to the opposite camp, La Mettrie and d'Holbach. La Mettrie is the objective observer of the world. Speaking from the viewpoint of relativism, he takes the opposite stand from most of the apriorists: there is no absolute justice, equity, vice, or crime, but only in relation to society—"beautiful arbitrary relations" he calls them.\(^{14}\) This statement may seem to eliminate the priority of justice. But let us observe how La Mettrie works back to it. "What belongs to the law produces legal right" (*droit*); but this right in itself is neither rational right nor the right of equity; it is a "right" based on force, "which often crushes a wretch who has reason and justice on his side."\(^{15}\) How can La Mettrie, who does not believe in any objective or abstract right, bring the law before the tribunal of "reason and justice"? The concealed motive is his nihilism, his desire to show the unjustifiability of society's restrictions on the individual—though, with characteristic clear-sighted honesty, he recognizes fully that society must protect itself, with or without

\(^{12}\) See Jaucourt's "Équité" and Romilly-fils' "Vertu." In "Relation," however, Jaucourt, who was more a copyist than a thinker, expresses the contrary opinion. "It is the conformity or disconformity of our actions to some law (to which the legislator has attached, by his power and will some good or evil which we call reward or punishment) that makes these actions morally good or bad."

\(^{13}\) E.g., Le Mercier de la Rivière, *L'Ordre naturel*, p. 8, and especially pp. 55–61. He points out that we would discriminate between two laws imposing death, the one for murder, the other for walking at a certain hour. Also Mably: "What! . . . is it possible that laws made by tyrants can be just! What! If the thirty tyrants had wanted to prescribe [such laws] to the Athenians, or if the Athenians had declared themselves in favor of those laws, would that be a motive to submit to them? Absolutely not." (*Droits et Devoirs du citoyen*, *Oeuvres*, XI, pp. 332–43; also, XI, pp. 256–57.) Christian apologists of course adhered to the traditional Natural Law view. See also, as defenders of prior justice, Linguet, *Théorie des loix civiles*, Londres, 1767, I, pp. 230 ff.; Condorcet, *Observations sur le 29e livre de l'Esprit des lois*, chap. XVIII.

\(^{14}\) "Discours préliminaire," pp. 13–32.

moral justification. "What protects the weaker against the stronger," he adds in a loaded sentence, "may therefore not be equitable." Laws may, consequently, need to be rectified; not according to an abstract or absolute justice, in which La Mettrie does not believe; but only according to the interest of the group: "for that is the fixed point from which one can judge the just and the unjust. . . . One may say of [the laws] and of all human actions, that they alone are just or equitable which favor society, they alone unjust, which hurt its interests." In a word, there is really no inherence of justice or equity in law; "what is in the province of legality absolutely does not presuppose equity, which is recognizable only by the sign and characteristic I have mentioned," that is, the interest of society. La Mettrie thus offers a redefinition of justice, in terms of the community welfare, which becomes an abstract or objective criterion replacing Natural Law, and so the criterion having priority to law and entitled to judge the law. Law does not create justice, because it does not necessarily guarantee general interest, which is "justice." It is clear that if my own interest were to conflict with the general interest there would be no higher tribunal, no abstract, eternal, or certain right or wrong to which the dispute could be referred; there is only a contest of interests, a play of force, in which the community has, among other advantages, that of calling its interest "justice." With one blow, La Mettrie has undermined both the validity of law and the belief in a moral justice divorced from interest.

D'Holbach exalts justice as the basic virtue and social link. No relationship, no power has the right to force us to be unjust, "because justice is the support of the world . . . the true counterweight to the love we have for ourselves," the control of personal interest in favor of the permanent and larger, on which happiness depends.16 Like La Mettrie, d'Holbach, by telling us that the law, to be just, must favor the "general interest" of society, identifies justice with "general interest"—whatever that phrase may mean.17 He, too, sets up reason as a criterion higher than law. Reason's power to discern the general interest makes it a touchstone for the prevailing mores, which is always a system that tends to perpetuate itself by introjection into the individual conscience.18 Justice, then, is prior to law.

17 Système de la nature, I, p. 154.
18 Ibid., I, pp. 157–58, 253.
It is not then the frequently irrational will of a people, it is not its special interest, it is not its laws and usages which make just what is not just by its nature; there is nothing really just except what is in conformity to the rights of mankind. Violence and conquest may be in conformity with the interests of an ambitious people; those who satisfy its passions may be in its eyes estimable and virtuous persons; but such a people is only a mass of evildoers and murderers to anyone who has healthy ideas of international law, insolently violated by a nation which is an enemy of all others. The permanent interest of man in general, of the species, of the great world society, demands that one people respect the rights of another, just as the general interest of a particular society demands that each of its members respect the rights of his associates.19

In this sincere and eloquent passage, we can see how fundamentally different d'Holbach's thought is from La Mettrie's, and why he detested the earlier materialistic atheist, despite all they had in common. La Mettrie was the disillusioned, detached observer, stripped of ideals, the egoist concerned with personal pleasure, the scientist aware of the individual and social mechanisms engaged in a natural struggle of power. D'Holbach, as the italicized words reveal, was a moral idealist. For him will should submit to reason, things are right or wrong by their nature, an abstract norm exists. As a sensationist and materialist, as a proponent of scientific method, he recognizes the empirical character of moral and legal codes and also identifies justice with the "general interest." But it is clear that that much used and rarely defined phrase has a different meaning and stands for a different outlook than it did for La Mettrie. The "permanent interest of mankind in general," taken in combination with the other key words of the quotation uncover, beneath the frequent appearance of pragmatic utilitarianism, a belief in rational ideals and moral absolutes which identify d'Holbach in substance, though not in form, with the most idealistic of the Natural Law thinkers.

