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NATURE, REASON AND MORALITY SOME ASPECTS OF THE
HISTORY OF THE DOCTRINE OF NATURAL LAW.

A thesis presented in the Faculty of
Social Sciences in the University of
Durham for the Degree of Doctor of
Philosophy by Robert William Dyson, of
Collingwood College, in the Academic
Year 1979-1980.

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CONTENTS.

Abstract.

Introduction	Page 1.
Chapter One. Nature and Convention	8.
Chapter Two Nature and Purpose	67.
Chapter Three Beyond the <u>Polis</u>	128.
Chapter Four The Christian Doctrine of Natural Law	175.
Chapter Five Rationalism, Individualism, Radicalism	245.
Chapter Six A Critical Perspective	283.
Notes	335.
Bibliography Primary Sources	366.
Selected Secondary Sources	373.

ABSTRACT OF A THESIS PRESENTED IN THE FACULTY OF SOCIAL SCIENCES OF THE UNIVERSITY OF DURHAM FOR THE DEGREE OF DOCTOR OF PHILOSOPHY BY ROBERT WILLIAM DYSON, OF COLLINGWOOD COLLEGE, IN THE ACADEMIC YEAR 1979-80.

Title Nature, Reason and Morality Some Aspects of the History of the Doctrine of Natural Law.

The present work is concerned with that theme of European political, moral and legal discourse generally called 'natural law'. The candidate writes as one who is by temperament and training more of an historian than a philosopher. Indeed, his purpose is largely to bring together, within a single volume, a more extensive historical treatment and definition than the subject has received in the past. But, in spite of the title, it has also been the candidate's aim to glance in a critical spirit at the claims made by the exponents of natural law. This is not to say that he is concerned with natural law as an 'ideology', however. Neither is he concerned with any more general argument as to how the term 'ideology' might most sensibly be used. In short, it is not his intention to try to assess or account for the force of 'natural-law talk' as an inspiration to action. Rather, his aim is the more modest one of discovering what sense, if any, is to be made of the assertion that (to quote from p.1) 'our moral and political activity ought to be carried on in conformity with certain principles of right conduct which...are somehow 'built-in' to reality itself'. Undoubtedly, any conclusions reached will be exceedingly provisional and open to much debate.

R.W. Dyson

1980.

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INTRODUCTION.

Before embarking upon an historical consideration of natural law, we might do worse than quote Bentham's animadversion upon those who 'take for their subject the pretended law of nature, an obscure phantom, which in the imagination of those who go in chase of it, points sometimes to manners, sometimes to laws, sometimes to what law is, and sometimes to what it ought to be'. If there are ambiguities and confusions to be found in this work, they may in some measure be justified by pointing out that the subject with which it deals is itself fraught with ambiguities and confusions. This characteristic of the subject-matter, however, also calls for a few prefatory words defining, in the broadest terms, what it is that we shall be considering in the following pages.

At the most general or 'ideal-typical' level, then, what we shall call the natural-law tradition may be understood in terms of three closely-related claims.

(a) That our moral and political activity ought to be carried on in conformity with certain fundamental principles of right conduct which, far from originating in any human fiat, are somehow 'built-in' to reality itself,

(b) that these principles 'stand to reason' - they are in some sense available to the faculty of reason in



virtue of which man is uniquely equipped to understand and deal with his circumstances, and

(c) that they are universal in their scope.

This universality itself has at least two distinguishable senses.

(1) It indicates that, since the principles in question are absolutely and objectively right 'by nature', they apply to all men everywhere, regardless of how widely human commitments and practices may actually vary as between time and place, and

(11) On the assumption that all men are equal in morally significant respects, it indicates that they apply equally to all men, without regard to what are 'denounced' as artificial or ascriptive differences - distinctions of race, rank, creed, and so forth.

Moreover, exponents of natural law have for the most part been concerned with a prescriptive rather than a descriptive treatment of law and justice. That is, they have concentrated upon what ought to be rather than upon what is. And their arguments are to be contrasted with those of legal and moral positivists - who contend that legal and moral contents are adequately understood as pure artifacts, 'posited' by enactment or convention, which do not need, or which cannot be given, a universal 'rational' justification, and which cannot be criticised or amended by reference to 'higher' or 'ideal' or supra-legal standards of right.

This ideal-typical representation of course suffers

from the usual self-conscious deficiency. As their 'inventor', Max Weber, said of all such representations, 'they are purely mental constructs, the relationship of which to the empirical reality...is problematical in every individual case.' But such a broad description does provide a loose frame of reference within which to consider a long-lived and plausible mode of understanding moral, political and legal experience. It is with the history and force of this mode or tradition that we shall here be concerned.

The phrase 'natural law' might be thought to be in some respects an unsatisfactory one. The word 'law' rather blurs the fact that 'natural law' figures at least as prominently in moral as in more narrowly or strictly political and legal discussion; and natural law is in any case never presented simply as a collection of rules as such. Also, of course, there is a familiar objection which has been brought forward by Professor Popper and others namely, that the term 'natural law' invites confusion between the allegedly normative 'laws of nature' and those scientific 'laws of nature' which merely describe or systematise our experience of the external world. I must confess that I find it difficult to imagine anyone being seriously led up the garden path by this ambiguity, and, in any event, it has seemed to me that 'natural law' is a familiar and serviceable enough shorthand term. For better or worse, then, I use it in preference to cumbersome periphrases, or to Leo Strauss' 'natural right' - an

attempt to translate literally from the German which is, after all, as ambiguous in its own way as is 'natural law'. Also, I tend to refer indiscriminately to 'the theory' and 'the doctrine' of natural law. This is not a case of mere verbal laxity on my part, since natural law may indeed be properly understood as both. As Paul Sigmund remarks, 'Natural law may be considered... both in terms of its contribution to the developing science of politics and as an ideology - as the symbolic expression of the needs and aspirations of social classes and groups.'

The present undertaking is motivated chiefly by the fact that, at least to the best of my knowledge, no work on the subject in English (and no single-volume work in any language) contrives to combine reasonable comprehensiveness of treatment with objectivity of criticism. To mention some of the standard writings Paul Sigmund, in his Natural Law in Political Thought (which does not, in any case, confine itself to 'political thought'), deals with the period between the Milesian cosmologers and Aristotle in twelve pages, devotes only five lines to Pythagoras, and wraps up the Stoics in three paragraphs. Leo Strauss, in his Walgreen Foundation lectures Natural Right and History, mentions Heraclitus twice and Pythagoras once - indirectly, in a footnote. Alexander Passerin d'Entrevès' exposition in his Natural Law begins with the Corpus Iuris Civilis, and he mentions David Hume only twice, both times in passing. More important, perhaps,

all these works are tendentious - they are obviously biassed in favour of the doctrine with which they deal or whose history they purport to tell. Professor d'Entreves quite frankly announces his intention to 'concentrate on its merits'. On the other hand, Otto Gierke's Natural Law and the Theory of Society, though distinguished by meticulous and dispassionate scholarship, devotes most of its attention to the theory of natural law between roughly 1500 and 1800.

For my part, then, I have tried to illustrate at least the 'commanding heights' of the natural-law doctrine throughout its entire history. Having said this, however, two qualifications at once become necessary. First, I have devoted a great deal of space to classical antiquity, deliberately to correct the present imbalance in the literature. Second, my treatment of what is usually called 'modern' natural law - i.e. the period from about 1700 onwards - has been relatively superficial. I have, in fact, been largely at pains to point to the continuities which subsist between 'modern' natural law and earlier forms. This relative superficiality is due to the following related considerations. First, there is hardly a shortage of books on Hobbes, Locke, the American Revolution, Human Rights, and what have you. Indeed, as my research was nearing completion, there appeared a book (Richard Tuck, Natural Rights Theories their origin and development) which, to judge from the reviews, bids fair to become a definitive work on the subject of natural

rights as such. Second, it has been my intention to remain, as far as possible, below a ceiling of 80,000 words, and it has seemed to me correct to devote most of my space to the least well-documented areas of the subject. In fact, an extra chapter, dealing with natural law as a practical argument, especially in relation to the consent theory of authority, has been left out of the final version, on the advice of my supervisor. As matters stand, I do not doubt that a certain amount of superficiality will be detected over and above that to which I have already confessed. It is undeniable that much has been left out and simplified. Neither do I doubt that some of my generalisations will be thought questionable or inadequately substantiated. But I have tried to avoid these - inevitable - blemishes as far as possible. Above all, I have tried to maintain what Max Weber calls 'ethical neutrality' - to present a critical assessment which is as fair, cautious and disinterested as it could be made.

As to technical matters. Where more than one quotation would have illustrated the same point equally well, I have usually chosen the shortest. Where appropriate, and with due regard for the sense, I have abridged needlessly-long quotations, modernised archaic spellings and punctuations, and altered modern punctuations to accommodate the quoted passage more comfortably within my own text. The appearance of round brackets at points where, in a printed text, square ones would be used is due simply to the limitations of the standard typewriter keyboard; as is the absence of

accents, umlauts, and so on. I do not imagine that these omissions will seriously impede understanding. Finally, for reasons not entirely of my own choosing, this thesis has been written in two years, instead of the usual three. So far as I can discover, the need to hurry has resulted in nothing worse than some inelegancies of expression which, had I had more leisure for revision, I should not have allowed to remain. In any event, I apologise for such marks of haste as may be found to disfigure my work.

My intellectual indebtedness is very deep. Whether or not it amounts to bankruptcy is not for me to say. But I wish particularly to thank the following Professor A.J.M. Milne, for - but by no means only for - his painstaking and forebearing supervision, Professors W.M. von Leyden, F.E. Dowrick and Michael Stokes, and Mr Henry Tudor, for their ever-helpful and penetrating comments and works of supererogation, and the staff of the Durham University Library, especially for so deftly manipulating the Inter-Library Loans service in my favour.

If it were not absurd for a doctoral thesis to bear a dedication, this one would be dedicated to my wife, Valerie. However deficient my assets may prove to be, it is only due to her encouragement and support that I have been able to display them at all.

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CHAPTER ONE NATURE AND CONVENTION.

I.Natural Law and Mythology.

It is as well to stress at the beginning the sheer longevity, in some form or another, of the natural-law tradition of argument. It would not be unreasonable to remark that there is something decidedly 'primitive' about its assumption that reality is morally as well as cognitively intelligible. It might with some plausibility be associated with men whose culture is distinguished by what Karl Popper has called 'naive monism' - who 'live in a closed circle of taboos, of laws and customs...felt to be as inevitable as the rising of the sun, or the cycle of the seasons, or similar obvious regularities of nature.'¹ In a word, we might suggest that such an assumption is in itself 'natural' to anyone reflecting for the first time upon his circumstances in relation to other men and his environment. The point is, of course, far too speculative to push very far. But the assumption in question - or something very like it - certainly occurs as a frequent presupposition in the oldest extant records of thought containing attempts to make sense of the world and of human experience. It is, for example, extremely difficult to see the force of Leo Strauss'

remark that 'There is no knowledge of natural right in the Old Testament.'² The knowledge which Adam and Eve are said to have acquired illicitly 'in the midst of the garden' was specifically knowledge of good and evil. Again, the Biblical version of the widespread near-eastern myth of a disastrous world-flood is not merely an account of a natural cataclysm. It is a moral story - a didactic narrative representing the forces of nature as being brought into play as the punitive agents of the will of an affronted deity. And the most obvious case of all, of course, is the obliteration of the twin cities of Sodom and Gomorrah for an offence which, throughout the Bible, the writings of the Church Fathers, and in Jewish and Christian commentaries down to extremely recent times, has been insistently condemned as 'against nature', 'unnatural', 'the greatest of all sins.'³

It is clear enough that these stock examples of 'sin' involve a reference to standards which are 'natural' within the usual meaning assigned to the word in ethical contexts 'natural' as distinct from man-made or 'conventional'. The sin of Adam and Eve involved their exceeding the limits of what had originally been intended by God as 'human nature'. It would, of course, be fair to point out that they transgressed a positive rather than a 'natural' injunction, even though this injunction was divine rather than human - since a prohibition against eating the fruit of a certain tree could hardly be said to 'stand to reason'.⁴ Indeed, the

story of the fall is presented in terms of a direct communication from God to Adam that he might eat the fruit of all the trees in the garden save one. This, however, is not the point. The important thing (at least for our present purposes) about the story of the fall is its claim that good and evil were discovered rather than made by human beings, and that our responsibility for wrongdoing dates from the moment of that discovery. Also, in the case of the flood story, we notice that what is at issue is no mere breach of human ordinance, but the moral adequacy of the entire system of practical arrangements so far made by fallen man. They fall short of the standards which the mind of God first imposed when the earth emerged from the waters of creation. The only remedy is a return to the waters and a fresh start. In short, integral to these examples is the assumption that the universe is not merely a collection of random or chance happenings. It is an ordered and purposive system, containing criteria of conduct which are simply part of the unalterable nature of things. We ignore these standards at our peril, and their application is universal. The flood annihilated high and low alike. What befel the cities of the plain befel them, not because they were Sodom and Gomorrah, but because of the intrinsic or objective wickedness of their citizens' lives. And this account of experience teaches that it is not only manifestly in our interests to heed these 'natural' principles, but also that it is within our power. We

do indeed have knowledge of good and evil, and by reason of this knowledge itself - quite apart from any statute or written code - we can be held answerable for what we do.

We shall presently have occasion to return to the Biblical conception of nature. For the present, we note that the idea of a morally-ultimate regularity immanent within the universe is also a characteristic of Greek mythology. The most obvious example, perhaps, is the symbol of Heimarmene - Fate or Destiny. Heimarmene is conceived - in the Homeric poems, for example - as ineluctably regulating the multifarious and often-conflicting purposes of mortals and immortals alike. At the last analysis, it reduces the chaotic activity and disparity within the world to a final reconciliation or unity. Not even the gods themselves have power to curtail or control its operation. Not even they can save a man from the fate of death, for example - we recall that Zeus himself is powerless to rescue his own son Sarpedon from death at the hands of Patroclus.⁵ Also, and in a not-dissimilar vein, we might notice the early development, in the dramatic personifications of Homer and Hesiod, of the view that the universe is in some sense permeated by a god-given Orderliness (Themis), which is said to be 'the voice of the gods', from which Good Order (Eunomia) in human affairs comes, and of which every individual human decision as to what is the Right or Just way (dike) ought to partake. Here (and I paraphrase a remark of Jane Harrison) we seem

to catch a glimpse of theology on the point of becoming transformed into a social philosophy.⁶

Strictly speaking, of course, all these examples are instances of an attempt to account for the world and for its being as it is by recourse to story rather than theory. In other words, they figure in mythological narratives, which may or may not be 'the philosophy or science of primitive men',⁷ but which, from our contemporary standpoint, we should not feel inclined to regard as either philosophy or science. At the same time, however, such myth-making is patently not just story-telling with a view to amusement. Myths may entertain; but they are not fairy-tales, and neither are the stories which myth-makers tell in all cases strictly speaking fictitious. Rather, they amount to an attempt to reduce the diverse and often unnerving experiences of the human condition to some kind of manageable order. As Henry Tudor puts it, myth 'explains the circumstances of those to whom it is addressed. It renders their experience more coherent, it helps them understand the world in which they live.'⁸ Thus, the mythopoeic universe is an anthropocentric one - as we might expect. Specifically, it adopts the notion of cosmic order as a backdrop against which to interpret the facts of human experience, and so to develop a perspective upon the condition and destiny of man. And this theme of a cosmic order common alike to the world of human transactions and to nature as such begins to become a feature of a more strictly philos-

ophical debate⁹ within the intellectual life of Ionia and Magna Graecia during the sixth and fifth centuries BC. It is not at all implausible to regard such debate as having been carried over, so to speak, from the preoccupations characteristic of the maker of myths.

The number of examples upon which we might possibly draw is considerable. It will be sufficient for our present purposes to glance at the following Anaximander of Miletus, the Pythagorean school, Heraclitus of Ephesus, and the Sophists whose activity centred (chiefly) upon fifth-century Athens.

II.

Anaximander of Miletus.

The evidence which is now available to us is comparatively slight and, in very many respects, problematical. Nevertheless, in the Ionian commercial city-state of Miletus during the first half of the sixth century, we can at least begin to discern the emergence of a recognisably 'scientific' preoccupation with the order of nature. Broadly speaking, cosmogony begins to be separated from theogony, an attempt is made to account for the regularities of nature without direct recourse to mysteries and dramatic narratives of gods and heroes, and the genealogies and personifications so characteristic of Greek mythological writing are no longer so clearly in evidence. Indeed, in pre-Socratic

philosophy as a whole, these features are relegated, if not completely to oblivion, at least to a relatively minor standing. The 'physicists' of Miletus (and the term is Aristotle's) derive their descriptive language not so much from mythological precursors as from the practical arts and observation at first-hand. In the words of Emile Brehier, 'All the analogies which make up their science show, along with great imaginative precision which, unlike myth, admits of no mysterious background, a great desire to understand inaccessible phenomena by relating them to the most familiar facts.'¹⁰

H.F. Cherniss has shown that the actual views of these Milesian proto-philosophers - Thales, Anaximander and Anaximenes - may well have been seriously distorted by their transmission to posterity through Aristotle.¹¹ Broadly speaking, however, they all address themselves to a single problem, usually referred to as that of 'the One and the Many'. We may briefly formulate the problem in the following terms.

From the evidence which is presented to us by our senses, we can hardly help being aware of constant change and contingency in the universe. The objects of our experience come into being, undergo changes of various kinds, and eventually pass away again. Yet, for all this transience and diversity, its overall continuity suggests that there is some sense in which the manifold universe is also One - just as, though an individual passes through many changes during the transition from birth to death, his identity as a recognis-

able individual persists throughout his life. The rather sophisticated question, most clearly associated with Plato, of whether the world of change constitutes the whole of reality, or whether there is instead a supersensible realm which is somehow more real, was to be raised, not by the philosophers of Miletus, but by Parmenides of Elea. The question to which the Milesians themselves refer is of a rather more elementary kind, namely How is it that that which is Many can also and at the same time be One? In other words, What is the fundamental or guiding necessity persisting within the contingency which we so constantly perceive? And the Milesian 'monists' each attempt to deal with this question in a broadly similar way. They do so by proposing that, beneath the multiplicity and flux which are apparent to us, unity and stability subsist because the world is made of some fundamental simple substance. The differentiation of particular things from one another is due to their being made of this substance in different forms or configurations or concentrations - just as, for instance, snow, ice and steam are just water in different states of physical change. And they undergo changes because these forms or configurations or concentrations are not themselves invariable or stable.

Anaximander's view seems to have been somewhat as follows. Our immediate experience of the world suggests that it contains four primary elements - earth, air, water and fire. These primary elements are classifiable

as two pairs of opposites - hot and cold on the one hand, wet and dry on the other. There is a sense, therefore, in which they are inimical to one another, and so it seems to Anaximander that we cannot account for the universe by postulating one of them as the fundamental substance of which all things are made. For instance, if we were to propose that water is the fundamental substance, as had Thales, we should at once find ourselves in difficulties when we came to explain the generation of fire, since it is hardly plausible to suggest that water produces fire. Also, since he holds that the process of coming into being and passing away is eternal, Anaximander concludes that the fundamental substance must be infinite in extent or quantity. It must be such that it is never entirely used up, and his assumption is that no one of the four primary elements satisfies this condition. The fundamental substance, therefore, cannot be water or earth or fire or air. Rather, it must be something which is common to all these things while not actually being any one of them. Accordingly, Anaximander proposes that the universe in its primordial state is 'made of' a ubiquitous and undifferentiated mass of infinite extent, in which the four elements are potentially but not actually contained. They are latent within it, but they have not yet come to be differentiated by reason of their possessing opposing properties. And this fundamental substance he calls the apeiron - the Unlimited or Boundless. According to Anaximander, the universe is eternally involved in a cyclic process of

creation, destruction and recreation / ours, it seems, is only one of an infinite succession of worlds.¹² The apeiron is in constant circular motion. Due (presumably) to the centrifugal force of this motion, the elements latent within it become actually distinguished from the apeiron and from one another. Having become separated, however, they at once begin to encroach upon each other in a manner dictated by their mutually-inimical characteristics. Fire evaporates water and consumes air, earth and water extinguish fire, water is hostile to air (i.e., if we are immersed in water we drown), and so on. In short, it is through the various combinations of invasions of opposites that the numerous things which we perceive come into being. They are compounds of the four primary elements. But although one or other of the elements may have the ascendancy for a while, the balance is inevitably redressed, and, just as the generation of things is explained in terms of the elements poaching on one another's territory and combining, so too is their destruction accounted for by the eventual return of the elements to the apeiron. And when all the elements have finally collapsed back into the apeiron - when entropy is complete - the whole process begins over again¹³

There is no need for us to dwell on the subtleties and difficulties of Anaximander's position - although he does, incidentally, offer some remarkable and prescient conjectures as to the origins of life.¹⁴ Neither need we digress into a comparison of his speculations with of Thales and Anaximenes. Rather, what makes Anaximander

of particular interest to us is the following statement of his cosmological view, reported by the neo-Platonist Simplicius

The heavens and the worlds which are within them do not derive their existence either from water or from any of the other things which we call elements. Rather, they come from something else which is unlimited (apeiron) in its nature. And the source from which existing things come into being is also that into which they return of necessity when they are destroyed. For they give justice and make restitution to one another for their injustice, according to the ordering of time.¹⁵

Is this just a figurative way of speaking? Or is it a mode of understanding phenomena which really makes no distinction between physical laws and moral norms, which are said to hold 'of necessity'? These are questions which we simply cannot answer clearly. The last two sentences of the passage just quoted are identified by Diels and Kranz as Anaximander's ipsissima verba. But this attribution rests upon the words which immediately follow them in the text of Simplicius' Physics. 'As Anaximander poetically puts it.' This gloss seems both to identify the words in question as a quotation, and to indicate that they are indeed not to be understood literally. On the other hand, however, we are not justified in assuming prima facie that the judgment of Simplicius can be taken as authoritative. In short, it is plainly impossible to make a confident decision as to how exactly we are to take Anaximander's

reference to dike and adikia, justice and injustice. At the same time, however, it is at least within the bounds of credibility to see here a suggestion, not unlike that which we encounter in the literature of myth, to the effect that the universe is a moral order in which justice of necessity eventually triumphs. It may well be that, for Anaximander, there are normative principles intrinsic to nature, to which inanimate and animate creation alike are subject, and of the operation of which we are reminded whenever we reflect upon change, creation and destruction. Such norms are not artifacts. They are simply given as part of our overall experience of the natural order.

III.

The Pythagoreans

Pythagoras himself came originally from the Ionian island of Samos (incidentally, he is not to be confused with the other Pythagoras of Samos, whose work as a sculptor is mentioned by Pliny and Pausanias). In about 533BC, the government of the island was seized by the tyrant Polycrates ('an old ruffian who became immensely rich, and had a vast navy.¹⁶'), with the assistance of the Egyptian Pharoah Amasis. Pythagoras is said to have become disenchanted with the government of Polycrates (who 'was not much troubled by moral scruples, he got rid of his two brothers...and he used his navy largely for piracy.¹⁷') He (Pythagoras) fled from the tyranny at home to the Italian city-

state of Croton. On his arrival, he seems immediately to have become embroiled in politics. He is said to have founded a community of some three hundred members,

whose government was such that the constitution became to all intents and purposes an aristocracy.¹⁸

Alas for Pythagoras, Croton soon became afflicted with revolution. He was turned out and obliged to withdraw to the neighbouring city of Metapontium, where he passed the remainder of his life. Diogenes Laertius retails the curious story that he was assassinated by political opponents at an advanced old age, having refused to make good his escape on conscientious grounds. To flee would have meant crossing a field of beans.¹⁹

Apart from these hardly-crucial - and by no means substantiated - biographical details, we know almost nothing about Pythagoras' life, doctrines, discoveries or immediate disciples. There is an abundance of tall stories about him - most of them high in entertainment-value, but unfortunately none of them can be satisfactorily confirmed. At all events, there is general agreement that the biographies of Diogenes Laertius, Porphyrius and Iamblichus are largely apocryphal. Some evidence of early date is to be found in the extant literary fragments of Xenophanes, Heraclitus, Empedocles and Ion. But this evidence, which Diels and Kranz somewhat strangely call 'decisively important', veers wildly from the pugnaciously critical to the uncritically laudatory.²⁰ Indeed, the study of Pythagoreanism in gen-

eral is, as W.K.C. Guthrie remarks, 'perhaps the most controversial subject in all Greek philosophy.'²¹

This notorious difficulty is due chiefly to three factors. First, in the communities which Pythagoras is said to have founded or inspired, there was a rule of secrecy so complete and so stringent that 'no Pythagorean texts became available until the time of Philolaus.'²² Second, the disciples of Pythagoras are said to have embraced the modest expedient of attributing all their own opinions and discoveries to the Great Man whilst themselves remaining anonymous. (The phrase ipse dixit, or at least its Greek equivalent autos epha, is supposed to have originated with the followers of Pythagoras.) Third, Pythagoreanism seems to have become divided at an early stage into two more or less separate, and rather incompatible, departments the Acousmatics or Pythagoreans, whose interests were in the main religious or mystical, and the Mathematicians, who concentrated on the scientific side of Pythagoras' teaching. Thanks to all this, the historical evidence is full of confusion. It is impossible to say exactly what the 'pure' teaching of Pythagoras was, and there is certainly no basis for any clear distinction between Pythagoras and Pythagoreanism. The identity of the discoverer of the famous theorem about right-angled triangles, for example, cannot be discovered. Thus, it will perhaps be no bad plan to follow the cautious example of Aristotle in the Metaphysics, and to use the terms 'Pythagoras',

'the Pythagoreans' and 'Pythagoreanism' interchangeably and as the context requires, without attempting hopeless feats of attribution.

