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Editorial

The uniqueness of Greek and Roman culture is important in accounting for the crucial difference between European and non-European civilizations. Whatever the status of the debate over “the Ancients and the Moderns” (the classicists claim the pygmy Moderns are standing on the shoulders of the giant Ancients), European civilization has been profoundly influenced by the perfections and faults of the classical world. The concept of natural law is the heritage from the Ancients which has had the most profound impact on the flowering of liberty.

Natural Law flourished in the Hellenistic period under the Stoics from the Greeks Zeno of Citium and Chrysippus to the Romans Cato the Younger, Seneca, and Marcus Aurelius. The Stoics posited an identification of *physis* and *nomos*, nature and law. The wise man lived in harmony with nature; he was not dragged in the train of events. The Stoics emphasized the “common law” of all peoples, *jusgentium*, the law of nations against each state's civil or public law. Chrysippus, “a philosopher learned in history, delighted in collecting examples of historical relativism; but like all the Stoics he was undisturbed by the diversity of the phenomena, for behind all the variety there is agreement at least about the basic issues, the agreement of reasonable men of all times and countries” [L. Edelstein, *The Meaning of Stoicism* (1966)]. Thus, although Chrysippus' historical knowledge caused him to regard all human laws as mistaken, this did not lead him to the disorder of government by man over man as it did with the Sophists. This knowledge led him instead to praise the order of the universality of natural law and each person's equality before that law.

The law of nations, which the Stoics viewed as the shadow of natural law, was derived from principles of private law as developed by Roman law-finders. Hayek has compared the persistence of private law, rooted in spontaneous social relations, to the ephemeral character of public law, based on political, imposed relations [F. A. Hayek, *The Confusion of Language in Political Thought* (1976)]. Hayek relates the achievement of some degree of individual liberty to societies like ancient Rome and England, where private law was in the hands, not of the government (legislators and executives), but of private law-finders (jurists and judges). Hayek's and the Stoics' analyses are complimentary.

Stemming from the Stoics and Thomas Aquinas and reaching down to Adam Smith and Thomas Paine, natural law has been the basis for the development of modern liberalism. However, the writings of Hugo Grotius (Huig van Groot, 1583–1645), especially *Dejure belli et pacis* (1625), constitute a watershed in the history of ideas because Grotius completed the process of founding natural law in human nature. F.J. V. Hernshaw, [*The Social & Political Ideas of Some Great Thinkers of the Sixteenth and Seventeenth Centuries (1926)*], has emphasized that the origins of Grotius's exposition can be found in the then great debate over whether obedience should be paid to political authority. Juan de Mariana, S. J. (1536–1624), Spanish historian and theologian, argued in *Derege et regis institutione* (1599), that it was lawful to overthrow a tyrant [Oscar Jaszi & John D. Lewis, *Against the Tyrant* (1957)].

Grotius inherited his opposition to tyranny. His father was the curator of the University of Leyden, center both of commercial Holland's Republican opposition to the militarism of the Princes of Orange as well as of the anti-Calvinist and bourgeois Arminianism. Grotius devoted himself to expounding the Arminian view of tolerance; his religious writings emphasized that the truths of Christianity, which were held in common by Catholics, Calvinists, Lutherans, and Arminians, were fundamentally more important compared to the peripheral points on which they felt they differed.

Grotius's appetite for learning and his encyclopedic knowledge were recognized at age twenty when he was appointed Historiographer of his province, Holland. Historical research continually engaged Grotius's attention, and his historical writings included *Deantiquitate reipublicae Batavae* and the *Annals of the Low Countries*, on which he worked until his death.

In 1609 Grotius published one of his most significant works, *Mare Liberum.* To the question of whether the seas could become state property, he answered a resounding no! No government had the right to exclude other nations' merchant ships from any seas. Soon England sought to claim the exclusive use of the North Sea and English Channel, and the master historian of English law, John Selden (1584–1654) in *Mare Clausum* (1632) vainly attempted to rebut *Mare Liberum.*

Grotius, as Pensionary of Rotterdam, wrote an edict of toleration which was issued by the States General of the United Provinces of the Netherlands. Religious toleration was opposed by the Prince of Orange, the military commander, who sided with the Calvinists against the Arminians. In part, the prince reacted to the Dutch bourgeoisie (the Arminians) who insisted upon acceptance of the favorable peace offered by Spain in order to concentrate on commercial activities. The price, rural gentry, and Calvinist clergy saw peace as undermining discipline while introducing luxury based on commerce. In 1618, the privileged, military Calvinists struck at the capitalist Arminians. By a coup d'état, the prince's army disarmed the militias of the Dutch cities. The Republican leaders, Johan van Oldenbarneveldt and Grotius were arrested. The former was executed and Grotius condemned to life imprisonment. Rescued by his wife's efforts, Grotius escaped in a chest which was supposed to contain his Arminian books; he was given refuge in Paris (1621).

The beginning of the Thirty Years' War (1618–1648) with its pillaging, violation, and massacre of civilian populations horrified Grotius. Aided by the researches of his brother, William, and his own unrivaled memory, Grotius wrote *De jure belli et pacis* (1625) in one year. Basing himself on the Stoics, Roman jurists, and medieval scholastics, Grotius drew most heavily from the sixteenth century Spanish philosophers of law—Francisco de Vitoria (1483–1546), Luis de Molina (1536–1600), and Francisco Suarez (1548–1617).

Grotius, in his *Prolegomena to The Law of War and Peace*, states that man is characterized by a strong sociability, by a desire to spend his life together with his fellow men, “and not merely spent somehow, but spent tranquilly and in a manner corresponding to the character of his intellect. This desire the Stoics call the domestic instinct, or feeling of kindred.” Grotius denied the universality of “the assertion that

every animal is impelled by nature to seek only its own good" since some animals "restrain the appetency for that which is good for themselves alone, to the advantage now of their offspring, now of other animals of the same species." Sympathy for others develops spontaneously among children, and increases with maturity "together with an impelling desire for society, for the gratification of which he alone among animals possesses a special instrument, speech. He has also been endowed with the faculty of knowing and acting in accordance with general principles."

Grotius derived from this sociability the concept of law. "To this sphere of law belong the abstaining from that which is another's, the restoration to another of anything of his which we may have, together with any gain which we may have received from it; the obligation to fulfill promises, the making good of a loss incurred through our fault, and the inflicting of penalities upon men according to their deserts." Finally, Grotius emphasized the scholastic concept of time-horizon: man's power of discrimination between "what things are agreeable or harmful (as to both things present and things to come), and what can lead to either alternative, in such things it is meet for the nature of man, within the limitations of human intelligence, to follow the direction of a well-tempered judgment, being neither led astray by fear or the allurement of immediate pleasure, nor carried away by rash impulse. Whatever is clearly at variance with such judgment is understood to be contrary also to the law of nature, that is, to the nature of man."

The pressures of the Thirty Years' War created the conditions for revolutions throughout Europe. The most famous were the Republican movements in the English Civil War and the Fronde in France. But Grotius did not live to see his vindication in the restoration of Republican rule to the Netherlands. The Peace of Westphalia (1648), which ended the Thirty Years' War, was concluded by the pacific Dutch capitalists and was opposed by the Prince of Orange. Finally, the Republicans gained dominance and established a decentralized constitution with each province controlling the army and religion within its own borders.

This history was well-known to the fathers of the American Revolution. Likewise, the impact of Grotius's jurisprudence was transmitted to them via Samuel Pufendorf (1632–1694), through Locke, Rousseau, Barbeyrac, Burlamaqui, Blackstone, and Montesquieu. Forrest McDonald, "A Founding Father's Library," *Literature of Liberty* 1 (January/March 1978).

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Bibliographical Essay

Natural Law: Dead Or Alive?

by Henry B. Veatch

Surely, the ancient and honorable doctrine of natural law is dead, is it not? And many would add, "Long dead and well dead!" What, then, can a bibliographical essay such as this amount to, if not to a kind of funeral oration, or else to a chronicle of "old, forgotten far-off things, and battles long ago"?

Not so, though. For two excellent recent historical studies—the older and shorter one by A.P. D'Entrèves, and the longer and very recent one by M.B. Crowe—both tell a similarly fascinating story of the continual births and rebirths of natural law doctrines in the course of their long history. Professor Crowe has even remarked that "the natural law, as an idea, is almost as old as philosophy itself."1 He thinks he can find the origins of a natural law doctrine even among the pre-Socratics. Following this, it received at the hands of the Sophists what appeared to be, if not a death-blow, then certainly a serious set-back. Plato and Aristotle, however, promptly revived it, if not in name, then certainly in essence. And with the Stoics, it really came into full flower.2 Proceeding, then, to the Christian thinkers of the Middle Ages, natural law doctrines at first enjoyed a rather more dubious status, only to receive eventually their most definitive formulation and justification at the hands of St. Thomas Aquinas in the thirteenth century.

In the later Middle Ages and the Renaissance, to be sure, there occurred something of an eclipse, only to be followed by the great sunburst of natural law doctrines, albeit in somewhat altered form, in the seventeenth and eighteenth centuries. The great names that always recur are first those of Hugo Grotius and Samuel Pufendorf, and then later and to a somewhat different effect, those of John Locke and Jean-Jacques Rousseau. The story is only too familiar of how their influence carried right over into the Age of Reason, when doctrines of natural rights seemed to crop up everywhere, and not least in America with the publication of the Declaration of Independence, followed by the numerous Bills of Rights in the various State and Federal constitutions.

Once again, though, the flourishing of natural law in the eighteenth century was followed by its apparent demise in the nineteenth century. As one contemporary critic has put it, "the philosophers tended to say that the natural law was not natural, and the lawyers that it was not law."3 Nevertheless, with the Thomistic revival in the latter part of the nineteenth century, an interest in natural law appeared to be in full swing again by the first quarter of the present century, particularly in Catholic circles. In this country, Catholic institutions of higher learning, especially law schools, pressed for the teaching of so-called natural law along with positive law; and thinkers of the stature of Jacques Maritain enjoyed vogue and influence alike in their efforts to awaken both Europeans and Americans to the pressing demands of human rights, particularly in the light of the ruthless suppression and perversion of those rights at

the hands of the Nazis. Then suddenly, in the late 1950s and 1960s, it was almost as if the bottom had dropped out, so far as natural law doctrines were concerned. In academic circles, especially among philosophers and political scientists, no one talked about natural law or natural rights anymore; and if one did, one was promptly relegated to beyond the pale by scornful colleagues.

And now just as suddenly, and seemingly no less unpredictably, there has been a dramatic revival of interest in so-called “rights theories”—and this just in the last ten, perhaps even in just the last five, years. True, such recent rights theories have not always involved an effort at reinstating anything like “natural” rights, and certainly not “natural law.” Yet many of them have. And in any case, they have all had the effect of bringing the issue of whether or not there is a natural law right out into the open again, thus making it not just respectable, but even imperative to discuss it and to take it seriously.

How “Natural Law” Should Be Understood: The Thomistic View Of The Objective Grounding Of Ethical Standards

What, though, is this doctrine of the so-called “natural law,” that has thus had such a long and chequered career, and has even displayed, in the words of more than one authority, the happy faculty of repeatedly being able to bury its own undertakers![4] Quite obviously, the doctrine is aimed at affirming that such things as human responsibilities and obligations, as well as human rights and “entitlements,”[5] are more than a mere affair of human convention or human agreement, and this no matter how enthusiastic or how widespread may be the acceptance of those conventions and agreements. Thus whether it be Antigone in Sophocles' drama, Socrates in Plato's *Apology*, or Shcharansky and Ginzburg of today's Soviet Union, the mere fact that a person has been convicted of a crime does not necessarily mean that hers or his was really a crime at all. Likewise, what may be right or just according to the standards of a given community or society may still be radically at variance with the standards of a natural right or a natural justice. Yes, might not one be inclined to say that in the Shcharansky case, for example, it is patent and obvious for all to see the glaring disparity between what the civil or military authorities are agreed in saying is just and right and what is really so? For it is an implication of any doctrine of natural law or natural right that the marks and standards of a natural justice are such as to make it recognizable, even in the face of whatever the prevailing conventional or customary justice may affirm to the contrary. Indeed, in this sense natural laws are held to be evidenced by nature itself, and to be there, as it were, right in the facts for all to see, if we have but eyes to see, and are not blinded by habit or by convention or by social conditioning or whatever.

Still, it is one thing to say that in any natural law doctrine, ethical and political standards are objectively grounded, or that they literally have a status as laws of nature, and thus are knowable and rationally determinable. It is yet another thing to understand just how such natural norms and standards may thus come to be known, to say nothing of how they can have an actual ontological status in reality. And it is just such points that we need to be clearer about, if we are ever to find our way around in

the contemporary literature, particularly as it surrounds the newly emerging contemporary rights theories.

To this end, we would make reference to an exceedingly illuminating article published in *The Monist* a few years ago by Vernon Bourke, entitled “Is Thomas Aquinas a Natural Law Ethicist?”6 It is true that Professor Bourke is primarily concerned with medieval versions of the theory of natural law and with the way in which so-called natural laws were held to be associated with the law of God. In this context “two radically different meanings for natural law” emerged, the one theological in origin, the other naturalistic or secularized, based on the natural light of unaided human reason. According to the one, natural law came to “name a code of moral precepts implanted in man's nature, or mind, and issuing from the legislative Will of God.” From such a view, what is good or bad, right or wrong, for man clearly depends on divine fiat. Accordingly, moral and political norms, so far from being in any proper sense “natural” or discoverable by reason in the very nature of things, would appear rather to be but so many “ought's” that are binding for no other reason than that God has decreed them to be so. By contrast, in the other view of natural law, namely, that of Thomas Aquinas, a natural law theory of ethics or politics stresses, as Bourke puts it, “the rational discernment of norms of human conduct, working from man's ordinary experiences in a world environment of many different kinds of things.”

Bourke's way of characterizing the Thomistic understanding of natural law may appear to be a bit of a mouthful. But why not consider ethics and politics, as construed in the light of this conception of natural law, as analogous to certain arts, skills, and crafts? Why does the skilled surgeon, for instance, make his incision in one way rather than another? Don't we say that it is because he knows how to do the job? There is presumably some reason—a real reason—for his doing it that way rather than another. In this sense, we should scarcely say that the rules of good surgical practice are mere agreed-upon conventions with no natural basis at all. Or why does the football coach insist that a tackle be made in one way rather than another? Is it just because he happens to like the one way rather than the other; or is it because there are reasons why one way of making the tackle is better than some other? And so also for countless other skills and techniques—bait-casting, accounting, gourmet cooking, pleading a case, teaching a class, building a bridge, or whatever. In all of these cases the expert is said to *know* how to do the job, and his knowledge is but a knowledge of what the *nature* of the case or the situation demands, be it in surgery or fishing or cooking or building a bridge or whatever.

The Art Of Living Based On Objective Nature And Reason

Accordingly, in Aquinas's view the living of our lives, be it either as individuals or as political animals, requires certain skills and know-how. That is to say, just as in the various arts the end in view determines the natural ground or reason for the means used—e.g., the health of the patient in the case of medicine, or the instruction of the student in the case of teaching, or victory in the case of strategy, or convincing the court in the case of legal pleading, etc.—so also in the case of living our lives as human beings and attaining such fulfillment and perfection as is appropriate to human

nature, this requires that we know what needs to be done and how we need to conduct ourselves to such an end.7 Just as in making tackles, or preparing meals, or performing surgical operations, or landing a fish, there are right ways of doing the thing as over against wrong ways. And since there are reasons why in the nature of the case such right ways of doing the job are right, so too, by analogy, in the living of our lives, the right way of doing the thing might be said to be that which is naturally right or just. Thus the various moral or ethical rules that need to be followed in the conduct of our lives may be said to be rules that are determined not subjectively by arbitrary whim but rather by "right reason" considering the pertinent facts. In this sense such moral rules may be properly termed "natural laws."8

So much, then, for the two rival conceptions of natural law, or rival ways of construing the meaning of that somewhat hackneyed, and now rather ambiguous, term. In the one sense, natural laws are to be understood as scarcely "natural" at all, in as much as they represent no more than certain absolute prescriptions and prohibitions, which, so far from being rationally discoverable by human reason in nature, are simply decreed by God. In the other sense, natural laws are thought of as being none other than such rules of intelligent conduct and behavior as any knowledgeable person ought to be able to see are demanded by the very nature of the case, when it comes to the living of our lives. Unhappily, though, it is just such an ambiguity in the notion of "natural law" that has led to no little confusion and misunderstanding, particularly in current discussions of the topic.

Grotius And The Secularization Of Natural Law

Nevertheless, before we can move to a consideration of what the current climate of opinion is regarding natural law, we need first to consider certain added features of natural law doctrine that are due to the revival of natural law teachings in the seventeenth and eighteenth centuries. Generally, authorities would seem to be agreed9 that these features amount to two principal ones. For one thing, Grotius in his treatment of natural law was peculiarly insistent that so-called natural laws could, if one so wished, be regarded as literally and exclusively natural, and therefore as not being of divine origin at all. His point was that natural laws, as he conceived them to be, could be seen as binding upon men even if there were no God,10 and hence eliminates any claim to divine authority for such laws. Naturally enough, such a stand on Grotius's part has been interpreted as heralding that increasing secularization of doctrines of natural law that was so characteristic of the eighteenth century. At the same time, be it noted that if the validity and binding character of so-called natural laws is considered to be in no wise dependent upon their being decrees of God, this could not be other than profoundly upsetting to that one view of natural law, that based such laws solely on their proceeding from God's will. On the other hand, such a secularization of the doctrine of natural law need not be comparably disturbing to the Thomistic understanding of natural law. Not that in Aquinas's eyes the so-called natural law did not constitute a part of the eternal law of God; and yet as Aquinas saw the matter, the natural laws that are prescriptive of how human beings should conduct themselves are like the how-to-do-it rules in any of the various arts or techniques: there are perfectly good reasons in the nature of the case why such rules are rules; nor are they rules merely because some "ruler" or some authority happened to want things

done in that way and decreed that they be done in that way—and this regardless of whether that ruler be man, God, or beast!

From Natural Law To Natural Rights: Is It A Shift In Emphasis Or Principle?

But now what of that second feature of natural law doctrine that dates from the eighteenth century? Not only would there seem to be a general secularization of the doctrine, but more importantly, in the eighteenth century, emphasis seemed to shift quite markedly from talk of “natural laws” to talk of “natural rights.” Immediately there springs to mind the whole business of “the rights of man”—the right to life, liberty, and the pursuit of happiness; the right to freedom of speech, of religion, of assembly; the rights of property, and the right not to be deprived of “life, liberty, or property without due process of law”; the right of revolution, the right to representation in government, etc.

Superficially, and even to many authorities, it has seemed that such a shift of emphasis from natural law to natural rights was far from being a major shift. For supposing that as in medieval discussions of natural law, the emphasis was upon what might be called the natural duties and obligations and responsibilities of human begins to lead, as the *English Book of Common Prayer* would have it, “a Godly, righteous, and sober life,” still there would seem to be a sense in which any and all duties tend to involve rights that are somehow correlative with them. After all, if I have a duty to lead my life and conduct myself in such and such a way, then do I not have a corresponding right not to be interfered with in the performance of those duties, and perhaps even a right to be aided and assisted in such performance?

Nevertheless, the notion that the shift of emphasis from natural law to natural right was but a minor shift, and in no wise a shift in principle, has been effectively challenged by the late Leo Strauss in his monumental work of some years ago, *Natural Right and History* (1953). According to Strauss, the classical natural law tradition, as it stemmed from the Greeks and from Aquinas, while it could hardly be said to have been without concern for so-called human rights, was certainly not concerned about them in the manner of the eighteenth century thinkers, or even in the manner of most contemporary thinkers either. Instead, on the Thomistic theory of natural law—to take this as an example—human duties and rights are both of them subordinated to, and made intelligible in terms of, the business of human beings attaining their natural and or goal or perfection as human beings.

Suppose that we again recur to our earlier analogy between ethics (and politics) on the one hand and the various arts and skills on the other. For is it not plausible to say that there are right ways and wrong ways for physicians to go about the care and treatment of their patients, and that these ways are determined by the very nature of the case, in the light of the end and purpose of the medical art, which is human health? But analogously, then, when it comes just to the living of our lives, not as butchers or bakers or candle-stickmakers, but simply as human beings, may it not be said that our natural end, or what we all naturally seek or aim at as human beings, is nothing if not simply our human well-being or human perfection just as such, and as contrasted with

that more restricted sort of mere health or well-being that the physician is concerned with? For would we not all say—perhaps not Nietzsche, to be sure, but then we scarcely need deal with such an exception in the present context—that someone like Socrates managed to attain an excellence and a perfection, just in the business of being human, that a Hitler or a Stalin, or, in a different way, a Macbeth or a Hamlet, could not be said to have brought off at all? In the light of examples such as these, why would it not be possible to determine what some of those natural laws are—i.e., what some of the right ways, as over against some of the wrong ways, of our going about the living of our lives? As Richard Hooker in the sixteenth century phrased it—in a rhetoric that may put us off somewhat for being strangely Elizabethan, but which is still effective for all of that:

All things that are have some operation not violent or casual. Neither doth any thing ever begin to exercise the same without some fore-conceived end for which it worketh. And the end which it worketh for is not obtained, unless the work be also fit to obtain it by. For unto every end every operation will not serve. That which doth assign unto each thing the kind, that which doth moderate the force and power, that which doth appoint the form and measure of working, the same we term a law.

The Rational Justification Of Human Goals: The “Naturally Right” Us. “Natural Rights”

Clearly on this conception, a so-called “natural law” simply determines what our natural obligations and responsibilities are in the living of our lives—how we ought to do it, in other words. And as for “natural right,” that term might be taken as but a translation of the medieval expression, *jus naturale*, much as “natural law” is a translation of *lex naturalis.* Indeed, it is in this sense that Strauss takes the term in his title, *Natural Right and History.* Yet note that in this sense of the term a natural right does not so much signify what it is someone's natural right to do, as rather what it is naturally right for someone to do. And these senses of “right” are far from being the same. Indeed, in the second and more traditional sense of “right,” a right is really equivalent to a duty and obligation, and hence is scarcely “a right” in the current sense of the term at all.

Not only that, but when in the context of classical natural law theory, one asks why it is held to be right for someone to act or proceed in a certain way, or why he is obliged to conduct himself in that way, the answer is always to be given in terms of the end to be achieved thereby. That is to say, given a natural or proper end of human life, then it may be determined both in natural and by reason, what it is that one needs to do or that one ought to do or that it is right for one to do in order to attain that end. But what is this, if not to say that natural rights and natural duties—and hence natural laws as well—are always susceptible of a proper justification? Or in other words, there is always a reason for holding such obligations to be naturally binding upon us: they are so in virtue of the natural end or goal toward which human beings are oriented by their very nature.

Not so, though, “natural rights” in the eighteenth century sense or in the modern sense either. For as Strauss has argued, this newer notion of natural rights was developed in

an entirely different philosophical setting from that of the classical or medieval notion. Instead of its being supposed that human beings were naturally oriented toward a proper end or goal of human perfection or achievement, it became fashionable in the seventeenth and eighteenth centuries to consider human beings simply as they are, just naturally and in fact, and quite apart from any fancied notions of what they ought to be, or apart from any supposed natural ends or purposes toward which they might be supposed to be somehow naturally ordered and oriented. In fact, did it really make any sense any more to talk about natural ends or final causes at all? For had not the new science, as it emerged from the hands of the Galileos and the Descartes and the Newtons, simply left final causes out of account altogether? Why, then, continue to talk in the way Hooker had done: “All things that are have some operation not violent or casual. Neither doth any thing ever begin to exercise the same without some fore-conceived end for which it worketh”? Surely, such a way of looking at nature and at the changes that take place in nature would now seem to be outmoded.11

Revolution In Natural Law: Hobbesian “Natural” Rights As Subjective Desires

Likewise, with respect to human beings, why not follow the lead of a typical modern thinker like Hobbes, and consider human beings simply in their natural state or condition? For considered in that condition, what is a human being if not a creature of countless appetites and desires? And as for there being any natural end or goal or perfection which a human being is under a natural obligation to strive for and try to attain,

there is no *finis ultimus*, utmost aim, nor *summum bonum*, greatest good, as is spoken of in the books of the old moral philosophers. Nor can a man anymore live whose desires are at an end than he whose senses and imaginations are at a stand. Felicity is a continual progress of the desire from one object to another, the attaining of the former being still but the way to the latter.... So that, in the first place, I put for a general inclination of mankind a perpetual and restless desire of power after power that ceases only in death.12

Here, surely, is a veritable revolution in the understanding of nature and natural law, particularly as it pertains to human nature. For as Strauss remarks, with respect to Machiavelli:

Classical political philosophy had taken its bearings by how man ought to live; the correct way [now and in the spirit of Machiavelli] of answering the question of the right order of society consists in taking one's bearings by how men actually do live.... What Hobbes attempted to do [more or less following Machiavelli] was to maintain the idea of natural law, but to divorce it from the idea of man's perfection; only if natural law can be deduced from how men actually live, from the most powerful force that actually determines all men, or most men most of the time, can it be effectual or of practical value. The complete basis of natural law must be sought, not in the end of man, but in his beginnings....13

And what do these “beginnings” of man, or this natural condition of man, as conceived now in the new sense of “nature,” have to teach us regarding man's natural rights? Clearly, any such natural human rights may no longer be understood in the sense of those things which it is right for a human being to do, or which he ought to do, or has a responsibility to do, in the light of his naturally determined human end or perfection. No, for in his natural condition man is no longer to be thought of as having any natural end or perfection at all; instead, he is but a creature of needs, appetites, and desires. And the need or appetite that tops all others is that of self-preservation, and the desire to avoid death. Here, then, is man's basic natural right: it is just his inalienable right to self-preservation; and by derivation his right to gratify his desires and appetites, as far as the power within him lies. And so Strauss thus moves to his conclusion as to this new and radically transformed notion of “natural right,” *à la* Hobbes:

Natural law must [now] be deduced from the desire of self-preservation....[It is this that] is the sole root of all justice and morality. The fundamental moral fact is not a duty but a right; all duties are derivative from the fundamental and inalienable right of self-preservation....duties are binding only to the extent to which their performance does not endanger our self-preservation. Only the right of self-preservation is unconditional and absolute. By nature there exists only a perfect right and no perfect duty.... Since the fundamental and absolute moral fact is a right and not a duty, the function as well as the limits of civil society must be defined in terms of man's natural right and not in terms of his natural duty. The state has the function, not of producing or promoting a virtuous life, but of safe-guarding the natural right of each. And the power of the state finds its absolute limit in that natural right and in no other moral fact. If we call liberalism that political doctrine which regards as the fundamental political fact the rights, as distinguished from the duties, of man and which identifies the function of the state with the protection or the safeguarding of those rights, we must say that the founder of liberalism was Hobbes.14

The Problem With Natural Rights: Are They Natural, And Do They Have Any Foundation At All?