While not all empiricists place law before justice, only those who are empiricists, with a rare exception or two, do take this stand. As one view always seems to evoke its contrary, so we find this position expressed early among the Greeks. In the ideas of Thrasymachus, in Plato's Republic, we already find what is and will remain the essential of this position, as its adherents might

19 La Morale universelle, I, p. 92. Italics added.
express it: the abandonment of an imaginary "ought" for a de facto acceptance of the world as it is. In all societies, he argues, those who seize power dictate the laws, dominate education and religion, manipulate rights, privileges, and conventions in favor of themselves and their class. The resultant code becomes what is accepted as justice, and in that name wins the allegiance of the masses. A really strong man will rebel and seize power; becoming a hero in his turn, his will is then the source of conventional morality. In this doctrine, we can recognize seeds of nineteenth-century theories of class exploitation and of hero worship, as well as the empirical formulations of conscience and moral genesis.

Much closer to the period we are studying, Montaigne rallies to a similar kind of reasoning. "Now the laws maintain their credit, not because they are just, but because they are laws: this is the mystical basis of their authority; they have no other, and this serves them well. . . . Whoever obeys them because they are just does not obey them for what he justly should." This view was approved and expanded by Pascal, although with a different aim. Not only is the justice of man a mere synonym for the existing customary and power establishment, but to speak of a justice which does not have the power to make itself real and effective is meaningless. It is probable that Gassendi was also sympathetic to this general position.

More influential than any of these writings was the repeated and detailed exposition of Hobbes. It is clear, for Hobbes, that civil laws are not founded on a prior definition of right and wrong. Quite to the contrary, it is law which defines the notions of justice, of right and wrong, and confers on them their power or quality of obligation. One cannot speak of justice or injustice prior to the existence of civil laws. Nor can one speak of an unjust law: the law, by definition, is always just. Hobbes's influence is evident not only on those who adopted his ideas, but even more, in the continuous thunder of refutations and denunciations which they aroused in England and France. Among his chief followers we may, on this matter at least, count Spinoza. Before civil law, writes

20 The Republic, 344A–344C. There is some contradiction in Thrasymachus, since he condemns tyranny as an injustice.
21 Essais, III, p. xiii, "De l'Expérience."
22 Pensées (Brunschvicg), 298, 312.
Spinoza, there were only "the general laws of nature, there being no difference between pious and impious . . . because there was no possibility of justice or charity." Not until droit exists as an effective formulation "does it dawn upon us what is justice and what is injustice, what is equity and what is inequity . . . justice is dependent on the laws of the authorities, so that no one who contravenes their accepted decrees can be just. . . . Wrong is conceivable only in an organized community; nor can it ever accrue to the subject from any act of the sovereign. . . ."

Among the Natural Law doctrinaires, Pufendorf stands alone in his attraction to this point of view. Rightness, he declares, is only "the conformity of the action with the law." Since this position belongs more properly to empiricists, we are not surprised to see it strongly upheld by Hume, although the other British empiricists did not, in the main, follow him. Justice is ranked by Hume among the "artificial virtues," not among the "natural virtues." After conventions are entered into, "there immediately arise the idea of justice and injustice; as also those of property, right, and obligation."

Among the French writers of our period, it is somewhat surprising to note Father Buffier's acceptance of the legalistic thesis. In his Traité de la société civile (1726), he admits, rather obscurely, a "limited kind of equity which may correct law," but asserts that "equity in general is manifestly the conformity of our judgment and of our will with the Law, or with the spirit of the Law." With Helvétius, on the other hand, this position is obviously a part of his system. Justice and injustice presuppose a society and laws. They are invented by men in order to live together. If men had not made conventions, "there would not have been any general interest, consequently no just or unjust actions." Thus there is no universal probity, for it would have to

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27 Treatise of Human Nature, ed. cit., pp. 59-60, 82-97. 133-34. The objection was frequently made that without a prior notion of obligation and justice, there was no obligation to be faithful to the first convention.

28 Pp. 179-80. Similar views are found in the anonymous L'Anti-naturaliste, 1756, pp. 15-14, and in Morellet's "Sur la Liberté de la Presse," Mélanges, 1818, III, pp. 41-42.

29 De l'Esprit, p. 276. Prior to conventions are personal interest and physical sensation. Therefore physical sensation is the author of all justice!
consist in "the habit of actions useful to all nations," and there are no such actions. However nations could create universal probity by agreeing to laws and conventions. In general, we may define injustice as "the violation of a convention or a law made for the advantage of the majority. Therefore injustice does not precede the establishment of a convention, a law and a common interest." Helvétius thus leaves the social culture free to set its goals and standards and to mold men's minds and characters in the selected direction.

Another unexpected proponent of legal priority was the anarchistic monk, Dom Deschamps. According to his theory, we have no conscience, or notion of right and wrong, just or unjust, before positive laws, from which they are derived. He concedes that the critic may inquire, Would laws have given us such notions if they did not find in our hearts this prior principle: "it is just to obey a law emanating from legitimate authority"? "Yes," replies Deschamps, "if it is true that this supposed prior principle is and can only be a subsequent principle, consequent to already existing law. And that is what it really is; for alone Law could enable us to know what a Law is . . . and it is only inasmuch as we are under Law that we can judge whether or not it is just to obey the Law." This is quite peculiar reasoning, and one should really like to ask the friar how the first law came about, without a notion of law. Searching a bit further, we can discover the motive of this bizarre reasoning in Deschamps' ultimate purpose, the promotion of anarchism. Disentangling some involved sentences, we find that his final cultural stage, "the state of morals," excludes all laws, and any idea that there is a law which we must obey.

Note the significant implied identification of general interest with the interest of the majority.

Helvétius' ideas were attacked by Hayer (op. cit., VII, pp. 25-33): we ask ourselves about the justice of an act we are about to commit, not only about our interest, "or else I should have as a principle that everything which is to my advantage, or to that of Society, is, by that fact alone, just and equitable." Hayer then shows how this principle would lead to anarchy in human affairs. Sylvain Maréchal tried to defend Helvétius by a compromise view. (Examen des critiques du livre intitulé "De l'Esprit," Londres, 1760, pp. 17-19.)