So much by way of introduction. We can at least say with some confidence, however, that the schools or communities associated with the name of Pythagoras were by way of being religious and moral fraternities. This much is substantiated by a considerable body of evidence. A five-year novitiate, involving a vow of silence, was a condition of acceptance into full membership, and the life prescribed for the member was one of great rigour. The initiate was required to abstain from meat and beans (hence, presumably, the founder's fatal reluctance to trample over the bean-field) and to observe a number of curious taboos which, according to Diogenes Laertius, had a symbolic significance for those committed to them.²³ These fraternities have much in common with the Orphic thiasoi, which spread throughout the Greek world from Athens to Magna Graecia during the sixth and fifth centuries with a degree of success amounting, at times, to a full-scale religious revival.²⁴ In a sense, it is perhaps the case that Pythagoreanism and Orphism both contributed to the meeting of a widely-felt need. The precise nature of the relation between Pythagoreanism and the Orphic brotherhoods cannot, in fact, be ascertained, but there is no doubt that they, as it were, institutionalised certain mystical or spiritual convictions. In particular, they taught that all

living things are in some way linked to one another by bonds of universal kinship, and that the soul is engaged in a pilgrimage towards ultimate perfection through a succession of purifying reincarnations in human, animal and even certain vegetable forms. These beliefs (the origins of which are attributed by Herodotus to the Egyptians²⁵) provide the obvious and standard explanation for the Pythagorean dietary regulations, and of such well-known yarns as the one told by Xenophanes that Pythagoras once begged a man to stop beating his dog because he had recognised the voice of a departed friend in the dog's yelping.²⁶ Their significance will become apparent in a short while.

To pass to cosmology The Pythagoreans appear to have held that, in its original state, the universe was a monad of infinitesimal magnitude, created we know not how, and surrounded by a Unlimited (apeiron, again) containing void, breath or air, and time. This primordial monad 'inhales' void, breath and time from the Unlimited (which explains how things come to be spatio-temporally differentiated), so that the original monad becomes a dyad, the dyad a triad, and so forth. The idea seems to be that the universe swells like a balloon, while at the same time dividing like a growing cell, by sucking in the contents of the Unlimited from without. Moreover, the whole universe is said to be a living and breathing creature, with a universal consciousness of its own in which every particular entity has a share One is reminded of William James's reference

to 'the vast slow-breathing. .Kosmos with its dread abysses and unknown tides.'²⁷ (Incidentally, vague hints of an apparently similar view are to be found in the small literary remains of Thales and Anaximenes of Miletus.) The Pythagorean Ecphantus of Syracuse also describes the universe as a form or ideal of the divine power called Mind or Soul which is said to be the cause of motion ²⁸

The universe, however, is not only alive. It is also an ordered and limited unity from which chaos is abolished and in which proportion and beauty are firmly established. All its parts are subordinated to the overriding purpose of maintaining the life and integrity of the whole, and evidence for this orderliness is to be found in the regularities of the day and night and in the wheeling of the stars. Indeed, Pythagoras is said to have been the first to use the word cosmos as a technical or scientific term, implying order, principle, rationality and beauty. The Pythagoreans, like Anaximander, held that this orderly cosmos comes into being as a product of strife between opposites - in this case, through the conquest of the Unlimited by Limit (peras). This doctrine ranks as the central cosmological tenet of Pythagoreanism, and we note especially that, where Anaximander had been ambiguous, the Pythagoreans depict the process whereby limits are imposed upon chaos in quite unequivocally moral terms. Order and limit are good, disorder and the absence of limit are evil. Thus, the cosmos is generated by a

struggle between antagonistic moral principles.²⁹

One of the most perennial and best known of the concepts of Pythagoreanism is that of the universe being an harmonious order. For the Pythagoreans, the notions of order and limit seem to have been most arrestingly exemplified in their discovery that the notes produced by the two sections of a string stretched over a bridge give simple musical intervals when the lengths on each side of the bridge stand to one another in a simple numerical ratio. The perfect consonances are thus expressible as arithmetical ratios between the first four integers - the fourth by 4 3, the fifth by 3 2 and the octave by 2 1. In other words, while the entire compass of sound extending indefinitely upwards and downwards in pitch is apeiron, harmony and beauty exist within the limits represented by the system of numerical relations between concordant notes. As Professor Cornford puts it, 'The infinite variety of sound is reduced to order by the exact and simple law of ratio in quantity. The system so defined still contains the unlimited element in the blank intervals between the notes, but the unlimited is no longer an orderless continuum, it is confined within an order, a cosmos, by the imposition of limit or measure.'³⁰

So impressed were they by this discovery that the Pythagoreans came to regard the number ten - that is, the sum of the first four integers - as sacred. However, it is necessary to guard against being misled by Professor Cornford's remark that this numerical limit

or measure is an 'imposition'. It is indeed an imposition in the cosmological sense already outlined - that is, an imposition by process of nature of order upon disorder. But it is important to grasp that it is not claimed to be a man-made imposition. The full force of the Pythagorean discovery lay precisely in the fact that it revealed an order which is inherent in nature - which is found out rather than created by human intelligence. Indeed, Aristotle suggests that the entire scientific system of the Pythagoreans was in fact built upon this initial discovery

Since they noticed that the attributes and ratios of the musical scales are numerically expressible, and since everything else then appeared to be modelled on numbers, number seemed to be the first thing in the whole of nature, and the whole of heaven to be harmony and number.³¹

In the words of Fraenkel, 'Behind our world of things and happenings, they saw a ruling world of mathematical order, which.. gives to all things their appointed quantity, form and proportion, and so the principle was formulated 'Number is the principle of the world'.³²

We now come to what is, for our purposes, the crucial point. Given their overall account of the universe, it readily follows for the Pythagoreans that to study the order of nature is to engage, not only in science, but in a process of ethical discovery as well. Moreover, their theory of a joint cosmological and moral harmony - and particularly their postulate that the universe itself is a living and breathing entity - is closely

tied in with their belief in the transmigration of souls and the kinship of all living things. For if all life is akin and, as it were, mutually interchangeable, then man's own individual self is involved in a mystical union with the rest of creation. In this connection, the following remarks of the first-century polymath Alexander 'Polyhistor' (paraphrased by Diogenes Laertius) are highly suggestive

The air which immediately surrounds the earth is stagnant and unhealthy, and everything within it is mortal. But the upper air, which is constantly in motion, is clean and wholesome, and everything in it is immortal, and therefore divine....The soul is a detached portion of the upper air. ..It is immortal, since that from which it has been detached is immortal. .Hermes is the guardian of souls...and it is he who brings in the disembodied souls from land and sea. The pure are taken up into the highest region, but the impure are forbidden to approach either the pure or each other. ..The most important thing in a man's life is the winning of his soul to good or evil. Fortunate indeed are those who achieve goodness of soul, for they would otherwise have no rest, nor any consistency of purpose in what they do from one day's end to the next. ³³

There are good reasons for supposing that, taken in conjunction with our other sources of information, this passage provides a substantial insight into the basis of the Pythagorean ethical life. The upper air is the world-soul, the seat of immortality and divinity. The spark of soul in every man, which is a detached portion of the world-soul, is itself immortal, 'and

therefore divine.' But the soul is incarcerated within the body. It must undergo a process of catharsis or cleansing through successive reincarnations before it can be 'taken up into the highest regions', there to become one with divinity. The proper way of life for man, therefore, is that which will enable him to achieve spiritual reunion with the animate universe to which he is akin. And so a burning question arises In what activities does such a way of life consist? For the Orphic communities mentioned a little while ago, it consisted in a punctilious observance of the minutiae of ritual and taboo, and Pythagoreanism itself was generously supplied with such minutiae. But Pythagoreanism was far from being only a system of religious belief and ritual observance. It was also a scientific system whose exponents conceived their discipline as providing a key to the understanding of the natural order and therefore of the moral order also. In short, its ethical regimen was intended 'to free the mind, to liberate the divine part of the soul in us',³⁴ by finding and following a virtuous way of life, not simply through religious practice, but also through a systematic enquiry into the nature of things.

This linkage between scientific or philosophical understanding and moral development is perhaps to be seen most clearly in the Pythagorean conception of the soul itself as

a kind of harmony - harmony being a blending and reconciliation of opposites.³⁵

In other words - and we shall presently run across a very similar point being made by Plato - the human personality or 'soul' contains a number of disparate elements. The well-ordered soul - what we should now call the well-integrated personality - is one in which these elements are, so to speak, in tune with one another. It is when their souls are in such a state of harmony that men find 'rest...(and)...consistency of purpose in what they do from one day's end to the next.' And since goodness of soul is in this sense to be understood as such a state, the matrix of the soul's perfection is to be found built-in to the harmonious cosmos itself

Virtue is harmony. So are good health, God and all good things. This is why (the Pythagoreans) say that everything is made according to the laws of harmony.³⁶

Their every stipulation as to what should or should not be done is directed towards conformity with the divine. This is their point of departure, and their lives are arranged entirely with a view to following God. This is the principle which directs their philosophy.³⁷

The good life, therefore, will be found in an absorbed study of those disciplines which most readily yield knowledge of the structure of reality. And, as we might expect, the Pythagoreans counted as chief amongst these geometry, arithmetic, music and astronomy. The object of such study is to become more closely acquainted with the principles by reason of which reality is cosmion - orderly. And, in this way, the student

himself is brought more nearly into conformity with these principles. The aspirant's own soul will approach purity in direct proportion to the intensity and success of his efforts, until the cycle of rebirth is at last broken, and his soul, brought to a perfection of harmony, is reunited with the living and divine soul of the cosmos.

It seems clear, however, that all this constitutes something more than a merely private morality. It will be recalled that Pythagoras and his three hundred adherents reputedly turned the Crotonian constitution into an aristocracy - albeit a short-lived one - by the excellence of their government. It is impossible to pronounce with confidence on the question of whether Pythagoras really did organise a rightist coup at Croton. Indeed, it is impossible to say anything at all concrete about the nature and extent of his activity in the political field. But a number of his later fifth-century disciples undoubtedly were political men, and - inherent likelihood apart - there is evidence to suggest that the theoretical basis of their politics was an extrapolation from the cosmological theory that order and limit, and therefore moral excellence, are to be understood as in some sense numerical

They said that justice is the first square number. ...On some accounts, this number is four, since four is the first square number of all. It is divisible into equal parts, and it is in all respects equal, since it is the product of two and two. According to others, it is nine, since nine is the first square of an odd number.³⁸

It would appear, then, that the preservation of harmony or justice within the State is a matter of seeing to it that the components of the State consistently stand to one another in a relation of equality. Moreover, the Pythagoreans also speak of justice as antipeponthos - 'reciprocity' or 'redress', and the suggestion here would seem to be that the unjust man is he who has, without good reason, made himself unequal in relation to his fellows (a suggestion which reminds us of the remarks of Aristotle on the subject of 'proportional' equality). Presumably, therefore, harmony within the State is to be preserved by removing from him whatever personal benefits may have accrued to him through his unjust practices. This is 'reciprocity', and such reciprocity in human affairs may be conceived as answering to the mathematical regularity of the natural order itself.³⁹

IV.

Heraclitus of Ephesus.

Like Pythagoras, Heraclitus 'the dark' is a figure around whom biographical and hagiographical legends have tended to proliferate, so that it is again impossible to separate fact from fancy. We can say no more than that many of his 140-odd surviving fragments do indeed have a kind of Nietzschean stridor which is consistent with the traditional account of him as a misanthropic and disenchanted aristocrat.

Diogenes Laertius, for example, reports that the forbidding style of his treatise On Nature was a deliberate contrivance to render his work incomprehensible to all but the select few.⁴⁰

Of Pythagoras and his speculations, Heraclitus can find nothing good to say

Learning many things is not enough to teach a man to be wise. If it were, it would have taught...Pythagoras⁴¹

Pythagoras, son of Mnesarchus, engaged in research more than anyone. Having compiled a collection of other people's writings, he then passed them off as his own - as wisdom which was really nothing more than quackery and fraud.⁴²

We are, in fact, safe enough in regarding much of what Heraclitus says as a critique of the Pythagorean philosophy. From what we can tell, his ethical and political views seem to have been closer to those of the Pythagoreans than he might have cared to admit. Both Pythagoras and Heraclitus exemplify the traditional Greek maxim, ariston metron - 'moderation (measure, restraint, etc.) is best.' But Heraclitus certainly has no time for the Pythagorean picture of the universe as a stable, harmonious and enduring order brought about through the imposition of limit upon the unlimited

War is the father and king of all. He reveals some to be gods, others men. He reduces some to servitude, others he makes free.⁴³

It is essential to grasp that war is universal, that justice is strife, and that everything comes about through strife and necessity.⁴⁴

Heraclitus' suggestion is that everything we experience comes into being only through encroaching on or invading something else - this is apparently the point of the dictum that war is 'the father and king of all.' As he also puts it,

Fire lives the death of earth and earth lives the death of fire. Water lives the death of air and air that of water.⁴⁵

Cold things become hot, hot things become cold. That which is wet dries, and that which is dry is moistened. ⁴⁶

This recurrent motif of opposites and their antagonism (which is in many respects rather like the remarks of Anaximander) is employed by Heraclitus to answer what we have seen to be one of the fundamental questions of pre-Socratic philosophy. What is the relationship between unity and multiplicity, stability and change? Throughout the fragments which are now extant, Heraclitus is constantly to be found juggling with the idea of opposites, and evidently delighting in the paradoxes which the idea generates in his clearly rather allusive mind.

God is both day and night, winter and summer, war and peace. That is to say, he is all the opposites at once. He changes just as fire, when it is mixed with spices, is named according to the perfume of each. ⁴⁷

Immortals are mortal and mortals immortal.
each lives the death of others and dies their
life. ⁴⁸

In one sense, Heraclitus wishes to say that opposites are really the same - although quite what he means by this has been much chewed over and is very far from clear, not least of all because Heraclitus seldom allows his readers the luxury of clarity. As Michael Stokes remarks, however, 'practically any analysis in modern English of the connection between the opposites is likely to be overexplicit and to introduce terms which Heraclitus would not have understood.'⁴⁹ It would seem that his meaning is at least this that there is no reason for any final disjunction between any one thing and its opposite, since all things are constantly changing into their opposites. And the most fundamental dichotomy which Heraclitus discerns is that between fire on the one hand and the world of appearance on the other. The universe as a whole is a consuming movement. In it, perceptible objects are constantly being transmuted into elemental fire, and elemental fire is itself constantly becoming perceptible objects. This elemental fire, he suggests, is divine, eternal and uncreated, and the process of transformation in which it is engaged is never-ending. The world, he says,

was not created by gods or men. It was, is and ever shall be an immortal fire, ignited in measures and extinguished in measures ⁵⁰

All things are constantly being exchanged for fire and fire for all things, like goods for gold and gold for goods. ⁵¹

On the whole, it would seem that Heraclitus uses 'fire' as a metaphor for constant change, rather than postulating it as the kind of basic stuff about which the Milesians speculated. To cut a long and rather complicated story short, however, what he wishes to say is that nothing really is. Only change is real, and all is a continuous becoming and passing-away. Individual things are as they are at any given time only because of an ever-present tension or balance - palintonos (literally, 'backward-stretching') - holding between the opposing forces of change

It is not generally recognised that what makes a thing coherent is internal tension. Harmony consists in tension between opposites, as in the case of the bow or the lyre.⁵²

The universe, then, is only a cosmos in the Pythagorean sense to the extent that opposing strengths are more or less equally matched. If any one element were ever to become decisively stronger than the others, it would presumably engulf everything forthwith. Such stability as there is, therefore, is the result of continuous struggle between finely-balanced forces. And there is no sense in the suggestion that such struggle is somehow reprehensible or 'unjust' - justice is strife

Heraclitus takes issue with the poet who says, 'If only strife between gods and men might be destroyed ' For if there were no high and low,

there would be no musical scale If there were not the opposing principles of male and female, there would be no living things ⁵³

The poet in question, incidentally, is Homer, who 'ought to be thrown out of the contests and whipped' - presumably for being so misguided as to desire the collapse of the natural order.⁵⁴

If all this be true, then, what is wisdom, and where is it to be found? Plainly, it cannot consist, as for the Milesians and Pythagoreans, in the amassing of data about the physical world, for 'it is impossible to step twice into the same river.'⁵⁵ In other words, whatever is known about the world at any particular moment is bound to be falsified sooner or later by the eternal process of change And this, presumably, is why 'learning many things is not enough to teach a man to be wise.' (Indeed, the situation which he depicts is even worse than Heraclitus appears to notice. If everything is changing into its opposite in a never-ceasing flux, then knowledge itself is presumably always turning into ignorance, perception into non-perception, and so forth If we carry the study of Heraclitus to its logical conclusion, we shall be compelled to concede that the study of Heraclitus - or of anything else - is, if not impossible, then at least utterly futile.)

Nevertheless, Heraclitus suggests that it is possible to penetrate beyond the curtain of ambiguous sense-data and contemplate the principle - the logos - by reason of which all things are constantly becoming

something else. Wisdom, according to Heraclitus, is true judgment as to the purpose which directs all things through all things.⁵⁶

Now, this word logos, with its very wide spectrum of possible English equivalents (word, speech, argument, explanation, reason, definition, rational principle, proportion, and so forth) is a notorious Gordian knot from the point of view of the translator. Distinguishing common from technical senses is at the best of times far from easy. In the case of Heraclitus, this ordinary difficulty is compounded by the often extreme obliquity of his language, and by the fact that, since his writings survive only as a collection of fragments, we are deprived of contextual clues as to his meaning. Thus, in its different occurrences, the logos of Heraclitus seems to be God, fire, matter, a physical ingredient of things, the cause of change, the principle which accounts for change, a principle indicative of an overall purpose in the universe, and a rule of conduct. Presumably, his overall meaning is something along the following lines. The logos is the underlying principle of organisation in a universe otherwise consisting entirely of contingency and change. It is to be seen in the orderliness of the succession of things, and, from this orderliness, we may infer the presence in the universe of design or purpose. The logos denotes a unifying formula of proportion or moderation which expresses, while at the same time also in some way controlling, the 'meas-

ures' in which fire is ignited and extinguished. In short, it refers to the balance of nature - and, of course, insofar as the balance of nature is conceived as being the work of God, it refers to God.

Obscure, odd, and indeed tormented as so many of his utterances sound, Heraclitus' insistence upon balance or moderation - upon the precise disposition of opposed forces - as a central feature of nature is not really very far removed from the Pythagorean doctrine of limit. Most important of all, apprehension of the logos is said to bring with it not only wisdom of the kind to which the scientific investigator might aspire, but moral wisdom as well

Moderation is the greatest of virtues, and wisdom is to speak the truth and, giving heed to what nature requires, to act accordingly. ⁵⁷

Heraclitus is far from being a lover of his fellow men, and certainly no optimist as to the perfectibility of human nature. But he insists that it is because they do not know the logos rather than out of simple wickedness that 'the majority of men are evil and only the few good.' ⁵⁸

One must follow that which is common. But although the logos is common to all, the many live as though they had a wisdom peculiar to themselves ⁵⁹

Also, it is broadly implied that the logos ought to be accepted as the guiding principle of political as well as of individual conduct

If we are to speak with understanding, we must rely upon that which is common to all, just as a city must rely on its laws - indeed, more so, since the laws of men are themselves nourished by one divine law, which has more than enough power to hold sway as far as it will. ⁶⁰

R. Singh remarks that all subsequent elaborations of the theory of natural law may be regarded as footnotes to this fragment.⁶¹ It is also interesting, however, to notice a reference in Heraclitus to a kind of cosmic justice rather reminiscent of the remark of Anaximander quoted earlier - a cosmic justice applicable equally to man and to the heavenly bodies

The sun will not go beyond its measures. If it does, the Erinyes, maidservants of justice, will find it out. ⁶²

Heraclitus clearly conceives the logos as a metaphysical quantity. It has an existence of its own, independent of that of the mind which apprehends it. In a word, it is there whether we know it or not. It seems, therefore, that his several allusions to the logos as being 'common' or 'common to all' do not indicate that it is to be found in those things in respect of which common agreement has been reached. Rather, it looks as though the logos is common in the more suggestive sense of being a principle which applies everywhere - which 'directs all things through all things.' Also, it would appear that the following gloss by Sextus Empiricus on Heraclitus' account of how we actually come to know the logos is incorrect

According to Heraclitus, we become sentient when we draw in this divine logos by breathing, and, though forgetful when asleep, we recover our senses when we wake up again. For in sleep, when the passages of the senses are shut off, the mind within us is deprived of its kinship with the enveloping substance, and breathing remains as a root, as it were - as the only remaining point of attachment. Since it is deprived in this way, the mind loses hold of its former power of memory. But, on waking, it once more emerges through the passages of sense, as it were through windows, and renews its powers of reason by meeting with the enveloping substance. 63

I think it rather probable that this explanation is suggested by Heraclitus' complaint that most men live as though they were asleep. It is difficult, however, to see that he really could have understood the logos in this way - as a kind of all-pervasive stuff which flows in through the sense-organs of every man who is actually awake. Quite apart from anything else, it does not, in fact, seem to be the case that Heraclitus took the view attacked by Plato in the first half of the Theaetetus that knowledge and sensation are coextensive. Also, if the logos were to be understood in the manner which Sextus Empiricus recommends, then there would be no reason why every man whose senses were not seriously defective should not always be fully possessed of the logos and therefore always be wise and good. Yet this quite clearly is not Heraclitus' view. His repeated complaint is precisely that most

men behave as though they were asleep - that is, they betray almost no consciousness of the logos at all.

On the whole, it is much more satisfactory to understand Heraclitus as embracing what we might call an elitist rationalism to account for the way in which the logos comes to be known by those who know it. It seems obvious that one might become aware of it through a study of the processes of change in the external world, and the flowing in of sensory impressions clearly is a necessary condition of our engaging in such a study. After all, if we were not receiving such impressions, we should not be having any experiences at all - we should be asleep or dead. But sensation, though necessary, is not itself a sufficient condition, for

Eyes and ears are bad witnesses for men whose souls do not understand their language.⁶⁴

In other words, it looks as though knowledge of the logos is ultimately open only to those who have a certain frame of mind or disposition of soul. Wisdom, we remember, is specifically said not to be acquired through learning. And one possible implication of this is that a form of wisdom must already be present before learning can take place at all. Heraclitus conveys the impression that, in one sense, this 'wisdom' consists, not primarily in the following-up of empirical interests, but in introspection or the quest after self-knowledge. His boast is said to have been that he was no man's disciple - that all his know-

ledge came from within himself.⁶⁵ Less enigmatically, it seems in any case obvious that the search for wisdom is not likely to be undertaken, successfully or at all, by anyone who does not already possess a certain innately critical and inquisitive cast of mind. And those without these requirements - the masses - simply 'live as though they had a wisdom peculiar to themselves '

This elitism is carried over into the least obscure of all Heraclitus' dark sayings his trenchant remarks about other people, which in turn have clear political implications

To me, one first-rate man is worth ten thousand.⁶⁶

Insubordination should be put down with more alacrity than if it were a blazing fire.⁶⁷

The best men choose one thing above all else eternal glory amongst mortals. But the masses are like overfed cattle.⁶⁸

The usual and quite reasonable guess is that Heraclitus was an exponent of an aristocratic political ideology that he would wish to recommend that man who is 'best' in the sense that he knows the logos as the best man for the job of maintaining the State. Presumably, also, 'maintaining the State' is, to Heraclitus' mind, a question of sustaining the appropriate degree of balance and tension between the forces existing within society. We might perfectly well understand his thought as running along broadly similar lines to those presently

to be developed more enduringly by Plato in the Republic. The evidence does not entitle us to regard this as anything more than a conjecture, but it is by no means an improbable one.

V.