With this mention of liberalism, though, we are getting ahead of our story again. Instead, we need first consider still another point that is relevant to the newly emerging natural rights doctrine of the seventeenth and eighteenth centuries. For so far as these doctrines go, one key question remains: granted that Hobbes may have been right, that on the basis of the new scientific conception of nature in general and of human nature in particular, the natural condition of men is one of ceaseless and ever proliferating appetites and desires; and granted that man's overriding passion is thus one of self-preservation in the gratification of these appetites and desires; still, why should such a natural concern on man's part be considered as being in any way a “right”?

Yes, granted that even among all mankind there is indeed just such “a perpetual and restless desire of power after power that ceases only in death,” why should the pursuit of such power be regarded as in any wise a right on the part of those impelled toward

such a pursuit? After all, on the more traditional and classical view of natural law, the mere fact that human beings, either some of them or all of them, should be naturally endowed with all sorts of limitless and heterogeneous appetites and desires certainly does not make such desires to be right, or their pursuit warranted.

On the contrary, their rightness is entirely dependent upon their conformity with the standards of what a human being ought to do or be, as judged in the light of a man's natural end. Or to put it more bluntly, the mere fact of our having certain desires is of no moral import whatever; rather what is morally relevant is only whether such desires as we have are those we ought to have or not. Nor is that all, for as we were at pains to note in our foregoing discussion, on the basis of the more traditional natural law theory, all human duties and human rights may be reasonably adjudged to be duties and rights only in so far as they can be justified, and thus shown to be duties or rights, in the light of man's natural end and perfection. Take away, then, this notion of a natural end or a natural perfection of human life, and there would no longer appear to be any ground on the basis of which rights or duties of any kind might be rationally justified.

Why Are Natural Inclinations Natural “Rights”?

Yes, suppose we go beyond Hobbes with his basic right of self-preservation, and suppose we open the gates to all of those further and derivative and typical rights so dear to the eighteenth century—and needless to say, to us today as well—the right to life, liberty, and the pursuit of happiness, the right to property, the right to freedom of speech, the right of “one people to dissolve the political bands which have connected them with another,” etc. What is the basis of these rights? Why do we hold them to be natural rights? For that matter, what possible ground do we have for taking any supposed right to be a right, much less these particular rights? For on the modern scientific view of nature, as contrasted with the Aristotelian view to which both Aquinas and Hooker adhered, there just does not seem to be any way in which such things as rights can be said to be items in the natural world at all. And granted that we human beings may be naturally inclined to life, liberty, and the pursuit of happiness; that we do have a natural desire to acquire property, or that we naturally cherish certain freedoms; why suppose that our natural inclinations and desires in these regards can in any way constitute a natural right on our part to such things?

Has Hobbes allowed himself to be somehow befuddled on this score, and have the rest of us who are advocates of what Strauss earlier called “liberalism”—have we likewise just followed suit and let ourselves be taken-in no less than was Hobbes? For surely, on the new conception of nature and the natural, which Hobbes took over from the newly emerging science, and which presumably none of us in this day and age would be so foolhardy as to question, the mere fact that something occurs naturally, or in accordance with the laws of nature, certainly does not warrant anyone's saying that it was right that it should have occurred, or that it ought to have occurred, etc.

Could it be, then, that our seventeenth and eighteenth century predecessors in the natural law tradition have given us a full-fledged doctrine of natural rights, but without providing us with any rational basis or justification for such a doctrine?

Indeed, may we even go further and say that theories of natural rights of the kind that emerged in the seventeenth and eighteenth centuries, and that tended to become but so many appendages to the more traditional natural law theories—could it be that by a strange irony such natural rights theories tended almost unwittingly to involve a recurrence to that one meaning or interpretation of natural law theories according to which natural laws, so far from being discernible or discoverable in nature, are rather to be thought of as simply "issuing from the legislative Will of God"? That there should be such an association of "natural rights" with "natural laws" understood as mere divine decrees,15 would surely not be without irony. In fact, the irony immediately becomes apparent, the minute we remind ourselves of those two features of natural right theories in terms of which they were originally distinguished from natural law theories of the more traditional sort. The one feature was simply that of the obvious shift of emphasis from so-called "natural laws" to "natural rights"—which thus far has been the feature that we have been discussing at such length.

But the second feature was what we earlier characterized as being one of the increasing secularization of the notions of both natural laws and natural rights, that was so marked a feature of seventeenth and eighteenth century theories. How singular it is, then, that a shift of emphasis from natural laws to natural rights should have entailed so radically different a conception of nature and the natural, as to make it largely unintelligible how natural rights could have any sort of basis in nature at all. In consequence, the affirmation of natural rights—at least in the seventeenth and eighteenth century context—tended to be just that, namely, a mere affirmation. But to imply that natural rights are really not grounded in nature, but are mere affirmations on the part of those of us who subscribe to them—is this not tantamount to holding that such rights are not rights by nature, but only be decree? Not by divine decree, perhaps, but still by decree.

But by whose decree? Apparently, as it turned out, it might be by decree of just about anybody who might come to feel certain things to be very dear to him or very important, and who would then proclaim them to be his rights, or to be somehow ordained for him by nature. Professor Crowe, in fact, gives some amusing, even if incredible, examples of such appeals to natural rights and natural laws as were not uncommon in the eighteenth century. For instance, it was put forward as a serious contravention of the law of nature "to enter unbidden, or to make journeys troublesome," or to expect soldiers to wear the stiff leather stocks that were then customary. Best of all is an example of a New England delegate to the Constitutional Cenvention in the U.S. who objected to the proposed two-year term for senators on the ground that a one-year term was "a dictate of the law of nature, [considering that] spring comes once a year, and so should a batch of new senators!"16

Theories Of Human Rights: Their Decline And Fall In The Nineteenth Century And Their Dramatic Rise And Resurgence Today

In the light of examples such as these, is it any wonder that the popular natural law and natural rights doctrines of the eighteenth century should have tended to be pretty well discredited in the course of the nineteenth century? So patently ridiculous were so many of the claims as to what might be natural rights or natural laws, that there came to be an increasing consensus that there just weren't any natural rights or natural laws at all. Nor was it merely because individual claims of this sort were so often patently ridiculous that nineteenth century thinkers were inclined to repudiate the doctrine of natural law altogether. In addition, one had only to reflect on the character of the natural world, as this had been disclosed by the scientists, and one could readily see that neither value distinctions nor moral distinctions could possibly have any place in nature. Facts were not values; nor was there any way that values could be said to have a place in the world of facts. And even worse for natural law doctrines, was the eventual impact of teachings like those of Hume, who maintained that there is no way in which an “ought” can ever be derived from an “is.”

In fact, to revert again to some of our own earlier examples in connection with Hobbes: granted that men actually do work for their own self-preservation, that certainly does not make it right that they should do so. Or granted that men deeply cherish life, liberty, and the pursuit of happiness, or that they will fight to retain their property, or be resentful of any taxation without representation, or whatever, that still does not as such mean that they have any right to these things, or that anyone who interferes with them in this regard is violating a very right or law of nature. Indeed, to think otherwise is to commit the fallacy of trying to infer an “ought” from an “is,” or a value from a fact, or, as G.E. Moore was to term it years later, it involves “the naturalistic fallacy.” From the point of view then of many thinkers in the nineteenth century and even after, the entire doctrine of natural rights and natural law would appear to rest on nothing less than a patent logical fallacy.

Natural Rights Assaulted: Historicism And Positivism

Of course, this was by no means the only ground on which various nineteenth century thinkers were inclined to challenge natural law theories, be it of law, ethics, or politics—the ground, namely, that all such theories tended to involve a fallacious inference from nature to ethics, from fact to value, or from “is” to “ought.” In addition, there was a widespread tendency for thinkers and scholars, to fall back, as it were, on history, and to regard the process of historical evolution as somehow ultimate and absolute. Thinkers as different as Edmund Burke in England, or Hegel in Germany, kept insisting that there could not, either in justice or in logic, be any warranted appeal to fancied standards of a natural right or a natural justice over and above those actual standards of justice and norms of political action that had been developed and had evolved in the course of a nation's or a people's history. It is true that this kind of historicism, if we may so term it, with respect to ethics, law, or politics, does tend to end in a position not far removed from a bland acceptance of the

principle that "whatever is, is right." But at least, the advocates of this kind of historicism[17] could claim that they made no spurious or illogical appeals to any imagined natural norms or natural laws, outside of and beyond the actual historical facts.

Indeed, similar arguments were not uncommon among legal scholars in the nineteenth century as well. For as is clear from our earlier remarks about Grotius and Pufendorf, these men were not so much concerned with a natural law, to the extent that it might have implications for ethics and politics; instead, their preoccupation was primarily with law in the narrower sense and with jurisprudence. Ironically enough, though, just as the natural law thinkers in the seventeenth and eighteenth centuries felt it essential that they be able to appeal to a natural law and justice, over and above the actual laws of a particular country or jurisdiction, or of any particular age or time, by the nineteenth century the pendulum had quite swung in the other direction.

Remember that earlier quip which we quoted to the effect that while the philosophers had come to think that a natural law was not natural, the lawyers had come to think that it was not law. And sure enough, that ancient principle of St. Augustine—and one that was repeated in turn by St. Thomas—to the effect that "an unjust law is no law," became the butt of criticism and attack on the part of both historicists and positivists among the legal theorists of the nineteenth century and after. How could a law be said to be not a law when it is on the statute books and is actually enforceable? And how can positive laws be held to be invalid and of no effect in virtue of mere appeals to a supposed natural law, when such natural laws amount to no more than ideals having no basis in fact at all? Yes, speaking of perhaps the most eminent of the legal positivists of a generation ago, the late Hans Kelsen, D'Entrèves observes that "Kelsen's 'pure theory of law' can be used to show the Achilles heel of positivism." For "Kelsen's refined form of positivism shows its real face [in that it involves] the reduction of law to a mere expression of force."[18]

Consequences Of Nineteenth Century Rejection Of Natural Law: Utilitarianism

Once more, though, we are getting ahead of ourselves. For before turning our attention to the contemporary reaction against the detractors of natural law and natural right in the nineteenth century and at the beginning of this century, we must first consider what some of the consequences were, philosophically speaking, of that spurning of all appeals to a natural law, which were so characteristic of the nineteenth century thinkers whom we have just been considering. Certainly, so far as ethics and political theory go, it might not be unfair to say that the rejection of natural law led to a triumph of Utilitarianism.

Superficially, the essence of Utilitarianism can be very tidily summed up in the slogan, "The greatest happiness of the greatest number," or "The greatest good of the greatest number." But going behind the slogan, it is not hard to discern alike the sense and the reason for Utilitarianism's great appeal. For suppose one becomes convinced that there really is no rhyme or reason to invoking such things as natural rights or natural laws. For one thing, it would seem that there just aren't any such things. And

for another, the very enterprise of a natural law type of ethics or politics, in which one tries to proceed from considerations as to what human beings are by nature, and what their natural ends and goals might happen to be, to some sort of argument about what men ought to be or what it is right for them to be—this enterprise is not just unwarranted; it is fallacious, as involving a patently fallacious process of moving from “is” to “ought.”

Or at least, so it would seem. Very well, putting aside all concern with natural ends or goals, to say nothing of the natural obligations and rights that are said to be based upon them, why not just accept the plain facts about ourselves as human beings? For are we not all of us creatures of countless needs, desires, impulses, wants, appetites, and whatever? True, your needs and desires are different from mine; and the other man's from those of either of us. But why get into a tizzy over questions of what our desires ought to be, or of whether we have a right to satisfy some of our interests and desires and not others? Is not the sensible thing for us to do but to settle down to the business of straightforwardly trying to satisfy just as many of our desires—as many of yours and mine and of all mankind's—as is humanly possible?

This is what is meant by the greatest happiness, or the greatest good, of the greatest number; and this is all that it means. And meaning this, doesn't it make eminently good sense? No worries about “oughts” or “rights” in the traditional sense, or about moral values or absolute duties or natural obligations or anything of the sort. Instead, we have only to get on with the business of all of us becoming as happy as possible, and of collectively maximizing our satisfactions in as quick and efficient a way as human calculation may be able to devise?

Rawls, Dworkin, And Nozick: Criticisms Of Utilitarianism And Positivism

Alas, though, sensible and even idyllic as this prospect might seem to be that Utilitarianism holds out for us, it turns out to have nothing less than a vicious cancer working at its very core—a cancer that suddenly, and seemingly quite unannounced, burst on the consciousness of so many of us a scarce eight years ago with the publication of John Rawls's *A Theory of Justice.* Not that what Rawls had to say was anything very original, and he certainly said it in what many might think to be a somewhat tedious and turgid way. And yet his saying it did somehow manage to capture the imaginations of nearly everyone; and as a result, instead of the plain old diet of ever more and more Utilitarianism, we today have set before us a dramatic revival of so-called “rights theories”—not necessarily theories of natural rights, but still rights theories for all of that. For what Rawls succeeded in bringing home to most was the realization that in any Utilitarian program of the maximization of the satisfactions of all mankind, there was no reason in principle why such a maximum satisfaction might not be a satisfaction of the majority at the expense of the minority, or else, possibly, of the many at the expense of the few.

If the sum total of human satisfactions can be increased, even if it be at the cost of the suffering of some one or of a few or even perhaps of many human beings, then by the Utilitarian program it is just that maximum satisfaction that is to be opted for and

aimed at. But aren't the implications of this rather damning, so far as Utilitarianism is concerned? After all, in the course of the Christian centuries not very many people have been inclined exactly to applaud the judgment of Caiaphas on a certain rather notable occasion, when he said that "it was expedient that one should die for the people" (John 18:14). Yet what could be more in accord with Utilitarian sentiments than just such a judgment?

In any case, in opposition to the Utilitarians Rawls managed to come right out and say that on any interpretation of justice as fairness, to secure a maximum satisfaction for mankind, and yet to do so at the expense of a few, or even of one, would be unjust. It would violate the rights of those individuals, or of that one individual, whose happiness or satisfaction had had to be sacrificed in order that the total happiness of the rest might thereby be enhanced. True, Rawls did not propound this as a natural right. Instead, in his book he provides for a somewhat elaborate apparatus whereby the rights of individuals, as determined in the light of the principle of justice as fairness, will come to be recognized as a result of a social contract.

Likewise, in the field of law, Ronald Dworkin has come out with a stimulating book, *Taking Rights Seriously* (1977). Dworkin's main opponent in the book is none other than the brilliant and eminent English philosopher of law, H.L.A. Hart. Now, as it happens, the upshot of Hart's work in jurisprudence had been his telling defense of the thesis that in judicial proceedings there cannot properly be any appeals to such principles of right and justice as may transcend and so fall outside of the expressed or implied principles and rules of a given legal system. However, it is just this basic tenet of legal positivism that Dworkin undertakes to challenge. Again, it needs to be said that Dworkin does not base his challenge on any invocation of natural law or natural right. And yet for all of that, in his own enterprise of "taking rights seriously," Dworkin implies that the rights that he would take so seriously and would have others take seriously are precisely such rights as may well not be included within the positive provisions of a given legal system.

But then just where do these extra-legal rights come from? Moreover, so long as Dworkin fails to make clear just what their origin and basis is, may he not be criticized for not fully facing up to the question of whether there is a justification, and, if so, what the justification may be, for supposing that there really are such rights in the first place.

Indeed, no less a criticism and in a somewhat similar vein could perhaps be directed at another new and even somewhat electrifying book by one of the new rights theorists, namely, Robert Nozick. That is the book *Anarchy, State, and Utopia* (1974). Nozick's basic conviction seems to be—if we might express it more or less in our own language—that human beings are naturally interested and appetitive animals, each with his own concerns and wishes. Moreover, there is no reason why each should not pursue his own interests—provided always that he recognize that there are certain "side-constraints" on what he does, side-constraints that involve a respect for various rights that others may have. Thus the persons and property of these others, Nozick would say, are things to which they have "entitlements," and these entitlements are such that they may not be violated or interfered with by others. No, they are, as it

were, in the nature of absolute rights; and no Utilitarian considerations of any kind can ever justify us in any attempt at overriding them.

What If Rights Theories Can Only Draw Sustenance From Natural Law Theories?

Now to all of these newly developing rights theories, which in their different ways might be thought to lead to the establishment of a genuine Libertarian philosophy, one can only say “Bravo!” And yet isn't there one fly in the ointment? For these rights that Rawls, Dworkin, and Nozick have been so vigorous in championing are not held to be natural rights; nor are the various duties and side-constraints, that are correlative with the asserted rights of individuals, to be regarded as having any foundation in nature.

Yet if rights and duties cannot be shown to have any basis in nature or in fact, what reason is there to suppose that they have any basis at all? True, we may feel strongly about them; and nothing is easier than to get human beings to warm to affirmations of their individual rights and freedoms. But mere warmth of feeling can hardly be a substitute for rational justification. And if rights and duties are not held to be natural rights and duties, what is there that is rational about them?

Just recall our own earlier account of the natural law theories in the seventeenth and eighteenth centuries, in which the rights and the laws that were appealed to, turned out to be not natural laws or natural rights, so much as rights and laws that appeared to rest on nothing more than fiat or decree—in the Middle Ages upon divine decree, and in the later secularized versions of natural law upon no more than man or mankind's decree. But the eighteenth century experience would surely seem to indicate that rights that turned out to have no more than an asserted, and not a natural, foundation could be only too easily denied and discarded altogether. And might not this be a message that could bode ill for the future of today's newly emerging rights theories?

Indeed, this is a prospective danger that at least some contemporary philosophers have been not a little anxious about, though not necessarily those of a classical liberal persuasion. Two names of authors of two very able books that have appeared just in the last two years might be mentioned in this connection, Alan Donagan and Alan Gewirth. In both cases these writers are concerned to justify human rights and human duties; but they want to do so on some other basis than an appeal to nature and natural law. Instead, they both prefer to follow a more Kantian line of justification.

In general, Kant suspected that egoistic or self-interested motives were non-moral because they were not so much reasoned to and freely chosen as automatic, given biases or vested interests caused and determined heteronomously rather than by the autonomous choice of the moral agent. In the hope of making ethical choice more rational and autonomous, Kant turned to a universalizability principle. He reasoned that universalizing one's reasons for action (i.e., by applying those reasons equally to every other agent) would form the decisive criterion for any action that is truly rational and hence a truly moral one. This universalizing approach led Kant to formulate his categorical imperative whose edict applied equally well to all moral agents.[19] Kant was at pains to remove all self-interested goals, ends, or objects of

desire as the possible justifying reasons for moral actions. Such self-interested motives seemed to him merely irrational deterministic reflexes of an agent's actions (similar to Hobbes's “passions”) rather than authentic, autonomous, and rationally chosen motives.

Thus Donagan wishes to argue that there simply is a basic imperative to which all human beings are subject, and which might be expressed “Humanity is always to be loved and respected for its own sake,” or “Every human life is to be respected as an absolute and inviolable good.” The only trouble with this is that it would seem only too easy to round on Donagan and say, “But I don't see that this is an imperative incumbent upon me at all. What evidence is there that I am really bound by any such absolute obligation or duty as is here formulated?” Nor does it seem that Donagan has any very good answer to this. True, as far as Kant was concerned, he claimed that such an absolute or categorical imperative as that requiring one to respect humanity or human life as an absolute good was binding on each and all alike—and this simply for the reason that to deny it was somehow to fall into self-contradiction. However, very few have been convinced that any such self-contradiction could really be shown to be involved in such instances. And in any case, Donagan does not choose to defend his absolute imperative by this means. But what, then, is the warrant for it?

Moving to Gewirth's case, he would, in *Reason and Morality*, appear to want to justify human rights and duties by considering what the implicit assumptions are of any human action whatever. Thus in acting, any human agent cannot but recognize that his action has the characteristics of being both purposive, as well as being voluntary and free. Moreover, Gewirth feels that to recognize the voluntary and purposive character of our actions is also to recognize the rightness and the desirability of their being so; but to recognize that it is but desirable and right that my own actions be voluntary and purposive is also to acknowledge that it must be no less desirable and right for any and every human being.

In other words, if it is right that my actions be voluntary and purposive, then it is right that everyone's should be so; and just as everyone should recognize my right in this regard, it is no less right and a duty that I recognize the rights of everyone else in this same regard.

Undoubtedly, this is a telling and ingenious argument by way of establishing rights and duties; and yet is it sound? For may not someone make rejoinder by simply saying, “Why, yes, I am glad that I am in a position to act freely and purposefully as a human being. But even though I like this situation of mine and certainly hope that it continues, I do not claim it as a right. Indeed, if I did, it would be an obvious case of the fallacy of trying to infer an ‘ought’ from an ‘is.’ Moreover, not claiming the freedom and purposiveness of my actions to be in any way a right, since it is nothing more than simple fact about my individual situation, albeit a very happy fact, then there is no way in which I can be held to be logically bound to recognize a corresponding right to freedom and purposiveness on the part of other human beings.”

How Can We Salvage Contemporary Rights Theory And Rehabilitate Natural Law?

What to do, then, when it comes to trying to save contemporary rights theories from the charge of arbitrariness? If the Kantian moves of Donagan and Gewirth cannot do the trick, what alternative is there by way of justifying rights and duties, save that of showing that such rights and duties are somehow natural rights and duties? And what does this call for, if not for some sort of rehabilitation of the old natural law theory, more or less in its Thomistic form? For on this view, as we saw, the way one justifies rights and duties in the context of ethics and politics is analogous to the way in which one justifies the right ways of doing things, as over against the wrong ways, in the contexts of various arts, skills and techniques. In the latter sorts of cases—e.g., medicine—one justifies a certain care and treatment of patients as being naturally required on the basis of the end of the medical art, which is health. So likewise, given that the natural end of human life is the attainment of one's natural perfection or fulfillment as a human being, then one can come to recognize what it is that is naturally required of one, and what one needs to do or what it is right for one to do, in order to attain such an end.

But if the only way really to restore rights and duties to a proper status once again, either in our individual lives or in society, is to recognize them as having a natural basis and foundation, and a natural basis and foundation such as will enable them to be integrated into an overall scheme of natural law, why has this not been an alternative that has been more readily resorted to by thinkers in the present-day world, particularly by champions of latter-day rights theories? The answer surely is that as nature has come to be conceived and described by modern science there would appear to be just no room and no place in nature for any such things as natural human ends, to say nothing of natural rights or duties. Thus Hooker's unqualified assertion that “all things that are have some operation not violent or casual; nor doth any thing ever begin to exercise the same without some fore-conceived end for which it worketh”—this assertion of Hooker's would appear to be directly contravened by the account of nature given by the scientists. Not only that, but the very enterprise of trying to ground moral and ethical and political principles in nature, in addition to being inconsistent with the scientist's account of nature, would also appear to involve the patent fallacy of attempting to reason from fact to value and from “is” to “ought.” Little wonder, then, that natural law theories of ethics and politics in the Thomistic sense, cannot ever seem to get off the ground any more!

Reviving Natural Law: Bridging Facts And Values And Formulating A New View Of Nature

Yet that ground is changing, and hopefully changing fast, so that a proper takeoff may become possible after all. The old dogma, for instance, about the absolute and unbridgeable gap between facts and values has recently been subjected to various

sorts of devastating analyses and criticisms,20 and while the dogma still hangs on, even in philosophical circles, hopefully its days are numbered.

The hallmark of a natural law ethics is that the gap between facts and values is indeed bridgeable. Natural law aims at grounding norms and values in fact and nature. Because values are claimed to be natural and factual, and are not mere man-made conventions, it is possible to claim a rational and objective basis for ethics.