La Voix de la raison, Bruxelles, 1770, pp. 11-18.
From a still more radical viewpoint, Sade espoused the priority of law over a so-called justice. With keen cynicism he points to one of the chief weaknesses in the thinking of Helvétius and other *philosophes*, a fault which Hayer had also denounced, and which we shall have occasion to mention again.

Almost always, moreover, the laws of government are our compass for distinguishing just and unjust. We say, the law forbids such an action, therefore it is unjust. Nothing is more deceptive than this way of judging, for the law is directed towards the general interest; now nothing is in greater contradiction with the general interest than individual interest, and at the same time, nothing is more just than individual interest. Therefore nothing is less just than law, which sacrifices all individual interests to the general interest. But man, you say, wants to live in society, and so he must sacrifice a part of his personal happiness to the public happiness. All right; but how can he have made such a pact without being sure of getting back at least as much as he gives? But . . . you burden him much more than you satisfy him. . . .

Indeed, if one were to adopt such a viewpoint, one could identify justice with individual welfare as readily as with "general welfare." In the first case, as for Sade, it becomes an impulse of nature, in the second, an adjunct of culture. But in neither case is the equivalence meaningful, from the ethical point of view.

With this background, we may now retreat one step chronologically and examine the undeclared contention between Diderot and Rousseau, which is the most important nucleus of the eighteenth-century controversy on the matter of justice and law. In dealing with Diderot's opinions, we may disregard the occasional pronouncements of his more radical moods, in which he declared justice to depend on law, since these were unknown to Rousseau. Diderot, insofar as Rousseau knew his thought on the matter, believed that men naturally form judgments of right and wrong.

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82 Sabatier de Castres' opinion fits the general outlook of his post-Revolutionary writings. "The words justice and injustice, good and evil, goodness and wickedness, express only ideas relative to the established laws and customs." (*Penseés*, pp. 18–19.)
83 See *Introduction aux grands principes*, II, pp. 85–86. On p. 98 *ibid.*, he denies that men had notions of justice before laws were made. Conventions came from property, and presupposed no idea of justice but only of common interest. [The distinction between justice and common interest is to be noted.] The idea of justice grew out of the observation or infraction of the rules.
84 Antoine Adam's interpretation of a passage in the *Apologie de l'Abbé de Prades* is most dubious. Diderot writes (I, p. 455) that in the state of nature men, living
This belief permeates his articles in the *Encyclopédie*, which are his most significant pronouncements on the subject.

It was the article "Droit naturel," we recall, which evoked Rousseau's disapproval. Diderot begins his discussion with an empirical statement. Rights are the foundations of justice, but in the state of nature, in which everything belongs to everyone, there may be no "distinct idea" of rights or obligations. However, whether the idea of justice is distinct or indistinct at that stage, it develops promptly in association. At any rate, Diderot does not here pursue the question of genesis which he has raised, but proceeds at once to a theoretical analysis. The essential point is the implicit acceptance of Grotius' viewpoint, although with a technical correction: "... that equity is to justice as cause is to effect, and that justice can be nothing but equity declared." This point is made clearer in the article "Juste," in which Diderot amends Grotius' terminology: there is indeed no justice or injustice before laws, but there is equity prior to all law; equity and laws together constitute justice. Consequently, "justice," in the sense of "right," precedes law. Justice, in the sense of an enforceable legal command, is subsequent to law, provided that law does not violate equity, by which is meant our rational approval of ends and means. With law, we have positive (in scholastic terms, "perfect") obligation. But no law can be the source of moral judgment, nor can a legislator's will change moral relationships, which inhere in the needs of self-preservation within an association. The law, then, is not *per se* the test of the rightness or wrongness of an action.

We need not discuss each instance that Diderot reiterates this opinion. Its recurrence in two of his works is worthy of brief

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38 "... in the social acts of savage and barbarous peoples ... and even in indignation and resentment. ..." (XIV, p. 300.)

39 "If we understand by *just* and *unjust* the moral qualities of actions which are the foundation [of those terms], the propriety of things, natural laws, without contradiction all these ideas are quite antecedent to law, since law builds on them and may not contradict them." (XV, p. 400.) Pufendorf is rejected. This point of view is obviously similar to Formey's.

40 See article "Loisir," XVI, p. 3; and Moï's statement in *Le Neveu de Rameau*, ed. J. Fabre, p. 10; *Supplément au Voyage de Bougainville*, ed. G. Chinard, pp. 142-43.
mention. In the Entretien d’un père avec ses enfants, it is the basic question at issue, in the concrete form of an individual’s decision. Is it right, and also more prudent, to follow the law’s prescriptions, even when a heartbreaking inequity results, or may the individual “take justice into his own hands”? Without the law there is no theft, argues Diderot’s sister, and no property, claims his brother. Rights and therefore justice inhere in the law. And Diderot contradicts both arguments. Reason, conscience, natural equity—all pre-date law. Man came before the legislator. 41

As a matter of practical prudence, however, Diderot is more often inclined to protect society against anarchy by upholding the duty to follow the law. 42 It is in his Réfutation d’Helvétius that Diderot repeatedly hammers at the theory that law creates the distinction between just and unjust. Even the savage knows that his stealing the fruits of another’s labor is unjust. “Laws do not give us the notions of justice; it seems to me that they suppose them.” The idea of justice is born of resentment, not of law, and of the danger of retaliation. 43 There is an objective and absolute basis for the judgment of just and unjust, in our needs, our life, our sensitivity, a basis “whose notion private and general interest vary in a hundred thousand different ways.” But “the essence” is independent of self-interest. We must go beyond the superficial phenomenon of relativism to the universals in moral judgment, which constitute, contrary to Helvétius’ argument, a “probity relative to the whole universe.” 44 The savage may own no words to designate right and wrong, but his cry is not an animal cry, devoid of meaning. 45 Consequently, the first legislator had the notion of justice before he made his laws. 46