These few examples of pre-Socratic speculation illustrate something of two broad motifs which are directly of interest to us. First, they indicate a pronounced departure from the terminology and outlook of the myth-maker. It is true that Fate, Necessity, divine activity, and so on all have some part to play in much of the literature of pre-Socratic philosophy. But the inevitabilities of nature are no longer regarded simply as matters which have to be taken on trust and accounted for indirectly or allusively, by way of dramatic narratives of gods and heroes. Rather, things are conceived as happening as they do in accordance with universal 'natural' principles which, though knowledge of them may in some sense be conditional upon a certain disposition of mind or acuity of insight, human rationality can nonetheless discover and begin to understand.

Second, however, the presuppositions of myth in a sense continue to make their presence felt. These universal natural principles are not presented in terms of a distinction between physical laws and moral norms. Thus, the conclusion - later to be so fundamental to Socrates - begins to arise in philosophy that, in

order to become a good man, it is necessary also to become a wise man. It is very difficult to know what to make of Anaximander's elemental 'justice', and it would certainly be a mistake to ask the passage from Simplicius to bear a great deal of weight. The mysterious logos of Heraclitus, however, is clearly not simply a formulation of physical regularity or the motive force of change, although in different contexts it is portrayed as both. It would be fair to say that, at least in the fragments which are now extant (and quite possibly not at all), Heraclitus never succeeds in 'unpacking' it entirely. Nevertheless, it is plainly his contention that knowledge of the logos confers not only scientific or theoretical understanding, but right-thinking also. To Heraclitus' mind, the condition of the world is on the whole unsatisfactory, and he attributes this precisely to the fact that the majority of men try to live at odds with nature. Through ignorance or folly, they either cannot or will not become acquainted with the crucial principle of measure or moderation which both informs that natural order and stands as the proper criterion of all behaviour.

It is with the Pythagoreans, however, that the enterprise of deriving norms from the study of nature may be said to reach its culmination in pre-Socratic thought. Here, we find an entire communal form of life apparently predicated upon the doctrine that personal perfection and ultimate reunion with the supernal are to

be achieved, not merely through the observance of religious externals, but through religious devotion and observance coupled with active philosophical contemplation. More accurately, perhaps, the activity of the philosopher is understood as actually being a kind of religious observance. As John Burnet puts it, 'The originality of Pythagoras consisted in this, that he regarded scientific, and especially mathematical, study as the best purge of the soul.'⁶⁹ Just as the universe is a cosmos, so is each individual a micro-cosmos. In him are replicated those same principles of order and limit which constitute the natural order, so that in the limits which contemplation discloses there are also to be found the proper limits of human conduct.

VI.

The Sophists.

By the middle of the fifth century BC, however, many developments were on foot - particularly in Athens - which could hardly fail to unsettle moral and political doctrines developed from beliefs which had themselves taken their essential shape during the Homeric period. The fifth century began with the Persian and ended with the Peloponnesian wars. It was a period of acute and relatively rapid social, political and economic transformation, and of trade and colonisation. It was the period during which Athens herself became

the centre of a maritime Empire, the political centre of Hellas, and a point of cultural focus to which intellectuals were drawn from all over the Greek-speaking world. In particular, it was a period of gathering interest in other peoples and their cultures - an interest most clearly exemplified, perhaps, in the work of Herodotus. Aristotle tells us that

After the Persian wars, men pushed further afield, taking the whole of knowledge as their province, making no distinction, but seeking ever-broader areas of study.⁷⁰

And, as Sir Ernest Barker remarks, 'if a study of anthropology led to any scientific conclusion, it must have driven men, contemplating the infinite variety of savage customs, to doubt the existence of any natural or universal law.'⁷¹ Such doubts may also have been fostered by the ultimately rather dead-end character of pre-Socratic science. Thales supposed the world to be made of water, Anaximander of apeiron, Anaximenes of air, and so on. Clearly, not all of them could be right, but no experimental science was yet available by means of which purely deductive conclusions about the nature of the world could be tested. Broadly speaking, the effect of the disagreements and contradictions of pre-Socratic science was such as to create an atmosphere of scepticism with regard to theoretical study in pursuit of absolute truths, and a corresponding inclination on the part of intellectuals to devote their resources to the more modest task of finding solutions to immediate practical

problems. The prevalence of such a state of mind is well-illustrated by the activities of the loosely-constituted group of teachers centred upon Athens called the Sophists.

The unfortunate Sophists have had a notoriously bad press - indeed, almost unrelievedly bad until George Grote's nineteenth-century rehabilitation of them. They have commonly been seen as the embodiment of what Sinclair calls 'many-sided and unscrupulous cleverness',⁷² and the word 'sophistical' has come to have the same overtones of mendacity and intellectual sharp-practice as 'Jesuitical'. This attitude seems to begin with Plato, whose attitude towards Sophists is generally either one of ridicule (the Euthydemus) or contempt (the Sophist). As Hegel puts it, 'It is particularly through the opposition of Socrates and Plato that the Sophists have come into such disrepute that the word now signifies that, by false reasoning, some truth is either refuted or made dubious or something false is proved or made plausible.'⁷³

Plato's response to the Sophists is not, in fact, one of unrelieved hostility. The portraits of Protagoras of Abdera and Gorgias of Leontini which emerge from the Platonic dialogues named after them are by no means unattractive. But it is at the same time well to bear in mind that such knowledge of the Sophists as comes to us through Plato (and Aristotle) reflects the dispositions of authors who wish emphatically to dissoc-

rate themselves, if not from the most intellectually impressive of the Sophists, at least from what they take to be the possible undesirable consequences of their activity. It is therefore no bad plan to reflect that the word sophistes itself means no more than that a man is sophos - 'wise', or 'good' in the sense of being highly-accomplished - in respect of whatever happens to be his particular activity. It is used, for example - and often in flattering or complimentary contexts - of mathematicians, cosmologists, poets, and men of practical ingenuity in general.⁷⁴ The activity of the Sophists whom we shall consider was - chiefly, though not exclusively - nothing more sinister than that of providing a course of instruction designed to turn a young man into an effective political figure. As Jaeger puts it, they set out 'to educate the leaders of the people.'⁷⁵ And the demand for such instruction is to be understood in the light of the social and political history of Athens herself. The old Hellenic tribal aristocracy - of which Homer, Pindar, Hesiod, Theognis and quite possibly Heraclitus may be regarded as spokesmen - had what we might not altogether flippantly call an old-school-tie mentality. Broadly speaking, their assumption was that arete - all-round personal excellence, and particularly the ability to conduct oneself well in public life - is a quality possessed by the few and transmitted only by heredity. This, in itself, was taken to be a plain fact of human nature

and, as Albin Lesky puts it, 'a cornerstone of aristocratic philosophy.'⁷⁶ Inherited excellences might indeed be brought more nearly to perfection by training. In particular, they might be drawn out and developed by association with and emulation of distinguished men as Jaeger remarks, 'the nobleman educates others by presenting to them an eternal ideal, to which they have a duty to conform.'⁷⁷ But a man born without these excellences in his blood, so to speak, could not acquire them. In Athens, however, the successive constitutional reforms of Draco, Solon, Pericles and Cleisthenes had progressively widened and diversified the possibilities of political participation, while at the same time emasculating the political stronghold of the traditional aristocracy, the Areopagitic Council. Moreover - most telling of all, perhaps - the war against Persia had been won, not by old-style Homeric noblemen and their feudal retainers, but by well-armed and well-trained citizen armies. To cut a long story short the political history of Athens down to the Sophists had been the history of the displacement from political pre-eminence of the gentleman by the citizen - and particularly by the newly-rich citizens made wealthy by the growth of trade after the Persian Wars. Under the democratic constitution, the Athenian citizen could rise to a position of influence, or indeed eminence, without the advantages of noble birth. But, to do so, he would need the ability to win the support of other

citizens, to conduct himself to good effect in the lawcourts and public assemblies, and, in short, to hold his own in all forms of controversy and debate. The education which the ambitious citizen sought, therefore, was one which included a large measure of training in the art of public speaking. And although it would be a mistake to suppose that they had no other interests, it was upon the cultivation of this art that the Sophists tended to concentrate.

This concentration is not to be understood, however, merely as a rather unworthy peddling of forensic or rhetorical artful dodges in return for a fat fee.⁷⁸ Our acquaintance with the two best-known of the Sophists, Protagoras and Gorgias, suggests that their teaching was to a large extent based upon, or at least justified in terms of, an academically perfectly respectable epistemological scepticism. The following famous fragment is preserved by Plato from Protagoras' popular treatise On Nature (the inference that this treatise was 'popular' derives from its catchy alternative title, Kataballontes - which means, roughly, Knock-Down Arguments)

Man is the measure of all things of things
that are, that they are, and of things that
are not, that they are not. ⁷⁹

It is not clear what Sir Ernest Barker has in mind when he says that Protagoras is here recommending 'a robust empiricism' as an alternative to the previous attempts of philosophers 'to find some hidden

unity of the universe.' Protagoras does not seem to be recommending any one method of acquiring knowledge as against any other. Rather, the account of his theory of knowledge given in the Theaetetus suggests that his view harks back to the flux-cosmology of Heraclitus, and amounts to something like this. that, since the world is so full of change and uncertainty, we cannot ever say anything which might unambiguously be shown to express knowledge or episteme at all. Strictly speaking, Protagoras is talking about language rather than knowledge, but, for practical purposes, this distinction is not important.⁸⁰ To put it very briefly, he seems to have held that any one statement about what is the case - any one logos - can always be matched by another and antithetical one which might equally well be true, and which may indeed well be 'true' from the standpoint of whoever utters it. What this boils down to is the conclusion that all statements are statements of mere opinion (doxa), and that, on the face of it, there is no compelling reason why your opinions should be accorded any more - or any less - weight than mine. Socrates understands him as having supposed that

Nothing is one and invariable, and you could not really attribute one quality to anything at all. If you call it large, it will also seem small. If you call it heavy it will also seem light, and so forth. No particular thing or quality, indeed nothing at all, is one ⁸¹

And this is clearly all a part of familiar current metaphysical debate. In fact, Protagoras is said to

have produced a volume of antithetical statements (the Antilogiae) arranged in such a way as to show that there is always more than one side to any argument, and that no one of them can conclusively be shown to be false.

Gorgias of Leontini takes up a somewhat similar position in his treatise On Not-Being or On Nature. His first task is to show that, by using the techniques of the philosophers, we can appear to demonstrate that even palpable absurdities are true. His own particular contribution to this game is to defend the thesis that nothing exists, and this is quite possibly to be understood as a retort to such figures as Zeno of Elea, who by his famous paradoxes had seemed to establish on impregnable grounds conclusions wholly at variance with ordinary experience and common sense. Second, Gorgias remarks that we cannot be sure that our own experiences constitute some absolute kind of knowledge - again, because he can see no way of reconciling conflicting viewpoints or antithetical logoi. His point here is that man has no experience, sensory or rational, which is such as to eliminate the possibility of his experiencing something else, and can therefore make no statement about the nature of things which can be shown to be either more or less true than its antithesis. Finally, he holds that, even if we could have knowledge, it would in any case be of a rather private kind. We could not communicate it to anyone - or, more properly, we could never be sure that

we had made anyone else understand our meaning - since, strictly speaking, language conveys only our account of our experiences. It does not convey the experiences themselves. 82

There is undeniably something rather strange about this scepticism. For instance, the examples given in the Theaetetus convey the impression that, so far as Protagoras is concerned, the conclusion that 'man is the measure of all things' is a generalisation based upon those areas of discourse in which the truth of a given statement is relative to the circumstances of the man whose statement it is. If you are strong and I am weak, the same sack of potatoes will feel heavy to me and light to you. If I am hot and you are cold, the breeze which feels warm to you will feel cold to me, and so forth. In such cases as these, there is obviously no future in trying to show that one of us is wrong by proving that a 25 kilogram sack of potatoes is 'really' heavy or 'really' light. In a sense, it is both, and we are both right - given our respective strengths. And the apparent contradiction involved in attributing both heaviness and lightness to the same object at the same time is only apparent. But this kind of thing does not obviously establish that man is the measure of 'the totality of things understood as action or as experience', as Untersteiner puts it.⁸³ If you and I disagree over (say) the question of whether poached eggs are poisonous or not, or over whether the water in the swimming-pool is a solid

or a liquid, then the means of deciding which of us is right are quite ready to hand. It is perhaps not beyond the limits of possibility that poached eggs have suddenly or will unexpectedly become poisonous - any more than it is impossible to hold the position that the whole of experience is a dream, or that there are no other minds, or whatever sceptical position you happen to fancy. But these are not possibilities of a kind that most people would treat as serious practical considerations. In other words, experience seems to assure us that nature is at least sufficiently uniform to enable us to go about our ordinary business in a reasonably uncatastrophic - and indeed successful - way. Perhaps the most that could be said is that there are some spheres of discourse such that, if you say one thing and I say another, neither of our opinions can be shown to be true at the expense of the other. But Protagoras and Gorgias appear to hold that this kind of uncertainty infects all discourse, and this clearly won't do.

Although they may have overstated the case in this respect, however, what is important for our present purposes is the specific application of their remarks to moral and political discourse. The following remark of Protagoras indicates the nature of this application.

Whatever seems right and praiseworthy to a particular State is right and praiseworthy to it, for as long as it holds it to be so ⁸⁴

So far as politics is concerned, the sceptical view of things just outlined involves a sharp disjunction between nature (physis) and convention (nomos), and an associated recommendation that politics be regarded as a purely practical and, as it were, localised activity. In other words, there is no point in trying to base the conventional arrangements of corporate living upon standards of absolute right sought out from within the natural order. Neither is there any point in trying to evaluate the arrangements of other States in terms of such standards. We cannot know either that such standards exist or what they are, and, even if we could, we could not convince anyone whose opinion happened to be that we were wrong. Political activity, therefore, is not a matter of trying to bring our laws and other institutions into accord with supposedly universal theoretical principles. Rather, it is a matter of designing or changing them according to what is appropriate or expedient to our - purely contingent - circumstances, and with an eye to the successful achievement of whatever ends we happen to agree in desiring. Clearly, some decisions will be 'better' than others in the sense of more successful in securing the ends which they are designed to serve. But no decision will be 'better' than another in the sense of being 'truer' or more closely aligned with some 'absolute right'. The politically effective man, therefore, will be one within whom there are two well-developed aptitudes. First, there will be that of

identifying what is expedient and, second, there will be that of inducing others to form the opinion that it is expedient and to act accordingly. Whether a man can learn the first of these aptitudes, or whether - as Gorgias suggests - it is simply an innate flair or 'divine gift', is a vexed question.⁸⁵ But Gorgias and Protagoras both agree that the second of them, at least, is something which a teacher might be able to communicate to his pupils.

In his elaborate rhetorical set-piece, the Encomium of Helen, Gorgias hints at a mechanistic theory of human motivation rather like that subsequently to be developed by Hobbes and Spinoza. As he puts it,

It is a law of nature that the stronger is not subordinated to the weaker but the weaker is subjugated and dominated by the stronger, the stronger is the leader while the weaker is the entreater. ⁸⁶

His view seems to be that, in any predicament where two or more courses of action are open to us, we are caught in a play of forces which push us either towards or away from the various possibilities. The course of action upon which we do actually settle will depend simply upon which set of forces eventually happens to prove the strongest. And the immediate point of this for Gorgias' argument is that there is no justification for the traditional practice of blaming Helen of Troy for her desertion of her husband. It is true that, by so doing, she brought great misfortune upon

her compatriots and their enemies alike. But she acted as she did, not out of wickedness or perversity, but simply because the forces impelling her towards defection were the strongest of the forces to which she was subject. These forces included such things as physical coercion and bodily desire. But, above all, they included the persuasive power of speech.

Persuasion is a powerful potentate, who with frailest, feeblest frame works wonders, For it can put an end to fear and make vexation vanish, it can inspire exultation and increase compassion.⁸⁷

More generally, the extent of Gorgias' faith in the power of persuasion is illuminated by his remarks in the Gorgias, where rhetoric is represented as a kind of master-profession

On many occasions, I have done the rounds with my brother or other physicians and found a patient refusing to take medicine or undergo surgery or cauterisation. And where the physician has failed to talk him into it, I have succeeded - simply and solely by means of the art of rhetoric. I give you my solemn word that if a physician and a rhetorician were to go together into any city you care to name, and there speak against one another before the Assembly. .for the job of physician, you would find the physician himself beaten hands-down, and the rhetorician having the job for the asking. ⁸⁸

In short, what we do in any given state of affairs will be in large measure determined - literally so, it seems - by how we are persuaded 'I was persuaded' and 'I was compelled' amount, for the purposes of justifica-

ation, to very much the same thing. It is impossible to demonstrate that any one course of action is in any absolute sense better than another. But it is at least possible to present one side of a question more forcefully or more plausibly than its alternatives, and so to determine, by means of a kind of deception, which side is discarded and which upheld. And the knack of doing this is something which can be taught. In one sense, it is the art of the poet or dramatist, who is able, as it were, to take command of the imagination and feeling of his audience. In another, it is the art of public speaking, which formed so central a part of the Sophist curriculum.

VII.

So far as we can tell, both Protagoras and Gorgias were men of eminently mild and moderate views. We notice, for example, the almost total - embarrassed? - silence which Gorgias maintains in the Gorgias while his ferocious young admirer Callicles advances and defends what Jaeger calls his 'transvaluation of all values.' Despite his confidence in the sheer power of rhetoric, Gorgias is quite ready to concede - although with doubtful consistency - that this power should not be used improperly, to gain unfair advantages or to tyrannise the weak.⁸⁹ Although no stigma attaches to Helen, her 'barbarian' abductor, Paris, deserves only to be held in contempt.⁹⁰ Again in the

Gorgias, Gorgias defends the activity of the rhetorician by analogy with that of the boxer. Boxers, he points out, sometimes put their abilities to deplorable uses by assaulting their parents and friends, but no-one on this account condemns the whole art of boxing as such. Similarly, those who condemn rhetoric might fairly be asked to distinguish between the art itself and its improper use

The orator can speak against anyone and on any subject in such a way as to win over the crowd to whatever conclusion he wishes to be drawn. But to say that he can is not to say that he should undermine the reputations of physicians or other professional people. He ought to use his skill fairly, just as he would use his prowess as an athlete. 91

For his part, Protagoras' view is rather like that advanced against the revolutionaries of 1789 in Burke's Reflections on the Revolution in France, or the case more recently made out by Popper for 'piecemeal social engineering.' To Protagoras' mind, the devil we know is better than the devil we don't. He suggests that, since we cannot know or assert that any one course of action is absolutely the best per se, and since our concern is with contriving things in whatever way happens to be appropriate to our circumstances and desires, it will be prudent to leave well enough alone while our existing arrangements are working satisfactorily. Throughout the Protagoras, his emphasis is upon traditional institutions and practices, and upon 'doing the done thing.' He stresses the value of

education, of learning the accepted norms of the community of which you are a member, of observing customary forms of behaviour, of worshipping the gods - even though we can know nothing about them, or even that there are any gods to worship. In a nutshell, he recommends that, since nature is chaotically unknowable, we put our implicit trust in the deposit of law and other convention formulated by the wise and tested over time. The accumulated wisdom of the past is not sacrosanct, and the wise man will know how and when and by how much to alter the status quo. But it is clearly in our own interests to approach the task of altering the status quo with the utmost caution.

It is clear, however, that if the art of rhetoric can indeed be used effectively 'against anyone and on any subject', then it can as well be used by the rabble-rousing demagogue as by the cautious and moderate man. In other words, the individual who has mastered the techniques of persuasion and who is equipped to set the entire direction of political life is not compelled to set only such directions as might commend themselves to the conservative cast of mind. And at least two very radical viewpoints are indeed associated with the younger generation of Sophists - with those who had sat at the feet of Protagoras and Gorgias. Here, the point is not that we can have no knowledge of nature. Rather, it is that the knowledge which we do have indicates that men are 'by nature' driven to act in a rampantly individualistic

way. On the one hand, there is the doctrine of Callicles, reported in the Gorgias - a viewpoint which is frequently, and not inappropriately, compared with that of Nietzsche. According to Callicles, our observation of the animal kingdom reveals that the normal state of things in the world is one of ruthless and unequal struggle - the strongest survive and prosper at the expense of the weak. Conventional morality, as expressed through the medium of law, imposes an unnatural or artificial equality which is peculiar to mankind. On Callicles' account, it arises out of agreements - synthemata - amongst men, which are intended to protect the weak by depriving the strong of the pleasures which are due to their natural superiority. True or 'natural' morality, as distinct from the synthetic morality of convention, consists simply in the pushing of power as far as it will go, and in revelling in the pleasure which the exercise of power brings with it. The nature of man, therefore, does not find its true satisfaction or realisation within the constraints imposed by any system of conventions. On the contrary, it would only be realised if a man of utterly superior physical and intellectual capabilities were to arise and fling petty restrictions aside in order to glory to the utmost in the plenitude of his own power.

'Right' and 'wrong' would be, so to speak, incarnate in the person of such a man. They would be incarnate precisely because he himself would have the power to

define them and to compel other people to act according to his definitions. It is perhaps not too Quixotic to say that, to Callicles' mind, we live in a Looking-Glass world

'When I use a word,' Humpty-Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean - neither more nor less.'

'The question is,' said Alice, 'whether you can make words mean so many different things.'

'The question is,' said Humpty-Dumpty, 'which is to be master - that's all.'

An illustration of this kind of Machtpolitik in action is to be found in the report of the dialogue between the emissaries of Athens and the inhabitants of the island of Melos given in Thucydides' History of the Peloponnesian War. The intransigent islanders had resisted all efforts to persuade them to join the Athenian confederacy, and had, in fact, contributed to the Spartan war effort. In 416BC, diplomatic resources having failed, the island was invaded and annexed by Athens, and all men of military age were put to death. Thucydides describes the fruitless negotiations in detail, and he attributes the following remarks to the representatives of Athens

You know as well as we that men arrive at 'just' settlements by negotiation only when the parties involved are of equal strength. Otherwise, the powerful get what they can take, and the weak give what they have to give. Of the gods we know, and of men we believe, that as a matter of natural necessity, they invariably rule where they have

the power to do so. We did not make this law, neither are we the first to take advantage of it. We found it already in existence, and we expect that it will continue in existence forever. And so we follow it - as would you and anyone else who had as much power as we have. ⁹²

On this account, then, there is indeed an eternal and immutable 'law of nature' to which men can look as a source of guidance in and justification for their conduct. But it contains only a single and uncompromising provision that the right cause is simply the cause which happens to be the strongest. And this, perhaps, is really the most consistent or logical application of Gorgias' thesis, that men simply do whatever their circumstances compel them to do.

Second, there is the view of Thrasymachus, asserted and discussed in the first Book of Plato's Republic. Having listened with growing impatience to the relaxed and mannerly discussion which has so far taken place on the nature of justice, Thrasymachus breaks into the conversation with his downright assertion that 'justice is the interest of the strong.' During the lengthy interchange which follows, he is made to shift his ground with comparative ease, but he does so in a way which serves rather to clarify than to weaken his position. It turns out to be not really his view that justice is the interest of the strong. Rather, he holds that 'justice' amounts only to remaining within such conventional limits as may be prescribed by the strong, his assumption being that the strong will always make such prescriptions as seem to them to be in their own

interests. On this account, laws embody, not the collective desire for self-protection of the weak, nor some cosmic justice writ large in the heavens and readable there by man, but merely the self-interested will of the strong. It is in the interests of the strong that others be just, and the other side of this is that any particular individual will achieve his interests only to the extent that he can be unjust. To Thrasy-machus' mind, the happy and successful man will be he who ruptures the conventional restraints of justice insofar as it serves his turn to do so, and to the extent that he can do so without having to put up with unpleasant consequences

Injustice on a grand enough scale is stronger, more free, more masterful than justice. As I have already said, justice is that which is subservient to the interests of the strong. But what really profits a man from his own point of view and secures his own interests is injustice 93

Incidentally, we might note in passing that a somewhat similar view of the relation between legal obligation and personal desire is adopted by the Sophist Antiphon

Doing justice is a matter of not infringing any of the laws of the State of which you are a member
A man would therefore do justice to his own best advantage if he displayed great veneration for the laws when in the company of witnesses and held the promptings of nature in equally high esteem when alone, with no-one to see him 94

Thrasy-machus' case amounts to three distinguishable theses. First, his point is not the commonplace and

obvious one that the very existence and survival of positive law indicates that whoever makes and administers the law is strong. Rather, he wishes to say that the meaning of the term 'law' is 'whatever is laid down as binding by whoever is strong enough to do so while brooking no opposition.' Second, he recommends, or presupposes, an egoistic, hedonistic and competitive psychology. His suggestion is that every individual wishes to be as strong, as free and as masterful as possible, and this purports to be a generalisation about human nature. To try to overreach other men in the struggle for advantage is what men really understand natural behaviour to be, and in their heart of hearts they regard the point of life as being nothing more than success in this struggle. Third, since on this understanding restraint is contrary to human nature, it follows that the purely conventional restraints embodied in 'justice' may be disregarded without blame by the individual who is able to do so. To Thrasy-machus, as to Callicles, physis and nomos, nature and convention, are not merely distinct, they are actually opposed.