In the natural law perspective, however, values are not simple objective properties or facts as we commonly understand these terms. Despite the fact that values are truly objective, they also serve as values for a subject, namely, the human agent. Speaking in terms of their factual status, values resemble goals or perfections which the individual strives to achieve by rational choice. Just as the acorn tends toward the mature oak tree (and never say, the sycamore), so a young girl tends to actualize her latent potential to blossom into a wise and beautiful woman.

Facts are viewed as values, when we consider them as the mature unfolding or actualizations of human potentials. Human values are also, indeed, facts to the degree that these perfecting actions are worthwhile and obligatory for us humans if we aim to realize our natural potential. For example, such humane values as wisdom or courage are certainly facts; but as facts they are no less developmental achievements which represent the realization of a person's earlier potentialities.

Even more significant for rehabilitating natural law have been the number of recent books and articles which have argued for an out-and-out revisionism, so far as the received scientific account of nature is concerned. On the one hand, there have been studies designed to show that modern natural science is simply not to be interpreted in the Humean and positivistic manner that has been fashionable for so many years.21 Instead, the ancient Aristotelian causal scheme, including material, formal, efficient, and even final causes, is said to be far more compatible with the actual practices and procedures of scientists than any Humean scepticism, such as has been wont to be predicated upon the usual stereotyped contrast between constant conjunction and necessary connection. Yes, if such a philosophical revisionism with respect to science itself should begin to gain ground, then Hooker's old affirmation about the natural operations of things in the natural world, all of them having fore-conceived ends for which they work, will once more gain credence and respectability.

Nor is that all, for just as on the one hand, something rather like the old Aristotelian and medieval view of nature is considered by some contemporary philosophers of science to be the proper framework in terms of which the procedures of modern science can best be understood, on the other hand there is another group of philosophers of science who take as their point of departure Sir Karl Popper's celebrated thesis that “the logic of scientific discovery” is to be understood as involving an almost exclusive reliance upon the so-called hypothetic-deductive method.22 Moreover, if such be the nature of scientific method, then it would seem to follow that science is not really interested in achieving a knowledge of nature and reality at all. Instead, rather than being concerned to know what nature is, or is like, in itself, the modern scientist may be said to be concerned only with nature as it appears

to be, depending upon the particular conceptual framework or set of hypotheses in terms of which the scientist happens to be viewing nature at a given time. In other words, the objective of science is to control and manipulate nature, and not necessarily to know it as it is in itself at all.23

Notice, though, what the implications of either of these recent revisionist accounts of modern science would be with respect to possible rehabilitation of natural law theories in ethics and politics. For if science is not concerned with nature as it really is in itself, then modern science cannot be said to have undermined that conception of nature in terms of which all operations in nature, and particularly those operations characteristic of human beings, might be said to have their fore-conceived natural ends. In other words, there could be no basic incompatibility between what the scientists have to say about nature and the concept of nature that is required by a natural law or natural rights philosophy. Of course, on the other revisionist view of science, there could be no incompatibility between the scientist's view of nature and the natural, and the natural law philosopher's view of them, for the simple reason that the scientist's view of nature ultimately comes down to the same thing as the natural philosopher's view.

“Oh,” but you will say, “neither of these revisionist views of science has gained sufficient currency to again render secure the philosophical foundations of natural law theories of the traditional sort.” True enough, and yet surely there is enough stirring and going on to admit of a most hopeful answer to the question, “Natural law—is it dead or alive?” The answer is, “It's very much alive!”

FOOTNOTES

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I

Natural Law

The complex tradition of natural law exercised a profound, but historically problematic, influence on modern natural rights theory and the equally complex liberal tradition. Liberalism, as the political philosophy of absolute human rights, might well be described as an ideology of freedom in search of an ethical justification—which perhaps only natural law can supply. Indeed, a major theme of Professor Veatch's preceding essay holds that the liberal doctrine of natural rights (or any other political philosophy or ethical system for that matter) is untenable without the ontological and epistemological support of a natural law approach.

And, of course, natural law seems a very congenial idea-complex for liberalism both in natural law's historical function and in the thrust of its unit-ideas of rationalism and the nomos/physis *dichotomy. Historically, as d'Entrèves's* Natural Law *amply documents, natural law served the liberal function of placing rational limits on political power. Furthermore, at the heart of natural law lies an antithesis with radical political implications: the contrast between* nomos *(convention or custom) and* physis *(nature). From the ancient Greek political gadfly Socrates to the modern civil disobedients Thoreau and Solzhenitsyn, humans have appealed to a "higher law" or true natural law to protest and rebel against unjust conventional laws. In his essay Professor Veatch draws this same ethical distinction between* nomos *and* physis *as an intrinsic unit-idea of natural law:*

For it is an implication of any doctrine of natural law or natural right that the marks and standards of a natural justice are such as to make it recognizable, even in the face of whatever the prevailing conventional or customary justice may affirm to the contrary. Indeed, in this sense natural laws are held to be evidenced by nature itself, and to be there, as it were, right in the facts for all to see, if we have but eyes to see, and are not blinded by habit or by convention or by social conditioning or whatever.

So understood, natural law was charged with a radical liberal and revolutionary potential to challenge all illegitimate state authority and edicts by submitting these to the rival sovereignty of individual reason and ethical judgment. Thus natural law concealed a subversive potential akin to imperium in imperio. *For the touchstone and voice of natural law was not public authority but private conscience, the individual's right reason, which the Stoics called* orthos logos *and Cicero* ratio recta. *Professor Veatch cites Vernon Bourke's formulation: "the rational discernment of the norms of human conduct working from man's ordinary experience in a world environment of many different kinds of things was right and natural in politics and ethics."*

Reason—universally available to every individual—remained always a ready and powerful weapon to protest against violations of human nature in politics. What was right for man was rationally discoverable by human reason consulting human human

nature and its ends. This concept of what was "naturally right" for man led to the concern for natural rights characteristic of a significant strand of the modern liberal tradition. In fact, the English liberal, Lord Acton, impressed by Thomas's natural law advocacy of the values of freedom, natural rights, and government by consent, went so far as to pay Aquinas the homage of being "the first Whig" (see Crowe's The Changing Profile of the Natural Law, *p.235, as well as pp. 223–245, for a discussion of the rationalist and human rights interpretation of natural law from Hugo Grotius and Samuel Pufendorf through Locke and Rousseau to the classical liberals Bentham, Mill, and Sumner Maine).*

The liberal catalyst inherent in natural law, then, was its touchstone of critical reason rigorously examining the moral rightness of laws and social institutions. D'Entréves has distilled his study of Natural Law *(p. 110) by observing: "The doctrine of natural law is in fact nothing but an assertion that law is a part of ethics." To the question "what is law?" (quid jus?) the natural law tradition answered that law is law only if it is just (jus quia justum). This primacy and sovereignty of the ethical reason over politics led the natural law jurists to "recognize that 'law' does not necessarily coincide with the law of the State." (d'Entréves, p. 113). This approach opposed state-centered legal positivism and voluntarism, or the doctrine that law is whatever a ruler wills. From the natural law perspective, law to be true law must be an act of the intellect corresponding to the natural order of justice rather than a simple act of the will of a legislator. Since private reason, not civil authority, defined true law, natural law paved the way toward principled civil disobedience and the liberal legal order based on the inviolable rights of the individual moral conscience.*

Liberalism flourished and then declined to the extent that it consistently and radically defended such individual rights and to the degree that it was nourished by the absolutism of the "higher law" or natural law doctrine. Liberals worked massive and radical social and political upheavals by rationally questioning the rightness of laws and institutions. Just as natural law, liberalism also rejected the unnatural interference of nomos in the form of arbitrary, conventional laws, legal privileges, and economic intervention. Inspired by a natural law vision of a natural order of reason, freedom, peace, and prosperity, liberalism toppled the Old Order of the cien régime *in Western Europe. It replaced the trappings of the Old Order's* nomos—*legally enforced privileges, class exploitation, mercantilism, slavery, status, and statism—with a new liberal order of legal equality and individual freedom. The liberal temperament's rational analysis of nature and the state ushered in the dynamic ferment of the Enlightenment, the Industrial Revolution, and the American and French Revolutions together with their modern progeny.*

Liberalism's challenge to the Old Order, on the basis of the natural law-derived doctrine of natural rights, found expression in the French Declaration of the Rights of Man and the Citizen (1789) with its echoing allusion to the American Declaration of Independence: "These natural, imprescriptible, and inalienable rights." This new order of human rights was adumbrated by Enlightenment liberals such as the Abbé Sièyes in What is the Third Estate? *(1789), which challenged the state-imposed caste system of privileged orders of nobility: "All privilege... is opposed to the common right; therefore all the privileged, without distinction, form a class that is different*

from and opposed to the Third Estate." (In Thomas C. Mendenhall, Basil D. Henning, and Archibald S. Foord, eds. The Quest for a Principle of Authority in Europe: 1715-Present, *1964, p. 53). Such embryonic liberal class analysis exposing unnatural and artificial social distinctions (or nomos) was later matured and perfected by the French liberals Charles Dunoyer and Augustin Thierry and by others [Literature of Liberty 1 (July-September 1978): 78–79]. Earlier, the social revolutionary force latent in the rational analysis of customary and legal social distinctions was expressed in the pique against nobles by Beaumarchais's operatic character Figaro on the very eve of the French Revolution: "Nobility, rank, place; all that makes you so proud. What have you done to deserve all these blessings? You took the trouble to be born, and nothing more. Otherwise, a rather ordinary man!" Favoring enlightenment and reason, liberalism subordinated all legal codes and political institutions to the standards of right and nature. Characteristically, the French liberal philosophers of the* Encyclopédie *were at the forefront of the antislavery movement.*

But liberalism, after such monumental achievements, declined in the nineteenth century—in large measure because it abandoned natural law and absolute human rights in favor of a utilitarianism that allowed the rights of society to take precedence over individual rights. Professor Veatch's essay has effectively traced the quandary and tensions within liberalism resulting from its fitful adherence to natural law, its fateful emphasis on Hobbesian subjective passions, and finally the collapse of utilitarian defenses of natural rights. Part of the liberals' problem was a positivist view of human nature and their related failure to resolve the Humean fact-value or is-ought dichotomy. To the layman an abstruse and idle philosophic game, the is-ought split was fraught with profound practical consequences to man and society: How can we factually justify so radically value-laden a concept as human rights or freedom? Freedom and rights continue in jeopardy unless a philosophical justification can rescue these concepts from being nothing more than subjective whims, no better nor worse than coercion or slavery.

The following set of summaries illustrates Professor Veatch's insight into the problematic connection between natural law and the liberal understanding of natural rights.

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"Nature" And "Law" In Natural Law

Micheal Bertram Crowe

University College, Dublin

"Natural Law: A Twentieth Century Profile?" In *The Changing Profile of Natural Law.* The Hague: Martinus Nijhoff, 1977, pp. 246–290.

The historical function of the doctrine of natural law (as pointed out in A.P. d'Entrèves's *Natural Law*) has been to place rational limits upon the arbitrary exercise of political and legislative power. But this historical function has oftentimes been hobbled by criticism such as Norberto Bobbio's, who pointed out that philosophers tend to declare that natural law is not natural, while lawyers tend to declare that it is not law. The chief attacks against an objective, universal, natural law rest on the ambiguity of the concepts "nature" and "law" together with the notoriously subjective differences in our moral evaluations and judgments. The critics of natural law, however, seem forever to be "burying the wrong corpse." Modern day defenders of natural law believe that they can rehabilitate the doctrine by stressing the "historicity of human nature and human existence" while rejecting naive views of human "nature" and "law."

The latent ambiguity in "nature" becomes manifest in the contradictory institutions which are claimed, at different times and places, to be "in conformity with nature": slavery and liberty, communism and private property, monogamy and polygamy. Existentialists and logical postivists alike reject an invariable or universal standard of morality in "human nature." Others reject "natural" law because of the discrepancies between the claims of an unvarying natural standard and the reality of wildly differing moral codes. Likewise, scientific humanists favoring bio-cultural evolution are hostile to what they believe is natural law's endorsement of an unchanging morality based on a static, nonevolutionary human nature.

We can interpret "nature" in various ways. Natural law's quest for an objective basis for morals can mislead us to fabricate a moral absolute out of man's physical or biological nature. This approach forestalls a more sensible and comprehensive analysis of man's complex biological, emotional, and rational nature. Some would posit a more sophisticated notion of "natural" law by looking for a natural moral standard in man's "natural inclinations." But natural inclinations stir up two problems: (1) "the gnoseological" (how are these inclinations to be identified?), and (2) "the metaphysical" (what is their ontological standing?). The central issue remains: "Is an inclination natural because reasonable or reasonable because natural?" In avoiding arbitrariness and relativism in order to guarantee an objective moral standard, we must take into account the historicity of man and his evolving nature rather than statically identify as human "nature" time- and culture-conditioned features of human existence. This static reading of natural law would be a "comouflaged legal positivism."

No less ambiguous than “nature” is the concept of “law” when used in natural law. Stressing its universality and uniformity, the traditional defenders of natural law tended to understate the differences between physical laws (such as the law of gravitation) and the moral law. We can better understand law as an analogical term that unites different kinds of uniformity or patterns in behavior. The law of human nature is “prescriptive” since man's power of free choice allows him to disobey its edicts and behave less regularly than atoms. By contrast, the laws of the positive sciences are descriptive and not dependent on volitional acceptance. Human legal codes, finally, imply in their value-terms (“justice,” “legality,” “equality before the law”) a moral order that allows us to distinguish between good and bad positive laws by reference to a “higher law.” A rehabilitated natural law with “variable content” would allow natural law to function more coherently as a non-arbitrary, objective norm to judge government power and law.

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The Anatomy Of Natural Rights

Tibor R. Machan

State University of New York/Fredonia

"Human History and Human Natural Rights." In *Human Rights and Human Liberties: A Radical Reconsideration of the American Political Tradition.* Chicago: Nelson Hall, 1975, pp. 2–46.

A disturbing moral paradox looms over modern culture. On the one hand, it is common to rhetorically invoke natural rights to protest local and international violations of human rights. On the other hand, it is no less common for philosophers to maintain that no convincing rational theory can justify natural rights. How did the doctrine of natural rights arise and how did it come to suffer Jeremy Bentham's sceptical caricature of it as "nonsense upon stilts"?

Historically, natural rights theory evolved to answer the perennial human question: Can we rationally know what is right and wrong in morality and politics, or are these urgent issues merely matters of subjective opinion, sentiment, and convention? Despite kaleidoscopic diversity, the natural law tradition from Plato, Aristotle, and Cicero to Aquinas and more contemporary exponents, has tended to affirm the reality of an objective and natural "court of last resort" capable of settling human disputes in ethics and politics. Natural rights advocates appealed not to shifting *nomos* (convention, custom, or man-made law) but to the more stable *physis* (nature, especially human nature) as an intersubjective arbiter by which human reason could adjudicate questions about values.

Natural right is closely related to, and at times conflated with, natural law: "... natural right is to natural law as truth is to fact—the first are aspects of beliefs, ideas, or statements, while the latter are what exists, about which beliefs, ideas, or statements are entertained, thought, or uttered, respectively." Natural rights theory, basing its beliefs about right personal conduct on the widely varying interpretations of what philosophers viewed as human nature, received different formulations at the hands of Plato, Aristotle, Aquinas, Hobbes, and Locke. Plato and Aristotle regarded reason and free will as the distinguishing features of human nature, whereas Hobbes saw man as psychophysically determined, and viewed reason as a tool of the passions whose only absolute was individual survival. Within the natural rights and natural law tradition, dissent also raged as to how absolute and unchanging were such norms.

These and other internal debates set the stage for many moderns to reject natural rights theory by challenging the core of natural law: the possibility of rationally understanding the truth about the world, human nature, and moral or political rightness. Resurrecting pre-Socratic sceptical attacks, David Hume (1711–1776) fathered the radical challenge of the very possibility of scientific moral knowledge. In his *Treatise on Human Nature* Hume claimed that an unbridgeable gap separated

factual "is" statements and moralizing "ought" statements: How can we legitimately cross over from empirical knowledge of value-free facts to claim that we know what is morally good, right, wrong, or evil? This Humean fact/value distinction has exercised a weighty influence on subsequent philosophy and the social sciences, which characteristically restrict themselves to value-free evidence and argument over positive facts for fear of unscientifically trespassing into the "ought" of value.

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Egoism And Rights

Eric Mack

Tulane University

“An Outline of a Theory of Rights.” Paper presented at the Libertarian Scholars Conference, Princeton University, October 1978.

How can we establish individual rights? We must be able to show that the teleological claim that man “ought” to act in his own self-interest (eudaimonistic egoism) can generate a moral obligation or “deontic claim.” But how does each individual have value so that it is wrong and a violation of “rights” for others to use coercion against him?

Traditional natural rights theory asserts that individuals possess rights because of their status as persons. What kinds of actions would violate someone's personhood and how do we justify our claim that person-denying actions are wrong? The short answer is that we violate someone's person and rights by misusing him, that is, by treating a person as a means to another's end rather than as an end-in-himself.

Misusing a person presupposes a teleology of human nature: each person possesses a certain “natural” or “objective” end, and it is a “natural” function for him to strive to satisfy his natural end. The natural and objective end of each person is his well-being. To strive towards success in achieving this well-being also defines the natural function of each person. This type of eudaimonistic egoism gives us a moral principle to oppose misusing a person as other than an end-in-himself. Each person is an individual, a separate being, with a unique, irreplaceable life; any use of a person that does not recognize a person's status as an end-in-himself is a misuse.

Human individual well-being means living well. Smith can misuse Jones's life by so acting on him that Jones cannot direct his own behavior and purposes toward personal well-being. Smith would thus misuse Jones by treating him as a means to Smith's end rather than as an end-in-himself. But the purpose of individual goal-directed action is a person's living well. Therefore it is wrong and unjustified to coercively deprive another person of self-direction. Such misuse of an autonomous person is deontically wrong. Jones has a valid claim against such treatment because he is an end-in-himself. This claim is a right against misuse or coercion. Thus man possesses a fundamental right against coercion from which other specific rights derive.

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The Is/Ought Chimera

Julius Kovesi

University of Western Australia

"Against the Ritual of 'Is' and 'Ought.'" *Midwestern Studies in Philosophy* 3 (1978): 5–16.

Can we bridge the gap between the factual "is" and the moral "ought"? This much-discussed ethical issue of whether we can properly derive moral "evaluations" from descriptive statements of empirical facts is misconceived. The very terms of this discussion emerge from a badly conceived framework. In fact, examples abound to show that moral judgments are not simple evaluations on the linguistic model of "This is a *good* knife." Moral judgments are wrongly thought to be evaluations made according to criteria of goodness.

We ought to dismiss the entire is/ought ritual. First, because this modern dichotomy is thoroughly ambiguous (nor did it originate with either Hume or Hare). Secondly, because this dichotomy results from biased and ideological philosophizing. Thirdly, because preoccupation with the is/ought ritual (and its dry inquiries into what criteria, for example, constitute "good" strawberries) distorts what serious moral philosophy is about. Most champions of the is/ought question are simply prisoners in a prominent tradition (linguistic analysis) of doing moral philosophy.

Evaluations such as "good" and "bad" actually occur because we have an interest, aim, or purpose in doing something. We designate those things as "good" (horses, knives, or food) that serve our purposes well. However, nothing like this characterizes our moral life, where we seek to learn what we should or should not do. The logic of evaluation provides no help in deciding whether we value or detest something. The moral problem is whether to lie or not to lie, rather than to determine what criteria constitute a "good" or "bad" lie.

Some who reject an objective or naturalist morality whish to avoid morality altogether by avoiding evaluations. They thus strive to demonstrate that only "brute facts" exist and show that no criteria of evaluation are possible. These subjective "individualists" fear having their moral freedom controlled by external standards and extra-individual values as are implied in such "criteria-setting" evaluative terms as a (good) horse or man. But if, as is argued, morality concerns itself with the issue of whether we can substantiate our descriptions (for example, "It was murder") the individualist's fear of moral evaluations restricting his freedom appears to be beside the point.

Additional readings on the is/ought controversy may be explored in John Searle, "How to Derive an 'Ought' from an 'Is'," *Philosophical Review* 74 (1965), reprinted in Philippa Foot, ed. *Theories of Ethics*, pp. 101–114; and R.M. Hare's 1964 article, "The Promising Game" also reprinted in the Foot volume, pp. 115–127.

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Deriving “Ought” From “Is”

Ralph McInerny

University of Notre Dame

“Naturalism and Thomistic Ethics.” *The Thomist* 40 (April 1976): 222–242.

Can we logically construct an objective human ethics that grounds moral obligations and the norms for being a “good” man in factual reality? “Prescriptivists” have joined battle with “descriptivists” (or naturalists) on this crucial issue.

Prescriptivists including R.M. Hare deny that we can legitimately derive values from such facts as human nature. Their doubts stem from Hume's fact/value dichotomy and G.E. Moore's “naturalistic fallacy”: We cannot logically derive a moral “ought” from a factual or descriptivists “is.” Seeking a single meaning for “good” behind all its different uses, prescriptivists claim that the function of “good” in moral evaluation is to emotionally commend. There is, they assert, no necessary or logical tie connecting our commending something as “good” with the descriptive qualities that we select as the criteria for an object's goodness.

On the other hand, naturalists seek to root values and the standard of “good” in the nature of things, namely man's distinctive characteristics. When we “commend” something to someone as “good” we mean to express more than our subjective emotional approval; we seek to suggest that there are sound reasons or objective qualities in the thing that should rightly commend it to someone.

Aquinas identified humans as “good” when they exercised well their distinguishing trait of the rational will to achieve specific goods because these human goods tended to perfect man's nature. Aquinas did not, as D.J. O'Connor asserts in *Aquinas and Natural Law* (1968), commit a fallacy moving from what men do in fact seek as ends to what they ought to seek. The Thomistic approach may circumvent Hume's stricture against derving such an “ought” from an “is.” The author formulates a way to derive human values from facts:

> (1) Men are *de facto* engaged in the pursuit of a vast variety of objectives, ends, goods.
> (2) The pursuit of the good involves the judgment that, say, a particular action, A, has the formality G, goodness; that is, A is regarded as perfective of the agent.
> (3) That A has G is the reason for, the justification of, desiring A.
> (4) It is possible that A, which is thought to have G, does not really have G.
> (5) One desiring A under the assumption that it has G who comes to see that it does not have G, should not pursue A.
> (6) If A is seen not to have G, there is no longer any justification of pursuing it.

> (7) And if B is seen to have the G, A was mistakenly thought to have, one who ought not to pursue A, ought to pursue B.

Thus, human good is the set of "virtues," values, or excellences which do in fact perfect individual human nature. This set of values is hierarchically ordered; human reason and will are said to function well in defining and directing us to achieve these many and varied goods.

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Facts Vs. Value-laden Whims

Antony Flew

University of Reading, England

“Ideology and ‘a New Machine of War’.” *Philosophy* (UK), 51 (1976): 447–453.

Does personal taste or cultural prejudice determine our values and so vitiate our claims to objective knowledge in science and moral values? If true, this doctrine would reduce our criteria of knowledge to extreme relativism and scepticism. One currently fashionable version of this sceptical notion claims that there cannot be “a realm of facts independent of theories which establish their meaning.”

This thesis of “value-laden” facts serves as an ideological weapon or “machine of war” to silence one's opponents in social and economic theory by labeling the “scientific” status of rival theories as mere vested-interest briefs. Thus, Robin Blackburn in *Ideology in Social Science* (1972) argues that the attempt to justify social theories by appealing to an independent realm of facts is unscientific. In reality, the choice of the field of study and the range of concepts selected “all express assumptions about the nature of society and what is theoretically significant and what is not.”

This sceptical assault is not convincing. It is true that we cannot know any propositions without being equipped with their constitutive concepts. This, however, fails to prove “that all propositions are theory-laden,... that we cannot know the phenomena themselves.” In addition, even granting that humans create concepts and necessarily employ them in making discriminations, do not reveal objective differences in the universe around us.”

Finally, this argument recoils upon its wielder by suggesting that his own sceptical argument is value-laden and “unscientific.” The modern ideological sceptics would wish us to accept their own social theories through relativist intimidation. Rashly to accept such relativism would mean replacing the true intellectual's search for truth with “in-group” mentalities.

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Is/Ought And Probable Reasons

B.H. Slater

University of Western Australia

"A Grammatical Point about Obligation." *Philosophical Quarterly* (Scotland), 28 (July 1978): 229–233.

The is/ought problem may dissolve by exploiting a well-known point in probability theory. Consider how the following argument operates: "I have two pairs, so there is a probability of about 1/10 that I'll make a full house." The probability evaluation is not part of the conclusion; rather, it reflects the strength of the connections between the premise and the conclusion. In other words, from the premise ("I have two pairs"), the conclusion ("I shall get a full house") follows in the sense that it has a certain probability of following.

The same move holds for the is/ought question. The "ought" does not lie in the conclusion but rather in the connective. Accordingly, we commit no fallacy by moving from "is" to "ought" since our argument does not proceed in that fashion. For example, consider another argument: "You received some oranges from the grocer, so you *ought* to pay him for them." This argument does not say that from the fact of your receiving some oranges the normative statement ("You ought to pay") follows. It actually says that from the *fact* that you received the oranges, the *fact* of paying the grocer *ought* to follow. This claims that we ought to be able to pass from one statement of fact to the other statement of fact.