Rousseau’s thinking deliberately and sharply opposes Diderot’s. For Rousseau, we remember, moral notions do not exist in the

41 Oeuvres, V, pp. 296–97, 301.
42 See Salon de 1767, XI, pp. 121–23. “My good actions will be mine; the law will be responsible for my bad ones. I shall submit to the law, but protest against it.” If an individual defies bad laws, he encourages “the insensate masses to challenge good laws.” Virtue is obedience to the certainties of law, not to a criterion of “public interest.” See also Supplément au Voyage de Bougainville, II, p. 249, Diderot et Catherine II, pp. 520–23, Lettres à Sophie Volland, I, p. 219.
44 II, p. 270.
45 II, p. 388.
46 II, p. 396. To the argument that laws may simply have sprung out of common interest, Diderot replies that each must have realized that it was just to follow the general interest. This is analogous to Hume’s “benevolent impartial spectator.”
state of nature. Justice is man's creation, a result of adherence to the general will, which is legitimized by the voluntary (and revocable) social contract. The humanistic theorists of Natural Law had combatted Machiavelli and Hobbes, citing an eternal justice prior to law and the reasonable nature of the human species. The general will, for Diderot, was an act of the understanding, and nothing more, in reality, than a "universal Reason." While Rousseau supposes rationality and moral capacity, he makes the general will, in "Economie politique" and later writings, precisely what the second word of that phrase indicates, an act of will, and not an inevitability of nature or of reason. The State is an artificial "body," forming a "moi commun," a "moral being" possessing a will, which may be called the general will. This will is "the rule of just and unjust"; it is the source of law, and therefore everything which the law orders is legitimate. The law is "that celestial voice which dictates to each citizen the precepts of public reason, and teaches him to act according to the maxims of his own judgment, and not to be in contradiction with himself." In the Contrat social he grudgingly concedes a universal justice emanating from God and from reason alone. But this justice is (as Pascal had said) a vain word, lacking natural sanctions, and inexistent in the state of nature. Only conventions and laws effectively "unite rights with duties and set justice towards its object." And this is the work of the general will. We can no longer ask, then, "whether the law can be unjust, since no one can be unjust to himself." What is the significance of this disagreement? Antoine Adam, in the article referred to above, has interpreted it to mean that Rousseau had a liberal, progressive philosophy, and Diderot a

47 The sources are in Hobbes and Spinoza. We recall that Rousseau will present a different story in La Profession de foi.

48 Vaughan, op. cit., I, pp. 241-42. This is so because the general will cannot err, but always tends to the "welfare of the whole and of each part." Moral judgment is thus "freed" from the limits of the subjective conscience.

49 Ibid., p. 245.

50 Livre II, chap. VI.

51 In the first version of the Contrat social, Rousseau had written: "For Law is prior to justice, and not justice to Law. And if the Law can never be unjust, it is not because justice is its basis, which may not always be so [in such a case, then, it is still, for Rousseau, just; but the statement is self-contradictory, since it admits a prior justice outside of law]; but because it is against nature that one should want to harm himself..." (Ibid., p. 494.) He also affirms that there was no "society of the human species," and consequently, no common moral will, no right before legislation, no equity before law. (P. 447 ff.)
reactionary, static philosophy. The truth seems to me to be exactly the opposite. For one thing, Diderot, according to Adam, believing that society is based on a universal human nature, leaves us no hope, in view of the evil in us. Rousseau, on the other hand, considers society an accident, so that vices result from men being badly governed; the evil is political, and has a remedy. This is to misinterpret both writers. Leaving aside as irrelevant the absurdity of considering society (as Rousseau does) as an accident, it is necessary to understand that the contingency involved is only a metaphysical one, not a historical one: the "original men" could not have remained forever in the state of nature. More important still, the evil, for Rousseau, is far more than "political"; it involves all human relationships, and human nature itself: for once the social relationship is embarked upon, the depravation of man becomes inevitable. Innocence is lost, and the moral state of good and evil begins. To say, as Adam does, that Rousseau believed that vices belong to "man mis-governed" and therefore liberation is possible, is to misinterpret the essence of his thought. For Rousseau evil is necessary and inevitable in any naturally developed society. Evil is indeed remediable, but it will not be expunged by political reforms. It can be remedied only by an artificial society and artificial men, subject to the statics of control. It can be overthrown only by revolutions, socio-political and individual, whose effect is, in Rousseau's words, to "denature" man, that is, to change his nature. "Liberation" from evil is possible, but not in a way which "liberates" men!

Diderot, on the other hand, admits the evil in human nature. However this does not necessarily lead, as Adam thinks (limiting his view to Hobbes) to absolutism. There is inherent evil in human nature, but human nature is not all evil. It remains possible to struggle for a better order. And let us not forget this: it was Rousseau who declared that society necessarily and universally depraves man. Diderot and the other philosophes held that it does not always or necessarily do so. Thus the very form of men's existence together permits a measure of change and improvement. Society, which is an expression of human nature, may emphasize the evil, or may tend to correct it.52

52 Adam also asserts that Diderot's determinism makes progress impossible, which is to confuse determinism and fatalism. He also confuses the notions of progress or change with the attainment of an ideal state (which terminates progress). Conceiv-
The second issue is Adam's claim that the thesis of the priority of justice to law (as well as Diderot's concepts of human nature and society) involves an immutable absolute which is static and not progressive. This was the motive, according to Adam, for Rousseau's attack on Diderot's ideas. It is indeed correct to state that Rousseau's system was not congenial to Natural Law, but for a reason which is not given by Adam. His thesis in regard to justice and law is a coherent part of an abstract system whose goal is the remaking of society and of man in society. It is necessary for him that sovereignty be absolute. "But sovereignty, which is only the exercise of the general will, is free, like it, and is not submitted to any kind of prior engagement." It is also necessary that men, in order to be made over from natural beings into social beings, should be susceptible to a complete conditioning process. "If it is good to know how to use men as they are [Diderot's viewpoint], it is much better yet to make them such as we need them to be; the most absolute authority is that which penetrates inside of man, and influences his will as well as his actions. It is certain that in the long run people are whatever the Government makes of them."