Whichever of these views be taken, it seems that the conclusion will be to all intents and purposes the same. A political order which satisfies what are truly the requirements of human nature will not be one in which the principles of reciprocity and harmony apply, as for the Pythagoreans. Similarly, the best life will not be the life of moderation and restraint recommended

by Heraclitus. Rather, a natural political order will be one in which the strong have bent all weaker wills into their service; and the best life will consist simply in the most effective deployment of power and the most single-minded enjoyment of the pleasure which its exercise brings. Political life is not mutual co-operation in relation to a community of interests, but a continual zero-sum contest for the scarce resource of power

It is this starkly individualistic standpoint - so prevalent a feature of Athenian political life after the death of Pericles - that Plato and, less directly, Aristotle are concerned to confute. Broadly speaking, they both set out to lay down a rational ground upon which to oppose the principle 'might is right', and to develop an alternative theory of politics resting upon this ground. The following words of Sir Ernest Barker were written with reference to Plato; but, with certain qualifications, they might equally well have been applied to Aristotle 'It is his mission to prove that the eternal laws of morality are no mere 'conventions', which must be destroyed to make way for a regime of 'nature', but that they are, on the contrary, rooted beyond all possibility of overthrow in the nature of the human soul and in the system of the universe.'⁹⁵

CHAPTER TWO NATURE AND PURPOSE

I.

Human Good and Community Life

Although Aristotle develops the theme a great deal more fully and with a rather higher degree of subtlety, both he and Plato put forward a general account of the world in teleological terms. This teleological account may be taken as our own most appropriate point of departure in this chapter.

Both Plato and Aristotle ascribe fundamental significance to a notion which, as we have already seen, is an old and deeply-rooted one the notion that, in a normative sense, nature as a whole is an intelligibly ordered and purposive system. In the Republic, as part of his exposition of justice, Plato proposes the view that the things which we see around us and of which we make use have ascertainable purposes. It would seem from what he says that this observation is intended as an empirical generalisation. The interrogation of Thrasymachus appears, at this point, to be intended to suggest that it is experience which indicates to us that any one of the objects named is 'for something'. This is said to be obvious to us either because the thing in question has been made with some specific purpose in mind, or because it does what it

does better than anything else can, or because what it does cannot be done at all by anything else, or by reason of some combination of these. For instance, and the example is Plato's own, we know that the purpose of a pruning-knife is to prune, both because that is what its manufacturer intended it to be used for, and because, though at a pinch you might be able to prune with a chisel, you will find that you do a more satisfactory job if you use the appropriate tool. And, by the same token, the purpose of horses is to pull carts, the purpose of eyes is to see, that of ears is to hear, and so forth.¹

This theory (which Plato leaves in a rather unelaborated state) in fact contains many more snags than might at first sight be apparent. For instance, it is not at all difficult to imagine an archaeologist digging up an object and not having the faintest idea of what it is for - speculating over a range of possibilities, guessing wrongly, giving up in disgust, and so on. It does not really seem to be the case that the purpose of anything, or even that it has a purpose, is always immediately discernible from its structure or design. Again, we can envisage that the purpose ascribed to any given artifact might be in some sense ambiguous or a matter for dispute. For example, is it the purpose of a brass warming-pan (in the twentieth century) to warm beds or to be hung on the wall as an ornament (or even to smuggle babies into royal bedchambers when convenient)? Also, diff-

iculties begin to arise at once as soon as we get away from objects which are unambiguously man-made articles or tools of some kind. Why, for instance, should we say that a horse is better answering to its purpose when it is pulling a cart or carrying a man on its back than when it is being magnificently wild and free? Leaving these difficulties to one side, however, the general drift of what Plato and Aristotle wish to say is clear enough the purpose or 'final cause' (telos) of an acorn, say, is to become an oak-tree. It is true that many unforeseen things can intervene in such a way as to alter the ordinary or 'natural' course of things. Also, the application of technique or art can bring about intended changes which would not otherwise have occurred. But our normal expectation - our expectation of unimpeded nature - is that the acorn will indeed grow into an oak-tree. It will not become a stunted parody of an oak-tree, or a pine tree, or a heap of firewood or a sideboard. And we should therefore say that, when it has become a mature oak-tree, a natural process has been carried to its appropriate conclusion. Aristotle wishes to say that what we call the 'nature' of a thing is that which unfolds when it is achieving, and that which is fully realised when it has achieved, its telos. Moreover, this account of natural processes is one in which description and evaluation are merged. It asserts not only that we can identify the purposes of things as a matter of fact, but also that, when we pronounce

them good, we do so by reference to whether they do or do not answer to their purpose. The thesis is that nature always achieves what is best, and, as Aristotle puts it in the Politics

The nature of a thing is its end, since that which everything is when its process of development is complete is what we call its nature, be it a horse, a man or a family....What is more, that end for which a thing exists is also its highest good.²

If all this is true of nature considered as a whole, and given that man is a part of nature, then it must also be true of human nature considered in particular. Plato and Aristotle both suggest - and the suggestion itself is commonplace enough - that the natural purpose, and therefore the highest good, of man is to live a life which is a life of eudaimonia. English translators almost always render this word as 'happiness', but this is hardly the most appropriate choice. Quite apart from anything else, we should not be justified in saying that a man's life is one of eudaimonia simply because he can say, 'I am happy.' Plato and Aristotle both consider that a man might consider himself 'happy' and yet be mistaken, and, in any case, eudaimonia is not any particular or determinate happiness. On the contrary, it is general or all-round wellbeing to live a life of eudaimonia is to live 'the good life' And Aristotle remarks that it is obvious that eudaimonia is in fact the highest good for man since, though other goods such as riches and health are desired as a means to it, eudaimonia itself is desired

simply for its own sake. There is nothing beyond it to which it is a means.³

According to Aristotle, the telos of anything is achieved through its being in a state of 'engagement' (energeia) in the function or proper activity (ergon) to which it is by nature suited - for which, that is, it has a special capacity or potential (dynamis). The purpose of an eye is to see, its ergon is seeing, its dynamis is the capacity to see, and so on.⁴ But when we come to enquire into the specific ergon of man, matters cease to be quite so straightforward. Man is not a simple entity with a single and immediately obvious function and capacity. But, Aristotle remarks, it at least seems plain that the special ergon of man qua man cannot lie in mere biological functioning or in instinctual behaviour or sensation. It cannot lie in these things since man has some or all of them in common with other animals and with plants. The highest good to which the ergon of man is directed, he assumes, must be something different from the highest good of a chrysanthemum or an ox. And he and Plato both point out that there is one outstanding and obvious respect in which man is uniquely different from - and indeed superior to - the rest of creation: namely, in his capacity for reason. And they infer from this that the achievement of man's purpose must in some way be connected with his rationality. Moreover, Aristotle goes on, just as the proper function of the flute-player lies in his actually performing on the flute

rather than in his merely owning a flute, so too that of man as such must lie, not in his mere proprietorship of reason, but in rational activity - Plato mentions managing, deliberating and ruling. Again, we should not say that a blunt knife or a flautist who only tootles aimlessly is good. They are good, not simply to the extent that they discharge their function, but to the extent that they discharge it well. And, in the same way, the highest good of man is to be achieved through his acting, not only rationally, but well - in the sense of rationally choosing and following the right means to ends which are themselves good, and not just now and again, but throughout the course of life as a whole. ⁵

Having come this far, Plato and Aristotle go on to the further point that a properly conducted life - or, for that matter, any kind of life - cannot satisfactorily be lived alone. Protagoras himself had pointed out that collective living is obviously necessary for the purposes of subsistence and protection, and this is a modest claim which even the most radical and individualistic of the Sophists would surely have to take (Even the view that every man really wishes to tyrannise other men presumably requires that the tyrant engage in some form of collective living with his victims)⁶ At the most basic level, then, you cannot live a life of eudaimonia - the life of a rational, cultivated and humane man - if you are starving to death or constantly at the mercy of wild

beasts or aggressive foreign powers. Also, though there would be no point in urging an acorn or a pruning knife to engage in its proper activity, man is distinctively able to respond to exhortation and instruction. Thus, education and legislation are appropriate to the human condition. In addition, a man cannot engage satisfactorily in rational activity unless he has a certain amount of leisure and freedom from mundane concerns. And all these things can be had only through co-operation with other people. On these grounds, then, political life is established as the natural way of life for man. It is natural in the sense that, without it, he cannot fully be or become what it is his nature to be or become a creature whose rational activity is effectively directed towards that which is good. As Aristotle puts it,

It is clear that the State is a natural growth and that man by nature is a political animal. Whoever is naturally - that is, not by accident - outside the State is either superhuman or subhuman. ⁷

Indeed, according to Aristotle, because man is naturally dependent upon the society of others, all the various forms of association of which he is a part are natural. The chief difference between smaller units such as the household or the village and the State itself, however, is that the latter is self-sufficient in every respect. It is the most completely natural association in that it is the most 'fully-grown' association, just as a mature oak-tree

is the natural culmination to the career of an acorn. The State, properly conceived, is self-sufficient in that it contains everything necessary to the full actualisation of the natural associative tendencies of its members. It is such that they do not have to look outside or beyond it for the means of satisfying any of their needs or desires. And politics, the science of maintaining the State on a proper footing, is identified as the 'master' or architectonic science. Its practice is that which makes possible the practice of all other sciences, so that even those pursuits which are generally esteemed as the most noble are in this sense dependent upon politics. The maintenance of political life is that which makes every other human activity possible. To Aristotle, then, politics is what rhetoric was to Gorgias the profession to which all other professions are ultimately subordinate.⁸

Plato and Aristotle both recognise that not everyone will be able to live the good life to an equal degree, but it is nevertheless important to note that they both insist that the good for man is the good for man as such. It is not, as Thrasymachus and Callicles had maintained, the good only of the man who happens contingently to have pre-eminent strength or power. As they see it, the State, properly so-called, is not an organisation in which the efforts of the majority are bent towards the good of a single individual or class. Neither is it one in which the majority are merely dedicated to self-protection against the depredations

of the rapacious strong. Rather, it is a functioning system in which all have an important part to play - in which each individual takes his proper role to the extent that he contributes to the good of the whole. And the good of the whole, of course, includes his own good the State should be a system of what Johannes Althusius was later to call 'symbiotic' relationships, in which each man contributes to the wellbeing of all the rest, who in turn make their own contribution to his wellbeing.⁹ The familiar analogy of the living body suggests itself at once. Just as a self-sufficient and functioning organism depends for its wellbeing upon the proper interrelation of all its parts, so too in the State the proper role of the citizen consists in, and his own ultimate advantage depends upon, his contribution to the health and integrity of the whole. As Aristotle puts it,

If the hand or foot be removed from the body, it will no longer be a hand or foot at all, except perhaps in the loose sense in which one might talk of a hand carved out of stone. In such a case, it will be ruined, no longer having the ergon and the dynamis by reason of which it is what it is.¹⁰

This conception of what a community of men should be is captured with convenient cogency in the following words of Hegel 'A system of complete interdependence, wherein the livelihood, happiness and legal status of one man is interwoven with the livelihood, happiness and rights of all '¹¹ Plato and Aristotle both subscribe

to what has since come to be known as the 'Organic Theory of the State', depicting it as a complex unity whose members are bound together by 'living together, sharing common efforts, common dangers, common joys and common distress.'¹² In modern writing, this Organic Theory is commonly referred to pejoratively - or, at least, is referred to pejoratively by most of those writers who think of themselves as individualists. But in its classical form, far from being submerged in or obliterated by the whole, man is said to be completed by his engagement in the corporate life of the State. Communal existence and civic participation provide the conditions which are most appropriate to what he is.

We notice especially, then, that Plato and Aristotle understand man's good in terms which might, admittedly with a large qualification, be called universalistic. The good which is made possible in a properly-constituted State is the good of all the citizens, at least insofar as they are capable of achieving it. The qualification is of course necessary because both Plato and Aristotle would regard the majority of persons living within any given territorial boundaries as unfit to assume the rights and duties of citizenship at all. But they at least in some sense regard the human good as the human good, rather than as a sectional or individual goal to be pursued at the expense or in disregard of other men. Moreover, since they hold that the State is natural, having as its object

the attainment of that which is man's natural good, they proceed also to the conclusion that the criteria according to which the State should be organised are themselves 'natural' in our sense - that is, non-conventional and discoverable by the light of reason. Aristotle's view, to which we shall come in due course, is rather complex and ambiguous, and it is certainly less easy to discover and state than Plato's. Plato's treatment of this theme, on the other hand, is particularly extensive and elaborate. It is already a well-trodden path, but there are three reasons why we should do well to explore it at some length

(a) It is a self-conscious attempt to solve the notorious problem of conflicting opinions which we have already come across, and so to forge a weapon with which to fight the legal and moral positivism of the Sophists,

(b) In classical writing, it stands as the apotheosis of reason in relation to practical activity, and we are generally concerned with a doctrine which holds that certain principles of right conduct simply 'stand to reason',

(c) To quote Sir Ernest Barker again, it is a weighty and positive attempt to show that 'the eternal laws of morality...are...rooted beyond all possibility of overthrow in the nature of the human soul and in the system of the universe.'

II.

Reason and Practical Activity.

The Republic of Plato is, at least nominally, an enquiry into the nature of justice. And the conception of justice which Plato develops harks back ultimately to the Pythagorean and Heraclitean insistence that right conduct depends, at the last analysis, upon our remaining within certain natural limits. He advances it against the forcefully-argued case of Thrasymachus which we have already mentioned that the life of eudaimonia is to be found in successfully passing or disregarding limits - in minimising restraint and in outdoing the other fellow as far as possible by breaking the rules. Thrasymachus will not allow himself to be manoeuvred into saying outright that justice is vice and injustice virtue. But he does at least maintain that what is ordinarily called injustice is really no more than good sense or shrewd judgment, whereas what commonly passes for justice is mere naive imprudence. Faced with this, Plato does not set himself the task of refuting the claim that men do in fact seek to maximise their own advantages. Neither does he wish to insist that they ought not to do so. He agrees that acts are right if they do indeed promote eudaimonia - that is, if they conduce to our advantage in its most generally-stated form. And he holds, moreover, that no-one who knows what is good will voluntarily do what is bad in the sense of

inimical to his own purposes. But his point is that genuine advantage is not, in fact, to be secured by a total disregard of constraints. He points in the first instance to certain areas of activity within which refusal to act under certain appropriate kinds of constraint will obviously thwart the very purposes for which the activity was undertaken in the first place. The musician tuning an instrument, for example, does not screw up the pegs of the instrument tighter and tighter on the supposition that he is thereby stealing a march on other musicians. Similarly, the medical practitioner does not go on pouring ever-larger doses of medicine into his patient in the belief that he is thus cocking a snook at his colleagues. On the contrary, the musician tunes his instrument neither too high nor too low, the physician gives his patient as much medicine as will cure him and no more. In short, we have here certain limits which may rightly be called 'natural' in the sense that, if they are disregarded, certain things simply cannot in the nature of the case be done.¹³ And Plato's suggestion is that these examples are only particular instances of a generalisation which holds of individual and political life as a whole. The soul or personality of man, he suggests, is a compound of parts or faculties. This much is clear, he holds, from the fact that we do so frequently come across what look like conflicts within the soul if the soul were one, there could be no such conflicts, since it

is not possible for unity to be at odds with itself. And he proceeds to specify three parts in the soul: an appetitive part (epithymetikon), a rational part (logistikon), and a 'spirited' part (thymoeides). The idea here is that, through the appetitive part, we identify the objects of our desire, through the rational part, we choose between these objects or assign priority to them and select the best means of achieving them, and through the spirited part (which is the seat of such things as courage, assertiveness, determination, and so on) we pursue these means. And it is clear, Plato suggests, that there is a proper relation between appetite, spirit and reason which must hold if the soul is to function effectively. If we give an entirely free rein to our appetite, for instance - which is, in effect, the course which Thrasymachus recommends - we shall very often find ourselves in the grip of mutually conflicting and frustrating impulses. You cannot, after all, gratify every desire at once. Indeed, you cannot gratify every desire at all. Similarly, spirit, of itself, cannot make the necessary qualitative choices between desires or between possible alternative means of fulfilling them. If we are thirsty, it may be that we show great spirit in our attempts to satisfy the appetite for drink. But it is not through boldness or assertiveness or determination, but through reason, that we are able to know that it would be a mistake to drink sea-water. In other words, just as an organisation - even if it

be a band of robbers - cannot achieve what it wishes to achieve if it is torn by internal dissention, so too the soul will be unable to achieve its goals if it is, so to speak, internally divided into competing factions. 'Justice' in the individual soul, Plato maintains, is the state of affairs which obtains when appetite and spirit are kept within their proper bounds by reason. The function of reason is to 'care for the whole soul.'¹⁴ Its relation to the other parts of the soul is, as Plato puts it in the Phaedrus, like that of a charioteer to his two horses. As he also says, justice is the 'virtue' of the soul, in the same sense as sharpness is the virtue of a knife - it is the quality or characteristic in virtue of which it is made able to do what it is for.¹⁵ (So far as I know, this use of the word 'virtue' in English now survives only rather indirectly, in the phrase 'in virtue of'. A readily-accessible archaic example gives the idea.

And straightway the fountain of her blood was dried up, and she felt in her body that she was healed of that plague. And Jesus, immediately knowing in himself that virtue had gone out of him...said, 'Who touched my clothes?')¹⁶

Thus, unless the soul is just, the life which it leads cannot be one of eudaimonia, and Plato maintains that this is as much true of the State as it is of the individual.¹⁷ The State, too, has its parts, answering to the need for division and specialisation of labour, and in some sense analogous or comparable

to the parts of the soul. It contains producers, who create material wealth, soldiers, who conduct war and ensure defence, and, of course, rulers. And the business of the ruler, like that of the 'logistic' part of the soul, is to keep the other classes of the State within the scope of their functions, and so to ensure that the overall purpose of political life can be met. Thus, by analogy with the soul, a just State will be one in which this state of affairs is established

The proper function of the producers, the soldiers and the Guardians, when each class is doing its own work within the State...would be justice, and would render the State just. ¹⁸

So far, Plato is clearly reminiscent of Anaximander and Pythagoras and Heraclitus in regarding justice as a natural harmony or limit or reconciliation. It is not externally imposed. Neither is it a mere technique which can be considered as extrinsic to other and separate techniques. It is the natural characteristic of the well-ordered soul. Plato's description of the proper standing of the parts of the soul in relation to each other is presented simply as a definition of a well-integrated soul or personality. Similarly, justice in the State, though capable of being reduced to or expressed through convention, is not conventional in its nature, for political activity is not an imposition upon those who engage in it. The just arrangement of the classes of the State is simply a natural necessity, in the sense of being necessary to the full realisation of the indwelling needs and potentialities

of human beings.

III.

None of this, however, yet takes us to where we really want to be. It is established that the good life is the proper end for man, that rational activity is the function by means of which it is to be achieved, that we therefore cannot enjoy eudaimonia unless we live rationally-ordered lives, and that neither can the State achieve its purpose unless it, too, is rationally ordered. But we do not yet have any means of distinguishing what is actually good from what is not. And for as long as we are in this position, the possibility remains open that we shall live rationally-ordered lives only the more effectively to achieve what is bad. It is obvious to Plato, therefore, that if the individual and, by extension, the State are to secure what is good, wise conduct and government alike must be founded upon or inspired by knowledge of what really is good.

We recall that the state of play as Protagoras and Gorgias had left it was that knowledge, and specifically knowledge of what really or objectively is good, simply cannot be had - or, at least, cannot be effectively expressed. Any statement of mine purporting to be about the nature of goodness is doxa, mere opinion or belief. But then again, if you contradict me, your statement too is no more than doxa, and there is no indubitable body of episteme by recourse to which

the stalemate between us can be resolved. Plato, however, wishes to claim, and as far as possible to show, that it is indeed possible to have knowledge as distinct from opinion. His view of the matter is that the intellectual content of philosophy, when philosophy is properly understood and undertaken, is knowledge, and that this includes or culminates in knowledge of absolute and eternal Good. It follows from this that only the philosopher is the truly good and happy man, but the special status of philosophy also has far-reaching political implications. As Plato puts it,

Unless philosophers become kings in our States, or unless our present rulers become conscientious and competent students of philosophy, so that wisdom and political power unite...there can be no end to the troubles which beset political orders and the human race as a whole. ¹⁹

In passing, it will be as well to point out that the recommendation that 'wisdom and political power unite' and the educational and social prescriptions associated with it in the Republic are of a rather distinctive kind. For much of its length, the Republic is a Utopian tract, in the more or less technical sense of the word 'Utopian' suggested by George Kateb. It is essentially a work in the same tradition as More's Utopia, Campanella's City of the Sun or William Morris' News from Nowhere.²⁰ It pictures a hypothetically perfect society in which perfection is understood chiefly as a harmony of each man with him-

self and others. But it is readily conceded - and the concession is not thought to be a damaging one - that the actual creation of such a society would be a difficult or impossible task. As Plato puts it,

Perhaps (the ideal society) exists only as a heavenly model. Whoever wishes to do so may see it and make himself a citizen of it, but it does not matter whether there really is such a State, or whether or not it shall ever come into being.²¹

In short, the Republic offers, not a checklist of direct practical recommendations, but an ideal paradigm to which actual communities would do well to try to conform themselves even though, in practice, they are likely to succeed only imperfectly in doing so. An account is given of that form of political organisation which would answer most completely to the requirements of man's nature, and such a State is offered for emulation even though it is admitted that actual imitation is unlikely to occur. We might say that the sentiment of the Republic is like that of Browning's Andrea del Sarto - 'Ah, but a man's reach should exceed his grasp, Or what's a heaven for?'

Philosophers, then, should rule - or rulers should become philosophers. But what kind of man is the philosopher? By way of preliminary definition, Plato says that he is one who

has a desire for every kind of knowledge, and whose curiosity for learning is never satisfied.²²

But the objection is at once raised that this definition would seem to embrace the mere enervated and curious diletante - the aesthete who flutters aimlessly from one titillating experience to the next. Surely we are not to regard every such quidnunc as a philosopher. And Plato agrees that indeed we are not. Such creatures may on the face of it appear to have the characteristic curiosity of the philosopher, but they are in fact mere shams, or superficial 'lovers of sights and sounds.' By contrast, the genuine philosopher is he 'who loves the vision of truth', and he is to be distinguished from the counterfeit philosopher in the following way

Lovers of sights and sounds derive their satisfaction simply from beautiful sounds and colours and shapes, and from all the various combinations of these that ingenuity can produce. But their intellects lack the power of comprehending and glorying in the nature of beauty itself. ²³

The distinction which Plato is here drawing extends, of course, beyond aesthetics and into every field of human experience. Most generally, what sorts out the philosopher from the unphilosophical man is their respective preoccupations with, on the one hand, particular appearances or manifestations of things and, on the other, with the nature of these things in themselves - with 'things as they really are'. In short, a distinction is here being made between different kinds or orders of experience in terms of Plato's Theory of Ideas. Expressing it as briefly as possible,

his point is as follows.

Considering the apparently problematical relation between knowledge and opinion, Plato holds that we may take it for granted that such opinions as we entertain are at least 'about something'. Our opinions cannot be opinions about nothing, since nothing is precisely nothing - 'that which is not' cannot form the subject of any predicate. It is equally clear, however, that opinions about what is are not instances of knowledge of what really is. If they were, then the constant differences of opinion which we in fact experience would not arise. Thus if you and I entertain conflicting views about x, our views are views about x to the extent that they are not views about nothing. But if we both knew what x really is, we should not - Plato thinks could not - disagree about it. Two people who have complete knowledge of a subject will not differ as to any of its aspects. Such differences can only occur if the knowledge of one or both parties is incomplete or faulty. And Plato wishes to say, not only of faulty, but also of what we should call partial, knowledge, that it is not really 'knowledge' at all. As a whole, his theory of knowledge is rather like that of Hegel. He pictures reality as a complex entity of which any experience short of apprehension of the whole can only be an imperfect manifestation.