Besides striving to dissolve the is/ought problem, this approach may be an improvement for two reasons. First, it clarifies the notion of a reason for action. Consider the inference: "If I did p, therefore I ought to do q." It is puzzling how my merely doing p can move me (or put me under an obligation) to do q. A way out of this *non sequitur* exists if the previous inference means that doing p gives me a *reason* to do q (that is, one ought to pass to the fact of doing q), then we can investigate how reasons motivate us. Second, this approach resolves differences between deontologists who build their ethics upon "right," "ought," and "duty," on the one hand and teleologists who build their ethics upon "good" or "pleasure." Since "evaluative" terms simply measure the strength of moving from premises to conclusions in a moral argument, we can accept both sorts of moralists' terms depending on the case involved. Which ethical approach is acceptable depends on how strong is the connection between premise(s) and conclusion.

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Does Righteous Anger Imply Rights?

Patrick L. McKee

Colorado State University

“The Existence of Natural Rights.” *The Philosophical Forum* 7 (Fall 1976): 44–58.

Are natural rights valid claims? Do they truly exist?

Rights do exist. They are more than shorthand references to social utility, yet less than empirical or intuitively known properties. Rights exist because of their “explanatory” status. Rights are necessary to account for certain common human experiences which otherwise would be inexplicable.

For example, consider Paul's anger because Peter has stolen his coat. What explains this anger? The fact that Paul has a natural right to what was stolen serves as the best explanation of the victim's experience of anger. Natural rights theory looks upon Paul's anger as anomalous: all other explanations, except natural rights, won't account for the anger. Paul's anger does not become intelligible by referring to the bad results of the theft, or to the psychological or physiological causes of the anger (though these may explain other responses), or to legal rights or disappointed expectations. Nor will reference to conditioned beliefs explain Paul's anger, since Paul may feel angry even if he knows nothing about abstract rights. Such anger will occur no matter who is involved and no matter what culture we inspect. Without reference to rights, the anger is unwarranted and inappropriate.

This theory, McKee claims, answers such traditional challenges to natural rights as the need to show that such rights are self-evident, natural, precise, and absolute (see J.B. Mabbot, *State and Citizen*, 1958). The present theory shows; (1) Rights are self-evident since any rational adult can understand them and their role in explaining human experience, (2) Rights are natural since they do explain certain natural since they do explain certain natural phenomena. A right “is a claim, liberty or privilege” which we need as long as physical, physiological, and psychological laws cause us to experience anomalous anger and similar responses. (3) Rights are precise. The list of claimed rights is often controversial because precise recognition of anomalous responses requires careful attention and difficult skills. (4) Rights need not be absolute in this theory since conflicting rights are explained by conflicting anomalous responses which sometimes we cannot resolve.

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Why Be Moral?

Frank Snare

Australian National University

"Dissolving the Moral Contract." *Philosophy* 52 (1977): 301–312.

How can we best answer the assault on natural morality posed by the "immoralist's" question: "Why should I be just?" Snare argues that there is really nothing to *say* to the immoralist. The appropriate response is to consider him beyond the bounds of the moral community and outside the "moral contract." We can have no understanding with the immoralist. In ordinary contracts, when one party does not honor his obligation, the other party is discharged from fulfilling his obligations through breach of contract. Analogously, morality is like a contract. We have no obligation to anyone who does not live up to the obligations of morality. People belonging to a community and legal system should not take the law into their own hands (this claim resembles Locke's assertion that joining political society requires everyone to surrender the right to judge or punish others).

If the immoralist asks what "interested" reasons he has for being moral, we might ask, just as rhetorically, what moral reasons we have for tolerating immoralists. Why must we entertain the immoralist and his question with politeness, for example? We do better to treat him "...as we do any natural threat such as a flood, or an earthquake, or fire. We avoid them, divert them, destroy them—when we are not ourselves destroyed. In the immoralist's case we can, in addition, employ argumentation, but only as a means of manipulation and control."

Another approach to this same question "Why be moral?" appears in John Hosper's book *Human Conduct: Problems of Ethics* [Shorter edition, New York: Harcourt Brace Jovanovich, 1961, 1972, pp. 174–198].

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Truth As An Objective Value

M.J. Finnis

University College, Oxford

“Scepticism, Self-Refutation, and The Good of Truth.” In *Law, Morality, and Society: Essays in Honor of H.L.A. Hart.* Edited by P.M.S. Hacker and J. Raz. Oxford: Oxford University Press, 1977, pp. 247–267.

In *The Concept of Law* (1961) legal theorist H.L.A. Hart argues that the most fundamental human value is survival and that all other values are instrumental means to that value. Questions of the ultimate source and ground of value are crucial for any discussion of a particular value (such as liberty) and for establishing an objective morality. Since many recent discussions of value assume the truth of something similar to Hart's claim, it is important to critically examine that notion.

Against Hart's position, Finnis argues that survival is no more basic a value than truth. Indeed, the Aristotelian-Thomist notion maintains that the *bios theoretikos* (life of the mind) is as fundamental as any human value, if not more so.

The value of truth emerges by using a retorsive argument. Resembling intellectual boomerangs, retorsive arguments show that one cannot assert certain sceptical propositions without selfcontradiction (e.g., Aristotle's rebuke to the sceptic: “let the man who denies the law of contradiction speak first”). In a similar vein, one who denies that truth is a value worth knowing ends in self-contradiction. In other words, one cannot under any circumstances deny that truth is a good. This places truth on as fundamental a level as any other good (such as survival).

Essentially this argument boils down to the position that one must assume the very value of truth in order to deny that truth might not have value. Whether Finnis's argument demolishes the notion that life is the ultimate value remains to be settled.

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Was The Revolution Objectively Necessary?

Lester H. Cohen

Purdue University

"The American Revolution and Natural Law Theory." *Journal of the History of Ideas* 39 (July/September 1978): 491–502.

American patriotic historians of the late eighteenth and early nineteenth centuries labored retrospectively to morally justify the American Revolution. They attempted to gain certain knowledge through the principles of natural rights rooted in natural law, but in this attempt they radically reinterpreted the meaning of natural law from an abstract transcendent standard to a concrete, imminent social process working in human history. It is doubtful whether the new interpretation of natural law "proved" or made more rigorously certain the moral legitimacy of the Revolution to anyone who did not already share the American historians' ideology.

The problem of establishing morally certain knowledge was earlier mirrored in the Declaration of Independence. The Declaration of Independence. The Declaration left ambiguous how the pre-Revolutionary historical facts could be connected with the transcendent certainty of "the Laws of Nature" to justify the separation from England. The Declaration's listing of 27 recent grievances against King George III might establish the historical expediency and utility of a revolution but not its justification in moral certainty and necessity. To make up for the Declaration's epistemological deficiencies, the revolutionary historians aimed at grounding arguments of historical expediency in the universal and immutable standards of natural rights.

The problem of reconciling arguments of expediency with arguments of moral principle and the immutable laws of nature appears in the historians' inability to explain how such worthy men as John Dickinson had opposed the separation by appealing to the same "certain" natural law invoked by the revolutionaries. It seems that the "certain" standard of rights and natural law made for uncertainty and disagreement. Whose intuition into the certain and immutable laws of nature should we accept, the loyalist Dickinson's or the separatist patriots' and historians"? Natural law's virtue—its promise of a clear standard of epistemological certitude because of its transcendence—seemed to be its very weakness. For who could arbitrate disagreements about applying natural law to historical events? Yet to dismiss the promise of a transcendent standard of truth and value risked moral relativism and nihilism.

The historians' problematic solution was to formulate a new "processive" or "historicized" theory of natural law: "a Natural Law no longer conceived as a static body of immutable principles. Rather Natural Law was historicized; it was seen as a process by which fundamental principles were made concrete in the course of history itself." In effect, to know that a historical tradition of constitutional rights existed

would allow men to demonstrate the legality of natural rights and provide a historical standard to know for certain when rights were violated.

A problem remained. The historicized natural law might allow historians to make moral evaluations about factual events without appealing to any dubious transcendent standard outside the events themselves, but critics could still charge that historical interpretations remained subjective, arbitrary, and partisan.

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Natural Law And State Of Nature

John Anglim

Flinders University of South Australia

"On Locke's State of Nature." *Political Studies* (UK), 26 (1978): 78–90.

John Locke's *Two Treatises of Civil Government* unfold five distinct usages or phases of the "state of nature" and reveal natural law as the motive force behind each phase. (1) The unifying core idea behind the state of nature is the stateless, autonomous condition in which humans lack an authoritative, common, human superior and are free and equal: "Men living together according to reason, without a common Superior on Earth, with Authority to judge between them, is properly the State of Nature..." (*Second Treatise*, Section 19). (2) This autonomous condition is the original condition of all human peoples. (3) But it becomes such an inconvenience for some peoples as they develop their social and economic life under the impulse of rational natural law that they leave this state of nature by forming government. (4) Even so, the state of nature still remained as the condition of some peoples, Locke thought, in his own day. (5) The state of nature continues as a constant potential and actual feature of all human communities in respect to the possibility of tyranny, absolute monarchy, revolution, or withdrawal from government.

Moral or legal equality and liberty define the essential elements of the state of nature. Human persons were free and equal, but only if they obeyed the limits of natural law. Otherwise the state of natural liberty would become a state of immoderate license. Political society becomes necessary both because men obey the natural law (creating properties, increasing population, multiplying the occasions for wrong) and because men disobey natural law (violating its tenets by having and declaring wrong intentions). Humans enter civil society by an act of consent, but in so doing they do not always or necessarily escape the state of nature. The state of nature may recur, as in war or revolution. Furthermore, some defective types of political society, chief among which is absolute monarchy, exhibit the characteristics of a state of nature.

Locke's account of the state of nature comprehends an anthropology and a conjectural cultural history. The five phases specified above are all guided by the natural law. Rational natural law leads men out of their primitive original condition to a developed economic and political life. The state of civil society is, for Locke, a contrivance surrounded and threatened by a recurrence of the natural condition, both domestically and internationally. In Locke's day, indeed, some peoples had not achieved the advantages of civil society at all.

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Natural Law And The State

Aldo Tassi

Loyola College, Maryland

“Anarchism, Autonomy, and the Concept of the Common Good.” *International Philosophical Quarterly* 17 (1977): 273–283.

We may ground the state in a dual essence theory of human nature and in a conception of the common good which weds the twin truths that human beings are both sociable and metaphysically free.

Robert Paul Wolff, *In Defense of Anarchism* (New York: Harper Torchbooks, 1970), and Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974) have drawn attention to freedom and to the defects within both liberalism and modern ideas of government. However, Wolff's and Nozick's initial contrast between society and the individual, together with their concentration on problems of law and coercion, misunderstand autonomy and sociability. These authors wrongly believe that political authority is incompatible with human freedom.

Self-awareness and the aim to live a meaningful life distinguishes human existence. Political activities, however, generally represent one group's attempt to “live the lives of others.” Escaping this censure would be those minimal state activities derived from the right of self-defense.

Autonomy means the capacity both to shape the forces that act on humans (independence) and to act on these forces according to the self-chosen plan of one's life. This view of autonomy, as articulated in the writings of Jacques Maritain, is compatible with the concept of the *common* good. The process of achieving autonomy actually occurs in a social context. Individuals achieve their identity in a necessary relationship with other humans. Each must learn from others in order to master his freedom, i.e., to actively shape his life and actions. In making our actions intelligible to others, we make them intelligible to ourselves. Thus, the experience of individual autonomy necessarily refers to other humans and presupposes society.

An individual's *proper* good, is what he makes his own (good) by virtue of desiring it. If the individual is to understand what he is doing in pursuing his proper good, there must be some criterion by which he judges it worthy. The criterion must be a criterion

for him-together-with-others. By its nature, the common good must be redistributed to individuals; if it exists, we must make it available to individuals so that they may pursue their proper good. Individuals presuppose the common good in order to function as autonomous beings, pursuing their proper good.

The *public interest*, on the other hand, is the good aimed at by cooperative tasks voluntarily undertaken. Achievement of the public interest benefits all; each individual pursues the public interest as his own proper good.

The autonomous person must be selfaware; he must also be aware of himself with-others. Since his being-with-others is also others-being-with-him, this state is a common one, and moreover, is a worthy state to be in for its own sake.

The political order addresses the autonomous individual in the context of being-with-others. The state functions to care for the common good, and from this function, it is argued, creates its legitimacy. The political order defines the way in which each individual should take responsibility for the common good. The common good, in turn, provides the standard for criticizing existing states.

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Natural Rights And Anarchism

Peter Danielson

York University

"Taking Anarchism Seriously." *Philosophy of Social Science* (Canada), 8 (1978): 137–152.

Has Robert Nozick's Lockean or natural rights defense of the minimal state in *Anarchy, State, and Utopia* (1974) defeated the anarchist's natural rights objections to the state? Not if we invoke Nozick's own analysis. It is clear from Nozick that the anarchist's fears and arguments against the risk of a monopoly government usurping individual rights hold with equal force against Nozick's own minimal state.

Neither utilitarian nor John Rawls's contractarian justifications of the state answer the anarchist's challenge.

As Rawls rejects utilitarianism for permitting slavery so long as there is a net benefit, the natural-rights theorist rejects Rawls's contractarianism for permitting slavery so long as everyone benefits. Natural rights require the additional constraint that each individual consent rather than merely benefit (and hence hypothetically consent).

Indeed, both of these approaches tend to avoid the moral problem, whereas Nozick's natural rights approach aims to meet it directly.

The anarchist challenges the moral legitimacy of the state. The state, as distinct from a private hired defense agency, claims both (1) monopolistic right to forbid unauthorized uses of force and (2) the dubious right to charge some for the protection of others. The anarchist believes that any claims to a monopoly of enforcement and taxing "rights" contradict the property rights of sovereign individuals.

Nozick does not meet this anarchist challenge because he does not defend property rights. Where he does invoke property rights he does so in a way that suggests he must logically accept the anarchist's concerns. Various complications with Nozick's theory of property rights, his view of community, and his conception of the Lockean proviso lead to an embarrassing conclusion. Despite a highly innovative effort, Nozick has not shown the compatibility of natural rights with monopoly government. Nozick's own natural rights theory should force him to take the anarchist case even more seriously.

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Dworkin On Rights

Joseph Raz

Balliol College, Oxford

“Professor Dworkin's Theory and Rights.” *Political Studies* (UK), 26 (1978): 123–137.

Ronald Dworkin makes rights the heart of his legal and political theories. His concept elevates individual political rights over collective social goals.

However, Dworkin fails to identify the definitive characteristics of rights. He is correct in saying that rights ought to be respected, that they belong to “rightholders,” and that the right-holders' objects may be thought of as morally good. But these three properties of rights are radically incomplete.

Dworkin's views on the foundations of political theory have changed greatly over the years. In *Taking Rights Seriously* (1972) he regarded fundamental rights as generally superior to collective goals, and as requiring very weighty considerations to override them. In his later writings, Dworkin dismisses any possible conflict between collective welfare (understood as a function of the personal preferences of individuals only) and rights. The legitimacy of collective welfare as a political goal derives from the ambiguous right to be treated as an equal, which in Dworkin's view is the fundamental right.

What is the right to be treated as an equal? It is not, claims Dworkin, a right to have an equal share of all resources or benefits. Dworkin's right to be treated with equal concern and respect does not identify him as an egalitarian ideologist. This right to equal treatment implies that government ought to strive to satisfy every personal preference and that government must never act on controversial ideals.

Dworkin fails to make a persuasive case for his view on the foundations of political theory. His vagueness on the right to concern and respect does not permit us to judge whether it encompasses all the values that should inform political action.

In his legal philosophy, Dworkin is the most powerful theorist of law yet to emerge from the United States. Dworkin's seminal article on “Hard Cases” expounds his theory of law and examines three theses: (1) The Natural Law Thesis: what law is depends logically on what is moral. (2) The Conservative Thesis: all judicial decisions should be justified by the political theory which best justified by the political theory

which best justifies all valid and binding decisions. (3) The Rights Thesis: judicial decisions are and should be based on existing legal rights only.

Dworkin's Rights Thesis is the only one of these three which he identifies under his own name. Despite appearances, it does not exclude a judge's reliance on social and economic considerations, since these are themselves defined as rights. Further, the economic and social considerations by which Dworkin expands the notion of rights are all *legal* rights. Dworkin's Natural Law Thesis allows morally binding considerations to be legally binding. The Rights Thesis (given Dworkin's definition of rights) is, in fact, devoid of content.

Although Dworkin's major theses fail, Raz stresses that we can learn much from Dworkin's legal philosophy.

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Liberalism, Rights, And Abortion

Gary D. Glenn

Northern Illinois University

“Abortion and Inalienable Rights in Classical Liberalism.” *American Journal of Jurisprudence* 20 (1975): 62–80.

An immense gulf affecting human life and liberty separates the inalienable rights doctrine of classical liberalism from the “unlimited rights” doctrine of such utilitarian liberals as John Stuart Mill. The crucial difference appears in the different responses to the question of whether the individual has a right to suicide, selling himself into permanent slavery, or choosing abortion. The pro-abortion argument, it is argued, is incompatible with the inalienable rights foundation of American classical liberalism as voiced by Locke and others.

Where should one who believes in inalienable rights stand on abortion? To what extent is the theory of inalienable rights justifiable on this and other issues? The author distinguishes the inalienable rights doctrine of the classical liberals, Hobbes and Locke, from the utilitarian liberals' doctrine that individual action may be restrained only for the sake of protecting others. John Stuart Mill expresses this latter understanding of freedom and unlimited rights in *The Subjection of Women:* “The modern conviction...is that things in which the individual is the person directly interested, never go right but as they are left to his own discretion; and that any regulation of them by authority, except to protect the rights of others, is sure to be mischievous.” This notion of unlimited rights for the individual contrasts with inalienable rights, which erect civil society on the foundations of individual consent but also limit the scope of legitimate consent. This limitation forbids an individual to alienate (that is, consent away or deny by deed or word) his inalienable rights. “Civil society exists to protect the inalienable rights of its citizens.” Although not alienable these rights may be lost “by destroying a citizen's being or humanness or both.”

In the framework of inalienable rights one may not do whatever one pleases. One can do to oneself or others only what one can justify in terms of inalienable rights. Thus, the pro-abortion argument is invalid when it argues that a woman has a right to do with her own body as she pleases so long as her actions directly affect no one else. The public policy of a regime governed by classical liberal inalienable rights would ban abortion as well as suicide and slave-contracts.

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Rights And "Mercy Killing"

Peter C. Williams

State University of New York at Stony Brook

"Rights and the Alleged Right of Innocents to Be Killed." *Ethics* 87 (July 1977): 383–394.

Is a physician (or anyone else) duty-bound to intentionally kill a patient because the patient demands this as a "right"? This moral dilemma—whether a patient's demand that someone kill him is ever a "right" or a sufficient reason to morally require that the other person to kill him—helps us to clarify the nature of rights and why rights do not apply in deciding some moral issues. To view the morality of euthanasia merely in terms of "rights" and their correlative duties is shortsighted. Killing others may, sometimes, be the right thing to do without being a response to a "right" claimed by the victim. Where rights per se do not apply, other important moral motives may be relevant such as "gracious, loving, charitable, sacrificial, heroic, or saintly acts."

An adequate moral answer to the propriety of killing (or helping to kill) an innocent person who desires death avoids the concept of right or duty. It lies between two extremes that err by fallaciously invoking rights and duties: (1) Some claim that we are, under all circumstances, duty-bound or morally required to strive to preserve lives; they thus condemn aiding or abetting suicide and euthanasia. (2) At the opposite extreme, others claim both an absolute "right" for each individual to choose his death and the further instrumental "right" requiring others to aid him if the need arises.

The plausibility of any such claim to particular rights depends on the nature and characteristics of rights. It is argued that innocent patients have no legitimate "right" to demand that others must aid them to commit suicide. This argument is amplified by exploring three features of rights. First, any alleged right implies a correlative duty of someone to provide that right. This "demand quality of rights" would mandate that rights override other moral considerations. It is necessary to justify why someone must be subject to such a duty or demand. Secondly, analysis of the moral force implied by a claim of right shows that we cannot be duty-bound to kill innocents. And thirdly, rights apply to some but not all situations. This, however, still leaves open the possibility of killing the willing patient by invoking some other moral notion, such as mercy, kindness, or humaneness.

Moral concepts other than rights may be invoked in deciding situations where rights and duties do not pertain. Rights "are prima facie justifications for acts in accordance with them. The assertion of a right is the assertion of a sufficient reason for action. "When John legitimately claims a right from James rather than asks a favor, James is duty-bound to comply. However, in some moral situations it is more sensible to invoke favor, kindness, or spontaneous choice.

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Rights And The "Brain Drain"

N. K. Onuoha Chukunta

Essex Community College, New Jersey

"Human Rights and the Brain Drain." *International Migration* 15 (1977): 281–287.

National governments and international organizations have exerted increasing pressure to condemn and thereby prevent the so-called "brain drain." What is really at stake is a question of human rights. The "brain drain" actually describes the free migration of persons with scarce skills or knowledge out of poorer countries to richer ones that can reward them for the use of their special talents.

The present state of international law nominally guarantees the free migration of persons. The right to migrate is guaranteed explicitly and implicitly by a host of international covenants and national constitutions.

Extending the basic rights proclaimed in the French Declaration of the Rights of Man (1789), the United Nations affirmed in Article 13(2) of its Universal Declaration of Human Rights (December 10, 1948) the right of self-determination: "Everyone has the right to leave any country, including his own, and to return to his country." What undercuts this right, however, is a later United Nations restriction [Article 12(2) of the Draft Covenant on Civil and Political Rights of December 17, 1959]: "Everyone shall be free to leave any country, including his own, except where (3) necessary to protect national security, public order, public health or morals or rights or freedoms of others."

Likewise guaranteed is the right to live abroad indefinitely and the right to return to one's native place. In the absence of a special treaty, the right to recall a migrant by the native country does not exist, while the right to admit and expel an alien is solely the internal affair of the host country. Unfortunately, enforcement of the right to migrate under international laws is lacking.

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The Natural Law Right To Work

Thomas Haggard

University of South Carolina

"The Right to Work—A Constitutional and Natural Law Perspective." *The Journal of Social and Political Affairs* 1 (July 1976): 215–243.

The natural law approach can illuminate the legal status of work in a free society. The conclusions reached are: (1) A natural-law right to work does exist. (2) The United States Constitution was designed to protect natural-law rights, including the right to work. (3) Currently, the natural right to work suffers from fallacious consitutional interpretation. The right to work is treated as the right to engage in voluntary work (i.e., no one should prevent one's working nor ought anyone be forced to employ another).

The natural law defines an ethical system that deduces its norms of human conduct from the nature of man. Under natural law, the good for man is to seek his perfection by living his life consistent with his natural essence. Deducing natural-law rights from man's essential attributes, we focus on man's life, action, rationality, free will, autonomy, sociability, individuality, and metaphysical equality.

Two necessary corollaries of man's essential attributes are his self-ownership and his right to freedom from aggression. The natural right of self-ownership entitles us to do anything we choose except violate another person's right of self-ownership through aggression. Aggressive acts include the unjustified use of force or fraud against another's person or legitimate property. Natural law considers when it is permissible for individuals to resort to force. In effect, to claim a natural-law right to do something is to assert that we are morally entitled to use force against anyone who would interfere with our freedom to do that very thing.

Work, within a natural law context, is a natural right almost by definition. Work means those actions we perform to maximize our existence as humans. Since everyone has the natural right to perfect his own natural essence, it follows that work is a natural right. Work includes using previously owned resources, exchanging such justly acquired resources or property, and exchanging one's services in an employment relationship.

The American Constitution, influenced by such natural rights philosophers as John Locke, guaranteed such freedoms through the Bill of Rights which protects property and the right to labor in the above defined sense. However, legal protection of the natural-law right to work has been violated repeatedly in America through occupational registration, job licensure, state regulation of employment contracts, state and federal labor laws, and prohibitions of contracts in which employers forbid employees from joining unions. The root of these violations of a natural-law right to work is the fallacy behind government police powers that aggress against individual rights in the name of the common good.

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Grotius: Contract And Natural Law

Geoffrey MacCormack

University of Aberdeen, Scotland

"Grotius and Stair on Promises." *American Journal of Jurisprudence* 22 (1977): 160–167.

In the seventeenth century, both Hugo Grotius and the Scottish jurist James Stair attempted to establish the binding force of promises upon natural law foundations. Two questions arise: (1) How do we explain the binding force of promises and contracts in general? and (2) How do we explain the mechanism by which an individual binds himself?

In *De Jure Belli et Pacis* (1625), Grotius carefully distinguishes the varying degrees of obligation created by three kinds of statements that declare a person's intentions. First, when someone simply announces that he intends to perform an act in the future, Grotius sees no obligation arising since the speaker is free to change his mind. Second, if the speaker stipulates his intention (*pollicitatio*) not to change his mind, he incurs an obligation under natural law to do the act. Finally, a statement declaring that one intends to perform an act, does not intend to change one's mind, and also intends to confer a right upon someone, is what Grotius calls a *perfecta promissio.* This, however, fails to create an enforceable right unless the intended beneficiary accepts the *perfecta promissio.*

Grotius's analysis of the obligatory force of promises is apparently intended to apply also to contracts. By contrast, for a promise to create an obligation, in his *Institutions of the Law of Scotland* (1681), Stair requires the promissor to confer a power of exaction on the promissee. But with contracts, i.e., pacts, the parties must reach a consensus in the sense that they manifest an *animus obligandi* (intention to obligate) concerning the agreement. The similarities between Stair's and Grotius's work suggest that Stair was influenced by Grotius.