In the words of Paul Léon, Rousseau abandons "the absolutism of morals, creates an absolute juridical monism"; the conception of the totalitarian State is "in direct filiation with the Rousseauist monism." Or, as d'Entreves has expressed it, "There can be little room left for old-fashioned discussions about the nature of justice and the essence of law when human will is made the supreme arbiter of all human values." It is, then, a complete misunderstanding of Rousseau which leads Adam to state that his was "a philosophy of liberty."

On the other hand, Diderot's refusal to accept the thesis that justice is, by definition, what the law orders us to do reserves to minorities and to individuals the freedom to oppose the law. It is this opposition which is progressive and productive of change; it can properly be made in the name of justice, which is held to be logically (not chronologically or statically) prior to law. The con-
cept of a universal human nature and the priority of justice is not static, but a guide for progress. Rousseau, however, was really aiming at the end of change and at the abolition of history, which has produced man’s depravation. 58 According to Franz Neumann, Diderot’s distinction in “Juste” is more than a logomachy. It is a sensible answer to legal positivism which, “with its thesis that law is nothing but the sovereign’s will, had exterminated all attempts to measure the system of positive law on some normative standard.” 59

We can now begin to see the true significance of the contention over the priority of law and justice. Ethically, the priority of justice establishes values, gives a meaning to life, and allows for a moral criterion of judgment. The contrary view is pragmatic and utilitarian and denies any significance to the means which are chosen to achieve ends. Politically, the priority of law signifies that whatever is, or is willed, is right. There are no limits to the power of law and government (will may or may not decree limits), and to the crushing of dissension. The priority of justice, on the other hand, involves the priority of rights, the illegitimacy of pragmatic power decisions which violate rights.

Similarly, the admission of a universal human nature—or, more exactly, of universals in human nature—does not, as Adam thinks, imply the justification of whatever is, as “natural.” Adam confuses, as is so commonly done, two senses of the word “nature”—nature as empirical description and nature as norm of right. Everything in human nature is natural, but not everything is good or right. There are instincts in men which may be said to violate the moral imperatives of human nature (as well as those of culture, which transcends nature). Quite to the contrary, it is the denial of universals that makes anything that is, right. If there is no “human nature,” anything you do to men is legitimate. The concept of a “human nature” only establishes universal values, it does not mean that institutions are in accord with those values. Progress consequently becomes legitimate and necessary; on the other hand, when there is no criterion for critical judgment, there is no justification for change. 60 Diderot’s policy, then, was liberal and

58 See J. Starobinski, Jean-Jacques Rousseau, la transparence et l’obstacle, p. 22.
60 The idea of a “human nature” also constitutes a “human reserve” which is a barrier or limit to the power of thought control and conditioning, and such a limit does, in fact, exist. This view coincides with Diderot’s theory of heredity as a limit to “education,” and with his refutation of Helvétius.
progressive. Rousseau’s was the absolute of totalitarianism, allowing each State to create its own values without hindrance from what is called “just” or “true.” It is an arbitrary dynamism with no root or point of reference, and whose goal is a power-enforced stability. Diderot’s dynamism aims at an ideal regarded as certain, but never conceives the possibility of an ideal State, in which a remade man is frozen into the status of a mechanical unit of an organic whole.

If law determines justice, then, writes A. C. Garnett, we fall into the confusion of primitive ethics—the failure to distinguish between law as it is and law as it ought to be. Human will is considered to be prior and paramount to human rationality. The law “ought to be” whatever we will it to be. Those who have distrusted human rationality and considered men unworthy to be treated with dignity have frequently espoused the priority of law. Their mental outlook is typified by characters like the captain in Melville’s *Billy Budd* or Hugo’s Javert. The Renaissance writers who revolted against Natural Law, like Machiavelli, Luther, and Hobbes, favoring the individual and the empirical, were political absolutists. On the other hand, the priority of justice has been argued by men of widely differing political views, but all opponents of absolutism of the left or right. They include *philosophes* like d’Holbach and the framers of the *Déclaration des droits de l’homme*, but also Burke who decried arbitrariness of will in government and held law to be, in its nature, a rule of reason, and not something which derives its authority merely from its institution.

The priority of law, in its absolutist forms, may be considered an abdication of nature in favor of culture, just as nihilism and anarchism are denials of culture in favor of nature. The priority of justice implies a middle ground of control by rational directives which are inherent in human nature, and which define the propriety or impropriety of our acts. But our acts, as we have said,
take place in a context of institutions and relations; these evolve and thus may require new definitions and new laws. An American philosopher recently noted: "A moral law does not imply the existence of a lawgiver. We can derive a moral law from a lawgiver only if the lawgiver is moral. To know that he is, we would already have to possess prior knowledge of moral law independent of his example. If the enforcement of legal obligations had no reference to moral obligation, how could we condemn the infamous laws of Hitler and Khrushchev, or punish Eichmann and his spiritual kinsmen for executing their legal orders?"  

In other words, respect for law depends on the sense of its close relation to moral law, on the fact that it embodies the ethical minimum necessary to social life. Of course it is always possible to deny this; to agree with Montaigne and Pascal, or with Sumner in our own century and hold that law is only the product of custom sanctioned by force; that its power and compulsion, not its rightness, constitute our obligation to respect and obey it. Then ethics and politics, as Helvétius claimed, become identical—that is, there is only politics. The law and its makers, on this view, have the power to change the worth of an act, to create or destroy moral values.

III. Reason and Feeling

Although the problem of the role of reason and feeling in moral experience has been involved in the discussion throughout the preceding chapters, a brief summary and some additional comments may be useful. We have noted anti-rationalism, in relation to morals, in Montaigne and Pascal—although for Pascal reason "makes [man's] being." We may say as much for Fontenelle and even Malebranche; however they are not, like many eighteenth-

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65 Sydney Hook, in a letter to a newspaper.