The world as ordinary people experience it, however, is problematical precisely because it does so often

give rise to conflicts of opinion. To take perhaps the least controversial of the possible examples that which may appear beautiful from some points of view may from others equally well appear ugly, that which is thought just by some people may be accounted unjust by others. Certainly, and as we have already mentioned, the problem of ambiguity in the world is nowhere near so acute - or nowhere near so acute an epistemological problem - as Protagoras, Gorgias, Plato and others supposed. There are many areas of experience in respect of which differences of opinion seldom or never occur, and in cases where they do occur such differences are not usually difficult to account for. There undoubtedly are occasions when people who judge that I am mistaken have the same reason to be thought right as I have, but it is not easy to see why Plato (and, so far as I know, all his predecessors) have found such things as relational propositions so puzzling. For instance, Plato finds it mystifying that, since six is greater than four but less than twelve, we cannot escape contradiction when talking of six, which is clearly nonsense. But we must let these difficulties pass. Suffice it to say that, for Plato, although we can affirm that the world about which we entertain opinions is not non-existent, we cannot affirm that it is existent in the 'full' sense of the word - or in what he takes to be the 'full' sense of the word. We cannot, that is, say that it is composed of 'things in themselves' If it were, then

our experience of it would constitute knowledge. The true nature of things would be immediately available to us in sensation, and, in that case, the world would be free of paradoxes. Since the 'world of sight' (as he habitually calls it) is manifestly not free of paradoxes, Plato concludes that it must occupy a queer and indeterminate area somewhere between being and not-being. It is a world of mere appearances.

But appearances of what? To put it rather briefly, Plato's response to this question is to suggest that there must in fact be two orders of reality. They differ from one another in that one is, as it were, a dilute or approximate version of the other. They stand to one another in the same way as a reflection in a mirror stands to the object whose reflection it is in the world of sight. Why, then, can we not perceive this 'more real' world of which the world which we do perceive is a mere appearance? The answer must be that, while the world of sight is sensible, the world of which it is a copy is purely intelligible - it is a world of Ideas, and, as such, it is seen, so to speak, only with the mind's eye. The distinction is neatly summed up in the following anecdote about the redoubtable Diogenes the Cynic

When Plato was talking about Ideas and using the words 'tableness' and 'cupness', (Diogenes) replied, 'I can see a table and a cup, Plato, but I can't see what you call 'tableness' and 'cupness'. Plato said, 'That is easy to explain. You have eyes by which you see the table and the

cup, but you do not have the intellect to apprehend tableness and cupness.²⁴

(Diogenes seems to have gone to Plato's lectures largely for the sake of poking fun at Plato. Plato's tart reply perhaps gives some hint of the relations between the two.)

It is important to be clear, however, that these Ideas, though intelligible rather than sensible, are nevertheless said to be real or substantial rather than 'nominal'. The Idea of Beauty, for instance, is not just the sum total of all our ascriptions of beauty to empirically-observed particulars. Rather, it is an hypostatized concept, by reason of which the things which we call beautiful are so-called. Again, we call a cup a cup because it partakes, albeit imperfectly, of the Idea of Cupness. The intelligible world which the reason may apprehend is a real world in which Ideas actually exist - in which such things as 'cupness' are, as it were, laid up as the standard yard foot and inch are laid up at Greenwich. And in this world, because it is real, there is no ambiguity. Its content, Plato claims, is the subject-matter of philosophical enquiry properly understood, and the province of knowledge properly so-called. Thus, it is the philosopher whose aesthetic judgment, say, will be true judgment, for it is the philosopher and only he who will know beauty as it really is.

We cannot, of course, digress into a full-dress consideration of it here, but the most cursory inspection

is enough to show that the Theory of Ideas is full of the most intractable difficulties. First, in common with all Greek speculation before the development of Aristotle's logic, it makes none of the categorial distinctions familiar to, and regarded as essential by, the modern mind. It seems that there are Ideas not only of 'Beauty', 'Justice', 'Redness', and the like, but of 'Cat', 'Ball', 'Equilateral Triangle', 'Isosceles Triangle', 'Straight Line', of 'Who', 'There', 'This', 'Greatness', and so on indiscriminately. Second, as a pointer towards the actual complexity of grammar, the Theory of Ideas occupies an important place in the history of ideas; but its evident muddleheadedness arises largely out of the fact that Plato offers it as a metaphysical dogma about supposedly subsistent entities. It is well known that, in the Metaphysics, Aristotle lays bare a number of the theory's most evident weaknesses, and it would take us too far afield to go over the ground which he there covers. In fairness to Plato, however, it ought also to be remarked that he himself was by no means oblivious of his theory's deficiencies. The treatment which it receives in the Timaeus is a brief and somewhat defensive one. It is subjected to extensive and penetrating criticism in the Philebus and the Sophist, and in the Parmenides, Plato in fact anticipates much of the case which was later to be marshalled against it by Aristotle. So far as the history of philosophy in general is concerned, the Theory of Ideas is perhaps

most interesting as the earliest attempt to state the so-called 'problem of universals'. From our immediate point of view, however, its importance lies in the way in which, in the Republic, it is brought in to support a moral doctrine, and in particular the contention that the State, though in a sense an artifact, ought to be organised in the light of a transcendent moral reality which is not itself artificial.

The crux of the matter is this So far as the world of sight and the language which we use in our discourse within it are concerned, finally to pronounce something good is to apply to it - admittedly only as a matter of opinion - the highest and most comprehensive term of approbation. This is straightforward enough The word 'good' does not merely signify a single quality which we attribute to things. It differs from other adjectives such as 'red' in that it is also the name of that in terms of which we evaluate things 'Not-red' does not imply any judgment of value (at least, not in the ordinary way - although I suppose that to say of a bullfighter's cloak or a Doctor of Divinity's gown or a pillar-box that it is 'not-red' would be to imply such a judgment) 'Not-good', on the other hand, invariably is a judgmental term. And since this is true of our ordinary and imprecise uses of 'good' in the world of sight, it will follow that the highest of all the Ideas in the World of Ideas will be the Idea of the Good - the 'Good-as-such' or the 'good-in-itself.' This will not only be the megiston

mathema, the greatest object of knowledge. It will also be the ultimate end or value - the final standard for the making of practical judgments

The greatest of all possible objects of knowledge is the Idea of the Good, from which everything that is good and right for us derives its value.²⁵

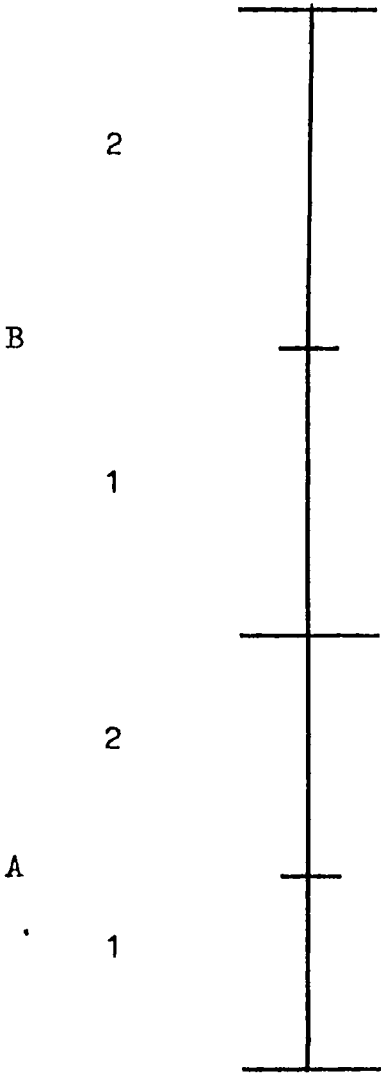
In the words of R.L. Nettleship, 'The use of the word (good) implies a certain ultimate hypothesis as to the nature of things, namely that there is reason operating in the world, in man and in nature. This reason shows itself everywhere in the world in this particular way, that wherever there are a number of elements co-existent there will be found a certain unity, a certain principle which correlates them, through which alone they are what they are, and in the light of which alone they can be understood. Thus the good becomes to Plato both the ultimate condition of morality and the ultimate condition of understanding. These are not two things, but one and the same principle showing itself in different subject matters.'²⁶

Thus, the ruler - or, more strictly, the ruler of Plato's postulated ideal State - will be a man of complete philosophical knowledge, who is equipped to do good by his knowledge of all-embracing and real Good. We are immediately led to ask, however But what is the Idea of the Good, and how are we to arrive at it? And, when pressed on this point, Plato is able to give only an indirect and discursive answer. He is no more able to describe the Idea of the Good

than he had been able to describe tableness and cupness for Diogenes. In short, the World of Ideas lies wholly outside the world which language depicts. Thus, the Good is not amongst the things which can be communicated by speech (and we are probably correct in regarding this as a retort to the frequent claim of the Sophists to be able to teach arete or politike arete.). The most that the established philosopher might do, Plato suggests, would be to indicate where the Good stands in the hierarchy of cognition, and so point a way towards it for the guidance of whoever wishes to discover it for himself. And he proposes a series of illustrations with this in mind.²⁷ The first of these is very brief and preparatory. He suggests that we regard the Idea of the Good as being to the intelligible world what the sun is to the world of sight, and that we similarly consider the eye in the perceptible world as answering to the soul in the intelligible. In this way, knowing is represented as being to the soul what seeing is to the eye. In the world of sight, the eye is able to see because the light of the sun renders objects visible. And, by the same token, it is said that the Idea of the Good is that which enables the soul to know it is the ultimate source of meaning and truth. From this starting point, Plato proceeds to two rather more extended analogies, the purpose of the first of which is twofold. It is intended both to illustrate the differences between sensation and intellection and also, as Jaeger puts it, to describe 'the stages by which knowledge moves from the

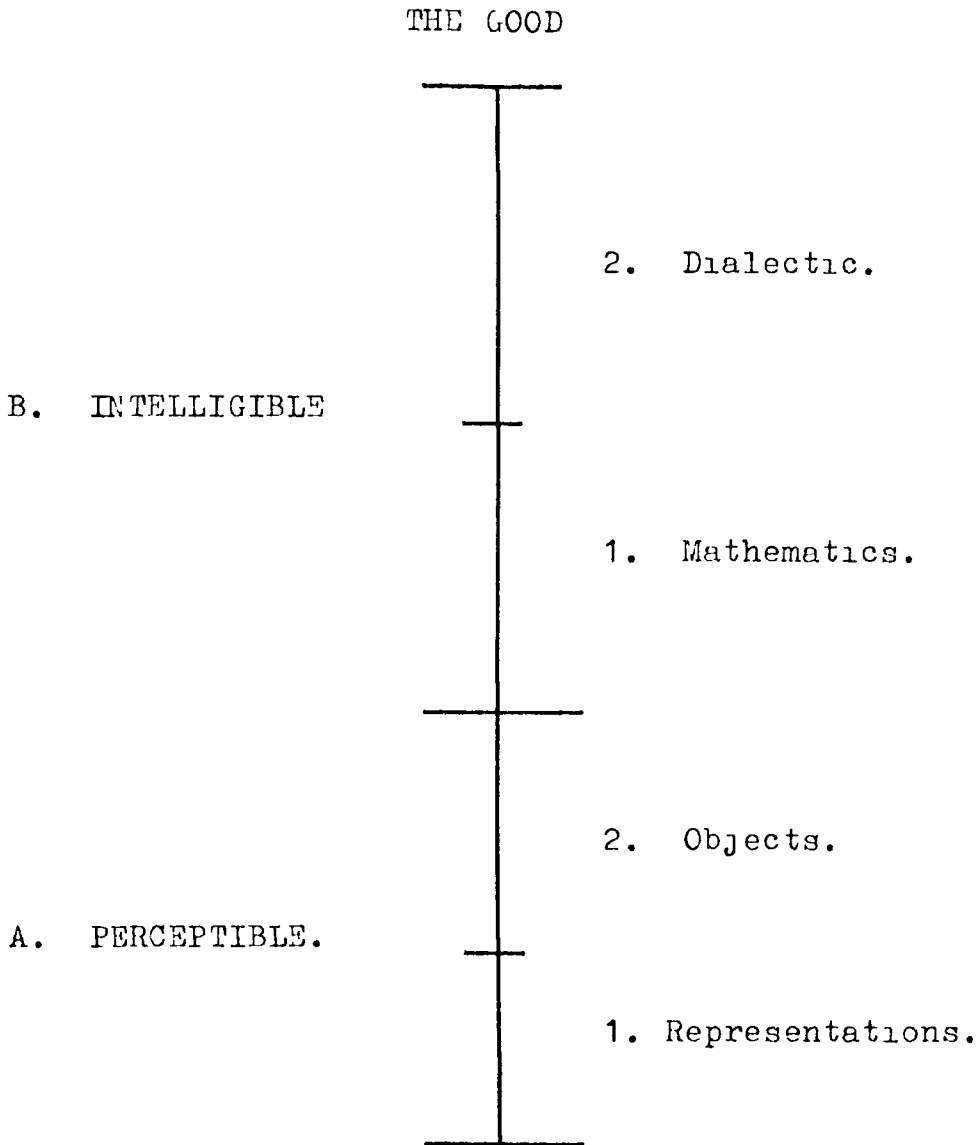
emptiest sham of appearance to the vision of the supreme reality.²⁸ The purpose of the second is not so immediately clear, but we shall glance at each of them in turn.

In the first, we are invited to consider the process of acquiring knowledge in terms of a line divided into two unequal parts, each of which is again divided into two smaller parts in proportion to the division of the whole



Let A and B stand respectively for the world of sight and the world of Ideas. Section A as a whole, therefore, is distinguished from section B by its relative lack of clarity. Subsection A1 corresponds to that department of sensory experience which is made up of images or representations - reflections, paintings, shadows and so forth. Subsection A2 answers to that part of the perceptible world which is comprised of all the things of which the contents of A1 are representations that is, it stands for our normal sensory field. Subsection B1, which carries us into the intelligible world, represents mathematical knowledge, while the final subsection stands for that part of knowledge which is acquired - or, more properly, elicited - and expressed through dialectic. It stands for knowledge consisting entirely of Ideas. Intellectual development, therefore, is represented as a linear progress from the world of particulars to that of pure Ideas, such Ideas being separated from any particular object or state of affairs. And at the end of the line, as the culmination of the aspirant's progress, stands the sublime and comprehensive Idea of the Good.

The complete sequence which Plato here wishes to represent may therefore now be illustrated in the following way



The bridge between perception and intellection, and thus the most crucial stage of mental development, is said to be provided by mathematics. This 'bridging' function of mathematics is not made clear in the analogy itself, where mathematics seems to fall entirely within the intelligible world; but this aspect of the matter emerges from Plato's exposition as a whole. Mathematics is understood as including geometry, astronomy and harmony, and the important point here is that all these departments of enquiry have in common the fact that they take their departure, as it were,

from the world of sight. In other words, our concern with them tends to centre upon or begin with geometrical figures, observations of actual heavenly bodies, and representations of musical intervals. They are therefore in one sense, or to a certain extent, a part of the perceptible world. Yet in another sense they are not. They may be said to occupy both branches of the natural order, and it is this duality which gives the key to their value as a mode of passage between the two.

This transitional nature of mathematics is most readily illustrated by an elementary example from geometry. Consider the so-called theorem of Pythagoras that in the case of any given right-angled triangle ABC such that C is the hypotenuse, $A^2 + B^2 = C^2$. In the ordinary way, the teacher who wished to communicate this would demonstrate it by constructing a right-angled triangle with squares on each of its sides and performing the necessary calculations. But there are four things to note. First of all, it is not strictly necessary to construct actual figures at all. The figures are nothing more than aids to the mind. They do, in fact, furnish only a rather cumbersome way of illustrating something which, in principle, the reason alone can grasp, but which is rather elusive by reason of its own abstractness and the somewhat slack or hazy condition of the untutored mind. (This is made clear, incidentally, by Socrates' conversation with Meno's slave-boy in the Meno.) Second, it seems that we could

not in any case draw the figures and perform the calculations at all unless we already had some vague awareness of certain ideas line, square, square-root, and so forth. The constructions will serve to clarify these ideas and communicate something of them, but our actually having some apprehension of the ideas would appear to be prior to our drawing any figures or doing any calculations. Third, the theorem of Pythagoras - or any other geometrical theorem - is a generalisation. If true, it is true not just of this or that right-angled triangle, but of The Right-Angled Triangle. (The fact that, thanks to the problem of incommensurable numbers, the theorem of Pythagoras is not, in fact, universally true is awkward, but this need not detain us.) Finally, it remains to be pointed out that we cannot in any case draw 'proper' triangles or squares at all. A triangle and a square are certain configurations of straight lines, and a straight line is the most direct route between two points. But we cannot draw the most direct route between two points. It is in any case technically impossible to draw, or otherwise to produce, a completely straight line - as Whewell puts it, 'And so no force, however great, will stretch a cord, however fine, into a horizontal line which shall be absolutely straight.'²⁹ Moreover, no line can be drawn which does not have the dimension of width or thickness in addition to that of length. Thus, a line which has width as well as length may be said to be only an imperfect copy or representation of

that which really answers to our definition of a straight line. And the upshot of all this is that Plato would wish to conclude that triangles and squares as we draw them are only approximately like the 'real' geometrical figures laid up in the intelligible world. What we assert about geometrical drawings as such is only hypothetically true, it is categorically true only of the Ideas which the drawings represent. But the fact remains that geometers do arrive at the truth about 'real' figures, even though they do so only with the aid of approximations or 'visual aids'. To the extent that they do operate with visible figures, and especially to the extent that they tend to assume their findings to be categorically true of such figures, they are still tied to the world of sight. But they are nevertheless within reach, as it were, of subsection B2 of the divided line, where they 'come to a kind of knowledge. (which) is the real or pure logos. It rises to grasp the highest principle, from there, by holding on to what is just next to it and within its reach, it descends again to the end without the help of any sense-perception, and thus, moving from Ideas to Ideas, it finally rests at Ideas.'³⁰ In other words, mathematics is the platform from which the philosopher is enabled to launch out into the purest apprehension of reality where, unencumbered by the ambiguous empirical, he may eventually grasp at the Idea of the Good itself.

It is this theory of intellectual development which

underlies Plato's account of how, through education, men might be turned into philosophers, and so made ideally fit to rule. In the Ideal State, the potential rulers will be selected from the auxiliary class, all the members of which - male and female alike - will share a common education until they reach the age of twenty. Their formal instruction will include grammar, music, and gymnastic and athletic training, and their curriculum will be carefully vetted to keep out anything undesirable. There will be no painful stories about the horrors of the next world which might weaken the military ardour of those who hear them. There will be no light music, but only stirring and martial tunes. Most generally (and without digressing into Plato's theory of art), nothing is to be included in the syllabus which might impede the individual's progress upwards from particular objects towards the realm of Ideas. At the age of eighteen, the students will serve in the army for two years. They will then be tested by alternate temptation and fear to see whether the qualities so far developed in them are easily overthrown; and those who pass the test will proceed to further training as Guardians. During this training, as we might expect, much time will be spent on mathematics - which 'leads to the apprehension of the truth'.³¹ Arithmetic, plane and solid geometry, astronomy and harmony will occupy the students between the ages of twenty and thirty, and they will then proceed to a five-year course of dialectic, described as



the discovery of reality by the unaided light of reason, without the assistance of the senses, persisting until (the student) grasps the nature of the Good itself, and so finds that he has reached the limits of the intelligible world.³²

Knowledge of the Good, however, is not the end of the story. The final connection between theory and practice still has to be made and reinforced by practice. Now thirty-five years old, those who are destined for Guardianship will be required to undertake a fifteen-year stint of military command and various other subordinate offices, and, during this time, they will again undergo tests to see whether they stand firm in the face of a range of temptations or weaken and turn aside. Eventually, when they are pronounced fit to undertake the ultimate functions of statesmanship, they will become fully-fledged Guardians. They will

Raise the soul's eye to the universal light which illuminates all things. They will see there the ultimate Good, the pattern upon which they are to order the State and the lives of individuals, and the remainder of their own lives also.³³

Even then, though all will take a turn at ruling, they will spend most of their time in study and contemplation. Government will be regarded, not as an honour or as an end in itself, but as a necessary duty. By their success in an educational obstacle-course of extraordinary duration, they will have shown themselves to be something very different from the Calliclean superman or the Thrasymachean self-interested lawmaker.

They will have come to know the true nature of reality itself, and, in doing so, they will have proved themselves to be the best men of their generation - talented in every way, loving the State, and regarding its interests as their own.

IV.

Having described by means of the divided line how genuine knowledge might come to be acquired, Plato now passes to the famous and somewhat problematical analogy of the cave. We are to imagine a cave or subterranean chamber in which men are bound fast as prisoners. They are fastened in such a way that they can neither move nor turn their heads. Behind them, objects are being carried to and fro along a parapet, behind which again a fire is burning. Pinioned as they are, the prisoners can see only their own shadows and those of the objects behind them, projected by the light of the fire onto the wall in front of them. It is to be assumed that the prisoners have always been prisoners and, since they have never seen anything else, the wall of shadows constitutes to their minds the whole of what is. Presently, however, one of the prisoners escapes. Turning, he notices that the shadows which he has hitherto taken for reality are only shadows. He makes his way to the entrance of the cave, and passes through it into the sunlit world beyond. At first, since his vision is unaccustomed to such brightness, he is only indistinctly aware of the things

of the outside world. But his vision presently adjusts itself to accommodate, first, the things themselves and, in due course, the sun by reason of which they are visible. His journey completed, he descends again into the cave and tries to enlighten his scornful and incredulous former companions.

The cave illustration is clearly in some respects a reference back to the imagery with which Plato's series of analogies began. Once again, the sun stands for the Idea of the Good. Also, the cave-analogy seems to continue the idea of a stage-by-stage progression as initiated by the analogy of the divided line. Both analogies set out four stages, and both at first sight seem intended to show how the intellect may pass by degrees out of the realm of opinion and into that of knowledge. Traditionally, therefore, it has been thought appropriate to take the cave-story as more or less symmetrical with the analogy of the divided line. The initial stage of the former, when reality appears to the prisoners to be constituted entirely by shadows, is answered by subsection A1 of the latter, and so on, pari passu. Thus, as Nettleship puts it, 'The prisoner set free from the cave and gradually accustomed to bear the strongest light passes through a series of stages which correspond generally to that which was symbolised by the divided line in the preceding section of the argument.'³⁴ On closer inspection, however, matters turn out to be rather more complex than they seem. First, although he is rather inclined

to labour a point, why should Plato use two major figurative devices in quick succession merely to illustrate exactly the same thing? Second, and more substantially, while there is a clear enough correspondence between the last two stages of each analogy, there is an equally clear lack of correspondence between the first two. Subsection A1 of the line is proposed as the province of mere shadows or reflections or representations. Amongst other things, it is the province of art or mimesis which is, as Plato later puts it, 'three removes away from the truth.'³⁵ That part of reality ordinarily occupied by man - the 'world of sight' - is symbolised by subsection A2. Yet when we come to the cave, we find that the prisoners there are said to be denizens of a world which is itself 'three removes away from the truth.' Their world is a world in which shadows are believed to form the sum total of reality, and only the occasional escapee turns his head and so graduates to the stage which, on the divided line, is a symbol for our ordinary sensory experience. Not until the prisoner passes out of the cave altogether do we retrieve the image of the sun, and not until this stage is reached does he become even dimly aware of anything but mimetic objects. The objects which he sees in the first instance are artificial ones, carried to and fro before an artificial source of light by men who are not themselves prisoners, but whose identity is not revealed.

It would seem reasonable to suppose, therefore, that, in the words of Professor A.S. Ferguson, 'the allegory (of the cave) is not framed to exhibit how opinion mounts by a graduated ladder to knowledge. It is not even primarily concerned with the relation of the sensible to the intelligible.'³⁶ Instead, it may plausibly be considered as having a primarily political message. On this account, it is intended, not to show how an individual might pass through the stages of intellectual development, but to illustrate the pointed contrast which is one of the Republic's central themes the contrast which ordinarily holds between the philosophical and the political ways of life. After all, in the analogy of the line, the emphasis is placed squarely upon the individual as seeker after truth. In the cave, on the other hand, there is a shift of emphasis the individual is now considered as one among his fellow men - as a member of society. And this is reinforced by Plato's speculations as to what might happen to the philosopher who, having once made good his escape, returned to the cave to convert the others

Do you think it at all remarkable that the man who returns from the contemplation of things divine and once more becomes involved with the miserable concerns of men should be thought unimpressive and foolish if, while still unaccustomed to darkness and peering in the poor light, he should be called upon to argue in court or elsewhere about the shadows of justice or the images whereby such shadows are cast with men whose minds have never grasped justice itself?³⁷

In view of all this, it seems clear that the shadows and objects in the cave are not properly understood as corresponding to those which are said to occupy subsections A1 and A2 of the divided line, but as something quite different. Specifically, the men who are carrying the objects along the parapet might reasonably be seen as representing the manipulators of public opinion - perhaps as 'the younger generation of Sophists, of the type already portrayed in the *Gorgias*.'³⁸ Similarly, the shadows on the cave-wall might be taken to signify the 'shadows' of justice and goodness which are created by their practices in the public assemblies and courts of law. As Professor Ferguson puts it, the objects which they carry 'are not a stage in the education, their sole end is to cast shadows, to make illusion....As for the fire-light which makes the show possible, we are, I think, entitled to call it the light of human opinion. The fire too is part of the human machinery to produce shadows.'³⁹

Continuing this line of interpretation, it is reasonable also to suppose that the second stage of the cave-analogy - when the escaping prisoner turns and realises that the shadows are only shadows - represents the state of mind of the man who looks directly at the facts of the case without allowing himself to be led up the garden path by the fast-talking Sophist. But we notice that such an individual is still very far from knowledge properly so-called. He has managed to pass sig-

nificantly beyond the stage of unquestioning acceptance of the semblances devised by the professional rhetorician, but he is still operating within the world of sight and opinion. What is more, the individual who makes even this much progress is something of a rare bird. As for the majority, they do not judge according to the facts at all - or, at least, they judge according to the facts only insofar as they have access to them through the distorting medium of persuasion. In the main, men make judgments only on the strength of what they are told, and only now and again is a man able to disregard the transmutation of the facts by those who make it their business to present them.