How do Stair and Grotius attempt to ground the obligation to keep promises and contracts in natural law? For Grotius, "... the maintenance of society which accords with human intellect is the origin of *just* [right] properly so called," and the obligation to keep promises is included in *jus.* Stair argues that the law of nature consists of those principles implanted in man by God. From these principles comes the freedom to dispose of oneself as one wills, except insofar as one is bound to obey God or has obligated himself to pursue a specific course of action. In short, Grotius accounts for the binding nature of promises and contracts by arguing that the preservation of society requires that they be kept.

In accounting for how an individual actually binds himself through a promise or a contract, Stair and Grotius postulate (according to the author) a mechanism of the same kind:

Man is enabled to bind himself because his own will, under certain conditions, fetters the power of free disposition which he enjoys over himself and his resources, and gives to another the power to constrain him to act in a particular way. This mechanism is not natural in the sense that it is a product of the social instinct or that it conforms to principles implanted by God; it is natural in the sense that it is rational. Reason suggests that the only means by which an individual may bind himself is through his will. By his will he is able both to impose an obligation on himself and create a right in another. This may be explained in terms of a transfer to another of a portion of the individual's power of free disposition over himself.

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Rights And Communication

Theo Kobush

University of Tubingen

“Sprechen und Moral” (“Speaking and Ethics”). *Philosophisches Jahrbuch* (West Germany), 85 (1978): 87–108.

Plato's *Gorgias* teaches the naturally right use of speech and language. Plato's doctrine of the rightness of having our errors exposed and corrected in conversation is a primitive version of his doctrine of judging improper acts: it is right and good to be liberated from evil acts and evil speech. The *Gorgias* distills Plato's entire philosophy: the importance of seeking reality in truth rather than in appearances and opinion.

In the *Gorgias*, Plato presents these ethical views both logically as well as in the dramatic action and characterization of the conversation-dialogue itself. Naming the dialogue after the rhetorician Gorgias (rather than the more important interlocutor Callicles) suggests that rhetoric or the art of speaking is the main topic. The *Gorgias* represents dialectic as the ideal form of human language since it is indispensable for righteous personal, political, and social order.

The *Gorgias* discerns in human speaking the first and most important moral activity. Our speaking together presupposes specific ethical values and expresses our more general desire to avoid evil. Plato's preference for the give-and-take of dialogue over the monologues of sophistic rhetoric implies his judgment of the moral character of speaking. This “moral activity” of speaking implies a relation among people which requires the equal freedom and duty of each participant to speak the truth. We must seriously consider what our partner in conversation says. We must allow disagreement and we should change our mind if necessary.

True conversation involves an act of trust. We attribute to our interlocutors certain intellectual and moral characteristics that alone make possible shared and mutual conversation. Speaking, when engaged in seriously, is the expression of one's soul and values.

Being humble in the face of truth is the most fundamental moral phenomenon. Although speech is for self-expression, it also implies trust for our partner and the hope of improving ourselves by exposure to truth-seeking. The dramatic characterization of Callicles through his speech in the *Gorgias* (just like his foil, the ideal speaker Socrates) represents an extreme ethical position. Callicles enters the conversation without participating fully. He ignores what Socrates says about moral communication. He is the tyrant of conversation and misuses the natural end of speech.

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II

Autonomy, Privacy, And Authority

Natural law, indeed any reflective personalist morality or political ideology such as individual freedom, requires autonomy. To be free the self seeks to form its own moral consciousness autonomously, rather than passively have its consciousness formed by externally imposed authority. In this framework, the progress of culture and civilization parallels the progressive concern for the privacy of other selves and the determination to cultivate our own autonomy. Increasing autonomy in a society represents a liberation from the authoritarian mentality's taboos against individuation and dissent from the group's rules. By freeing the person to be individuated and differentiated from the group, autonomy tempers the old, automatic, and conventional customs by rational scrutiny and the Socratic examined life.

From the Stoic Epictetus to Abraham Maslow, autonomy as inner personal freedom has been seen to have intimate connections with external freedom in society and politics. The modern world, with its trends toward centralization, bureaucracy, and depersonalization demands that we study more carefully the conflicts between the inner freedom of autonomy and the external servitude of authority, conformity, and obedience. Accordingly, the following summaries focus on the interconnection between the concepts of autonomy, privacy, and authority.

The first two summaries show how essentially pertinent autonomy is to such issues as authoritarian bureaucracy and the debate between voluntarism and government authority. Next, the Black summary, introducing five related studies, emphasizes how vital is autonomous self-responsibility in developing moral self-awareness and the capacity for freedom. A similar theme underlies the studies of buck-passing and the ongoing conflict in the classroom between self-assertive autonomy and authoritarian conformity. With the Margulis summary the focus moves to the close kinship between autonomy and privacy. That privacy and personal autonomy have social and political repercussions is evident throughout each summary.

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Bureaucracy And “The Organization Man”

Steven Seidman Michael Gruber

University of Virginia New School for Social Research and College of New Rochelle

“Capitalism and Individuation in the Sociology of Max Weber.” *British Journal of Sociology* 28 (December 1977): 498–508.

Sociologist Max Weber (1864–1920) posed a crucial question: “Given this overwhelming tendency toward bureaucratisation, how is it still possible at all to preserve any sense of ‘individualistic freedom of movement’...” This commitment to individual autonomy, argue the authors, is what motivated Weber in his studies of modern capitalism.

Weber identified two decisive factors in the development of modern capitalism in the West: (1) The growth of Protestant ‘inner-worldly asceticism’ overturned the religious bias against worldly economics, and (2) The existence in the West of competing political and social authorities prevented the totalizing control of a monolithic empire.

A central theme in Weber's work is “the significance he attaches to the break-through from particularistic-prescriptive structures (clan-caste) with their in group-out group morality to communal-associational structures which embody a universal ethic.” “In the west clan ties were replaced by military, territorial, and juridical associations.” Helping to promote individuation, the “Christian ethic of universal brotherhood replaced the in group-out group dualistic ethic.”

However, the final steps in the direction of rational economic activity ushered in by the Reformation were to break down the priest/laity dichotomy and to spiritually reconcile the tensions between the Christian ethic of universal brotherhood and the purposive-rational conduct of other orders in society. Weber's analysis of the social origin of the bourgeoisie in the medieval city shows how the city provided a favorable climate for the systematic rationalization of administration, commercial life, science, art, and theology.

In addition, the expansion of capitalism necessitates an increasingly rational and efficient organization of social relations—in short, increased bureaucratization. However, Weber realized that impersonal bureaucracies would inevitably lead to a loss of autonomy “by the individual in the face of technically calculated production and consumption and impersonally formalised integration.”

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Autonomy And Anarchism

Kirk D. Wilson

Bentley College, Massachusetts

“Autonomy and Wolff's Defense of Anarchism.” *Philosophical Forum* 8 (September 1976): 108–121.

Robert Paul Wolff defends anarchism on the grounds that political authority is incompatible with moral autonomy. For Wolff, political authority is legitimate only if we can rightly acknowledge the state as possessing genuine authority—that is, only if we can acknowledge that the state's commands should determine our moral obligations.

Wilson sees ambiguity and a flaw in Wolff's notion of autonomy. Wolff has actually created two divergent notions of autonomy—one in *In the Defense of Anarchism* and another in *The Autonomy of Reason.* Wolff has thus created two different arguments for anarchism. The first theory (presented in *Defense of Anarchism*) holds that autonomy is the primary obligation of man, an obligation to take responsibility for one's actions by deliberating about what one ought to do. Autonomy, in this sense, implies our absolute duty to reject the right of others (e.g., the state) to command and determine our obligations.

Wolff's second theory of autonomy (formulated in *The Autonomy of Reason*) is inconsistent with the first notion of autonomy. This second autonomy is the source of all obligations. This implies a contractual theory of obligations: obligations exist only insofar as we have freely contracted with other agents. But autonomy cannot be both man's primary obligation and the source of obligations in general. In the second view of autonomy no obligations exist other than those which arise by contract, whereas in the first view of autonomy a primary obligation exists regardless of one's contractual activities.

Wolff's proof of the contractual theory of autonomy also fails. He defends his contractual theory of obligation by asserting that no substantive principle of obligation can bind a rational agent a priori. But what if there is no source of obligations at all? Furthermore, Wolff offers no proof of the anti-a priori obligation thesis. Wolff weakly claims that the categorical imperative does not prescribe obligations but only rules out contradictory obligations. But what if there exist other sources of obligations than formal principles such as the categorical imperative?

Wolff's argument for anarchism now becomes very strange indeed. For Wolff has conceded that a rational person can have *any noncontradictory obligation what-soever* so long as this arises by voluntary unanimous contract. Why, then, could not rational agents agree to obey a state's commands? Unless Wolff shows this to be logically impossible, his notion of autonomy does not entail anarchism. Ofcourse, it is perverse

to use political power as the source of one's obligations if it is true that autonomy is the only source of one's obligations. But there is nothing logically impossible about such a perverse society, or at least Wolff has provided no argument to that effect.

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Autonomy And Taking Responsibility

Virginia Black

Pace University, New York

“Responsibility Management: The Primary Object of Moral Education.” *Journal of Moral Education* (UK), 7 (1978) 166–181.

Moral education in the sense of “responsibility management” or accepting personal responsibility inculcates individual autonomy.

“Personal freedom of action is the capacity to act on one's preferences for good reasons, unobstructed by various sorts of coercion or compulsions.” But such freedom also requires us to take rational responsibility for evaluating and correcting the consequences of our actions. A valid theory of moral education should stress “ascriptive responsibility,” which holds a person responsible for what he does or believes, regardless the degree of personal freedom or knowledge he had when he acted. This approach aims at increasing rational capacity and knowledge of self and others by asserting responsibility without exculpation. By accepting full responsibility for our acts, we assert our personal autonomy, our freedom.

This conception of moral responsibilities differs from legal liability. Morality seeks to develop character to a more perfect capacity for responsibility and freedom, whereas law permits and acts upon the possibility of diminished responsibility by reason of mental incapacity, ignorance, or excusing conditions. Morality under ascriptive responsibility demands strict liability for both acts and omissions, regardless of any excusing conditions.

As a “self-fulfilling prophecy,” holding ourselves responsible can guide us through feelings and “action-regulators” which compel us to take personal responsibility for our behavior. Thus ascriptive responsibility becomes the educational method by which one enhances real personal autonomy, the goal of moral education.

This method heightens personal awareness on the levels of intellect, will, and emotions. When we have fully internalized the habit of responsibility, the job of formal moral education is completed. A responsible person is a free person, one who habitually thinks for himself, rectifies his wrongs, and continues to instruct his own autonomy. Today social institutions often atrophy personal autonomy. Institutions encourage dependency, reward irresponsibility, while penalizing personal responsibility and excusing wrongs. The natural consequences of these failures to manage responsibility contribute to the decline in personal freedom characteristic of our present society. But as society and the law increasingly apply ascriptive responsibility, the resulting strengthened personal responsibility will diminish the need for custodians of our personal morality. Also, state regulations which, by

definition, create more crimes and criminals, and less and less personal freedom, will become unnecessary.

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Autonomy, Motivation, And "Buck-Passing"

Shirley Feldman-Summers

University of Washington

"Implications of the Buck-Passing Phenomenon for Reactance Theory." *Journal of Personality* 45 (1977): 543–553.

According to reactance theory, whenever an important freedom has been threatened or eliminated, a person is motivated to protect or restore that freedom. However, individuals do not seem to seek to maintain or restore freedom when the situation involves a potential threat to themselves. The present study investigates whether a person would strive to reestablish or maintain freedom of choice in a situation which requires taking responsibility for decisions that have potentially negative consequences for others. Relinquishing freedom of choice under such circumstances can be viewed as "buck-passing."

Three variables were manipulated in this study: (1) Participants either did or did not experience a threat to their freedom of choice; (2) The participants either were or were not told that they were responsible for the consequences to others; and (3) The outcomes to others could either be positive or negative in their effect. The findings of the study confirmed the buck-passing hypothesis. "When faced with responsibility for decisions which may have adverse outcomes for others, individuals will often relinquish their freedom of choice to others." This result may account for the reluctance of members of a bureaucracy to take action even within their range of prerogatives when confronted with controversial situations that threaten negative consequences for others. This result also implies that citizens may permit government to abridge their freedoms if taking action could produce negative outcomes for others.

The results of this study also indicate that a person who attempts to limit the freedom of choice of others is likely to be evaluated less favorably than one who does not threaten freedom of choice.

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Schooling For Conformity

George B. Helton Thomas D. Oakland

University of Tennessee, Chattanooga University of Texas, Austin

"Teachers' Attitudinal Responses to Differing Characteristics of Elementary School Students." *Journal of Educational Psychology* 69 (1977): 261–265.

Do teachers teach conformity and stifle individual autonomy?

The authors report a study of public elementary school teachers' attitudes toward descriptions of students who varied along personality, ability, and sex dimensions. A total of 53 elementary teachers were given 16 personality descriptions of students. The teachers reported on their feelings of attachment, rejection, concern, and indifference to each of the 16 descriptions.

Attachment—The teachers reported significantly higher levels of attachment to rigid-conforming-orderly and passive-acquiescent-dependent students. Teachers reported significantly lower levels of attachment to active-independent-assertive and flexible-nonconforming-untidy students.

Rejection—Teacher feelings of rejection essentially mirrored feelings of attachment. The feelings of rejection varied between sexes. Teachers displayed strongest feelings of rejection toward flexible-non-conforming-untidy boys but rejected active-independent-assertive girls the most.

Concern—A student's academic ability stirred up teachers' feelings of concern more than any other dimension. Students with lower scholastic ability elicited more concern. However, the teachers reserved their highest levels of concern for passive and dull students rather than their more active-independent counterparts.

Indifference—Teachers were generally most indifferent about active-independent-assertive students while least indifferent about their rigid-conforming-or-derly schoolmates.

The implications of this study are very clear. Teachers in this study felt positive attitudes toward those students inclined to accept authoritarian classroom practices, whereas they rejected those more autonomous students unlikely to accept authoritarianism. To the degree that teachers practice these paternalistic attitudes, they dampen student autonomy and encourage self-effacing conformity. Such classrooms are nurseries not for freedom but for authoritarian, political, and social environments.

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The Schoolroom Vs. Autonomy

Wendell Williams Dominick Pellegreno

Drake University Iowa State

"Gatekeeping and Student Role." *Journal of Educational Research* 68 (July 1975): 366–370.

Teachers function as "gatekeepers" of what is allowed to happen in classrooms. When teachers control discussions or show favoritism, do they do so on the basis of conformity or of autonomy in their students?

This study investigated the verbal interruptions of teachers and students in 10 public school classrooms. The study involved a total of 245 elementary school (third grade) students. The frequency of interruption was tied to the personality characteristics of the students being interrupted. Student teachers rather than the regular classroom teachers were controlling the classrooms during the study.

Teachers interrupted active-independent-assertive males and flexible-nonconforming-untidy females the most. On the other hand, passive-dependent-acquiescent and rigid-conforming-orderly students of both sexes were interrupted significantly less often than would be expected. Other students tended to follow their teacher's lead in the kinds of students that they interrupted. These findings are somewhat limited in that all but one of the teachers was female. However, the great bulk of elementary teachers are also female so the limitation is of small practical significance.

Williams's study corroborates others which show that teachers tend to reward passive, conforming behavior while punishing independent, nonconforming behavior. Since the existence of authoritarian political and social systems depends in large measure on the tacit support of a large group of the population, teacher support of such behavior undermines free societies. At the same time it builds the kinds of attitudes that make the establishment of an authoritarian society easier.

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Obedience To Authority

Gwendolyn Cartledge JoAnne F. Millburn

Cleveland State Ohio State

“The Case for Teaching Social Skills in the Classroom: A Review.” *Review of Educational Research* 48 (Winter 1978): 133–156.

What is the hidden curriculum of the public schools? What are the social behaviors, attitudes, and values that the public schools unofficially inculcate as part of their socializing function? The authors cite extensive research on modeling, imitation, vicarious learning, and reinforcement demonstrating that teachers tend to desire and reinforce obedient, attentive behavior in their students. Teachers place less value on freedom, initiative, and assertive behavior by their students. Gradually teachers place more emphasis on social controls and establishing a “stable, orderly classroom in which academic standards receive a prominent position” (Rabinowitz and Rosenbaum, 1960, p. 317). Since obedience is related to success in traditional schools, the authors argue for specific instruction designed to produce students that are obedient, attentive, task-oriented, and willing to perform the teacher's tasks.

The authors ignore the evidence that indicates school success is a very limited predictor of post-school success. America remains partially free. In such a system more is demanded than obedience and task-orientation.

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The Meaning Of Privacy

Stephen T. Margulis

National Bureau of Standards

“Conceptions of Privacy: Current Status and Next Steps.” *Journal of Social Issues* 33 (1977): 5–21.

The common theme emerging from several empirical studies of the common speech meaning of the word “privacy” entails “separation from others through control over information, space, or access, including simply being or working alone.” However, variations in the definition of privacy also reflected the vagueness and ambiguity of the term. The meaning of privacy in the legal realm is represented in four categories: “personal control over personal disclosure (protection from public disclosure of private facts); direct intrusions upon a person's seclusion, solitude, or personal affairs; the appropriation of another's name or likeness for personal (e.g., commercial) advantage; and casting someone in a false light publicly.”

Margulis provides what he calls a core definition: “Privacy, as a whole or in part, represents the control of transactions between person(s) and other(s), the ultimate aim of which is to enhance autonomy and/or to minimize vulnerability.”

Irwin Altman's (1974) theory of the processes involved in achieving a desired level of privacy is described and analyzed. Reference is made to the psychological costs involved in maintaining privacy. Privacy in this context is integral to the functioning of self-identity and autonomy.

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Privacy And Autonomy

Herbert C. Kelman

Harvard University

“Privacy and Research with Human Beings.” *Journal of Social Issues* 33 (1977): 169–195.

Social psychology, because of its focus on personal facts and feelings, has a dangerous potential of invading the privacy of the participants in research studies. Kelman uses a definition of privacy developed by Ruebhausen and Brim: privacy is “the freedom of the individual to pick and choose for himself the time and circumstances under which, and most importantly, the extent to which, his attitudes, beliefs, behavior and opinions are to be shared with or withheld from others.” Research participants are in a vulnerable position regarding invasions of privacy since they are often unable to determine what information about themselves they will reveal. Furthermore, once disclosure occurs, they lack control over how that information will be disseminated. The author discusses the potential abuses that exist in a variety of different research-procedures including participant observation, unobtrusive observation, field experiments, laboratory experiments, laboratory experiments, questionnaires and tests, and interview studies.

One important psychological function of privacy is to preserve our sense of an “autonomous self.” We have a desire to establish and maintain an acknowledged boundary between self and environment, a feeling of physical and psychological space which can be entered only by our invitation. A central part of this is the inviolability of our bodies and of our possessions. This aspect of privacy extends to the exchanges which occur within certain relationships, e.g., interactions with our friends, lover(s), physician, attorney, or priest. Kelman surveys various psychological research studies which involve violations of private space without informed consent. These studies seem “tantamount to spying.” We can minimize invasions of privacy by avoiding deliberate intrusions with prior consent and by the rejection of methods which involve deception, coercion, manipulation, or misrepresentation.

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Privacy And Consent

Carol Warren Barbara Laslett

University of Southern California

"Privacy and Secrecy: A Conceptual Comparison."

Both privacy and secrecy involve restricted observability and the capacity to deny access to others. The authors contend that the two differ on a moral dimension. "Secrecy implies the concealment of something which is negatively valued by the excluded audience and, in some instances, by the perpetrator as well." It is a means to escape being stigmatized. "Privacy, by contrast, protects behavior which is either morally neutral or valued by society as well as by the perpetrators... Privacy has a consensual basis in society, which secrecy does not. There is an agreed-upon 'right to privacy' in many areas of contemporary life; however, there is no equivalent, consensual 'right to secrecy'."

The authors take note of Shils's (1966) concept of "public-life secrecy." "Public-life secrecy is secrecy on the part of those in power and their agents, acting purportedly in the public interest." As such it is closely related to the institution of politics. "Public-life secrecy is active and directed at others' lives, while private-life secrecy is passive and protective of the self.... The secrecy of those empowered to act in the public interest is aimed at actively uncovering persons, groups, and activities which are a threat to those in power. In contrast, private-life secrecy is protective rather than aggressive; indeed, a major aim of private-life secrecy is to protect persons from secret agents of social control."

For their example of privacy the authors selected various family activities, whereas their example of secrecy portrays the homosexual world. Whatever the value of these examples, the conceptual distinction between privacy and secrecy may lead to further research.

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The Court And Privacy

Hannah A. Levin Frank Askin

Union Graduate School Rutgers University

"Privacy in the Courts: Law and Social Reality."

How do Supreme Court decisions deal with the questions of privacy?

The right to privacy may be seen as deriving from the Fourth Amendment's protection "against unreasonable searches and seizures," the Fifth Amendment's guarantee against self-incrimination, and possibly the First Amendment's prohibition on the abridgement of freedom of speech. With regard to the protection of sexual and reproductive behavior, the Supreme Court has recognized the right of privacy within the marital bedroom. Thus, individual access to birth control information and abortion is protected from governmental interference. However, the Court has decided that privacy interests can be outweighed by the social need for public safety. Thus, the police, without a warrant, are permitted to stop and frisk suspicious looking persons on the streets for weapons.

The authors believe that were the Courts to use social science data, the result would be an extension of the right to privacy. "The Justices of the Supreme Court have no special background regarding the meaning of or significance of personal privacy as a behavioral phenomenon. It is up to the social scientists who have studied this phenomenon to educate the courts."

Although not directly related to the authors' main line of reasoning, they observe that "in the modern world it is precisely governmental structures and governmental power that most directly threaten our right(s) of privacy." From the perspective of personal autonomy and freedom the use of social science data regarding the psychological expectations of privacy is fraught with problems.

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III

The Ambiguities Of Liberty

Throughout the history of political philosophy, the concept of liberty or freedom has provoked a bewildering and often contradictory range of interpretations. To appreciate how liberty has historically meant a complete spectrum of opinions ranging from the illiberal, totalitarian, and closed society to the liberal, democratic, and even anarchistic society, one has only to list the names of Plato, Aristotle, Epictetus, St. Augustine, Aquinas, Hobbes, Locke, Rouseau, Jefferson, Godwin, Hegel, Stirner, Mill, Marx, and Isaiah Berlin. Sorting out the major distinct meanings in the labyrinth of liberty, Mortimer Adler required two thick volumes to do justice to The Idea of Freedom. *Some philosophers, such as John Gray of Oxford, believe that liberty may be "ineradicably disputable" and possess an essentially "contestable" character [see Gray's "On Liberty, Liberalism and Essential Contestability,"* British Journal of Political Science *8 (1978): 385–402]. Liberty is a value-laden term since its meaning depends upon which rival conception of man and society one endorses. Defining liberalism, Maurice Cranston reflects the ambiguous nature of liberty: "By definition, a liberal is a man who believes in liberty, but because different men at different times have meant different things by liberty, 'liberalism' is correspondingly ambiguous." (In Paul Edwards, ed.* Encyclopedia of Philosophy. *Collier-Macmillan: New York, 1972, Vol. 4, p. 478).*

Some of the ambiguities of liberty are partially clarified by following Adler's distinctions: (1) freedom as "self-perfection" or exemption from the slavery to our internal passions and vices; (2) freedom as "self-realization" or exemption from the slavery to external circumstances (e.g., coercive laws, duress); (3) freedom as "self-determination" or the psychological and moral ability to freely choose an alternative (as opposed to determinism); and (4) "political freedom" or the ability of citizens to participate in making laws.

The following summaries reflect the ambiguities and debates revolving around liberty as well as attempts to clarify various distinctions and moral evaluations of this centrally important concept.

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Clarifying Freedom

J.H.M.M. Loenen

State University of Leyden, Holland

"The Concept of Freedom in Berlin and Others: An Attempt at Clarification." *The Journal of Value Inquiry* 10 (Winter 1976): 279–285.

We need to clarify the ambiguous and nettlesome concept of freedom in social and political philosophy.

In particular, we need to criticize the traditional distinction between positive and negative freedom found in the works of Isaiah Berlin, Maurice Cranston, H.J. McCloskey, Erich Fromm, and John Rawls.

Loenen argues that there are indeed two concepts of freedom but that the traditional terminology of 'positive' and 'negative' freedom is infelicitous and even misleading. Moreover, the traditional terminology is unhelpful in treating substantive issues such as the value, justification, and the proper scope of freedom. A more helpful distinction would be freedom as "not being interfered with from without" from freedom as "not being determined from without."

Particularly misleading is Isaiah Berlin's use of the traditional terminology. Berlin's view that 'positive' freedom means "being one's own master" (and, through ambiguity, this becomes "being master of oneself") plagues the concept of positive freedom with a perplexing and perhaps indefensible distinction between two 'selves'.