66 Bergier thought that men could not live if notions of good and evil could be changed at will. It would not be possible to have a society in which lies, ingratitude, cruelty, perfidy and crime were in honor. (Principes de métaphysique, pp. 95-97.) This is an assertion which we may evaluate in relation to historical events of the twentieth century.

1 Recherche de la vérité, II, p. 504.
Corollaries

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century writers, anti-rationalists, but are rather impressed by the overwhelming force of passions in men. As the Protestant writer J.-Fr. Bernard put it, man has reason but abuses and betrays it. Even in 1687, Father Bouhours had been struck by the prevalence of anti-rationalism in society, and the preference for coeur to esprit. According to Spinoza, it is plain "that we neither strive for, wish, seek nor desire anything because we think it to be good, but, on the contrary, we adjudge a thing to be good because we strive for, wish, seek or desire it." This opinion refers to moral experience itself.

There is, then, a certain amount of confusion in the issue. The function of reason in moral judgment is one thing, its function in our acts (such as our refusal to follow it—a subject we discussed earlier), another. Furthermore, reason may be taken in the discursive sense, or as immediate intuition. The moral sense of Shaftesbury's school has affinities with sentiment, but is really a sublimation of reason, the purpose of which is to make it "natural" and immediate. And this, as we saw in discussing conscience, is precisely what Rousseau did, though in him the link between reason and feeling is even tighter.

The Natural Law school emphasized reason as the power of perceiving moral truths. Grotius, Pufendorf, Burlamaqui, all leave no doubt about this. Obligation inheres in a rule, based on a relation, and the rule derives from man's reasonableness. Chubb, Clarke, Wollaston believe reason to be the judge of actions. Locke's sensationism halts before ethical truths. He thinks that a complete morality can be derived by ratiocination from general a priori principles, without reference to concrete circumstances. Swift's Houyhnhnms, on the other hand, are governed by reason, but it is a reason which "strikes you with immediate conviction; as it must needs do, where it is not mingled, obscured, or discolored by passion and interest." It does not lead to disputation. This again is Rousseau's "lumière intérieure."

The first great defender of sentiment, as the essential component of moral experience, was David Hume. Morality, in his view, consists of impressions, is felt, not judged of. Virtue and vice are feelings of pleasure or uneasiness of a peculiar kind, peculiar

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2 Réflexions morales, Amsterdam, 1716, p. 1. See An Age of Crisis, chap. 9.
3 Ethic, Part III, Prop. IX. Schol.
4 Kaye in Mandeville, I, p. 49, n. 1.
5 Gulliver's Travels, Part IV, chap. 8.
because divorced from self-interest. Hume does give a role to reason. It mediates between passions and their goals; but it is neither the traditional enemy of the passions and appetites, nor their master. "Reason and sentiment concur in almost all moral determinations and conclusions," though the final judgment "depends on some internal sense or feeling which nothing has made universal in the whole species." Hume was severely criticized by both Price and Reid. Hume had said, for instance, that it is not the office of reason to determine ends. Reid argued that there are rational principles of action. Hume has been criticized by twentieth-century philosophers, one of whom accuses him of confusing the justifiable notion that any value statement expresses a feeling with the unjustifiable notion that we do not have a value statement until we have a statement which indicates a feeling. Nevertheless, as with Hobbes and Mandeville, the attempts to refute Hume, valid or not, are witnesses to the revolutionary depth of his thought and the permanence of his influence. Before Hume, comments Basil Willey, nature was linked with reason; after Hume, it is linked with feeling, and morality is reduced to the sentiment of approval or disapproval. Reason, moreover, is rejected in favor of nature. Despite certain reactions, this statement is true for England; but it is far less true for France.

In the eighteenth century, wrote Lanson, there were two tendencies, one toward an intellectual ethics of geometric precision, the other toward an ethics of immediate sentiment, and at the beginning, they were fused in the notion of rational morality. It is not certain that the two attitudes were really fused in many cases. The essential matter, for thinkers of that early period, was to be free from theological dogma, and to bring ethics closer to the realities of human nature and motivation. It is in this sense that we may interpret the statement of a libertin, the Marquis de

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6 Aiken, op. cit., pp. 42-45.
7 Ibid., p. 177. Hume criticizes men like Malebranche, Montesquieu, Cudworth, and Clarke for founding right on relationships. (Aiken, p. 196n.) For a fuller statement of Hume's views on this subject, see ibid., pp. 219-21, 262-68 (Appendix I to the Enquiry).
9 J. W. Smith, "The British Moralists and the Fallacy of Psychologism."
Lassay, written in 1717: “I believe I feel in myself admiration for virtue and horror for vice, independently of all prejudices; ... not being able to enlighten myself by my intelligence [on free will and other moral questions], I act upon the sentiment which is engraved in the bottom of my heart.”

Marivaux describes a simple and good way of living, then asks:

What do you say to my ethics? It is not very reflective, that's because it is natural. There are people who moralize in such a sublime manner, that what they say is good only to be admired, but what I say is good to be followed, and that's real morality, the rest is only vanity, folly. Intellectuals spoil everything. They look for everything they say in the land of pipe-dreams. They make Virtue a précieuse who's always worried about how she can be haughty enough, to distinguish herself. So they think that's virtue, and I teach them from my stool that there's nothing so simple as virtue, good morals, or reason. We don't need to think hard to act reasonably; reason comes naturally, when we want to follow it—I mean real reason, for the one you've got to think about ... is not the good reason; we're the ones who make that one, it's our pride that invents it.