It is all this, then, which provides the theoretical substructure, as it were, of Plato's claim that, ideally, philosophers should rule. Practical affairs cannot be conducted satisfactorily by those whose vision has not truly and completely transcended the vale of opinion. Opinion is notoriously lacking in certainty, but, in public affairs, this is so not only because it is opinion rather than knowledge, but also because it is so readily distorted by the practitioners of persuasion, and manipulated by them towards ends which themselves require evaluation in terms of something more than opinion. Government, therefore, should be the province of those who do indeed have something more than opinion. It should rest with the man who has passed along the divided

line and at last grasped at the timeless Idea of the Good which lies behind and informs the natural order, and by means of which all practical judgments are themselves rendered good.

V.

Aristotle as an Exponent of Natural Law.

Aristotle differs from Plato in a number of significant respects, and it is true that, superficially, much of what he has to say looks scarcely compatible with what we have suggested are the broad claims of natural law. His most obvious point of divergence from his teacher lies in certain misgivings as to the relation between theory and practice - misgivings which are, in fact, not unlike those more recently voiced by Professor Michael Oakeshott.

Specifically, Aristotle's view is that a rigorous training as a theoretician or philosopher does not, after all, provide the best preparation for practical life. He fully agrees with Plato's suggestion that the philosopher is the supremely happy man. There is, indeed, an obvious Socratic flavour to his remark that there is something divine about a philosopher's life. But he nonetheless concludes that the cultivation of theoretical or scientific wisdom (sophia) does not of itself help us to find solutions to moral or practical problems as such. Contemplation is, after all, something quite different from action, and, as he puts it,

Socrates...set out to enquire into the nature of courage and justice and what-not. (but) our aim is not to know what justice and courage are so much as to be courageous and just - in the same way as we wish actually to be healthy and fit rather than just to find out what it is to be healthy and fit.⁴⁰

The activity of solving the problems which confront us in our daily living, Aristotle suggests in a familiar passage in the Nicomachean Ethics, is a matter of choosing a path which lies mid-way between extremes of deficiency and excess, and of choosing in such a way as to suit action to circumstances.⁴¹ The point, in short, is to act on the maxim which we have already encountered in connection with Pythagoras and Heraclitus 'Moderation is best'. But this activity, he considers, is something quite distinct from that of the philosopher - that is, from the activity of acquiring abstract knowledge of what is necessary and universal. It is different precisely because the circumstances in which we are actually called upon to act are themselves concrete, particular and contingent circumstances. To borrow one of the examples used by Plato at the beginning of the Republic⁴² Aristotle would wish to point out that, if a man who has left his weapons in your safe-keeping later comes to you in a frenzy of homicidal mania shouting for a sword, the question which will immediately spring to your mind is not, 'What is the Good?' or 'What is Justice?' but 'What shall I do?' In other words, practical decision-

making is not, or is not primarily, an intellectual enterprise. As Aristotle understands it, it calls upon the calculative faculty of the mind (logistikón) rather than the scientific or theoretical faculty (epistemikón), and the 'virtue' appropriate to it is moral rather than intellectual. He therefore concludes that the man best equipped for practical life in general, and for the duties of statesmanship in particular, is not the philosopher, but the man of phronesis or practical wisdom. And phronesis, he remarks - here arguing against the educational scheme devised by Plato for the Ideal State - is best acquired, not through educational development embracing ever-higher levels of abstraction from the particular, but through discipline and practice in relation to the particular. In a nutshell, ethics is not philosophy or 'science', but judgment. We cannot expect the solution of a problem in ethics to be given by the method appropriate to, or to have the formal precision of, an abstract enquiry divorced from mundane concerns.

Our discussion will be adequate if we make it as clear as the subject-matter allows. The same degree of accuracy should not be required of all enquiries....Fine and just actions, which are the subject of politics, admit numerous differences and variations.. It is the mark of the educated man to seek only so much precision in each kind of enquiry as the nature of the subject permits. It is as inappropriate to demand demonstration in ethics as it would be to allow a mathematician to rely on merely probable arguments.⁴³

These are remarks which might pardonably be thought odd coming from an alleged exponent of natural law - of a doctrine which characteristically asserts that there are indeed discoverable, necessary and universal principles of what is right. In fact, they are remarks of a kind which have been consistently advanced by those who are rightly regarded - and who in many cases regard themselves - as more or less opposed to the natural-law tradition Protagoras, Gorgias, Hume, Burke, Popper, Oakeshott, and so forth.

A similar comment might be applied to another of the familiar points of difference between Plato and Aristotle. For, while Plato sets out in the Republic to delineate the best conceivable State in the light of a single and imperishable ideal, Aristotle - as we might expect - is far more interested in making prescriptions with reference to the best practicable State. And he does so in relation to various configurations of historical, cultural, economic and geographical variables. In other words, he is much more fully and more tolerantly aware than Plato of the actual diversity of human circumstances and arrangements. His view, generally speaking, is that a constitution of any form may properly be called good, provided only that it is congruent with the way of life of those whose constitution it is, and that it secures the good of its citizens rather than merely that of their rulers. Thus, the fact that constitutions differ widely from place to place and from time

to time is not necessarily an indication that they are in more or less acute states of deterioration from a transcendent ideal, as Plato had supposed. It may mean no more than that they are appropriate in their own way to a particular state of affairs

At the last analysis, however, Aristotle's awareness of diversity, change and the uncertainty of ethical decisions does not lead him, as it had apparently led the Sophists, into an unqualified legal or moral relativism or positivism. Indeed, in making the point that ethics is not an exact science like mathematics, he observes that it may be this very inexactitude which has led to the common supposition that 'fine and just actions...are matters of convention rather than of nature.'⁴⁴ And the clear implication here is that such a view is mistaken.

It certainly has to be admitted that Aristotle's discussions of morality and law - and especially of law - are in many respects far from clear. The opacity of his treatment of law as it emerges from the Nicomachean Ethics, the Politics and the Rhetoric is charitably ascribed by Wolfgang von Leyden to his grasp of the subject's complexity and his desire to specify that complexity as far as possible by considering law under a number of different aspects.⁴⁵ Professor von Leyden suggests that Aristotle is adopting a 'principle of specification' opposite to 'Ockham's Razor', but as an alternative, or at least a supplementary, explanation, we might refer to the fact that the Nico-

machean Ethics and the Politics - especially the latter - are manifestly scissors-and-paste documents. They are compilations - compilations of very full lecture-notes, perhaps - rather than continuous compositions. And it may simply be that Aristotle delivered different and not always entirely compatible views on different occasions, or changed his mind with the passage of time. Be all this as it may, however nevertheless, the idea does seem constantly to be at the back of his mind that the distinction between right and wrong is ultimately not an artificial one.

In the broadest and briefest terms, his position might be stated as follows. As practitioners - as people who wish to derive applicable information from a treatise on politics or morals - our business is to act appropriately in relation to whatever has cropped up. As the other side of the same coin, our business qua practical men is not to specify what is right or just in abstract terms divorced from the particular case. But man is characteristically a rational animal. And the rationality of the phronimos - of the man of practical wisdom - though not identical with that of the philosopher, is nonetheless a rationality, and it is sufficient to show him in any given predicament that there are general 'natural' norms which ought not to be disregarded, even though they must be adapted to the special forms and conditions of life before they can be directly employed in determining and judging human conduct. Aristotle does not develop

this theme in any very systematic or consistent way, but it is undeniably present. And we are surely justified both in tracing its rationale back to the insistence that man and the State have a natural purpose to fulfil, and in supposing the acid test of what is 'naturally' right to lie in the practical consideration of whether or not this purpose is actually being met.

A number of pertinent illustrations are to be found in Aristotle's writings, and it will be illuminating to bring some of them together. Most generally, he remarks in the Politics that the successful conduct of human relationships requires that a certain natural hierarchy of authority or precedence be observed. Men are naturally superior to women, parents to children, and free men to slaves.⁴⁶ In the Nicomachean Ethics, he distinguishes 'absolute' from 'political' justice, and, though no definition is offered of the former, his meaning is presumably that such justice is 'absolute' in the sense of not being relative or peculiar to any particular community.⁴⁷ In other words, it is that which would be acknowledged as justice anywhere and in any circumstances. Furthermore, in his discussion of 'political' justice itself, Aristotle draws yet another distinction between 'legal' justice, which is 'established by enactment' and which varies from place to place just as weights and measures vary from market to market, and 'natural' justice, which

has the same force everywhere, and which is not brought into being by reason of our thinking this or that.⁴⁸

The point of the distinction between 'absolute' and 'natural' justice is not clear. It would seem to be that the former is natural justice between men sub specie humanitatis while the latter is natural justice between men sub specie civitatis,⁴⁹ but it is perhaps not immediately obvious why Aristotle should have thought it worthwhile to make this distinction. In any event, however, it is clear that he does not mean us to understand that either 'absolute' or 'natural' justice is no more than mere custom or 'the done thing'. This much is brought out by another and quite separate distinction, later drawn in the Nicomachean Ethics, between legal justice and customary or unwritten justice.⁵⁰ Also, although Aristotle does not in these passages give a specific account of the content of 'absolute' or 'natural' justice, his remarks may instructively be considered in the light of at least three of his other assertions. First, he argues in the Politics that a war conducted against natural slaves - against those who 'though intended by nature to be subject to government refuse to submit' - is 'naturally just'.⁵¹ (This, so far as I know, is the earliest of the many attempts which have been made to specify the conditions of just warfare.) Second, in the Nicomachean Ethics, he asserts that there are certain acts (he names adultery, theft and murder) which

are inherently bad, regardless of their consequences they are such that they can never be done rightly.⁵² Third, in the Rhetoric, he supplies a list of things which are equitable or fair (and see pp.120ffinfra) It is equitable to make allowances for the failings of human nature, to bear in mind the meaning rather than the strict letter of the law, to consider a man's intention rather than his action per se, to consider an event in the light of the whole of its circumstances and not merely a part, to judge a man on the basis of what he is now rather than what he has been in the past, to think of benefits received rather than of benefits conferred or injuries suffered, to be patient in the face of wrongdoing, to settle disputes by discussion rather than by force, to be willing to go to arbitration rather than to sue at law.⁵³ Moreover - this time in the Politics - Aristotle applies the general concept of natural norms to the specific question of private property. The taking of interest on loans is condemned as an unnatural form of acquisition, and the reason given is that money is not naturally productive of anything. By nature, it is appropriately to be used only as a medium of exchange. (A broadly similar form of this argument, complete with attribution to 'the Philosopher', was used by St Thomas Aquinas, natural law theorist par excellence, in his discussion of usury.) Furthermore, referring specifically to an injunction of Plato in the Republic that the property of the Guardians should be owned in common, Aristotle suggests that private

ownership and common use are more in keeping with nature, since nature has so designed individual men that they take pleasure or have pride in ownership. (This argument also is later to recur in Aquinas.)⁵⁴

Specifically on the subject of law, Aristotle insists that positive law does not originate in agreement or enactment. Rather, he holds that it has its source in general rational principle or logos. Both in the Nicomachean Ethics and the Politics he urges that law properly so-called ought to be rational in this sense of proceeding from general principles of disinterested prudence and understanding in the mind of the legislator. Otherwise, he says, the rule of law would be no better than the rule of a wild beast.⁵⁵ And it is clear that, to this extent, Aristotle subscribes to the approach to ethics already laid down by Plato, and to what was later to be called the 'rationalist' or 'intellectualist' theory and definition of law - which assumes that there are, as Hume put it, 'eternal fitnesses and unfitnesses of things which are the same to every rational being that considers them.'⁵⁶ In fact, Aristotle's view in this direction is very like that already expounded by Plato in the Laws. Legislation indeed requires technique or art in that it involves the application of intelligence to human actions, but it also demands adherence to the principles of nature.⁵⁷ It would seem that legislation is to be understood as the activity, not of making laws ex nihilo, but of discovering them - discovering them

in the sense of making particular prescriptions in the light of pre-existent general principles. Laws are positive or conventional in the sense of being discovered and declared, but they are not conventional in the sense of being the original creation of the legislator.

In this connection, it is plainly significant that Aristotle should have made his threefold distinction between laws which are merely enacted, laws which are well enacted in the sense of being the best laws for those to whom they apply, and laws which are absolutely the best in the sense of being good from the point of view of anyone anywhere. But he goes further than this, and maintains that positive law is only necessary at all to the extent that men are imperfect beings (a point which was to be readily taken by Christian theorists presupposing the doctrine of Original Sin.). It is because men are subject to caprice and impulse that they are so much in need of externally-imposed rules backed up by coercive sanctions. But moral goodness - the internally-imposed and rational goodness of the phronimos - stands above positive law. Indeed, it is that which good laws embody or express. Thus, if a man 'utterly superior in goodness' were to appear, no positive law need - or could - bind him

Such a man would be, as it were, a god amongst men. ...There is no law that can govern such exceptional men, for they are a law in their own right.⁵⁸

A similar point had already been made by Plato, both in the Republic and in the Laws, and it is interesting to compare his words with the ones just quoted. In the improbable event of a perfect and incorruptible ruler becoming available, he says, no writ need or should run against him, for

no law or command is superior to knowledge itself. It is therefore not right for reason to be subordinate to or bound by anything else. If it is really to answer to its name and be free in its very self, it must be master of all things.⁵⁹

Perhaps the readiest illustration of Aristotle's view of the ultimately non-conventional character of what is right is to be found in his remarks in connection with those circumstances when equity or arbitration (epieikeia) is required - when, that is, we wish to discover the spirit, the underlying rationale, of the law, rather than its mere letter. The difficulty here arises from the fact that, as a matter of general convenience, positive laws are drafted very broadly. It is expedient that they should take account of as many cases as possible in one breath, so to speak. But the price of this convenience is that, taken at face-value, the formulations of law may through their very generality defeat their own purposes when they are applied to the specific case. No law takes account of specific mitigating or extenuating circumstances which might possibly bear upon its own operation. No law is of itself able to identify the cases to which it should not apply. Most generally, it would

be impossible for the legislator to make provision for every possible future contingency since, quite apart from anything else, he cannot be expected to foresee every possible future contingency. As an elementary illustration of this kind of difficulty, Professor von Leyden points out that a law forbidding people to stick knives into other people, taken literally, makes the practice of surgery illegal.⁶⁰ It is quite plain that this is not what the legislator intended. But by reason of what is it quite plain? Another example - this time Aristotle's own - concerns those cases where the difference between an assault and an aggravated assault is in doubt. has a man who strikes another while wearing a ring broken the law forbidding assault with a weapon? (In much the same vein, I recall a case - I cannot recall the name of the accused - in which the accused was alleged to have struck the injured party after the injured party had said, 'I'm going to give you a bunch of bananas.' The plea was self-defence, and it was seriously discussed whether, in the circumstances, that mythical legal personage, the 'reasonable man', would have expected a present of fruit or a blow with a fist.) In short, there are very many cases in which we require an 'unless', a caeteris paribus principle, in order to soften what Gorgias, in the Funeral Oration, calls 'the arrogance of positive right.' On these occasions, equity is necessary 'to stop up a gap left in the law itself', as Aristotle puts it.⁶¹ And, at least in the

Nicomachean Ethics, he makes it plain that equity is not simply another kind of positive law (as it is in modern English law, for example), or even a form or department of legal justice. As he says,

That which is equitable, though just, is not legally just. On the contrary, it is by nature a corrective of that which is legally just.⁶²

It is interesting to bear in mind that, in his Outlines of Historical Jurisprudence, Sir Paul Vinogradoff calls attention to the resemblance between the Greek conception of equity in general and the Roman idea of Ius naturae. Equity, it seems, is conceived as an unchanging standard of humanity or fairness which lies behind or above the law, giving to it what we might call an inner validating moral purpose.⁶³

Aristotle's view is perhaps best summarised in his own words from the Rhetoric. However much variation there may be at the level of particulars as between time and place, he concludes that

there really exists...a natural form of the just and unjust which is common to all men, even when there is no community or agreement to bind them together. It is this form that the Antigone of Sophocles' play evidently has in mind when she says that it was a just act to bury her brother Polynices in spite of Creon's decree to the contrary. Just, she means, in the sense of being naturally just.⁶⁴

The first sentence of this passage can hardly fail to remind us of Locke's remark about the Swiss and Indian

trading in the backwoods of America.⁶⁵ So far as Aristotle is concerned, David Ritchie, in his highly tendentious book Natural Rights, somewhat brusquely waves aside his references to natural law in the Rhetoric. He contends that they amount to no more than a consideration of it as a handy rhetorical flourish for use in court. In Aristotle's view, says Ritchie, the appeal to natural law is only 'a commonplace of orators.'⁶⁶ And it is indeed true that, at one point in the Rhetoric, Aristotle does discuss natural law as a possible resource for lawyers with a weak case to argue or a strong case to answer. At the same time, however, it is patently clear that he does not regard it as no more than that. Indeed, I venture to suggest that it would not occur to any commentator to suppose that he did, unless that commentator were, like Ritchie, engaged in an extended attack upon the whole doctrine of natural law and natural rights. The passage quoted above certainly does not bear the construction which Ritchie would have us put upon it, and it is in any case only fair to ask that it be taken in conjunction with the other remarks which we have already considered. These remarks, viewed as a whole, show that, however ambiguous, confusing and imperfectly-formed his treatment may be, there manifestly is a basic substratum in Aristotle's thought which entitles us to locate him squarely within the tradition of natural law.

V.

Summary The Good Life and the Polis

We may briefly sum up the remarks of Plato and Aristotle, insofar as they concern us, in the following four points

(a) Men have a 'highest good' which is realised through the successful achievement of what is taken to be their 'natural' purpose. This good is not what it is because legislation or agreement stipulates or defines it. Neither could it cease to be what it is at the behest of any such convention or agreement.

(b) Neither life itself nor the good life can be lived otherwise than in community with other men, since men have not only physical, but also moral and intellectual needs which they cannot satisfy alone. The State is a work of art in the sense that its creation and maintenance require the systematic application of ingenuity. But such ingenuity itself derives its direction, we might say its 'rhyme and reason', from man's natural needs.

(c) The good life for man - or, more correctly, the good life for the citizen - is the good life for the citizen as such, and not for any one citizen or any limited group of citizens to the exclusion of others. The State is therefore properly to be conceived as a moral community, in which all the members work together for the good of the whole.

(d) Since the good for man is a natural good, the directions which he must follow if he is to achieve it, though they may be expressed or made particular through convention, do not originate in convention. They are not made, but discovered through the exercise of that faculty of reason which is the particular possession of the human species.

It is to be noted in all this, however, that the argument in question is developed and applied only within a strictly limited context. It presupposes one, and only one, form of political association. This is true even of Aristotle the 'political scientist', with his highly-developed comparative sense. Neither he nor Plato can conceive of true political engagement other than within the city-state or polis. The polis, on their view, provides the optimum setting within which the individual can practise moral and political virtue, and their whole conception of the good life - of the life of eudaimonia - is inextricably bound up with this supposition. Although Aristotle at one point mentions the possibility that the Greeks might rule the world if only they were politically united, we may take it to be as certain as any such thing can be that he would have deplored any Greek world-domination bought at the price of destroying or weakening the polis.⁶⁷ Both he and Plato abhor and fear change, which they equate with decay. Their political ideal is an unchanging, relatively small, self-sufficient city-state.

This preoccupation - or, rather, this preoccupation on the part of Aristotle - is really rather remarkable. It is well known that Aristotle was intimately connected with the architects of the Macedonian Empire. In about 343BC, he was invited to Pella by Philip of Macedon to act as tutor to his son, the future Alexander the Great. He served the family in this capacity for about eight years, and he outlived his illustrious pupil by one year. Thus, during his lifetime, he witnessed the destruction of the great Persian Empire and the concomitant growth of a vast and unified territorial conglomerate extending throughout Asia Minor, Syria, Egypt, Babylonia, Persia, Samarcand and into India. Yet Aristotle is consistently unwilling - it is a temptation to say constitutionally unable - fully to consider the implications of imperial hegemony. He is apparently quite oblivious of the fact that the independence of the polis was declining, and of the correspondingly-declining adequacy of a moral and political philosophy presupposing it.

As F.H. Sandbach points out, it would be a mistake to exaggerate the rapidity with which the polis declined. Similarly, it would be a mistake to make too much of the probable effect of the decline upon the daily lives of ordinary people.⁶⁸ In intellectual circles, however - in the moral schools which emerged roughly contemporaneously with the life of Aristotle - there is an unmistakable broadening of the terms of reference of moral and political discussion, which is at least

plausibly read as a response to the broadening horizons of political experience. Of these schools - Cynicism, Epicureanism, Scepticism and Stoicism - it is Stoicism which is most directly of interest to us. (In passing, however, it is interesting to notice that the ~~Sceptic~~ Carneades, a determined opponent of the Stoic Panaetius, seems to have held views rather like those of the Sophists.) It is to Stoicism, then, that we now turn.

CHAPTER THREE. BEYOND THE POLIS.

I.

The Stoics Nature and Submission.

On the whole, authors of general works on the history of moral and political writing display a very marked readiness to regard the Stoics as being in some sense the 'originators' of the doctrine of natural law. This assertion is usually made with only the barest of qualifications - usually including a reference to Sophocles' Antigone and, of course, a mention of the logos of Heraclitus. And it really is not easy to see why this view should have become so generally established as an orthodoxy, for what we have said in the previous chapters is enough to show that a recognisable version of natural law was well under way long before the Stoics. Moreover, it is almost equally mystifying to find it so widely believed that the Stoic version of natural law is the first 'systematic' account to appear in the doctrine's history. On the one hand, it has to be granted that the account which their predecessors give is not 'systematic'. They do not furnish us with a list of the provisions which natural law is supposed to contain, they certainly do not set out a list of alleged 'natural rights' or 'rights of man'. On the other hand,

however, it is very difficult to specify exactly what it is about Stoic thought which is supposed to be 'systematic' in the required sense ¹

The study of the Stoics is without doubt a very complex undertaking. And matters are made as complex as they are largely by the fact that the very term 'the Stoics' embraces so much. It does not denote a single 'school of thought' whose tenets can be identified and set out precisely or completely. When we come to discuss the Stoics, we in fact run across a considerable, not to say bewildering, variety of themes which are not always comfortably combined. We also come across fairly major shifts of attitude and emphasis with regard to such crucial matters as cosmology, determinism, choice, and the possibilities and value of practical activity. And this Protean or syncretistic character is to be accounted for largely by reference to the continuous existence of Stoicism in some form or other over a considerable period of time - some five hundred years. Christianity, which is in many ways a comparable case, is capable of accommodating within its even longer history figures temperamentally and intellectually as far apart as Cyprian of Carthage and Rudolf Bultmann. But we could not express Christianity - at least with any plausibility - in terms of a single 'system'; and so, too, with Stoicism. Stoicism, like Christianity, might fairly be set down as a way of thinking rather than as a readily-circumnavigated school of thought.