Another flaw in the traditional terminology is that 'negative' freedom as 'the absence of restraints' conjures up for some the image of a free person inactive or passive. This ambiguity thereby leads some to overlook the important 'positive aspect' of 'negative' freedom: its connection with activity and choice, that is, with freedom *to do* things.

Following Hayek and others, Loenen defines the central question for substantive social and political philosophy as not whether the individual is interfered with in some 'absolute' sense, but whether he is to live in a free society, one that assures him of some "inviolable 'area'" of choice and action. If the author is correct, traditional definitions of 'negative' freedom will be of little use in this debate.

Loenen further argues that freedom as noninterference has intrinsic value, but he judges that this value is fully revealed only by the specifications of freedom (e.g., freedom of the press). A succinct, accurate, and felicitous terminology for distinctions among kinds of freedom remains to be devised.

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Rehabilitating Mill's "Harm Principle"

Dudley R. Knowles

University of Glasgow, Scotland

"A Reformulation of the Harm Principle." *Political Theory* 6 (May 1978): 233–246.

John Stuart Mill's famous "harm principle" enunciated in *On Liberty* (1859) states that we can justify government restraint over an individual's freedom only to prevent harm to others: That principle is, that the sole end for which mankind are warranted individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. Mill's harm principle was attacked, beginning with Justice Fitzjames Stephen, on the grounds that we can devise no clear distinction between actions which harm and actions which do not harm others. Do not most human actions affect others. Do not most human actions affect others to some degree? We can, however, resurrect and rehabilitate the harm principle by providing it with an adequate theory. Such a theory would differentiate self-regarding activities (which would be immune to government interference) from those actions which do harm others.

We can reformulate the harm principle once we realize a vital distinction. Although almost all actions affect others, not all actions harm others. The revised formulation would then read as follows: "Prohibitations are legitimate if and only if, necessarily, token actions of the type described in the prohibition cause harm to others." For example, the prohibition of theft would be legitimate if harm means the invasion of an individual's interest. Legislators must simply provide a list of actions which fall under this principle. For example, in the case of pollution, the law might set standards for clean air so that government would enforce prohibition against the burning of coal only if noxious emissions exceeded a legally defined threshold.

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Experiencing Freedom

Malcolm R. Westcott

York University, Ontario

"Psychological Studies of Experienced Freedom." Revised version of a paper delivered at the Southern Society for Philosophy and Psychology, Orlando, Florida, March 1978.

The personal experience of freedom, whether or not it is illusory, is important to study. This is because political ideology often rests on judgments of human nature's capacity to be free. These judgments, in turn, often rest on subjective experiences of freedom or "experienced freedom." The following report details some psychological studies of perceived freedom.

In all, 69 university students responded to a questionnaire assessing the circumstances under which they experienced feelings of personal freedom. Perceptions of personal freedom were most likely to be reported when one experienced a "release from noxious stimulation" or where there was an "exercise of skilled behavior." Perceived freedom was least likely to be reported (among the categories studied) when there was a "recognition of limits" or "active decision making."

The participants were permitted to generate their own "opposites" to the word "free." Some 170 "opposites" were reported. The most frequent type of "opposites" referred to "prevention from without" (e.g., restricted stifled, trapped). "Opposites" referring to "diffuse unpleasant affect" (e.g., emotions such as anxiety, boredom, and being overwhelmed) and "conflict and indecision" were also frequently mentioned.

Westcott briefly discusses the potential problem of such a knowledge (i.e., the circumstances under which people feel free) being exploited for political purposes. Reference is made to Skinner's (1972) observation that the most dangerous type of despot is the one whose subjects feel free. The author suggests that making public what can be known about the experience of freedom may help to limit that danger.

Criticisms of such topics as that of "experienced freedom" in social psychology repeat standard arguments:

That experimental methodology applied to complex processes relies on precision of operations and measurement, lacks conceptual analysis, limits behavioral options, and in so doing produces data results which have appropriate statistical properties, but which do violence to the natural phenomena they are meant to represent.

These methodological criticisms may not be fatal to studying human freedom in its subjective aspect as personally perceived freedom. Psychological studies of this topic could also gain insights by interdisciplinary contact "with the conceptual analysis of

freedom within theories of social philosophy, political philosophy, theories of ethics, and justice.”

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Do Offers Coerce Freedom?

Theodore Benditt

University of Southern California

“Threats and Offers.” *The Personalist* 52 (October 1977): 382–384.

Can offers ever be coercive and thus limit freedom? The author makes an affirmative case by examining the various ways in which Smith might communicate something to Jones to get Jones to do act A: (1) I (Smith) make your (Jones) present situation worse unless you do A; (2) I will prevent your present situation from improving unless you do A; (3) Your present situation will become worse; and (4) Your present situation won't become better (without my doing anything) unless you do A in order to get me to help it improve.

Of these four motivations, (1) and (2) seem to be the threats, whereas (3) and (4) are apparently offers. The distinction depends upon whether a deliberate act of Smith's makes things worse or fails to improve them. However, it can be argued that (3) and (4) are *threats* if Smith has an obligation either to prevent Jones's situation from deteriorating or to help that situation to improve.

Given this foundation, Benditt argues that some offers can be coercive. In particular, where Smith takes advantage of the fact that Jones's alternatives are all repugnant by making a somewhat less repugnant offer, Smith might be said to “coerce” Jones and limit Jones's freedom.

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The Danger Of “Dangerousness”

Saleem A. Shah

National Institute of Mental Health, Rockville, Maryland

“Dangerousness: A Paradigm for Exploring Some Issues in Law and Psychology.” *American Psychologist* 33 (1978): 224–238.

In the United States, thousands of people each year suffer the loss of their liberty because they are judged to be “dangerous” to themselves or to others. Dangerous behavior is defined as “acts that are characterized by the application of or the overt threat of force and that are likely to result in injury.” Judgments of the dangerousness of an individual are important to the criminal justice and mental health systems in a variety of areas: decisions concerning bail, sentencing, parole, competence to stand trial, emergency and involuntary commitment, and release from mental hospitals. The author observes: “Despite the very serious consequences that can follow for individuals officially designated dangerous, it is astonishing to note the frequent absence of clear and specific definitions and criteria in laws pertaining to the commitment and release of the mentally ill and of persons handled via 'sexual psychopath’ laws and related statutes.” Recent law suits have led to more precise definitions and stricter decision rules.

The use of dangerousness as a criterion for incarceration assumes someone's ability to make accurate predictions about the future occurrence of such behavior. However, a convincing body of literature makes clear the difficulties involved in predicting events with very low base rates. The author indicates, however, that these predictions “are accompanied by rather high rates of ‘false positive’ errors; that is, the great majority of the persons predicted as likely to engage in future violent behavior will *not* display such behavior.” Despite the possibility of such errors, social and political pressures are often brought to bear to incarcerate potentially dangerous persons on the presumption of “better safe than sorry.” The author notes that while the mentally ill have been targets for preventive detention, other sources of demonstrated dangerousness do not provoke comparable concerns (e.g., repeating drunken drivers).

In citing the work of Dershowitz, the author states that:

almost all organized societies appear to have employed some mechanism such as preventive confinement for the purpose of incapacitating persons who are perceived to be dangerous but who cannot be convicted for a past offense... The more a society circumscribes the formal criminal process with very tight safeguards that make criminal convictions difficult, the greater the likelihood that many dangerous persons will manage to benefit from these safeguards.

In American society, legal procedures delegated as “civil” are used to achieve greater leeway in the uses of preventive confinement. “By resorting to legal word games and

verbal gymnastics, that which we would not and could not do to persons convicted of serious crimes and judged to be deserving of punishment, we manage to do quite readily to those designated as the recipients of our benevolence."

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Freedom, Motivation, And Government Programs

David C. McClelland

Harvard University

"Managing Motivation to Expand Human Freedom." *American Psychologist* 33 (1978): 201–210.

Many fear that a knowledge of human motivation might serve to exploit others by manipulating them to do something they would not otherwise want to do. But McClelland observes that any psychologist "who has spent a lot of time trying to help motivate people is much more impressed by how difficult it is to produce any behavioral changes at all, let alone manipulate people without their consent." "Increasing knowledge of motivation does not increase the possibility of manipulation, because that knowledge has to be shared by the person to be influenced, in order for change to take place. And giving away your technical information makes it possible for the person to refuse to do what you think he or she should do. Precise technical knowledge permits change, prevents manipulation, and therefore promotes human betterment."

Much of the reason for the failure of the large government social programs to remedy social ills arises from the strong "power orientation" of some individuals. Their need to do something moves them to establish large, impressive programs to deal with any social problem that falls within their purview. Doing something impressive may be more important than doing something effective. McClelland observes: "They don't want to 'do better'; they want to 'have impact'.... We have had power oriented people setting impossible goals that they have attempted to reach by powerful though inappropriated means."

The author describes his personal experience with two technical assistance programs in India. One was based on the premise that "most people want to help themselves and will take the initiative to improve their lot if they are just given the knowledge, experience, and tools with which to do so." This program was largely a failure. The other more specific program was based on a substantial body of previous research and was designed to facilitiate achievement motivation among small businessmen in the hope it would improve their entrepreneurial capabilities. This program was far more successful and led to increasing levels of employment. Such modest remedies for social improvement, however, are "difficult to follow because the power brokers in politics and the media want big problems with big effects immediately."

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Freedom Vs. Determinism

Richard Foley

University of Note Dame

"Compatibilism." *Mind* 87 (July 1978): 421–428.

Is a deterministic account of human action compatible with human freedom? A theory known as compatibilism (or soft determinism) denies that determinism must mean a person's lack of freedom or ability to act otherwise than he does.

The compatibilist grants that prior conditions causally determine human action. However, not all of those considerations are relevant in deciding whether a person has the ability to act otherwise. As G.E. Moore argued, a person's behavior is partly determined by what he wills. If a person wills differently, he can act differently. The compatibilist must, accordingly, explain our ability to will or choose. The best strategy for the compatibilist to show the compatibility of freedom and determinism is to focus on deliberate action. If the determinist can explain how a person could deliberately act otherwise than how he in fact did, he would explain the most important kind of freedom.

Deliberate freedom of action appears possible from the following analysis. A person is said to do *x* "freely" if, although doing *x*, he is also able to do something else, namely *y*. In this case he would be able to do *y* if: (1) there is something *z* such that, were he to will *z*, he would do *y;* and (2) there is some physically possible situation in which he would know *y* is the best alternative and, with this knowledge, he would do *z*.

This analysis means that a person would be free to regulate what he values or desires by a program of self-training. We can clarify this. There was some time prior to time *t* when the person was able to bring about his having at time *t* different values and desires. He thus could have willed differently at time *t* because it would bring about more of what he valued.

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Negative Vs. Positive Freedom

James Gould

University of South Florida

"Is There 'Economic Freedom'?" *Journal of Social Philosophy* 9 (1978): 17–19.

Does there exist such a phenomenon as "economic freedom"? The issue is not whether any given country has political institutions in which the law neither controls nor forbids economic activities. In Gould's view, economic freedom poses the question of whether those lacking in economic power enjoy freedom at all.

Gould argues that historically when the citizens' major concern was to gain the power to participate in political organization, they rightly emphasized the notion of freedom as Isaiah Berlin characterized it. In his *Two Concepts of Liberty* (Oxford, 1958) Berlin defined "negative freedom" as the absence of coercion from others. But history has so progressed that in many countries the scarcity of negative freedom is no longer the main problem. Instead what concerns many today is the scarcity of a more positive freedom, economic freedom, in the sense of having the power (which the poor generally lack) to take actions that are desirable. Some would argue that there may be a justified concern with establishing institutions for purposes of securing the economic freedom that people lack—to provide everyone with the power to take desirable actions.

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Smith And Utilitarian Economic Freedom

T.D. Campbell

University of Stirling, Scotland

"Adam Smith and Natural Liberty." *Political Studies* (UK), 25 (1977): 523–534.

Adam Smith grounds the system of natural liberty analyzed in *The Wealth of Nations* in a utilitarian moral theory. This utilitarian strain generates the reasons Smith used to justify departures from the laissez-faire principle. In Smith's system of natural liberty, a market economy is a mechanism whose inputs include man's natural (normal) desire to get the best return for his labor, capital, and land. The market's outputs (consumable products) are maximized when our choices as to how to deploy our economic resources are not thwarted by laws attempting to influence those choices. Natural liberty deployes resources "naturally" because the economic advantages of different courses of action are unaffected by laws designed to redirect labor and capital. This does not mean unaffected by *all* laws, since security and justice require a legal framework which affects the profitability of many types of economic behavior, but Smith believed that these laws are compatible with natural liberty.

The *Wealth of Nations* presents the system of natural liberty as instrumentally valuable for material progress and hence, as a utilitarian device. Smith emphatically denies that the economic agent acts out of utilitarian considerations beyond his own benefit. However, Smith's overall evaluation of the economic system depends on how far it maximizes human satisfactions—as God intends that it should—a position which may be called contemplative utilitarianism.

The standard of natural justice (which ideally determines the positive law of a country) is determined by sympathetic spectators' reactions to acts which cause resentment among men. Smith claims that such immediate moral sentiments tend to establish and maintain natural liberty prior to any consideration of its utility, so that justice does not originate in men's utilitarian calculations. However, he also believes that justice is a prerequisite for any society.

If Smith allows that the ultimate justification of justice—and thus of economic liberty—is essentially utilitarian, and if he assumes that an intelligent and impartial spectator can appreciate the social benefits of restraining injustice, why does he refrain from overtly endorsing a utilitarian approach to morality and politics? The reason that Smith's utilitarianism is contemplative and never practical lies in his sociological conservatism. Smith believed that effective law must reflect the judgments of the ordinary citizen, who does not appreciate long-term consequences. Smith retreated from the direct practical application of utilitarianism because no scheme which relies on the citizen or the politician acting consciously on utilitarian principles has any hope of success.

Smith's contemplative utilitarianism, coupled with his sociological conservatism, restricts legal and political reforms to those which are in harmony with the citizen's immediate moral sentiments. This, and the instrumental rather than an intrinsic character of Smith's liberalism, appear in his theory of political obligation and are supported by his natural theology.

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Locke, Freedom, And Tacit Consent

Albert Weale

University of York, England

"Consent." *Political Studies* (UK), 26 (March 1978): 65–77.

Various logical difficulties plague the definition of consent in terms of granting a right to act. To avoid such difficulties we need to define consent in terms of its intended effects upon the recipients of an act of consent. J.L. Austin termed this meaning of consent its perlocutionary force. Perlocutionary analysis holds that a person's "consent" can obligate him to perform actions which he may not want to perform. This same analysis of consent makes coherent Locke's account of political obligation in terms of tacit consent.

What, then, is consent? On this analysis, consent is a special case of promising, distinctive in its passive character. Consent to an agreement is a kind of promise. It is intelligible in terms of the intended perlocutionary effect; it induces people to rely upon future actions that one has consented to perform in an agreement. By consenting to an action I intentionally induce another to rely upon my noninterference in his performance of some action.

We may define tacit consent within this expectations model of consent. A speaker induces expectations or reliance on a hearer. The speaker undertakes either not to interfere with some future action of the hearer or to begin a course of action which the hearer has previously proposed.

This same concept of consent helps in reconstructing Locke's argument for political obligation. Locke's reconstructed argument runs as follows. To enjoy one's natural rights securely, one must rely upon other people to make a contract to relinquish their rights to personally enforce contract violations. The fact that we are securely enjoying our property seems to show that other people have consented to form a political association. Unless we knew and relied on this, we would not be able to enjoy our possessions. By relying on others to give up their personal right of enforcement we are thereby inducing them to rely upon our nonenforcement of our own rights. The others would not subject themselves to judicial restraint in the enforcement of their rights if we insisted on remaining in a state of nature. This satisfies the conditions stipulated for tacit consent: an agent acts in a manner that can induce others to rely upon his future acting without the agent intending such reliance.

This analysis is not Locke's actual line of argument in the *Second Treatise*, but it arguably is a natural extension from his own underdeveloped account of tacit consent and political obligation. The perlocutionary interpretation of consent, in allowing for the ascription of consensual obligations to people without their intentions, makes a case for political obligation resting upon their "consent." This analysis, however, does

not of itself establish the superiority of a consensual theory of political obligation over any other rival account.

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Religious Freedom

Louis McRedmond

Radio Telefis Eireann, Ireland

“Not to be Coerced.” *Studies* (Spring/Summer 1978): 28–39.

From the beginning the founding fathers of the United States saw the principle of religious freedom not merely as a political norm but also as a duty enjoined by Christian belief. Jefferson observed that the mind of man was free to make its own judgments. Thus freedom came from God, man's creator. Hence Christians were obliged to respect freedom.

Separation of Church and State was enshrined in the Constitution in order to protect the right to religious freedom. Congress was to make no law which would intrude upon the citizens' religious beliefs because each citizen had a right not to be coerced and the State simply had no function in the matter of belief.

Whereas the Americans defined the limits beyond which the State could not go without infringing fundamental rights, the revolutionary French interpreted these rights so much in terms of political ideology that they distorted the understanding of freedom in Europe for generations and consequently led to the doctrine of state supremacy.

Despite the antagonism of the revolutionaries to the Church, the Church leaders initially took care not to close off the possibility of reconciliation with the new French regime. Why, in view of attitudes such as this, the Papacy became such an implacable opponent to liberalism during most of the nineteenth century is not clear. Rome could see the revolution only in its European and anticlerical form.

The American experience made no impact on the leaders of the Church. Neither did the example set in Ireland by Daniel O'Connell who said that the right of every man to freedom of conscience was “equally the right of a Protestant in Italy or Spain as of a Catholic in Ireland.” But the liberal Catholics of Europe (such as Montalembert, Lammenais, Lacordaire, Ventura, Rosmini and Ketteler) did draw inspiration from O'Connell and sought to analyze liberal principles.

The concept of freedom motivating these liberal Catholics closely resembled that of the Americans. But Pope Pius IX condemned them, going so far as to brand Catholic

liberalism as "a compact between justice and iniquity, more dangerous than a declared enemy." By contrast, Pope John XXIII included freedom with the great virtues when he spoke of "truth, justice, charity and freedom." And for the Second Vatican Council the right to religious freedom "has its foundation, not in the subjective disposition of the person, but in his very nature. In consequence the right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it."

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Freedom, Existentialism, And Innocent Victims

Thomas C. Anderson

Marquette University

“Freedom as Supreme Value: The Ethics of Sartre and de Beauvoir.” *Proceedings of the American Catholic Philosophical Association* 50 (1976): 60–71.

To speak of existentialist ethics as an ethics of freedom raises a number of difficulties. In fact, Sartre has not written the work on ethics which he promised at the end of *Being and Nothingness.* Further, some object to the very possibility of an existentialist ethics based on Sartre's ontology. Sartre's views of man and of the nature of value would seem to provide no foundation for the development of an ethics.

Anderson, however, argues that we can formulate the general structure of Sartre's ethics. The Sartrean ontology can give rise to an ethical system if we borrow from Simone de Beauvoir's book *The Ethics of Ambiguity.* De Beauvoir seeks to establish the value of freedom by invoking three of Sartre's notions: (1) human interdependence, (2) equality, and (3) consistency. In Anderson's analysis de Beauvoir develops these three notions as follows:

> (1) Man is completely dependent on human freedom to attain justification or meaning for his existence.
> (2) Man wants such justification and wants it especially to be freely given by men who are able truly to appreciate his life; he wants to be valued by his equals.
> (3) Consistency demands, therefore, that men both value the freedom of others and strive to aid them in becoming his peers, so that their valuation of him will be both positive and fully meaningful to him.

Anderson argues that Sartrean ethics formulates a meaningful ethical position for those who proclaim the death of God and of all objective values. It seriously attempts to reply to Dostoevsky's challenge “If God is dead, everything is permitted.” However, several problems still remain to be solved in this ethical view. In the existentialist ethics of Sartre and de Beauvoir: “any action designed to promote freedom and the advancement of others to equality with oneself is good, any action to restrict this is evil.” In practical terms the choice of freedom for all, however, “will often mean that the freedom of some must be restricted in order to promote the freedom of the greatest number.” In addition Anderson comments:

Sartre and de Beauvoir are willing at times to condone even the suppression of freedom of the innocent in order to enhance the freedom of the majority.... even actions they generally condemn are considered to be justified in particular circumstances if they lead to greater freedom for the greater number. In the final analysis their support of Marxism, and more recently of the Third World nations, is

based upon their conviction that these are at present humanity's best hope for achieving the general liberation of mankind, a liberation which they believe will ultimately come about only in a communistic classless society.

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Does Censorship Harm Freedom?

Fred R. Berger

University of California, Davis

“Pornography, Sex, and Censorship.” *Social Theory and Practice* 4 (1977): 183–209.

Arguments in favor of restricting freedom through censorship reflect certain attitudes about sex that many reject. Thus, judgments about pornography will depend on people's different attitudes toward sex. By carefully examining some of the major anti-pornography arguments, the author seeks to establish this point.

An examination of this emotional issue demands close reasoning to deal with the arguments of those opposed to pornography. One observation favoring freedom against censorship is: “...people who *want* the stimulation of erotic materials, who feel freer in expressing themselves through the influence of sexy art, who do not want an environment in which sex cannot be appreciated through explicit literature and art, will hardly be impressed with the manner in which the censor protects *their* privacy.” The author also turns around an argument favored by pro-censorship advocates: “...if being a remote cause of harms is a prima facie ground for censoring literature, then we have some evidence that the conservative arguments ought [themselves] to be censored. This is *not* a view I advocate.”

The crucial argument against censorship is based on its jeopardy to freedom: “The...important issue turns on the fact that a great many people *like* and *enjoy* pornography, and *want* it as part of their lives, either for its enjoyment, or for more serious psychological purposes. This fact means that censorship is an interference with the freedom and self-determination of a great many people, and it is on this ground that the conservative harm argument must ultimately be rejected.” Two general objections weaken the case for censoring pornography: (1) Pornography is not distinguishable from other reading materials in producing direct harms of one kind or another; it may, in fact, offset other materials which are more likely to have these effects; and (2) The alleged *indirect* harms of pornography—those produced through the influence of altered attitudes and beliefs—are highly unlikely. Furthermore, a society which values freedom will not allow such alleged harms to become the basis of suppression without strong evidence of probable causal connections. A free society will seek to counter such remote putative influences by non-coercive means.

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IV

Slavery

Slavery represents an extreme affront to liberal values as historically the most blatant form of hegemony or legal, involuntary subordination of one person to another. In the ancient world there was disagreement over the naturalness of slavery and other forms of legalized inequality. Aristotle's doctrine of the natural slave and of the just subordination of slave to master offered a natural law defense of slavery with questionable parallels to other forms of "natural" subordination: body to mind, citizen to polis, *wife to husband, and child to parents. Under Aristotle's system, the slave's virtue was not autonomy but obedience to the master's mind and will. Other ancients, however, argued-still within the natural law—that slavery was a matter of* nomos *(custom or conventional man-made law) rather than* physis *(nature). But Aristotle preserved a muted reference to the dissenting liberal view:*

others affirm that the rule of a master over slaves is contrary to nature, and that the distinction between slaves and freemen exists by law only and not by nature; and being an interference with nature is therefore unjust. (Politics *i, 1253b*)

Certain liberal-minded Sophists (as discussed in Eric Havelock's The Liberal Temper in Greek Politics) *even went beyond indicting slavery and judged that all authority and subordination rested on coercion and nomos as its sole justification. Slave-holding Greeks, embarrassed by such reasoning, were likewise caught up in a moral dilemma when they wished to denounce tyrannical government as a form of slavery. The desire for political liberty, thus, easily led to questioning slavery and coercive inequality of every kind and degree. The complex of tensions and contradictions involved in the institution of slavery are discussed in detail in two volumes by David Brion Davis*, The Problem of Slavery in Western Culture *(Ithaca, N.Y.: Cornell University Press, 1966); and* The Problem of Slavery in the Age of Revolution: 1770–1823 *(Ithaca, N.Y.: Cornell University Press, 1975).*

Even the philanthropic Stoics and early Christians never called for the abolition of slavery, however much they might stress the slave's common humanity. In his chapter on ancient "Masters and Slaves," M.I. Finley trenchantly remarks:

On the contrary, it was that most Christian of emperors, Justinian, whose codification of the Roman law in the sixth century not only included the most complete collection of laws about slavery ever assembled but also provided Christian Europe with a ready-made legal foundation for the slavery they introduced into the New World a thousand years later. (In The Ancient Economy. *Berkeley: University of California Press, 1973, pp. 88–89.)*

A radical shift in moral consciousness was necessary to make society sensitive that the evil of chattel slavery was but one glaring form of a vaster system of unjust legal

subordination and privilege. The opening summary by Davis, accordingly, analyzes the various eighteenth-century cultural and intellectual forces and the new sensibility that converted indifference to indignation concerning slavery. Even earlier (as the Russell-Wood summary discloses along with the cited books by Lewis Hanke) natural law and rights arguments were advanced by the Spanish missionary, Bartholomé de las Casas, to condemn Amerindian slavery. But it remained for the agenda of the systematically liberal temperament of the Enlightenment philosophes *(see Hunting's summary) to launch a sustained and socially effective movement to abolish slavery as a moral contradiction to the values of natural liberty and equality. These liberal efforts led to the temporary end to slavery in French colonies in 1792, to slavery's abolition in British possessions in 1833, and finally to American emancipation of slaves following 1863.*

In the United States, the antislavery movement itself exposed other embarrassing contradictions of subordination and unequality. Thus, American abolitionists, while working for social equality of black slaves, were rent asunder in 1840 on the issue of allowing a woman, Abby Kelley, to be elected to the previously all-male business committee of the American Antislavery Society. Still more radical, the leading abolitionist William Lloyd Garrison met great resistance in antislavery circles by advocating "nonresistance," a form of Christian anarchism that opposed all forms of direct political action—even to remedy slavery—as forms of moral subordination and corruption of autonomy (see Ronald G. Walters, The Antislavery Appeal: American Abolitionism After 1830. *Baltimore: The Johns Hopkins University Press, 1976, pp. 3–18.*

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Slavery, Ideology, And Subordination

David Brion Davis

Yale University

"'The Problem of Slavery in Western Culture': The Argument Summarized." In *The Problem of Slavery in the Age of Revolution 1770–1823.* Ithaca, N.Y.: Cornell University Press, 1975, pp. 39–49.