While it is difficult to determine whether de Lassay and Marivaux really mean reason or sentiment, some writers leave no room for doubt. Vauvenargues tells us that the voice of nature is the voice of morality, and that it has grown fainter as the voice of reason has increased. Asking what principle enlightens us about good and evil, he replies, “the heart.” Reason is unable to draw such ideas from itself and to engender virtuous acts. But he is really aiming at the exclusion of rational calculation of self-interest: “Magnanimity owes no account of its motives to prudence.” (Maxim 130.) The confusion enters when we see him excluding conscience as “the most changeable of rules,” one which obeys the feelings that dominate us. Which, then, is the feeling that gives us moral knowledge, and which is the feeling that conscience obeys? Jules Barni writes that for Rousseau conscience is a special instinct which judges other instincts, while Vauvenargues “leaves it up to the instincts themselves.” Reason is thus opposed to nature.

Morelly, a communist, and Dulaurens, an amoralist, both warn

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12 Ibid.
13 L'Indigent philosophe, in Le Spectateur français, 1728, II, pp. 10–11.
against the deceits and vices of reason. So does the sentimental primitivist, Bernardin de Saint-Pierre. A disciple of Rousseau, he attacks discursive reason as the slave of self-interest: "... those maxims which are drilled into us from childhood: get rich, be on top, are enough to upset our natural reason; they show us just and unjust only in relation to our personal interest and to our ambition." There is a nobler, more constant, wider faculty in us. "I feel, therefore I am." We have a moral feeling, a "sentiment," which is quite different from physical feeling. It is always pure; "by subjugating our reason it becomes the most noble and delightful instinct of human life." To this motley company we must add the atheist Sylvain Maréchal, and two future reactionaries, Sabatier and Rivarol.

But the larger number of writers in France still unite reason and nature, and make reason the essential element in moral experience. A manuscript which probably dates from the late seventeenth century already takes essentially the position that was to be Bayle's. "If there are certain and immutable rules for the operations of the understanding, are there not also rules for the acts of will?" As it is wrong to reason in a way opposite to syllogisms, "so it is a fault of something without conforming to the rules for acts of the will." The most general rule is to act according to right reason.

Bayle also makes it clear that the general principle of obligation is reason, and he, too, declares that there are rules for the will as well as for reason. Throughout this passage Bayle uses practically the identical words that were used by the author of "De la Conduite." He says that the rules are not arbitrary but emanate from the necessity of things; that, as it is wrong to reason against rules of syllogism, so with will; and that the most general rule is

15 Morelly, _Code de la nature_, pp. 257–59. In an earlier work, however, Morelly upholds reason as the instrument for perception of moral truths, that is, the conformity of acts with the public weal. ( _Essai sur le coeur humain_, 1745, pp. 169–72.) Dulaurens, _Le Compère Mathieu_, Londres, 1770, II, pp. 184–87.
16 Eludes de la nature, _Oeuvres_, 1818, V, pp. 4–32.
18 "De la conduite qu'un honnête homme doit garder pendant sa vie," Maz. 1194, fol. 130–32. A reference to Mathias Knuzen, the notorious atheist, as a contemporary, is an indication of date. Knuzen disappeared about 1675.
19 _Continuation des Pensees diverses sur la comète, Oeuvres diverses_, III, p. 406. The conscience, for Bayle, is "a judgment of the mind which impels us to do certain things."
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to act in conformity with right reason. This is so because a reasonable creature must conform to reason, or he betrays his nature. There can be no doubt about Bayle having known the manuscript, “De la Conduite.” 21

Other writers in the first half of the century who hold similar views are Buffier, Lemaître de Claville, Levesque de Pouilly, and Toussaint. Among these, Father Buffier is the most interesting. Two sorts of persons, he explains, say that reason is not a sufficient rule for morals, some for the sake of religion, others out of opposition to religion. He refutes both. Revelation can add nothing to the natural rights of reason. As for the argument of moral relativity advanced by the second group, Buffier counters it by upholding universal judgments, which are, therefore, natural. 22

In the second half of the century, Diderot, as we have seen, and Voltaire, both believed the moral experience to be essentially rational, though not dissociated from affective elements. Diderot puts it this way: “Some may think that a knowledge of history should precede that of morality; I am not of that opinion. It seems to me more useful and expedient to possess the idea of the just and the unjust before possessing a knowledge of the actions and the men to whom one ought to apply it.” 23 Virtue, writes Voltaire, requires “enlightenment, reflection, philosophy, although according to you [Rousseau], any animal who reflects is a depraved animal, from which it would logically follow that virtue is impossible. An ignoramus, a complete fool, is no more susceptible of virtue than a horse or a monkey.” 24 The Physiocratic school would all adhere to the rationalistic thesis. Moral choice, declares Turgot, is a rational act, based on abstract principles derived from our desires and feelings. 25

Like some of the writers we have mentioned, Kant believes that the universal quality of moral laws indicates their source in the reason. Man is above all a creature of reason; a “reason” that, as


22 Plan d'une université, Oeuvres, III, p. 493.


24 “Sur le mot amour et sur l’ amour de Dieu,” Oeuvres, I, p. 362. However Turgot expresses exactly the opposite view, and upholds the primacy of feeling, in his second “Discours en Sorbonne” (1759), I, p. 224. Many other writers adhered to this position, including the Christian apologists, Mably, Bonnet, Boufflers, Delisle de Sales, etc.
distinguished from understanding and judgment, seeks to apprehend certain totalities which are not the objects of experience. Man is a being of nature, insofar as he is subject to universal natural laws; but also a distinctive being, inasmuch as reason, whose operation is spontaneous and different from physical nature, can have a determining influence on his acts. That is, man can make himself into a being bound by principles. Character is that "peculiar property of the will in accordance to which the subject binds himself to definite practical principles which he has unalterably prescribed through his own reason." 25a Kant declares it impossible to derive an ethics from a naturalistic analysis of human nature. Like the modern Existentialist, he says that we must construct our character by ourselves. The self is fundamentally a possibility of existence which can realize itself through freedom. With reason, however, the self can discover the moral principles which should guide it.26

It is curious to see Sade superficially taking the same side as Kant, and attributing moral judgments to reason. But the purpose and the substance are quite different. Sade, too, separates reason from nature. "Nature" is our feelings and instincts, and these, he repeats, lead us to what is called vices and crimes. Laws, which demand repression and sacrifice, are the children of reason.27

The rationalist view makes of moral experience a form of knowledge, usually of objective facts and relations and of normative rules derived from them, and so of a class of truths. (It was only extreme relativism, or nihilism, postulating the validity of all judgments, or of none, that denied moral knowledge.) Such knowledge may be intuitive, and is not necessarily provable. There was, however, a considerable group of rationalists, and even some empiricists, who thought ethics could be an exact science. Many of this group went so far as to envisage mathematical proof, and the comparison with geometry was frequently made.28


26 According to G. Schrader ("The Philosophy of Existence," ibid., p. 40 ff.) Kant holds that through the exercise of freedom, the self becomes objective and alien to itself. There is perhaps an influence of Rousseau here.