The oldest department of the Stoic 'school', the so-called 'old Stoa', originated in about 300BC in the porch - i.e. the stoa - of Zeno of Citium. It was re-founded, or, more correctly, extensively re-formed, in about 230BC by Chrysippus of Soli - largely in response to the criticisms of Chrysippus' older contemporary, Arcesilaus of Pitane. In fact, there was a tendency in antiquity for Zeno to be somewhat overshadowed by Chrysippus - Diogenes Laertius reports the saying that, without Chrysippus, there would have been no Stoicism. A second phase, labelled by historians as the 'Middle Stoa', and distinguished by the introduction of a large measure of Platonism, emerged during the first and second centuries BC, under the tutelage of Panaetius of Rhodes and Posidonius of Apamea. Moreover, tradition has it that in about 140BC, Panaetius struck up a firm friendship with Scipio Africanus the Younger, and that it was largely due to Panaetius' contact with Scipio's cultivated circle of acquaintance in Rome that the Stoic philosophy first came to be introduced into Roman intellectual society. (In this connection, it is of passing interest that the first two books of Cicero's De Officiis are acknowledged by the author to have been inspired by Panaetius' treatise Peri Kathekontos (On Duty).) This so-called 'Late' or 'Roman' Stoa, whose members placed a special emphasis on the importance of practical activity and statesmanship, included such luminaries as Lucius Annaeus

Seneca, the released but crippled slave Epictetus of Hierapolis, and Marcus Aurelius Antoninus Pius, Emperor of Rome from AD 161 to AD 180. (To the best of my knowledge, Marcus Aurelius is the only philosopher - with the possible exception of Lenin - ever to have measured up to Plato's specification that philosophers should rule. His Meditations indicate, significantly enough, that he found rulership a burden sometimes barely supportable. In any case, and unfortunately for Plato's thesis, his Principate was a rather undistinguished one. Also, it is one of the minor ironies of history that Marcus Aurelius, of all people, should have been the father of the Emperor Commodus, 'to whom lust-ridden and brutish characteristics...quickly became second nature.')²

In view of its long and varied history, then, generalisations purporting to be about 'the Stoic philosophy' are bound to be exceptionally vulnerable to objections in respect to particular points. At the **same** time, however, and bearing this caveat in mind, it may be said with some confidence that Stoicism embodies an essentially close connection between ethics and cosmology of much the same kind as we have already observed in our consideration of Heraclitus and the Pythagoreans. Indeed, the cosmology of the Stoics - especially of the 'Old Stoa' - is itself characteristically backward-looking or, so to speak, conservative and unadventurous. its indebtedness to the mysterious sayings of Heraclitus is quite beyond dispute.³ The

retrograde nature of the Stoic cosmology is, in fact, clearly seen if we consider it alongside the relatively bold scientific speculations of Aristotle, and it is at least not unreasonable to interpret it as symptomatic of a nostalgia induced by the political changes associated with the rise of the Macedonian Empire.

The central postulate of this cosmology is one with which we are already familiar from the Pythagoreans. Indeed, it is one which occurs again and again throughout pre-Socratic Greek thought. namely, that the universe is one vast and integrated living organism. It is said to be somehow permeated throughout by a rational principle - a logos, again. It is composed of material fire which does not vary in quantity, and which is internally divided into an active and a passive principle. The active principle is in turn identified with God, who is himself identified with the logos, and it is God who causes particular objects to come into being by acting creatively upon the passive part of matter. The remark is attributed to Zeno by Tertullian that God may be conceived as permeating matter in the way that honey flows through a honeycomb. Matter as such is eternal and without form, but it is capable of being moulded like wax into innumerable individual forms, and it contains within itself the seeds - the logoi spermatikoi - of every particular thing that will eventually come to be. The process of cosmic change is seen, in the familiar Greek

way, as one of coming-to-be and passing-away. In the course of this process, part of the elemental fire becomes transformed or rarefied into air. The air in turn becomes water, part of the water becomes earth, and part of it becomes air again which, being once more rarefied into fire, returns to God whence it came.⁴ All things, therefore, exist in a ceaseless state of flux. Indeed, it is interesting to note the way in which Marcus Aurelius recalls one of the familiar images of Heraclitus, comparing the sequence of phenomena to the flowing of a river. Coherence and purpose in the creative activity of the universe is said to be sustained by the presence within it of tonos - tension (this, we recall, is another idea which seems to have originated with the fertile Heraclitus), and the discrete elements which emerge and become distinct from one another from within the primordial fire are separated from each other by their relative densities.⁵

All this (at least in relation to Greek thought as a whole) is very mundane, and there is no need for us to pursue it in any great detail. What is important, however, is that this cosmological scheme is presented from a standpoint of thoroughgoing determinism. The suggestion is that nothing in the universe could be otherwise than it is. Moreover, the universe is identified as a purposive system. Everything is said to have been ordered according to the unchanging if inscrutable purposes of God's providence (pronoia).

Indeed, J.B. Gould remarks that the teleology embraced by Chrysippus is far more thoroughgoing than that of either Plato or Aristotle. It is, he suggests, the most radical form of teleology to be found anywhere in classical philosophy.⁶ The Stoics also maintain - in a manner rather reminiscent of Anaximander - that the present universe is only one of an infinite number of universes, which replace one another in an endless succession of cycles or periodoi. At the end of each periodos, everything which has come into being inevitably collapses once more into the eternal fire in a universal world-conflagration. This Gotterdammerung is, however, only the signal for the whole process of coming-to-be and passing-away to begin all over again. In one sense, then, the periodic conflagration is portrayed, not as a destructive or terminal event, but as an occasion of change and renewal. On the other hand, however, it is asserted that each of the successive periodoi exactly resembles every one of the others in all respects. Thus, the Stoic view of the world makes no allowance for the possibility of any ultimate progress or historical development. What is happening now is only an exact replica of what has happened on innumerable occasions before, and the same pattern of events will go on being exactly reproduced into the endless future. The whole process operates according to a vast and all-embracing causal nexus called Fate (Heimarmene), from which nothing that has occurred or is occurring or will

occur is exempt

Fate is the chain of causality of existing things, or the logos according to which they are arranged.⁷

(It is) the power which moves matter, operating always in the same way and according to identical rules. It is one and the same with providence and nature.⁸

In some of the Stoic fragments, in fact, there occurs a version or an echo of the dictum most commonly associated with Leibniz - that we live in the best of all possible worlds.⁹ Strictly speaking, of course, it has to be said that this is rather an unfortunate way of putting it. Anyone who really wanted to hold such a view would at once surely find himself confronted by an unanswerable question, namely Best compared to what? In other words, we cannot significantly claim that we live in the best of all possible worlds since we cannot point to anything that the world in which we live is better than. But this is really a quibble. What the dictum in question is intended to convey, in effect, is simply that the world just is as it is, inevitably and unchangeably. In a very vivid way, then, the Stoics recognise the operation of 'laws of nature' in the familiar, modern, 'physical' sense of the phrase.

Man himself, of course, is also determined insofar as he is a mere physical body and, as such, a component of the material universe. In the words of Chrysippus, paraphrased by Diogenes Laertius, 'our own natures are

part of the nature of the universe.¹⁰ But man, alone of all created things, is said to have within himself the capacity for rational activity and choice. He is said (and this is yet another motif already familiar from Pythagoreanism) to contain within himself a fragment of the pervasive and divine rationality or logos of the universe. How this logos can at one and the same time be all-pervasive and fragmented is a mystery which, so far as I can discover, is nowhere satisfactorily explained, but there it is. As Zeno puts it, 'Some things are within our power, while other things are not'. And, broadly speaking, the things which lie within a man's power are two in number. First, he is equipped to study and understand the universe of which he is a part. It is living and rational, and he is living and rational - there is an affinity between them, and, in virtue of this, man is not merely a helpless particle caught in an incomprehensible vortex of chaos. Second, having understood the world, he is free to accept the fact that whatever happens happens because it must, and that it cannot be avoided or changed. Such acceptance, it would seem, is the ultimate goal of education for the Stoics. Odd as it may seem to the twentieth-century mind, intellectual mastery over nature does not, on their view, equip man for what we should now call engineering or technology.¹¹ It does not in any sense prepare the way for him to alter or control external circumstance. But, having achieved such mastery, he

can at least be conscious of the unalterable nature of things. He can still only do what he would have had to do in any case. But at least he can now do it willingly, without struggling in ultimately pitiful futility to live at odds with what his studies reveal to be natural necessity.

The view of life which the Stoics develop - a view which commentators generally find depressing, but which has a certain austere and inflexible dignity of its own - is not unlike that later to be developed by Spinoza. It seems that, to their minds, wisdom consists in two things. First, it consists in intellectual mastery of what we might call a scientific, but not a technological, character. Second, it consists in a calm ethical submission to the fated inevitability of things. The second does not, strictly speaking, flow from the first, and the relation between the two is a purely contingent one. But the first might at least be said to prepare the way for the second. Chrysippus, for example, recommends that every ethical discussion be preceded by an enquiry into the way in which the universe is arranged. And the Stoic 'sage' - the ideally wise man - would presumably be one who had achieved both these goals to perfection. The Old Stoa, in particular, tended to draw the distinction between wisdom and folly very sharply. Its members were reluctant to admit any intermediate grades of enlightenment a man is either a wise man or a fool. Moreover, they insisted that most men can only ever hope to reach a rough approx-

imation to the ideal of wisdom. Chrysippus, for instance, does not consider that either he or any of his pupils are wise men. Indeed, he remarks that there have probably only ever been one or two wise men in the whole of history.¹² Also, although the Roman Stoics drew the distinction between the wise man and the fool far more leniently, even Seneca is compelled to admit that the truly wise man is as rare as the Phoenix. But, in the sphere of ethics, such a man, rare bird though he be, would be one who had completely mastered his passions. He would have realised that, since the world cannot be other than it is, there is no point in allowing oneself to give way to emotions of attraction or revulsion in relation to any of the objects of experience, or to pay any attention to such things as pleasure, desire, fear or pain. And, through this realisation, he would have achieved what Zeno and Chrysippus both call a 'smoothly-flowing life'¹³ - a state of spiritual peace or emotionlessness (apatheia or euthymia) as distinct from the 'normal' human disposition of futile rebellion, of kicking against the goads. As Diogenes Laertius reports,

Zeno was the first man to define the end as 'life in conformity with nature'....He was followed in this respect by Cleanthes in his work On Pleasure, by Posidonius, and by Hecato in his work On Ends. Chrysippus, too, in Book One of his work On Ends, says that to live virtuously is to live in accordance with the actual course of nature....The end may therefore be defined as life...in accordance

not only with our own human nature, but also with the nature of the universe itself.¹⁴

Perhaps the purest, or at least the most aphoristic, expression of the Stoic ideal of virtue is to be found in the following sayings of Seneca and Epictetus respectively

I do not obey God. Rather, I agree with him. I go with him, not because I must, but with my soul.¹⁵

I have placed my impulses under obedience to God. If it is his will that I should catch a fever or that I should obtain something, then it is my will too. If he does not wish it, then neither do I.¹⁶

The locus classicus of Stoic fortitude in the presence of suffering is probably furnished by Tacitus' account of the death of Seneca at the order of the Emperor Nero in AD 65.¹⁷

II.

The Stoics Nature and Choice.

So far, then, it would seem that, if the Stoics embrace an ethical doctrine of natural law at all, it contains only one provision - to wit, 'do with gladness that which you must do in any case.' This, perhaps, can hardly fail to strike the reader as a rather barren moral philosophy - if, indeed, it is to be called a moral philosophy (as distinct from a

purely private consolation) at all. It is not immediately easy to see how anyone seriously claiming to be committed to the body of doctrine which we have just outlined could also consider himself adequately equipped with an ethical basis for choice and practical activity. The doctrines themselves seem to be consistent only with the standpoint of the disinterested spectator - with that of the man who, since he knows that he does what he does only because he could not do otherwise, makes no claim at all to be willing or choosing, or even really 'acting'. And such indeed was the standpoint of at least one of the Stoics - Aristo of Chios, a contemporary of Cleanthes of Assos and Chrysippus. To Aristo's mind, the only good is virtue itself, and the only evil the absence of virtue. Everything falling within these two poles is merely adiaphoron - indifferent, without either value or disvalue, and virtue itself is understood simply as 'apathy', which is contempt for or indifference towards external things.¹⁸ Yet the Stoics were for the most part men who interested themselves in questions concerning practical activity. Zeno and Chrysippus, for example, are both reported to have written treatises on the State. Chrysippus himself, as it happens, made a point of abstaining from political life, but his reasons for doing so were not those which one might expect. His response, when asked to explain himself, was to remark that a bad politician is hateful to the gods while a good politician is hateful to his fellow men.¹⁹ In

other words, his attitude is not that practical activity is futile, but simply that it is foolish to play a game that you can't win. And, in any case, this position is altogether untypical of Stoicism considered in general. Both Zeno and Panaetius regard active and effective participation in public life as a duty, and this positive attitude to practical conduct is, of course, particularly clearly seen amongst the members of the Roman Stoa - for whom, as Sabine puts it, 'Panaetius (had turned) Stoicism into a kind of philosophy of humanitarianism.'²⁰ As we have already pointed out, Stoicism underwent a number of modifications during its history, and its apparent inconsistencies appear far less glaring in a full-scale exposition than they do in such a brief survey as this. Nevertheless, even considered very generally, there is, in Stoicism, an unmistakeable tension between the themes of determinism, resignation and fortitude on the one hand, and, on the other, that of properly-directed moral activity. Out of this tension arises an obvious question. Where is the famous ethical doctrine of natural law which the Stoics are said to have recommended as the basis of practice, and what is its content?

III.

The answer to the first part of this question is that the normative content of natural law is to be found out through the exercise of reason - or, more

particularly, of right reason, reason once again being postulated as the unique possession of mankind. Diogenes Laertius tells us of Zeno, Cleanthes, Posidonius, Hecato and Chrysippus that they understood a life of virtue as being

one during which we refrain from everything that is forbidden by the law common to all things - that is to say, by right reason, which pervades everything, and which is identical with God, the lord and ruler of all. ²¹

This insistence upon 'right' reason - upon reason as a distinctively moral rather than purely calculative faculty - is perhaps most strongly seen in Cicero, who gave 'to the Stoic doctrine of Natural Law a statement in which it was universally known throughout Western Europe from his own day down to the nineteenth century.'^{*} Cicero's fullest statement is worthy of quotation at some length

There really is a law - right reason in accordance with nature - which applies universally, and which is constant and everlasting. It summons to duty by its commands, and by its prohibitions it deters from wrongdoing....It is never right to invalidate this law by legislation, nor is it right to restrict its operation; and to do away with it altogether is impossible. Neither the Senate nor the people can absolve us from its obligations, and we need not look beyond ourselves for an expositor or interpreter of it. Neither will there be one law for Rome and another for Athens, nor one for now and another for the future. Rather, there will be one eternal and unchangeable law, valid for all nations and at all times. ²²

* G H Sabine A History of Political Theory, p 147

So far as the second part of our question, that of content, is concerned, it may be answered very broadly in terms of two general injunctions. These are,

(i) Make choices only after full consideration of all the circumstances, and then in such a way as to achieve the most advantageous possible outcome;

(ii) Remember that all men are at the last analysis equal, and so behave towards all men with kindness and goodwill.

It has to be admitted that this twofold formulation is somewhat oversimplified, and that it conceals a great deal of ambiguity and subtlety. For our purposes, however, it will adequately serve the ends of exposition, and it will be useful to look at each of the two injunctions in turn.

(i) If we were to press the Stoics hard over the matter of making choices between alternatives in the external world, they would presumably have either to abandon their original position of determinism, or to concede that such choices are impossible - or that they are, at least, only apparently 'choices'. The Stoics raise, in an acute form, questions of determinism versus free-will, of 'hard' and 'soft' determinism, and so on, which we cannot digress far enough to consider independently. Suffice it to say, however, that, broadly speaking, they do not choose to abandon either of their positions, and the common practice of ancient and modern commentators alike has been to regard the

Stoic doctrine of choice as something of an 'excrescence' - as an afterthought, or a logically rather unfortunate concession to practice. To be fair, however, they are for the most part consistent to the extent of holding that such choices as can be made cannot be considered choices between 'absolute good' and 'absolute evil'. Since external reality is absolutely necessitated, nothing can be absolutely good or absolutely evil, since everything that is necessarily just is. It cannot be changed either for the better or for the worse, and the secret of the 'smoothly flowing' or good life - of eudaimonia - consists in fully taking this point. But although it makes no sense to talk in terms of absolute good or absolute evil, we are nevertheless capable of perceiving that, in any given set of circumstances, certain things will at least be more advantageous than others (proegmena, or, in the Latin literature, variously producta, promota, praecipua, praelata, praeposita and commoda). On the other side of the coin, we are equally able to perceive that, in any given set of circumstances, certain things will be disadvantageous - apoproegmena, or remota, relecta and incommoda. (When Cicero reports this distinction as made by Zeno and Posidonius, he does so in terms of advantageous things being secundum naturam and disadvantageous things being contra naturam. We seem by this time to have forgotten, however, that, if everything in nature were causally necessitated or determined, nothing could be contra naturam)²³

The Stoics' remarks on the subject of choice are rather reminiscent of the insistence which we found in the work of Protagoras and Gorgias upon the necessity of matching action to circumstance. In particular, the distinction between proegmena and apoproegmena reminds us to Protagoras' dictum that, although no one statement can be 'truer' than any other, some statements are 'better' than others for operational purposes. The Stoics' idea, essentially, is that the wise man acts appropriately or 'according to duty' (kathekon) when he correctly identifies the distinction between proegmena and apoproegmena in the circumstances in which he happens to be, and, having identified the most advantageous course, follows it. The correct attitude to things which are advantageous is to accept them as such, and to act in ways which may be expected to bring them about. Similarly, the wise man will, as far as possible, act in such a way as to avoid those things which are, in the circumstances, disadvantageous. Obvious examples of things which might be proegmena are life, health and wealth. Equally obvious examples of things which might be the reverse are illness, death and poverty. When we come to finer or less obvious distinctions, there is, as we might expect, little unanimity. Neither is there much unanimity over the question of exactly how much in the ways of advantages a virtuous man actually needs. But, in broad terms, the point is clear enough, and the ultimately or ideally wise man would, of course,

be in an especially favoured position with regard to such choices as he might have to make. Having entirely conquered his passions and cultivated a sublime indifference to the world, his decisions would be completely rational ones, serene and unswayed by adventitious personal or emotional forces and considerations.

In fairness to the consistency of Stoic ethics, incidentally, it ought to be pointed out that their remarks on practical activity do not ultimately detract from the basic theme of rational submission to circumstance. As Seneca puts it,

It is not in any man's power to have whatever he wants, but it is in his power not to want what he does not have, and cheerfully to make use of whatever comes his way.²⁴

In other words, the wise and virtuous man will not experience distress if he fails to secure what is advantageous. Similarly, if he has to accept things which are disadvantageous, he will do so in a spirit of calmness and self-possession. No misfortune can touch him, and the price which he has to pay for his peace of mind, presumably, is that no good fortune can gladden him either.

(ii) Stoicism is widely, indeed almost universally, regarded by its chroniclers as having been, in origin, a reaction to the wide-ranging political changes initiated by Philip of Macedon and his son. As we have already remarked, this is perhaps as good an explanation as any of the 'nostalgia' which appears to pervade

Stoic cosmology. But the most important theme of Stoicism from the point of view of the history of natural law is that in respect of which it most obviously goes 'beyond the polis' - beyond the accepted social and political world order of its predecessors. The theme in question is its insistence upon the equality of all human beings - a theme founded upon a conception of the unity and brotherhood of the whole human race. Just as, as part of the development of the Athenian polis, the place of the gentleman was gradually taken by the citizen, so the Stoics see in contemporary political developments the supersession of the citizen by the individual. And it is precisely this theme of equality as between individuals, of course, which has subsequently provided the most fundamental point of departure for natural-law oriented claims.

In Stoicism, we again come across the familiar dictum or truism that man is by nature a political animal - this time reiterated by Chrysippus. The fact that men everywhere desire to live in the company of others is taken to be as much a fact of their nature as that they have two legs, two arms, and so on. And, in this connection, the Stoics develop a conception of a certain natural attribute which they call oikeiosis. It is pointed out that certain of the things with which we come into contact are such that we experience a natural feeling of 'belonging' in relation to them they are oikeia. The word oikeiosis is obviously

derived from oikos, house, the root idea presumably being that we feel 'at home' with those things which are oikeion in relation to us. In its most primitive or undeveloped form, this natural disposition or attribute manifests itself simply as the unadorned impulse towards self-preservation - since every living thing is said to experience its most basic or primal oikeiosis towards itself. In this form, of course, it is readily to be seen in the behaviour of animals. Indeed, the notion of oikeiosis may well have originated in an empirical generalisation from the fact that all creatures are observed always to seek their own preservation as Spinoza and Hobbes were later to remark, there is no conatus towards self-destruction. Human beings, however, naturally undergo a process of maturation or development which carries them away from this very basic urge towards mere self-preservation, and this process differs from anything of a similar kind in animals inasmuch as it also includes the aspect of moral development. It is suggested that the natural development of an individual's oikeiosis as part of this process is, as it were, a progression outwards to encompass successively family, friends, acquaintances and fellow human beings within the scope of his own compassion and concern. Ex hypothesi, oikeiosis in any individual case would only be fully developed when it had extended so as to include the whole of mankind. And it is further suggested that one of the duties of the man who aspires to live vir-

tuously is to extend his own oikeiosis as far as he possibly can.²⁵

This, then, is one aspect of the Stoic view that human horizons are not to be thought of as circumscribed by the territorial or political limits of this State or that. Rather, they are fixed by considerations arising out of the very nature of man. In particular, they are fixed by the supposed fact that 'all men are brothers and kinsmen by nature, since they are all sons of God.'²⁶ The model of political life for the Stoics, therefore, is not a polis which is held to be ideal, or which is said to be the best attainable on the grounds that it answers to a certain description in terms of social composition, education, self-sufficiency, and so forth. Rather, it is a universal or world-state - a polis coextensive with the cosmos. a cosmopolis. (It is interesting to note, incidentally, that this idea is actually said to have been derived from Socrates and from Diogenes of Sinope, both of whom, when asked 'of what State are you a member?' would reply, 'of the cosmos.')²⁷

In short, then, men are not to regard themselves primarily as being members of a race or city, but of a society spanning the whole world and rising above conventional distinctions. As Chrysippus puts it,

Just as the word polis is used in two senses, to mean both a place to live and the entire State and its citizen-body, so too is the whole universe a kind of polis, including gods and men, in which

the gods rule and the men obey. Men and gods are able to have such transactions with one another because they are both possessors of reason. This is law by nature, and it is for this that all things have come into being.²⁸

It should be noted, however, that this cosmopolitanism is not, in fact, 'anti-polis' either in its inspiration or its recommendations. The Stoics did not follow the Cynics in holding the amenities and institutions of organised life in contempt, and they do not deny that men ought to cultivate a measure of dignified loyalty or patriotism towards their native places. Zeno and Cleanthes, for example, are both reported to have declined the honour of Athenian citizenship on the grounds that to accept it would be to imply a disrespect for their own birthplaces. At the same time, however, the Stoics insist that the full realisation of the ethical possibilities of human life does not lie within conventional political forms. However convenient for practical purposes the existence of such forms may be, they do not, as Plato and Aristotle had supposed, contain within themselves all the conditions which are required by man's nature. In all important respects, the Stoics claim, every man is the equal of every other. All men are to a certain extent victims of uncontrollable circumstance - sometimes very inimical circumstance; and all men share the rationality through which they can understand their predicament and act in ways most consonant with it. The

perfectly wise man may be hard - perhaps even impossible - to find. But, at all events, each man has an at least roughly equal capacity with every one of his fellows to aspire to virtue. All men have a share in the logos which informs the universe, and, in view of this shared possession, the traditional socio-political classifications of individuals as Greeks and foreigners or slaves and freemen turn out to be distinctions founded upon criteria which are simply irrelevant. The universality of the moral faculty of reason is sufficient to establish that all men are by nature citizens of the cosmopolis. Each has an equal claim upon the goodwill of every other and, in ideal conditions, all should live in common, without any social or economic discriminations at all. It would, of course, be dangerous to read too much back into what the Stoics have to say, but this does look very like a prefiguring of the familiar doctrine of natural rights which are said to hold between man and man even in a 'state of nature'.²⁹

An essentially similar idea is to be found in the De Legibus of Cicero. In the light of his dictum that 'we need not look beyond ourselves' in order to discover what is right, Cicero develops the theme of natural equality in such a way as to remind us very strongly of Stoic cosmopolitanism

Out of all the subject-matter of philosophical discourse, there surely emerges nothing of greater significance than the realisation that

we are born for justice, and that right is based, not upon human opinion, but upon nature. As soon as one achieves a proper understanding of man's fellowship and unity with his fellow men, this fact will immediately be clear. For no single thing so exactly resembles anything else as we ourselves resemble one another. Indeed, if bad habits and false beliefs did not corrupt weaker minds and lead them into the paths of their own inclinations, all men would be as much like other men as any one man is like himself.... For those creatures who have received from nature the gift of reason have also received right reason. Therefore, they have received the gift of law, which is right reason applied to command and prohibition.³⁰

It would seem, then, that there is a single definition to be applied without distinction to the whole of mankind. All men resemble one another in their possession of reason, and in their capacity to turn this possession in the direction of 'command and prohibition'. There may, of course, be incidental disparities between individual intellectual achievements. Similarly, aberrations may arise out of the bad habits which become superimposed on human nature, or out of the diversity of educational circumstance. In spite of these things, however, all men are at the last analysis capable of striving for virtue under the tutelage of recta ratio. For example, it requires no enacted law (according to Cicero) to indicate to us that

It is more contrary to nature for a man to take something from his neighbour and so to derive benefit from his neighbour's loss than is death or

poverty or pain or anything else which can affect either our bodies or our external circumstances. 31

A.J. Carlyle - putting the matter somewhat too strongly, perhaps - suggests that these remarks embody much the same theory of man and society as that more familiarly summed up in the French revolutionary slogan, 'Liberty, Equality, Fraternity.' Dr Carlyle points to Cicero's dictum - later to be echoed by St Ambrose - that 'we are by nature disposed to love men, this is the foundation of law.' And he suggests that the word 'Fraternity' as it occurs in the revolutionary tag is only another way of conveying what Cicero expresses in these words. 32

To put it at its most general, and without engaging in invidious historical cross-referencing, so to speak, we might suggest that the historical importance of the Stoics lies not, as has so frequently been claimed or implied, in that they originated an ethical theory of natural law. Rather, it lies in the fact that, in their hands, the theory transcended the relatively narrow perspective of the classical polis. As E.V. Arnold remarks, the political thought of Stoicism 'calls for a revolt against nationalism, antiquity, custom, pride and prejudice, and a new constitution based upon universal reason and individual liberty.' 33

IV.