Why did the West's moral consciousness shift to embrace antislavery during the 1760s and 1770s? "By the eve of the American Revolution there was a remarkable convergence of cultural and intellectual developments which at once undercut traditional rationalizations for slavery and offered new modes of sensibility for identifying with its victims." In the era of liberal Enlightenment and revolution, the ideological function of attacking slavery was symbolic of a broader critique of all forms of legal subordination.

Slavery, as an extreme form of subordination, contained unstable tensions and contradictions that undermined its defense. On the one hand, the slave was regarded as a passive tool without an autonomous self-consciousness; on the other hand, the slave was also viewed as a conscious agent with traces of human personality. Also making for the instability of slavery was the paradox that the "master" was completely dependent on the slave's consciousness and recognition of him as a master to whom the slave owed obedience and subordination. Physical bondage reflected, in addition, an alleged but questionable cosmic hierarchy and subordination. Men who internally were "slaves" to sin or passions and judged incapable of virtuous self-government, were "natural slaves" deserving also of external bondage and subordination to virtuous or rational masters. The Cynics, Sophists, and Stoics offered the slave an ideological comfort that though outwardly a slave, he might inwardly be free. This cold comfort and the Christian emphasis on endurance and subordination prevented attacks on slavery.

The Quakers and other perfectionist sects questioned the morality of slavery as an inhumane treatment of fellow humans and an arbitrary subordination of equals who did not deserve to be treated as objects. Along with the Quakers' attitude, four developments in Western culture and British Protestantism fostered the burgeoning of antislavery consciousness: (1) Secular social philosophy came to interpret the master-slave relationship as a matter of fear, power, self-interest, utility, and social order. This undercut the ethical opposition to successful slave revolts. Furthermore, by sympathetically identifying with the slave's lot, the liberal Montesquieu (and Francis Hutcheson) "put the subject of Negro slavery on the agenda of the European Enlightenment." (2) The growing influence of the ethic of benevolence embodied in the "man of feeling" and "moral sense" made slavery appear as an inhumane and brutal affront to liberal progress. The liberal, sympathetic spirit, reflected in Adam Smith's *The Theory of Moral Sentiments* (1759) and *The Wealth of Nations* (1776),

viewed slavery as morally undeserved and as preventing “the spontaneous impulses” which the man of feeling cultivated. (3) The evangelical faith stressed conversion and sanctification of all men including slaves and warned against the abuse of power as a temptation of masters. (4) Finally, anti-slavery sentiments were fostered by primitivist “noble savage” currents which deflated white ethnocentrism and encouraged viewing blacks as autonomous human beings capable of virtue and creativity and as undeserving of subordination.

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Slavery And Imperialist Ideology

A.J.R. Russell-Wood

Johns Hopkins University

"Iberian Expansion and the Issue of Black Slavery: Changing Portuguese Attitudes, 1440–1770." *The American Historical Review* 83 (February 1978): 16–42.

To justify their overseas imperial conquests, colonization, and slavery, the Portuguese devised an official "ideology of expansion." This ideology together with their self-doubts formed the Portuguese attitude toward blacks, and toward slavery in Africa, Asia, and the Americas.

The fifteenth century inaugurated an upsurge of the Portuguese slave trade marked by the enslavement of Moorish, African, and Asian peoples with whom the Portuguese had neither religious rivalry nor territorial disputes. Portuguese imperial expansion was motivated by a mixture of "God, gold, or greed" to economically exploit black slave labor in Portugal, Brazil, and the sugar plantations of Madeira. In the imperial process, black slavery compelled the Portuguese to reinterpret the old concepts of "honor" and "just war" to allow offensive actions by Christians against "infidels." Though these expansionist crusades and slavery-expeditions were piously cloaked in the name of service to God, Charles Gibson more accurately described the first such expedition against Moroccan Ceuta in 1415 as the "first act of state-directed imperialism of modern European history."

The Portuguese ideology of expansion aimed to ease the Portuguese moral dilemma concerning imperialism and slavery. A pro-Portuguese warrior-God conveniently sanctioned His chosen people to extend Christianity to the pagans and infidels of Africa and Asia by means of the politicized Iberian tradition of crusades and "just wars." "Pillage, piracy, and wanton destruction" were legitimate policies in this ideology to deprive infidels of the sinews of war that they might conceivably direct against Christians.

Political pressures wrested papal sanctions, bulls, and indulgences to bolster the military and economic interests of Portuguese imperial expansion to Africa and beyond. Pope Nicholas V, for example, granted to Dom Alphonso V authorization to subdue the infidel Saracens, annex their lands, and reduce them to perpetual servitude—all this in the name of Christ and blessed with a plenary indulgence.

But doubts troubled the Portuguese and Iberian conscience. Even João de Barros (1496-1570), the court historian known as the "Portuguese Livy" could not reconcile the ideology of expansion with the cruel realities of the slave trade. The most trenchant critics of the Portuguese policies were the Spanish Jesuit, Luís de Molina (1536-1600), and the Spanish Dominican missionary, Bartholomé de las Casas (1474-1566). Las Casas defended the liberty of Amerindians and castigated the slave

trade and its historian apologists: “And to be marvelled at is the manner in which the Portuguese historians glorify as illustrious such heinous deeds, representing these exploits as great sacrifices made in the service of God.” Growing doubts about the moral contradictions of imperialism and slavery were poetically expressed in Camões's epic of Portuguese expansion, the *Lusíadas.*

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Enlightenment Liberalism Vs. Slavery

Claudine Hunting

Texas A & M University

"The *Philosophes* and Black Slavery." *Journal of the History of Ideas* 39 (July/ September 1978): 405–418.

Under the banner of liberty, equality, and fraternity, the French Enlightenment *philosophes*, Encyclopédistes, and liberal economists managed to effectively criticize proslavery economic policy of the French government. The *philosophes*, armed with arguments from reason, morality, and satire, propagated a liberal social and economic ideal despite the general indifference toward slavery as a normal institution and despite the French government's profitable vested interests in its colonial slave trade. The two decades from 1748–1765 saw the first phase of the *philosophes'* attack against slavery: 1748 seeing the publication of the *philosophe* Montesquieu's *L'Esprit des lois*, 1751–1765 seeing the appearance of those volumes of the *Encyclopédie* crucial to the themes of slavery and liberty.

The *philosophes* wielded a panoply of moral, intellectual, and emotional weapons to communicate their liberal philosophy of natural liberty in opposition to slavery. Morally, they attacked the "religious" motivation of saving souls for Christ by enslaving blacks and depriving them of their natural birthright of liberty and equal personhood. For the *philosophes* slavery was a moral issue unjustifiable by religious or economic motives. Reason and intellect, the *philosophes* argued, showed that all men were by nature free and equal. Freedom was "a right that nature gives to all men to have control over their own person and possessions" (*Encyclopédie* IX, 471). All men are equal because of natural liberty, and all are free because of natural equality, as Joucourt and Diderot noted elsewhere. In addition to the *philosophes'* moral and intellectual arguments of liberty and equality, they also advanced the emotional appeal of human fraternity. Human solidarity and love should move us to treat all men as our brothers.

The *philosophes* exposed the economic greed behind the imperialist and colonialist exploitation of black slaves. Voltaire succinctly summed up the matter in *Candide* (1759), by putting in the mouth of a brutally dismembered sugar plantation slave the indictment: "It is at that price you eat sugar in Europe." Joucourt likened to highway robbery the colonial settlers' trafficking in black flesh to extract profitable sugar, cocoa, and tobacco. Following liberal economic doctrines that viewed liberty and industry as the real sources of abundance, Joucourt launched a radical attack on state colonialism and the slave trade:

Can it be considered lawful to deprive mankind of its most sacred rights for the sole purpose of gratifying one's greed, vanity or idiosyncrasies? No...Let European colonies perish rather than have so many suffer. (*Encyclopédie* XVI, 533)

Ominously, the Enlightenment liberals also warned of the potential slave revolts inevitable under such a cruel system.

The temporary abolition of slavery in 1792 during the French Revolution was thus prepared for by the *philosophes'* antislavery arguments. It still remained, however, for French literature to rehabilitate blacks to the full image of dignity and weaken the racism that slavery had insinuated into society.

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The Anatomy Of A Slave Revolt

David Barry Gaspar

University of Virginia

“The Antigua Slave Conspiracy of 1736: A Case Study of the Origins of Collective Resistance.” *William and Mary Quarterly* 35 (1978): 308–323.

If a last moment change in the plans of their masters had not occurred, hundreds, perhaps thousands, of Antiguan slaves would have arisen in open rebellion against the system of slavery on October 11, 1736. Instead of leaving a legacy of bloodshed and race warfare, the Antiguan slaves left a rich, historical record collected during the trial of the leading slave rebels. Contained in the testimony of master and slave is an absorbing and suggestive recital of factors which led the slaves of Antigua to plan for freedom.

The Antiguan slave conspiracy strongly resembles other Carribean rebellions. The slaves chose their leaders from among the household and artisan workers rather than from the fieldhands. The evidence taken at the trial strongly suggests an overriding ethnic character to the conspiracy. All but one of the charismatic slave leaders were Creole and the slaves enlisted in the abortive rebellion seem to have had common African backgrounds. These privileged “elite” slaves freed from field work had time to plot, and their long residence on Antigua familiarized them with the whites' weaknesses.

“The psychological and sociopolitical base for a large-scale plot was perhaps strongest among the many artisans who regularly paid their masters a part of their earnings, obtained either by being hired out or by working on their own.” Such independent and self-reliant productive slaves were difficult to control. The two charismatic slave revolt leaders—the Coromantee Court (from the Gold Coast) and the Creole Tomboy—enlisted followers by playing on their fellow slaves' discontent and on their desire for dignity and manhood. These leaders bound them with an oath to kill whites. Religious sanctions administered by diviners (or obeahmen) strengthened and solemnized the oath of rebellion.

Moreover, the conspiracy drew its strength from the numerical superiority of slaves over whites, exceptionally lax enforcement of slave controls, the gradual rise of many slaves to higher social status and independence, as well as the increasingly frequent opportunities found by slaves for petty, yet overt, resistance.

Not surprisingly, the slaves' stated, pervasive goal was freedom. Beyond the rebellion, however, they gave little thought to how they would protect themselves on the sparsely forested island, or how long they would remain free from the renewed control of their masters. The depth of this thirst for freedom deeply stunned their masters who moved swiftly and ruthlessly to regain dominance and punish the

conspirators. Conspiring for freedom was costly: over seventy slaves were executed while as many were banished from family, friends, and Antigua.

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Colonial American Slave Law

William M. Wiecek

University of Missouri, Columbia

"The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America." *William and Mary Quarterly* 34 (1977): 258–280.

Government laws legitimatized powerful undercurrents of racial prejudice and institutionalized American slavery. During the American colonial period, other free communities enacted statutory laws that condemned blacks to lifetime servitude and thus protected the white owners from the threat of slave revolts.

So thoroughly did colonial lawmakers establish slavery that the newly formed states of the 1770s and 1780s wholly adopted their forebearers' servile legal code. Moreover, they agreed with United States Supreme Court Justice John McLean in treating this statutory legacy as firmly establishing American slavery.

To understand post-Revolution slavery we need to study the assumptions of its statutory basis in the colonial period. Colonial lawmakers labored to justify how human blacks lost those rights enjoyed by human whites. Moreover, legislators had to decide whether slaves were to be considered real or personal property, some mixture of the two, or a unique case. Ultimately slaves were defined as personal chattel, moveable property tied to a free person. This definition did not prevent some states, however, from allowing slaves to be sold with land as if they were real property.

The colonial statutes stipulated lifetime servitude for slaves, and thereby distinguished their status from indentured servants. They also stamped slavery with its racial definitions: negroes, mulattoes, and Indians could be slaves, but not whites. Finally, the colonial lawmakers determined that the children of slaves should follow their mother's status. This revealing innovation resolved the social dilemma resulting from sexual liaisons between the races; it also testifies to how strictly legislators sought to segregate the races.

Along with these pillars of slave law, colonial statutes minutely defined most relationships between the races. Slaves had civil existence only through their masters. Denied access to the usual channels of justice, slaves were relegated to special courts. During the colonial period, statutes forbade teaching slaves reading and other skills. The law disabled slaves from carrying weapons. Ultimately, even travel by slaves was restricted. Legislators devised elaborate policing systems to ferret out disruptors of this increasingly complex labyrinth of social controls.

By the time of the American Revolution, an intricate web of slave statutes had been woven. In an otherwise free community, it legalized a society of unequal status. This legal system also reinforced the bedrock prejudices underlying slavery. The only

significant legal changes in slavery after 1776 came from state legislatures above the Mason-Dixon line. These legislatures slowly and cautiously abolished chattel slavery over the next 80 years. Below the Mason-Dixon, the laws sanctioning a slave-based society stood virtually unchanged until 1861.

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Jefferson On Slavery

Edmund S. Morgan

Review Article of Gary Wills, *Inventing America: Jefferson's Declaration of Independence.* New York: Doubleday, 1978. In *The New York Review of Books* 25 (August 17, 1978): 38–40.

Jefferson's moral and political thinking on the vital topics of the basis of social contract and his attitude toward slavery receives clarification from Gary Wills's new exegesis of the Declaration of Independence. Seeking sources beyond John Locke, Wills propounds Jefferson's intellectual indebtedness to such Scottish Enlightenment thinkers as Kames, Hume, Hutcheson, Ferguson, Reid, Dugald Steward, and Adam Smith.

In contrast to Locke's atomistic individuals, who through intellectual calculation form an artificial social contract and enter into civil society from a conjectural nonsocial "state of nature," Hutcheson emphasized a universal, innate, and natural "moral sense" that benevolently moved mankind to live in social community. The Declaration's credo that "all men are created equal" goes beyond Lockean equal ownership of each man's person to a present social fact that all mankind equally possesses a moral sense, and derivative social rights, despite differences in talents and externals.

This Scottish theory of moral sentiments might help resolve the contradictions in Jefferson's remarks on the natural inferiority of blacks voiced in the *Notes on Virginia.* In that work Jefferson judged that blacks were mentally and physically inferior to whites, but endorsed their equality in possessing a common faculty of a moral sense of the "heart." This assertion was crucial because it is this egalitarian moral sense that "gives man his unique dignity, that grounds his rights, that makes him self-governing."

But Jefferson was no abolitionist. Because of his allegiance to white society, he favored emigration from America for freed slaves. This ambivalent attitude reveals Jefferson's dilemma as what Morgan terms a "conflict between his hatred of slavery and his devotion to a society that failed to abolish it." Jefferson's devotion to white society surfaces in his distress over Congress's deletion of a section of his Declaration draft. Originally Jefferson had complained of King George's attempt (through Virginia's Governor Dunmore) to free any slaves who would support the loyalist

cause: “he is now exciting those very people [black slaves] to rise in arms among us, and to purchase that liberty....” Congress substituted the more ambiguous wording: “He has excited domestic insurrections among us.” The original wording contradictorily combined a condemnation of slavery and the slave trade with a condemnation of slave insurrections to gain freedom. This is a strange tension in a document justifying political insurrection. Jefferson and the supporters of the Declaration felt by their moral sentiment more loyal to the society of white Americans who “stood ready to defend against Kings, loyalists, and slaves alike.”

A similar exegesis of the “domestic insurrections” passage as a muted reference to American slave revolts also appears in Sidney Kaplan, “The ‘Domestic Insurrections’ of the Declaration of Independence.” *Journal of Negro History* 41 (January 1976): 243–255.

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Slavery And The Poor

J.H. Plumb

“Slavery, Race and the Poor.” In *In the Light of History.* New York: Dell Publishing Co. 1974, pp. 102–113.

Although racism against blacks in America aggravated the mistreatment of slaves and subjected freed blacks to an unequal color caste, it was more an excuse than a cause of slavery. Virulent forms of English xenophobic racism, having no causal link with slavery, had previously been directed against the Dutch, French, and Irish. A more balanced view of American social history dealing with black-white race relations is needed to supplement the insights of such works as W.D. Jordan, *White over Black: American Attitudes towards the Negro*, 1550–1812 (1968); *Black History: A Reappraisal*, Melvin Drimmer, ed. (1968); *American Negro Slavery: A Modern Reader*, Allen Weinstein and F.O. Gatell, eds., (1968); and Michael Banton, *Race Relations* (1968).

In reality, the evils of American and English slavery grew from the more general evil of social subordination of servants, workers, the poor, and slaves a like. Both the poor and slaves suffered similar social oppression over the centuries because both groups could be exploited as cheap sources of labor and wealth. The early English slave codes, in fact, resembled legislation to control the Elizabethan jobless poor. The similarities between the treatment of slaves and the poor allow us to see how normal slavery could appear to an earlier society.

Slavery occasioned tensions among America's founding fathers who evaded or postponed the question of abolition. Slavery for the American revolutionaries represented a conflict between the natural rights of all men and the Lockean holiness of property. After 1800, two forces were at loggerheads: the revolutionary heritage of freedom or equal rights and fears about the effects of black emancipation on family life and the social order. Thus, even though slavery might be abolished, racism would continue.

The crucial question of why abolition gained so strong a social support is answerable by again looking at the status of the working class poor. In England the most pronounced antislavery movement occurred among the entrepreneurs of the Industrial Revolution. Quaker industrialists and other businessmen formed a new attitude toward the poor working class. From the perspective of Adam Smith, workers in modern industries would be more productive if they received more incentives, better skills, and improved conditions. Josiah Wedgwood and other imaginative industrialists experimented with higher wages and better working conditions for their workers. Spurred by the incentives of self-interest, workers had great advantages in production over unfree slaves. In the new industrial society, the poor gradually turned into the working class.

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V

Planning

Government planning and regulation has had a long history, characterized by noble aspirations and disappointing results. As the following summaries disclose, national and international government intervention has detrimentally affected the mails, charity, schooling, labor, industry, and the economy through war, inflation, and trade barriers.

Professor Hughes's opening summary sketches the ongoing effects of government war planning and regimentation into peacetime. Peacetime government planning continues the inroads toward centralization, control, and bureaucracy initiated during war crises. One underlying reason for the continuity of wartime and peacetime planning appears as a unifying motif in the following summaries: the government's desire to predict and control human behavior even at the expense of personal freedom and diversity. Friedrich Hayek's summary, as well as others, reveal how self-defeating and doomed in the long run are all such government attempts to control the natural, spontaneous social and economic order through artificial planning. The results of planning in the real world include: constricted individual initiative, stifled charity, political expediency, inflation, schooling in conformity, black markets, and planning bureaucracies.

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Regulation And The Warfare State

Jonathan R.T. Hughes

Northwestern University

“Progressives and the Impact of World War I.” In *The Governmental Habit: Economic Controls from Colonial Times to the Present.* New York: Basic Books, 1977, pp. 133–145.

The growth of the planned economy is not a recent innovation in America. The roots of nonmarket controls of economic decisions stretch back in our remote past. We have, as it were, become addicted to the government. While those who have turned to the government have aided and abetted its growth, we cannot say that what exists constitutes a system intentionally created by willful men. On the contrary, it is a mishmash of different governmental responses to perceived group needs.

Professor Hughes chronicles the growth of federal intervention in the control of the economy from colonial times to the present. In this section he examines the effects of the twentieth century's wars on the growth of government's role in economic activity.

His thesis is that “the wars of our century made such expansions of federal power possible.” The “psychological influence of successful war efforts,” augmented the acceptability of increased centralization of power in the federal executive and accelerated trends already present. In the process, commitment to the free market diminished. Increasingly Americans turned in peacetime to the solution that had seemed to work so well in wartime: centralized governmental decision making and nonmarket controls to solve problems. By the time Nixon imposed price controls in 1971, “the leaders of the American economy could accept direct controls with barely a whimper.”

The socially disintegrating effects of modern war on American freedom parallel ancient warfare's undermining of the Roman Republic. The direct legacy of war is obvious. Less obvious is the increased acceptance of federal nonmarket controls. The Progressives' domestic interventions set the stage “psychologically and structurally” for the war interventions, which then multiplied post-war governmental controls.

“National emergency became the catch-all justification for extensions of federal power into the private economy.” The most famous war-time entry of government into the private economy was the World War I takeover of the railroads. The trickery and secrecy behind Wilson's maneuver and seizure presaged the Gulf of Tonkin Resolution. Moreover, apparently innocuous and “temporary emergency” measures enacted in wartime, provided government with powers which they extended into peacetime. Wilsonian wartime control of food production was legalized in the Lever Food-Control Act. It was under this act that Attorney General Palmer conducted post-war persecution of “foreign radicals.”

American society could not return to pre-1914 arrangements. The whole social system of peace, free trade, and individual liberty had been crippled. Many of the domestic intrusions remained, if only in dormant stage, to be resurrected in the 1930s economic crisis and the next war. Tragically, the growth of government paved the way for successive wars and wartime interventions, whose effects are still with us.

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Mail, Privacy, And Social Control

Bruce A. Lehman Timothy A. Boggs

Staff Members of House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice

"How Uncle Sam Covers the Mails." *Civil Liberties Review* 4 (May/June 1977): 20–28.

Even such an apparently benign governmental monopoly as the postal service can, through regulation, serve sinister ends and violate individual privacy. The federal government has long used "mail covers" as a tool of investigation and surveillance. A "mail cover" involves the recording of information from the outside of envelopes of first class mail received by citizens.

Mail cover first appears as an investigative technique in the Postal Regulations of 1879. Its original intent was to supply information to postal inspectors about fugitives and "fraudulent schemers." In 1948 the regulations were modified to allow a mail cover at the request of any federal executive department or agency. One of the first victims of these new mail regulations was Senator Joseph McCarthy. In 1952, the Senate Subcommittee on Privileges and Immunities covered McCarthy's mail on the allegation that he was using Senate funds for stock speculation. The adverse reaction to the invasion of McCarthy's privacy through mail cover spurred the Post Office Department in 1954 to rewrite the postal regulations. The revised regulations again restricted access to postal information to postal inspectors and law officers seeking fugitives.

More recently, the mail cover regulations were rewritten following Senator Long's Congressional Hearings titled "Invasions of Privacy by Governmental Agencies." The new regulations did little more to restrain invasions of privacy than did the 1954 regulations.

Mail covers stirred public attention again in 1975 with a review of government surveillance techniques by the House Judiciary Subcommittee on Civil Liberties. Postal authorities, it was divulged, had granted mail covers to such agencies as a Fish and Wildlife Commission, the IRS, the FBI, the CIA, and the Royal Canadian Mounted Police. More significant was the discovery that no standards existed for regulating the use of "national security" mail covers.

A promising effort to limit mail covers is Congress's HR 214 (April 1976). This bill seeks to limit both those who can authorize or request mail covers and the duration of a mail cover. The bill also would permit mail covers to be used only in connection with investigating felonies and would require notifying the subject of the mail cover that his mail had been surveyed at the end of the cover. Because of opposition by the

Justice Department to portions of HR 214, the bill was reported back to the Subcommittee.

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Corporate State Capitalism: Coal

Charles Medalen

“State Monopoly Capitalism in Germany: The Hibernia Affair.” *Past and Present* 78 (February 1978): 82–112.

The Prussian government attempted in 1904 to secretly purchase shares of the Hibernia Coal Mining Company. This sparked a formidable battle between the Prussian state bureaucracy and the private owners, managers, and bankers who formed the active beneficiaries of the Coal Syndicate, a cartel that controlled over 88 percent of Prussia's coal supply. What triggered the government's policy may have been its belief that the coal operators were creating vertical coal and steel trusts, in emulation of America's U.S. Steel. A trust would be intolerable to the Prussian state for it threatened the stability of the State's military power based on its free access to coal and steel resources not under state control. On the other hand, the government feared pure competition because of the adverse political effects of cyclical fluctuation of prices, wages, and employment. Therefore, it preferred to maintain the coal cartel. Ownership of Hibernia Coal Company would give it the leverage to dominate the cartel and prevent the formation of a trust. Also at issue was the larger question of whether the state bureacracy or the coal and steel magnates and their banker allies would dominate the State.