27 Histoire de Juliette, VI, pp. 174-75.

28 In favor of scientific or mathematical demonstrability were Pufendorf, Sir William Patty, Locke, Cumberland, Hutcheson, Benjamin Franklin, and Ferguson. Hume mentions analogical proof from science and mathematics (Aiken, p. 225). In France, Maupertuis, Father André, Vauvenargues, Le Guay de Prémontval, Morelly,
It is one of the characteristics of the eighteenth century that it most often considered man to be definable by his reason, but not reasonable (or motivated by his reason); that it held reason to be limited, fallible, or even erroneous, yet relied on reason for explanations and solutions, indulged and delighted in abstract thought and not infrequently in the spinning of systems. It is reason—in its various modes of functioning—which criticizes abuses, wrongs, prejudices, ill-adapted or outgrown social structures, which plans a reconstructed society and ethics, and the reconditioning of man. In ethics, however, the reason which was favored, with a few exceptions, was that of intuitive immediacy, not of ratiocination; and it is another characteristic trait of the period that its reluctance to draw a sharp distinction oftimes makes it difficult to be sure whether its writers have intuition or feeling in mind. They certainly did not have in mind reason in Hume's narrow acceptance; but rather a judgment of propriety for beings such as we, with our needs, drives, and goals, both natural and social. An intuitive perception such as this could, by some, be considered an a priori, by others the result of earlier experience, habituation, or reasoning. Later, the frequent distrust of abstract, logical reasoning (or intellect) seemed, to many conservatives, amply confirmed by the events of the French Revolution, which they held to have resulted from the systematic political theories of Rousseau, Mably, Babeuf, and their disciples. The result was the anti-rationalism of reactionaries like Sabatier de Castres, Rivarol, and various Catholic writers of the Romantic period—an attitude which was renewed later in the nineteenth and twentieth centuries by proto-totalitarians and totalitarians. Burke, however, though a leader of the "anti-philosophe" movement, was not an anti-rationalist, despite his distrust of abstract and systematic reasoning. "Politics," he wrote, "ought to be adjusted, not to human reasonings, but to human nature; of which the reason is but a part, and by no means the greatest part." 29 In

Helvétius, d'Holbach, the author of "Connaissance" in the Encyclopédie, Condorcet and Rivarol all held to this view. The Académie de Berlin held an essay contest on the question, "Can moral truths be proved?" in 1752-53. Among those who openly opposed this view were Reid, Camuset, and Mably. There is no doubt that the mathematical approach reflected a misunderstanding of the nature of ethical experience. A. Cresson (op. cit., p. 194) writes: "Ethics is not a mathematics. It cannot be constituted outside of experience, in a world of pure abstractions." See also A. Schweitzer, op. cit., p. 201. This subject merits further specialized investigation.

29 Quoted in Willey, op. cit., p. 243.
this statement Burke is pointing out what he considered to be the
great error of the "philosophic" movement. However his phrase
is an exact description of what the philosophes did actually try to
follow, and of their analysis of human nature. What happened
was that their analysis, which was completely rationalistic, led to
rationalistic solutions of the ethical and socio-political problems—even to the point where they thought that irrational (or unreasonable) man would behave rationally and reasonably if reason (in the sense of what was deemed to be culturally desirable) were indissolubly linked with the irrational element of self-interest. This led to systems such as those of Helvétius, d'Holbach, and Rousseau—though in Rousseau, as in Morelly and others, repression was an important added element. Formulations of a universal order, of abstract truths with absolute validity were the outcome. Even unsystematic thinkers, Voltaire and others, believing in immutable natural laws (a conception of abstract reason), thought them to be discoverable by the individual reason, intuitive or discursive. It is this belief which Burke thought a dangerous folly, because of its willful ignoring of another order of truth, that of history and custom, or the accumulated wisdom and traditions which are the life-blood of any culture.

Actually, nothing was more abstractly rationalistic than the debate itself, as to the roles of reason and sentiment in moral experience. They are, in fact, indissoluble in the wholeness and multiple functioning of the self. Reason, by itself, has no necessary relation to morality. As the novels of the time showed—and there is no more faithful reflection of the culture and prevailing ideology—reason may be used for evil. On the other hand, without reason, there could be no moral life. "Valid ethical norms," writes a modern psychiatrist, "can be formed by man's reason and by it alone." A. O. Lovejoy has shown, from a philosophical viewpoint, that while rationality may not determine choice, it is involved in moral judgments as self-consciousness, generalization, the truth of propositions, and "adjectival values." A contemporary anthropologist draws a clear distinction between values ("ideas formulating action commitments") and sentiments, emotions, drives, or needs. Values are rationally justifiable, for they

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31 E. Fromm, op. cit., p. 6.
are "normative statements as contrasted with existential propositions." It is clear that men could not have been intelligent beings without having moral judgments and sentiments, nor could they have experienced the latter unless they were intelligent beings. Whether, as Clarke, Kant, and many French writers thought, moral values, based on relations, must appear the same to the understanding of all intelligent beings is a different question, one which we have endeavored to clarify in regard to the Age of Enlightenment.

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