The Hibernia Affair has become a crucial event among Marxist historians who interpret it as the early phase of the process by which large scale capitalist enterprises and state power integrate into a single mechanism of “state monopoly capitalism.” In Germany it was the occasion for capitalists to test their power. They aimed at defying the bureaucratic will of the Prussian State to bring to heel all possible challengers to its dominance. Skirmishes continued until 1914 when the war fever caused the State to co-opt private industry into the state war machinery.

During this affair, private bankers used naive government officials for their private ends. Bankers played a key role in organizing the resistance of the Coal Syndicate. This meant the continual failure of the cartel to maintain its agreed price and supply structure, provoking in turn mounting fears among the syndicate members and the government that competition would thwart their aims. The government's own coal mines were so inefficient that only the cartelized price structure made the government's product marketable. Medalen concludes that the Prussian government's failure to nationalize the Hibernia Coal Company was a significant victory for the “bourgeoisie.” Germany did not get “state socialism” but rather what American historians call “corporate state capitalism.”

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French War “Planification”: Chlorates

Henri Morsel

“Contribution à l'histoire des ententes industrielles (à partir d'un exemple, L'industrie des chlorates).” (A Contribution to the History of Industrial Alliances: The Chlorate Industry.) *Revue d'histoire économique et sociale* 54 (1976): 118–129.

The history of industrial alliances and cartels in connection with French government regulation of the chlorate industry in Europe repays study. International cartelization was part of the general movement toward protectionism which occurred in late nineteenth-century Europe.

In the late nineteenth century the French state exercised an important role in the market for chlorates through its demand for explosives and its monopoly of the manufacture and distribution of matches. More importantly, government customs barriers were essential in developing national monopolies which in turn developed into the international cartel. Customs barriers allowed the cartel to maintain coercively high profit levels which the cartel itself enjoyed rather than the individual manufacturers. This economic factor accounted for the continued strength of the cartel. Competitors were either co-opted into the cartel as junior partners or purchased outright. These were the favored tactics, since price cutting to force out competitors proved to be dangerous. Market forces—heavy speculative buying by chlorate consumers—tended to keep the price down.

After World War I, the growing trend toward national economic autarky ended the international cartel. National monopolies, however, grew stronger by the virtual elimination of international competition. In the international climate of the period, national cartels and the occasional alliances among them seem to have been less forms of regulation than weapons of war controlled by state policy.

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Bureaucracy And British Regulation

Rodney Lowe

Heriot-Watt University, England

"The Erosion of State Intervention in Britain, 1917–1924." *The Economic History Review* (May 1978): 270–286.

Why did Britain delay until the years following World War I to introduce interventionist policies on a broad front? This question is prompted by several factors: the electorate trebled in 1918; the state established a number of "interventionist" ministries during the first World War; and interventionist views flourished. For example, in 1923 the Financial Secretary to the Treasury declared that it was inhuman to let the unemployed starve and that the State would have inflation if inflation was the only way to prevent starvation. All these factors seemed to have set the stage for a high degree of interventionism during the inter-war years.

To answer why massive state intervention was laggard, we need to examine wage regulation and the role of the new interventionist ministries. During the War the Haldane Committee on the Machinery of Government had warned that the projected centralization of the civil service required that the Treasury change its attitudes about public expenditure and long-term policy. The Treasury, however, did not change its attitude and, in fact, immediately after the War, Treasury control waxed stronger. In 1919 the Permanent Secretary became head of the civil service with the right to advise the Prime Minister on the appointment of senior officials in all departments. Moreover, beginning in 1920, the Treasury acquired the right to have all proposals of increased expenditure referred to it before being submitted to the Cabinet. Since the Treasury also controlled promotions, senior civil servants were reluctant to challenge its views.

The Cabinet itself was also reluctant to oppose the Treasury. This first became apparent in 1921 at the outset of the depression when Lloyd George's cabinet panicked and lost faith in its previous policies. Some ministries did attempt to involve themselves in long-term policy after the War, but the Treasury succeeded in contracting departments "staffed by thinkers and those who apply information and statistics to problems and indicate policy." The officials in the interventionist ministries lacked the conviction and economic sophistication to challenge the Treasury successfully and their influence declined during the inter-war years. The fact that broadly-based interventionist policies did not emerge between the wars may therefore be attributed to Treasury control, political ambivalence, and the internal weakness of the interventionist ministries.

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British Foreign Policy And Stagnation

Stephen Blank

The Conference Board, New York

“Britain: The Politics of Foreign Economic Policy, the Domestic Economy and the Problem of Pluralistic Stagnation.” *International Organization* 31 (Autumn 1977): 673–721.

How did British international ambition and domestic regulatory policies engender the economic stagnation that England has experienced in the post-World War II period?

The author contends that the failure of the British economy was due primarily to efforts by successive British governments to maintain an international role beyond the

nation's capabilities. When combined with a determination to maintain the external strength of the British sterling, this policy resulted, after 1967, in heightened domestic social conflict and in the politicization of economic policy. Poor economic performance resulted in the post-war years.

Britain suffered from its military and foreign aid expenditures abroad. The author concentrates on the efforts by the government to maintain the existing exchange rate, and appears to favor an inflationary domestic economic policy combined with a willingness by the government to allow the value of the currency to fluctuate on the international exchange.

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Political Decisions And The Economy

Bruno S. Frey Friedrich Schneider

University of Zurich and Basel University of Zurich

"A Politico-Economic Model of the United Kingdom." *The Economic Journal* (UK), (June 1978): 243–253.

It is scientifically and morally interesting to consider the political psychology revealed in the Frey-Schneider "positive model" of politico-economic interrelationships. The two economists base their model on empirical data gathered from the revealed preferences of politicians' policy decisions in the United Kingdom. They claim that their model (given data regarding both the current state of the economy and the current popularity of the in-party) would allow us to intelligently forecast future political and economic decisions that politicians would make because of political expediency. "The basic assumption advanced is that the governing party aims to stay in power and therefore seeks to increase its popularity with the electorate when its (perceived) re-election chances are low."

The government's popularity is affected by the state of the economy. When, on the one hand, the government is popular and assured of re-election, it is free to choose its policies on the basis of its ideological preferences. (Following ideological preferences, a left wing government tends to increase, whereas a right wing government tends to decrease increments in the national budget.) When, on the other hand, the government's lead over the opposition party falls below a critical level, it resorts to inflationary or expansionary policies to win back voter popularity. In addition, the balance of payments has a significant effect on policy as does an autonomous "election cycle," which tends to decrease the in-party's popularity between elections.

In the United Kingdom, the governing party's popularity (as revealed in regular Gallup polls of voters) depends on the state of the economy: "A rise in the rate of inflation by 1% reduces the government's lead by about 0.6% and an increase in unemployment by 1% reduces the government's lead by about 6%...."

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Government, Labor, And Multinationals

G.K. Helleiner

University of Toronto

"Transnational Enterprises and the New Political Economy of U.S. Trade Policy." *Oxford Economic Papers* (March 1977): 102–116.

In the orthodox literature of international trade, the State's image is the representative of all individuals and firms for whom it acts to maximize their collective welfare. Kindleberger, however, argued that the State pursues the interests of powerful groups ("Group Behavior and International Trade," *Journal of Political Economy*, February 1951). In recent years further work has studied this group interest approach in the U.S.

In this framework, what are the origins of recent U.S. commercial policies and, in particular, what effects have resulted from the rise of the U.S. based multinational corporations? The author assumes that group interests pressure the government institutions which form trade policy. The resulting policies reflect the strength or weakness of vested interests rather than the social welfare of the United States.

An examination at the micro-level of the political origins of U.S. commercial policy suggests: (1) that organized labor has shifted from being liberal to being protectionist; (2) that the Democratic Party has become more protectionist than the Republican Party; (3) that pressures in trade policy now come more frequently from particular industries rather than from broad-based cross-industry associations; and (4) that labor and industry within the same industry have increasingly substituted antagonism for their traditional mutual accord.

Since World War II multinational firms have grown rapidly and a considerable proportion of international trade now takes place on an intra-firm basis in oligopolistically organized markets. Multinational firms favor freedom in international trade and in factor movements.

The emerging multinational firm has also weakened the position of labor in every U.S. industry. Labor worries about international trade in those firms with little prospect of intra-industry trade (especially where competing imports originate in less developed countries) and therefore with scarce employment gains to offset the possible job losses from imports.

The changed attitudes of the two political parties reflect these developments. Trade policy now follows the pressures exerted by (1) organized labor favoring protection in those industries where labor is most vulnerable and by (2) the U.S. based multinational firms favoring the reduction of trade barriers for the goods which they trade. The multinationals have little interest in the relatively labor intensive and

declining industries. In general where unions and multinationals oppose each other, policy makers tend to prefer the interests of the multinationals.

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Black Markets Vs. Regulation

Peter M. Gutmann

City University of New York

“The Subterranean Economy.” *Financial Analysts Journal* (Nov/Dec 1977): 26–27, 34.

This study is the first systematic attempt to measure the size of the subterranean, extra-legal economy that has prospered as Americans have increasingly sought to evade both taxation and regulation of their business activities. The government's disregard for the existence of this subterranean economy has meant understating the country's actual GNP statistics, as well as overstating the extent of unemployment (since many who are officially unemployed are in fact employed in this unacknowledged economy).

The natural reluctance of participants in the subterranean economy to report their activities to the government has always been a major stumbling block in measuring its size and growth. Gutmann has succeeded in estimating the size of the subterranean economy by devising an imaginative methodology which involves comparing the relationship over time between the two components of the nation's stock of money (M_1): currency and demand deposits (checking accounts). Gutmann hypothesizes that, as an economy develops, more transactions are typically carried out with checking accounts. Demand deposits, therefore, should grow more rapidly than currency. However, currency (cash) is the essential medium of exchange for the subterranean extra-legal economy since it permits transactions to occur without leaving any record. Thus, an increase in the amount of currency in relation to the amount of demand deposits may signal growth in the subterranean economy in relation to the “official” economy.

Using this methodology, Gutmann reviews the period 1892 to the present and discovers that between 1892 and 1941, as one would ordinarily expect, demand deposits did grow more rapidly than currency. However, in the period 1941 to 1945 this trend reversed itself, and cash grew more rapidly than demand deposits, a result which Gutmann attributes to the prevalence of black markets and tax avoidance during World War II. Between 1945 and 1961 the earlier growth of demand deposits revived once again but, beginning in 1961 and continuing until today, cash once more grew more rapidly than demand deposits. Gutmann concludes that, by 1976, the subterranean economy had an “illegal GNP” of $176 billion and that rising tax rates and the increasing burden of government regulations will continue to drive more and more of the total U.S. economy underground.

“The subterranean economy, like black markets throughout the world, was created by government rules and restrictions. It is a creature of the income tax, of other taxes, of limitations on the legal employment of certain groups, and of prohibitions on certain activities. It exists because it provides goods and services that are unavailable elsewhere or obtainable only at higher prices. It also provides employment for those unemployable in the legal economy; employment for those...whose freedom to work is restricted; and incentive to do additional work for those who would not do so if they were taxed.”

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Regulation Vs. Academic Autonomy

Robert M. Rosenzweig

Stanford University

“An End to Autonomy: Who Pulls the Strings?” *Change* 10 (1978): 28–34, 62.

The question now confronting government-university relationships is whether government funding inevitably entails government intervention. Rosenzweig notes that “virtually the whole range of public regulatory activities now bears on the university.” The result has been a growth in internal bureaucracy. Still, activities in the classroom, laboratories, and even admission committees have not been subject to much direct government regulation.

Particular problems, however, have developed for medical schools in their relations with the government. One example concerns American students, enrolled in foreign medical schools, who then seek to transfer to American schools. Efforts to increase the number of such transfers threatened loss of federal capitation grants unless the schools changed their normal admission requirements. After a confrontation within Congress over this issue, a very moderate resolution emerged that did not compromise admission requirements. After a confrontation within Congress over this issue, a very moderate resolution emerged that did not compromise admission requirements. Still the threat of government control left many medical school administrators shaken.

Another recent issue of government intervention concerns regulations directed toward the conducting of research on recombinant DNA. The author states: “What is at stake is not simply the means by which an important but still narrow line of research will be regulated, but almost certainly the way in which biomedical research generally will be dealt with.” The author points to the inappropriate nature of a democratic solution to this problem.

Such problems are the forerunner of similar, broader problems which other segments of the university community may soon encounter.

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Government Schools And Social Control

Carl F. Kastle

University of Wisconsin, Madison

“Social Change, Discipline, and the Common School in Early Nineteenth-Century America.” *Journal of Interdisciplinary History* 1 (Summer 1978): 1–17.

During the late pre-Civil War period in U.S. history (1830-1860), the formal education of children underwent fundamental change: the common school established itself as virtually independent of control by parents in educational matters. Parents ultimately traded control over their children's education for the status students acquired through literacy and technical training. Parents never fully acquiesced in the transformation of schooling, however, and the conflict between parents and teachers during this period produced the crisis of early American education that culminated in the modern school.

The crisis arose from the conflict between the two groups over the extent to which teachers could discipline students. Discipline stood at the center of the transformation in education. Without the freedom to chastise sluggish or rebellious children, the school claimed it could not perform its mission. At stake was the ability of schools to produce docile laborers and citizens. Through discipline teachers could break the bonds of home-formed habits and instill in children new, more malleable values designed to meet the goals of progressive schooling.

Parents often and vigorously objected to school discipline. The historical record abounds with examples of parents, singly or in groups, withdrawing their children from classes supervised by overzealous disciplinarians. In one instance the withdrawal was so complete and resolute that the local school board accused the parents of sedition resembling that of the southern states. Generally, however, the objections to discipline took less pronounced forms. Children either were kept at home for short periods of time, or the parent would voice anger at a public meeting. A compromise eventually mitigated the stance of both sides even though the balance ultimately tipped in favor of the schools. Children stayed at home until age five or six and then attended school for a prescribed number of days each year for the ten years thereafter. Thus parents were allowed to share with teachers in the socialization of children, but during the critical period of adolescence, when youths oriented themselves to work and politics, the state schools sought firm and exclusive control.

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The Economics Of Charity

Burton A. Abrams Mark D. Schitz

University of Delaware

"The 'crowding out' Effect of Governmental Transfers on Private Charitable Contributions." *Public Choice* 33 (1978): 29–40.

Does governmental welfare discourage private charity?

Many studies trace how government spending affects interest rates and price levels, but few studies have investigated the effects of government spending on private spending habits. How, in particular, do social welfare transfers affect private charitable contributions?

Since World War II, government spending on welfare has increased more rapidly than private charitable contributions. Private charity per tax return has remained the same despite the tax advantages of charitable donations. What explains this paradox is the growth of government welfare spending.

Private charity has frequently been characterized as a public good subject to a free rider problem. Yet charity allows sufficient noneconomic motivation to overcome the reluctance for individuals to donate charity (specifically, the motivation to "do good"). However, the number of charitable contributions depends upon personal tastes, income, and the relative cost of making such contributions.

Within this framework, increasing government transfers will have two effects on private transfers: (1) a substitution effect (government transfers will be taken as substitutes for private charity), and (2) an income effect (increased taxes used to finance transfers will reduce private incomes and hence private charity). The income and substitution effects can be analyzed by three models of private charity. The first, the ultra-rational, hypothesizes that a private individual regards government spending as his own so that he considers one dollar of government transfer is equivalent to one dollar of private donations. This model would predict complete crowding out of private charity. The second model includes interdependent utility functions between donor and recipient so that increases in government transfers lower the marginal utility of an additional dollar to the recipient, and hence donors contribute less. This would predict partial crowding out. The third model, the "better to give than to receive" hypothesis, assumes satisfaction is obtained from the act of giving, and hence there would be no substitution effect but some income effect.

The authors tested an empirical model in which contributions depended upon the cost of giving (marginal tax rate), income, and the number of government transfers. The findings were that government transfers do crowd out private donations. The substitution effect alone shows a .2 percent decrease in private donations for every one percent increase in government transfers. With the income effect added in, the total effect of crowding out is about 28 percent.

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International State Planning And Inflation

Geoffrey E. Wood Nancy A. Jianakoplos

"Coordinated International Economic Expansion: Are Convoys or Locomotives the Answer?" *Federal Reserve Bank of St. Louis Review* 60 (July 1978): 11–19.

The international Organization for Economic Cooperation and Development (OECD) espoused the "locomotive" approach in December 1976. This approach to international economic policy puts the responsibility for stimulating world output on the three major industrial countries (Germany, Japan, and the United States). They were to expand aggregate demand in each of their countries so as to cause demand in other countries eventually to increase. But one year later, the OECD Secretariat changed its policy approach, recommending instead that all governments expand aggregate demand in tandem (the "convoy" approach).

Both proposals assume the existence of significant unused capacity in most OECD countries. If true, economic growth could occur without aggravating price inflation. Alternatively, OECD countries are viewed as having unemployment concentrated in export industries. Scant evidence exists for either hypothesis. Regardless, the necessary monetary expansion will increase price inflation, even if there are some temporary effects on real output. Moreover, since evidence suggests that space capacity is not present, there would not even be any short-run benefits.

OECD countries with low price inflation and balance of payment surpluses have not retarded expansion in deficit countries. Rather, by lending savings to deficit countries, surplus countries have benefited the former. Thus, acceleration in the growth of aggregate demand in Germany and Japan would provide little additional help to their OECD trading partners. Instead, by not undertaking such expansion, Germany and Japan support countries with weaker economies. Policies for coordinated international economic expansion would aggravate the problems that such expansion is intended to correct.

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Competition And Individual Knowledge

F.A. Hayek

Freiburg in Breisgau

"Competition as a Discovery Process." In *New Studies in Philosophy, Politics, Economics and the History of Ideas.* Chicago: University of Chicago Press, 1978, pp. 179–190.

If the assumptions behind certain models of competition were true of the real world, then competition would, indeed, be a wasteful way of allocating resources. Economists assume all the relevant data are known. Were this the case, competition should be eliminated in favor of central planning. The world assumed into existence by standard competitive models is one far more consonant with central economic direction and socialism than with decentralized planning and capitalism. These models, however, do not fit the real world.

Real life competition, by contrast, endeavors to discover facts that are wrongly presumed as costlessly available (data) in economic models: "Wherever the use of competition can be rationally justified, it is on the grounds that we do not know in advance the facts that determine the actions of competitors." Competition is thus valuable because its results are unpredictable, which implies that these generally beneficial effects include disappointing certain expectations. A competitive order is one in which some individuals are necessarily disappointed. This dynamic view is in sharp contrast to the economists' "competitive" world in which all expectations are met and all plans executed. In mainstream economics, "competition" is a static state which excludes the activity of real world competition. "Competitive" theory has little to tell us about the real world of change, disappointed expectations, and plan revision.

The prevailing view of competition stems from treating the order produced in a market as an "economy." Strictly speaking, of course, an economy involves a given hierarchy of ends and the application of means so as to maximize the value of these attained ends. This conception is irrelevant, however, to a situation of many individuals with different goals independently pursuing their ends. The market produces a spontaneous order in which the different, shifting ends of individuals are satisfied. A market order does not have any preordained, static ends, nor can one express the value of the results as the sum of its individual products. A spontaneous order is one conducive to individuals achieving whatever their respective ends happen to be. No single a priori value is being maximized.

Socialists demand "social justice" to replace the market's unequal distributions of wealth. In the name of protecting some from the market, the logic of a policy of social justice would impede adjustment to unforeseen change, and thus, the operation of the market itself.

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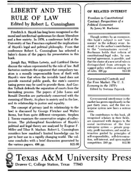

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[1.]Michael B. Crowe, *The Changing Profile*, p. 246. (Full citations for works listed in the Footnotes may be found in the following Bibliography.)

[2.] For both the fact and the character of natural law doctrines in classical antiquity, Crowe's treatment is excellent. But by far the most discerning and provocative discussion of natural law, as it suffered and flourished at the hands of the Sophists and of Plato and Aristotle, may be found in Leo Strauss *(Natural Right and History*, esp. Ch. 3).

[3.] Crowe, pp. 246–47.

[4.] Cf. statements by Crowe, p. ix, and by A.P. D'Entrèves, *Natural Law*, p. 13, to this same effect.

[5.] A term borrowed from Robert Nozick and, admittedly, cited here out of context.

[6.] "Is Thomas Aquinas a Natural Law Ethicist?" *The Monist* 58 (January 1974). The quoted phrases that follow in the text are from pages 52 and 53 of that article.

[7.] This is not to say that, just as there are striking similarities, there are not also just as striking differences, between right and wrong behavior in the living of our lives and the right ways and wrong ways of pursuing various arts and skills. For Aquinas these differences would turn on Aristotle's earlier way of distinguishing the so-called moral virtues from the intellectual virtues. For a somewhat simplified contemporary version of such differences, cf. Henry B. Veatch, *Rational Man*, Chapters 3 and 4.

[8.] It perhaps should be explained with some apologies that throughout this essay we have not been at pains to distinguish between what might be called natural laws in the context of ethics and natural laws in the context of what Aristotle would call politics. Suffice it to say that natural laws of the former sort are to be determined in the light of man's natural end, insofar as he is considered just as an individual; those of the latter sort are determined in the light of man's natural end, insofar as he is considered just as

an individual; those of the latter sort are determined in the light of man's natural end insofar as he is a political animal, i.e., a part of a *polis* or political community.

[9.] Crowe, *The Changing Profile* and d'Entrèves, *Natural Law.*

[10.] Reference should perhaps be made in this connection to the somewhat notorious *etiamsi daremus* clause in Grotius. The full sentence is quoted in translation in Crowe: "What we have been saying (namely, about natural law) would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to him." For a full discussion of the exact sense and import of this statement in Grotius, see the illuminating discussion in Crowe, Ch. 9

[11.] Hooker, *Of the Laws*, Bk. I, Ch 2, 1 (A.S. McGrade and Brian Vickers, eds., p. 109).

[12.] Hobbes, *Leviathan*, Part I, Ch. 11 (Michael Oakeshott, ed., p. 63).

[13.] Strauss, pp. 178 and 180.

[14.] Strauss, pp. 181–182.

[15.] In this connection it is interesting to note that even so eminent and so devoted a Thomistic scholar as Professor Vernon Bourke is inclined to give up on the use of the term "natural law" altogether. He feels that its usage has become almost totally infected by that one use of the term, which dates back to the Middle Ages, and which firmly associates the notion of natural law with "a code of moral precepts divinely implanted in man's nature, or mind, and issuing from the legislative Will of God." Hence he thinks it is hopeless to try to restore to the term the sense which it had in Aquinas, and according to which law is defined as a "rational plan and rule of action." Rather in the article cited above in note 6, Bourke concludes that with respect to Aquinas's teaching the term "theory of right reason" is a better expression to use than "theory of natural law." Cf. also Bourke, *Ethics in Crisis.*

[16.] Crowe, p. 233

[17.] This term is here being used roughly in Karl Popper's sense. Cf. especially *The Open Society.*

[18.] D'Entrèves, p. 162.

[19.] For a more detailed account of how a great many recent ethicians have sought, however inadvertently, a Kantian mode of justifying ethical generalizations, see the author's forthcoming article, "Is Kant the Gray Eminence of Contemporary Ethical Theory," as well as his fifth chapter on "A Transcendental Turn in Ethics: A Possible Solution," which appears in *For An Ontology of Morals*, pp. 85–98.

In the debate between egoism vs altruism, some ethicians have sought in Kantian fashion to avoid the alleged moral inadequacy of self-interested goals and motives by,

in effect, universalizing egoism. This universalizing move occurs through such devices as extending to all human agents the so-called “non-aggression axiom” which we may formulate as: “No one has the right to initiate force against the self-interest, life, and property of another.” But how can the device of universally protecting the self-interest of others' egoistic concerns seem morally superior to simply protecting one's own egoistic interest? How could one refute some radical egoist who would discern no special merit in universalizability? Such a person might well proclaim himself unwilling to invoke any universalizing of the non-aggression axiom and simply act out of his own personal self-interest and be willing to suffer the consequences. The Kantian turn toward a universalizability principle is not, in itself, a sufficient device for establishing an objective ethics.

[20.] For a discussion of this issue, cf. Veatch, *For an Ontology of Morals.*

[21.] Three books, all to much this same effect, have appeared just in the last six years: Wallace, *Causality and Scientific Explanation;* Harré, *The Philosophies of Science;* Harré and Madden, *Causal Powers: A Theory of Natural Necessity.* Needless to say, none of these books speaks to the question of natural law in the ethical or political sense. However, their revisionist accounts of both science and the natural world could well prove to be the basis for a revival of natural law theories of ethics and politics.

[22.] Cf. Popper's *The Logic of Scientific Discovery.* It should be noted that rather than Popper himself, it is a number of successor philosophers of science, men like Hanson, Feyerabend, and Kuhn who have pushed Popper's theories in the somewhat revisionist direction suggested in the text.

[23.] This particular species of revisionism, while suggested and hinted at by a number of contemporary thinkers, has never been worked out either fully or with very much unanimity. I might mention just a couple of papers of my own that have been sent up almost as trial balloons for this particular kind of revisionist thesis in regard to science. Veatch, “A Neglected Avenue in Contemporary Religious Apologetics” (*Religious Studies* 13, pp. 29–48), and “Is Quine a Metaphysician?” (*Review of Metaphysics* 31, March 1978, pp. 406–30).