Ius Naturale and the Corpus Iuris Civilis

The ambitious codification of the whole accumulated body of Roman law undertaken under the auspices of the Emperor Justinian stands as the culmination of a lengthy and intricate development. Indeed, this development reaches far back into the history of republican Rome - to the appearance, in about 450BC, of the earliest known written Roman law, the Twelve Tables. Moreover, Justinian's was not, in fact, the earliest attempt to bring a universal legal order into the administration of an increasingly unwieldy and trouble-ridden empire. The work which he commissioned was itself in large measure based upon three earlier compilations of law. These were the Codex Gregorianus and the Codex Hermogenianus, which had been pieced together from the Imperial Archives in about AD 294 and AD 334 respectively, and the Codex Theodosianus, made by a commission appointed by the Emperor Theodosius II in about AD 438. There has never been any doubt, however, of the supreme importance of the Justinianic codification, from the point of view of an understanding of both the history of Roman jurisprudence and the subsequent development of European legal and political thought and institutions. Justinian's work was universally taken to be the statement of Roman law in its definitive form. As such, it was studied (albeit often only in the form of summaries,

commentaries and translations) throughout the Middle Ages; and this came to be especially true after the foundation, in about 1088, of the celebrated law-school at Bologna, which 'attracted thousands of undergraduates from all countries of Europe ' ³⁴As a generalisation, it would be fair enough to say that something of Roman law is to be found somewhere in all modern legal systems. For example, the Justinianic law was adopted (or, in the customary terminology, 'received') as the foundation of the remodelled legal systems of Germany and Holland which emerged during the fifteenth and sixteenth centuries; and it was upon a fusion of Roman law with local custom that both the Napoleonic Code Civile of 1804 and the German Civil Code of 1900 were based. In short, to borrow the words of Walter Ullmann, 'To say that (the Justinianic) codification became one of the most formative agencies in Europe would be no overstatement. The general principles relating to justice, to the concept of law, the division of law, its enforcement, and so on, became central to the medieval conception of law....And the Code of Justinian was later, when it came to be the subject of scientific treatment in the medieval universities, one of the main sources of the doctrines relating to government ' ³⁵

The whole work, now known as the Corpus Iuris Civilis, is made up of three parts the Codex, the Digesta (sometimes also referred to as the Pandectae) and the Institutiones. The Codex and the Digesta are compil-

ations of the two branches of written law recognised within the Roman legal tradition the Imperial Constitutions (Placita) and the opinions of eminent legal authorities (Response Prudentium). The Institutiones is primarily a handbook of a relatively elementary kind. It is specifically intended for the use of law students - and addressed to cupidae legum iuventuti, although this part of the work was also given full legal standing and force by the Emperor. (Incidentally, the leges or constitutiones novellae, which have long been printed as part of the Corpus Iuris Civilis, are not, in fact, an integral part of it. Justinian had originally intended that his many legislative innovations should be incorporated from time to time in a series of updated editions of the Codex, but this plan was never carried into effect.)

Historians of legal and political thought almost invariably assert that the Corpus Iuris Civilis bears clear traces of Stoic 'influence'. As Sabine says, 'There can be no question that (the) earliest attempts at systematic jurisprudence were made by men strongly influenced by Stoicism'.³⁶ On the face of it, this seems quite obvious. But such assertions of influence are, however, questionable in any circumstances other than those in which the documents concerned contain clear and direct attributions. (The controversy surrounding what is supposed to be the 'influence' of Hobbes on Locke is an example of the kind of confusion which can arise here) So far

as the general relationship between Roman law and Stoicism is concerned, it is interesting to note that Quintus Mucius Scaevola, who is said by the jurist Pomponius to have been the first man ever to have produced a codification of the law (in eighteen volumes) was a member of the 'Scipionic circle', a pupil of Panaetius and a minor luminary of the Roman Stoa.³⁷ But there is, in the Corpus Iuris Civilis, no direct attribution - no declaration of indebtedness - to the Stoics as such. Indeed, the attitude to philosophy expressed at the beginning of the Digesta is politely dismissive the implication is that men would deploy their intellects much better if they stuck to practical business and gave a wide berth to abstract speculation.³⁸ On the one hand, therefore, it is perhaps as well not to bandy about the word 'influence' too freely. On the other hand, however, this much may readily be granted that the treatment of natural law and of the concept of equality in the Corpus is conducted in a spirit which looks very much like that of Stoicism.

In Roman jurisprudence, natural law - ius naturale - takes its place, broadly speaking, alongside two other kinds or divisions of law ius civile and ius gentium. The distinction between ius civile and ius gentium is itself a perfectly straightforward one. Briefly, ius civile - let us call it the 'civic law' - is the law of the civitas as such. It is the formal expression of the interest of one particular

political community - namely, the city of Rome itself.³⁹ In other words, it is that body of law which is specifically binding upon the Roman citizen as such; and it is by reason of such law that, for example, the Apostle Paul was able to demand and get special treatment as a Roman citizen. Moreover, such law grew with the passage of time, as it was interpreted and expanded according to need by the so-called ius honorarium - i.e. the body of case-law enshrining the decisions made in settlement of disputes by the jurisdictional magistrates, the praetor urbanus and the curules aediles. Commercial activity and territorial expansion, however, inevitably required at an early stage that the ius civile be supplemented by recognition of a body of law having wider and more flexible applications. In fact, as early as the third century BC, we notice the emergence of a special magistrate, the praetor peregrinus or praetor inter peregrinos, whose function it is to settle disputes between non-Roman citizens falling under the jurisdiction of Rome, or between foreigners and Roman citizens. And the law in the light of which such settlements were reached is the ius gentium.

Sir Henry Maine suggests that this ius gentium came in the course of time to be regarded by Roman lawyers as part of a 'lost code of nature' which was thought to have obtained in a 'golden age' in the remote past, and of which subsequent law was thought to be a debased or 'devalued' form or echo.⁴⁰ We shall

presently have some more to say about the relationship between ius gentium and ius naturale, but Sir Frederick Pollock remarks that he can find no evidence to support the conclusion that either lawyers or philosophers have ever approached the ius gentium in exactly this way⁴¹ Also, it is not immediately obvious what Sir Henry Maine is driving at when he says that the 'code of nature' was reckoned to have been 'lost'. It is true that some of the Stoics were inclined to make wistful reference to a past Golden Age when all was well with mankind. The idea is found in the writings of Seneca, for example, and it is not unlike the Judæo-Christian notions of the Garden of Eden and the fall of Adam. But the Stoics certainly did not wish to suggest that natural law had been 'lost' with the passing-away of this Golden Age. Indeed, the whole classical conception of natural law is that, whatever else in the world may be mutable or perishable, natural law at least cannot be lost. It is a potential point of reference for everyone. It is there, built into the natural order of things, or as an inseparable element of human nature, waiting to be read off and applied by the man of sophia or phronesis or recta ratio, as the case may be. The more usual - and much the more plausible - practice, in fact, is to regard the Latin phrase ius gentium simply as a literal translation of the Greek koinos nomos - 'common' or 'universal' law. In this sense, it need not be involved with any historical or mythological

presuppositions. It need indicate only those elements which are, as a matter of plain fact, to be found in all or most known systems of law. This is certainly the understanding most readily conveyed by the Digesta itself

The law of nations (ius gentium) is that law which the human race as such observes.⁴²

All the peoples who are governed by law and custom observe laws which are partly their own and partly common to all mankind.⁴³

Also, in the Institutiones, the following definition is given

The law of nations. .is common to the whole human race.. .From the law of nations come virtuelly all contracts, such as sale, hire, business associations, deposit, loan and innumerable others. ⁴⁴

It is important, at this point, to be clear, however, that the law of nations, understood in this way, is not the same thing as a modern writer would mean if he were to refer to 'International Law'. In other words, the provisions of the ius gentium are not entirely contained in treaties or agreements formally regulating the relations between States. Such regulations might on occasion - and with some ambiguity - be treated as though they were part of the ius gentium hence the frequent use of the phrase by historians - especially Livy - when speaking of the sanctity of treaty-relations or the immunity of ambassadors. Technically speaking, however, International Law in the strict sense falls

under a distinct sub-heading of its own (ius fetiale), and ius gentium itself is an altogether broader concept. In short, because it was known that contracts of various kinds - 'sale, hire, business associations, deposit, loan and innumerable others' - were as a matter of course regarded by other nations in much the same way as they were by Rome, it was assumed that the obligations flowing from such transactions rest upon legal principles which are felt everywhere to be binding in the same way.

This assumption that there are very fundamental legal principles which command such universal acceptance raises, of course, an immediate and obvious question - a question which had already occurred to the compendious mind of Aristotle. If empirical observation assures us - as it seems to - that there are certain elements common to all or most known legal systems, are we not entitled to infer from this that human nature is everywhere such that it cannot function in the world of practical affairs without giving heed to the principles which these elements enshrine? To put it another way does not the very existence of ius gentium entitle us to conclude that there is, at the heart of all diversity and change, a central core of 'law' which is 'natural' in the sense that, if it is not recognised, human beings simply cannot achieve their purposes? This is a suggestion which, quite apart from its earlier echoes, appears in the writings of Cicero - who remarks in the Tusculan

Disputations, for example, that

The common agreement of all nations is to be regarded as the law of nature.⁴⁵

Also, although they do not make any mention of a 'lost code of nature' or a 'Golden Age' in which such a code held sway, a strong current of opinion amongst Roman jurists bears out the same view. Thus, the second-century jurist Gaius has this to say

Those laws which each people has given to itself are called ius civile, since they are peculiar to each city. That which natural reason dictates to all men, however, is called ius gentium, since it is the law practised by the whole of mankind.⁴⁶

We notice that, in this passage, the term ius naturale does not occur at all. We note also, however, that, according to Gaius, the faculty by which the ius gentium comes to be known is naturalis ratio - natural reason. It would seem, then, that there is here an at least implied equation between ius gentium and ius naturale. And the view that Gaius wishes to propose such an equation receives independent confirmation when we turn to his own Institutiones, in which the term ius naturale does occur. He discusses the rules governing the acquisition and alienation of property as part of the ius naturale, and he declares that it is in accordance with naturalis ratio to conclude that an individual may acquire a title to a piece of property by being the first to make use of it - an argument which is, of course, precisely the same as that later to be

pressed into service by Locke.⁴⁷ Also, Gaius elsewhere asserts that the ius gentium is as old as the human race itself, and that it has been taught to mankind as a whole by naturalis ratio. In a nutshell, then, Gaius seems to be using the two terms ius gentium and ius naturale interchangeably.⁴⁸ And we find a very similar standpoint occupied by the third century jurist Paulus. 'Law', says Paulus,

may be spoken of in different senses. In one sense, when that which is always equitable and good is called law, it is ius naturale. In another, what is profitable in each city for everyone or many is called ius civile ⁴⁹

Here, it is the ius gentium of which no mention is made. The only distinction of which Paulus takes notice is one between 'that which is...profitable for everyone or many' in a particular civitas and 'that which is always equitable and good'. In short, it looks rather as though Paulus wishes to conclude, as Cicero had concluded before him, that the fact of there being common or universal elements in legal systems counts in some sense as evidence for the ultimately natural foundation of law. Finally, we might note the definition of ius gentium given in the Institutiones of Justinian

What naturalis ratio has established amongst all men is observed equally by all peoples, and is called ius gentium.⁵⁰

Not all the jurists who contribute to the Corpus, however, take the view which we have just discussed.

On the contrary, several of them wish to draw a clear distinction between ius gentium and ius naturale. But it is precisely these jurists who lay particular emphasis upon the historically-crucial - and characteristically Stoic - notion of natural human equality. Ulpianus, a contemporary of Paulus, has this to say

Private law is tripartite. It may be gathered from the precepts of nature, from those of nations, or from those of the city. Natural law is that which nature has taught all animals. As such, it is not confined merely to the human race.... From this law comes the conjunction of male and female which we call marriage, and the procreation and rearing of children. The ius gentium is that law which mankind observes, and it is easy to see that this law differs from the natural inasmuch as the one belongs to all animals while the other is peculiar to man. 51

It seems that Ulpianus would wish to say that natural law is really a kind of instinct or drive - is that 'which nature has taught all animals.' Something rather similar had, in fact, been said long ago by Democritus of Abdera; and this understanding of 'natural law' much more strongly resembles the remarks of some of the Sophists (Antiphon, Callicles, Thrasymachus) than those of the Stoics. So far as Roman law is concerned, however, Ulpianus' remark would seem to be, as Jolowicz puts it, only 'an isolated opinion in legal literature.'⁵² At any rate, it occurs nowhere else in the Digesta and, though it does recur in the Institutiones, its appearance there

is clearly only another reference to Ulpianus - whose actual words are quoted - rather than to some independent source.

If ius naturale is to be conceived as a kind of instinct or psychological drive common to all animals, however, then it must surely be attributed to them without regard to the question of rationality or moral agency. And, in this case, it is difficult to see how it can bear any ethical significance at all. Yet, however inconsistently, Ulpianus himself does proceed to derive from it a number of normative conclusions. For example, he remarks that the man who has the right to use the produce of a piece of property may be said to possess the property 'by nature'. Elsewhere, he declares that it is naturally equitable for one man to enjoy the generosity of another only for as long as the other thinks fit to bestow it; and that it is natural for a contract to be dissolved by the same process as that by which it was made. Most important of all, Ulpianus insists that, under the ius naturale, all men are equal. Provisions governing the manumission of slaves, he says, are to be regarded as falling directly within the province of ius gentium. They cannot be said to fall under the ius naturale for the simple reason that, by nature, all men are equally free already. And similar remarks apply when we come to the 'civic' law: those parts of the ius civile which have to do with the holding of slaves diverge from the ius naturale

since, so far as the latter is concerned, omnes homines aequales sunt.⁵³

The third-century jurist Claudius Tryphoninus lends a measure of support to the account given by Ulpianus. For his part, he provides no definition of either ius gentium or ius naturale. But he says that dominatio, the mastership of one man over another, is a creation of the ius gentium, whereas liberty belongs to the law of nature.⁵⁴ And his contemporary Florentinus explicitly states that the institution of slavery is contra naturam.⁵⁵ In this connection, it is also interesting to note the inventory given by Hermogenianus (compiler of the Codex of ca. AD 334) of institutions and practices which fall specifically within the ambit of the ius gentium. He names the conduct of wars, the division of mankind into separate States, political and social relationships of subordination and superordination, and regulations governing property ownership and commercial activity.⁵⁶ A similar specification of the ius gentium - which may or may not owe something to that of Hermogenianus - occurs in Justinian's Institutiones. Here, it is explained that, in the sense already outlined, the ius gentium is a universal system of law observed by all mankind, representing the experience of the human race, and containing provision for such things as war, captivity and servitude - quae sunt iuri naturali contrariae.⁵⁷ The point of these remarks seems to be that the ius gentium deals precisely with those institutions and activities which

arise from rather than constitute the possibility of human collective experience. And in the Institutiones (though not in the Hermogenianus passage) it is once again stated that institutions and activities of this kind are 'contrary to the natural law.' Clearly, what is here being presented is the familiar distinction between nature and convention.

V.

Given their recognition of this distinction - and that they do recognise it seems quite beyond dispute - it has seemed strange to some commentators (Dr A.J. Carlyle is an instance) that the Roman jurists and so many of their medieval successors should have been so ready to accept without complaint institutions which they unambiguously declared to be contra naturam. Similarly, to look backwards for a moment, it might seem odd that Cicero, for whom 'no single thing so exactly resembles anything else as we ourselves resemble one another', should find it appropriate to defend slavery with an argument similar to that in Book I of Aristotle's Politics (Dr Carlyle presumably fails to notice this when he finds in Cicero an advocate of 'Liberty, Equality, Fraternity'')

To find these things mystifying, however, is to misread the sources. Specifically, it is to succumb to the temptation to read the classical sources from a modern perspective of 'human' or 'natural rights'. And modern historians - d'Entreves, Kantorowicz,

Nicholas, Schulz - have taken great pains to point this out as a mistake. These more recent historians tend to resent the undeniable tendency of their predecessors to adopt the questionable methodological presupposition memorably baptised as 'the Whig view of history' the view that Human Rationality Made Continuous Progress until, at last, Men of Right Reason came to see that there Really Are Natural Rights. Professor d'Entreves, for example, specifically dissociates himself from those - he names Sir Frederick Pollock and Sir Ernest Barker - who would see natural law as having 'a perfectly continuous history' which 'runs from the Stoic teachers of the Porch to the American Revolution of 1776 and the French Revolution of 1789.'⁵⁸ And it is certainly clear that neither Cicero nor the Roman jurists nor the majority of medieval civilians or canonists made anything of what has subsequently come to be seen as the radical potential of natural law. On the contrary, for much of the middle ages, natural law was used, in Paul Sigmund's words, 'to relate feudal power structures to a hierarchical order in the universe'⁵⁹ - that is, to preserve rather than to overthrow the status quo. In spite of his insistence that natural law should not, and at the last analysis cannot, be abrogated by any human fiat, Cicero does not even hint at the possibility of an appeal to natural law being made in justification of the overthrowing of a morally-defective positive law; and neither do the jurists whose work is excerpted in

the Digesta.

The apparent reticence of the classical sources over this point is not, in fact, difficult to understand. Indeed, the difficulty only arises at all out of the wishful thinking of relatively modern liberal writers who wish to reinforce the respectability of 'natural rights' by ascribing to the doctrine 'a perfectly continuous history.' Cicero, after all, was a man of pre-eminently conservative political tastes. His ideal of civil association was the Roman republican constitution as it had been before the revolutionary tribunate of the elder Gracchus. He takes as his exemplar of public rectitude the old-fashioned probity - the 'strength of character and unflinching courage' - of Marcus Aurelius Cato.⁶⁰ It is certainly no part of his purpose to strike out into the arena of radical political change. As for the jurists of the Digesta, it must be borne in mind that their writings are the remarks of men who were professional lawyers - who were engaged, if one may so put it, simply in putting one foot in front of the other in the daily routine of legal practice. They are not legal or social philosophers, primarily or at all; and they are certainly not ideologues - or, at least, not consciously so. They use the concept of ius naturale as a means of applying and interpreting existing law in normal (= 'natural') circumstances - they use it in much the same way as it has from time to time been used by the United States Supreme Court, for example. Most

briefly stated, the objective of the Roman jurists is 'to find - within the specified framework - the rules arising out of the nature of the thing itself, out of conditions as they are.'⁶¹ This is an understanding of 'nature' which is clearly reminiscent of Aristotle; and, as Vinogradoff points out, the appearances of ius naturale in practice remind us very strongly of the Greek conception of equity which is exemplified in the writings of Aristotle.⁶² The concept of ius naturale was used in legal practice to provide a theoretical or heuristic undergirding to such principles as equality before the law, fair dealing in matters of contract, the obligation to protect dependants, and the primacy of claims arising out of family relationships. In other words, it was applied as a regulative standard in relation to such things as the conduct of trials, the law of contract, family law and the law of succession. Also, it contributed to some extent, although not as a radical ideology, to the processes of social and legal reform. It was appealed to as a means of reducing the absolute control of the Paterfamilias over the belongings and persons of his children; of increasing the independent control of married women over their property, of protecting slaves against cruel and arbitrary treatment; and of increasing the opportunities available to them of securing manumission.⁶³ It is certainly true that, after the great revival of systematic legal studies in the twelfth century, it was from time to time deemed

possible to detect and exploit radical possibilities in the Justinianic law.⁶⁴ In Roman jurisprudence as such, however, we find ius naturale used by legal authorities as an interpretative device and as a means of effecting gradual change, but not as an overt and abrasive critique of the existing order.

To return briefly to the question of Stoic 'influence' whatever may be the direct intellectual relation between Stoicism and the development of Roman legal thought, it is clear that the dominant themes of Stoicism are indeed to be read in the definitive Corpus Iuris Civilis. Justinian's codification brings together a body of legal principle which bases its claim to universal validity upon the deeper claim to coincide with or to embody natural justice. It stands, not upon force, and ultimately not even upon the authority of the Emperor himself, but upon reason. Ius naturale is once again said to be available to us through an innate moral faculty, naturalis ratio. It is universal in its application - the jurists of the Digesta do not make any unanimous distinction between the law of nature and the law of 'nations' which is common to the whole human race. What is more, when such a distinction is made (as by Ulpianus) it is made in such a way as to set up ius naturale as a standard of perfection to which other forms of law may be compared. Slavery and various other forms of inequality, which are provided for under the terms of the ius gentium and the ius civile, are not parts of the ius naturale. They

are even said to be contra naturam. At the last analysis, justice is not positive. It is rational, and, since rational, natural, and, since natural, universal - imposing certain moral minima upon all men everywhere. It is

a constant and perpetual willingness to give every man his due. The law teaches us to live honourably, to injure no-one, and to give every man what is due to him. Law is a knowledge of things human and divine, the science of the just and unjust.⁶⁵

It is also interesting to notice that the presence in the world of natural principles of justice is expressly attributed in the Institutiones to the activity of something superior to the will of any earthly lawgiver

Now the laws of nature, which are observed by all peoples equally, remain always firm and immutable, constituted as they are by a divine providence.⁶⁶

The attribution of natural laws to a divine providence - a 'providence' which reminds us of the pronoia of the Stoics - clearly implies that they represent permanent principles of justice and humanity which should be taken as the standard for all other forms of law.

The numerous political theorists of the middle ages who emphasise the rule of law and the ultimate sovereignty of impersonal justice are drawing upon precisely this understanding of the nature of law and

justice. It is true that they place great stress upon the roles of custom and scripture in determining the content of justice. It is also true that early medieval theorists in particular have a strong predilection for what is, in effect, a deeply conservative theory of kingship - which, in turn, anticipates the Lutheran and Tudor doctrine of non-resistance, and which runs somewhat as follows. The king is bound to obey the laws of nature; but he is bound, not by any agreement to do so subsisting between himself and his subjects, but by reason of his having been entrusted with his kingdom as a trusteeship from God. In the event of his turning out to be an unjust steward, therefore, the people have no right to enforce a 'contract' against him - for the simple reason that there is and can be no such contract. Their best recourse is to pray to God for deliverance - or, of course, to approach the Pope, who is the earthly guardian and interpreter of God's wishes and who has, amongst his other powers, that of deposing a king and of absolving his subject from their obligations to him. These considerations, however, do not detract from our central theme. Law is not primarily something which is created by legislation or as an act of the sovereign's will. Rather, the proper - the morally proper - function of legislation itself is to enact that which has been immemorially recognised as being binding upon man a priori. God, says an anonymous French epic poet of the twelfth century, has not created the king

so that he may gratify his own desires and rob the poor, but so that he shall tread all wrongs under foot, listen to the complaints of the poor man, and redress his grievances.⁶⁷ Political authority, in other words, finds its only rationale in the discharge of a moral function the purpose of kingship is to 'give every man what is due to him, protect the pious, destroy the impious, and administer justice to all.'⁶⁸ And A.J. Carlyle, writing of the eleventh and twelfth centuries, remarks that there is ample evidence in the works of the political theorists of the period to show that they conceived of the morality of rulership 'under the terms of the contrast between the natural and conventional condition.'⁶⁹ To quote at greater length from Otto Gierke's Political Theories of the Middle Age, 'all were agreed that there was natural law, which, on the one hand, radiated from a principle transcending earthly power, and, on the other hand, was true and perfectly binding law. Men supposed, therefore, that before the State existed the natural law already prevailed as an obligatory statute, and that immediately or mediately from this flowed those rules of right to which the State owed even the possibility of its own rightful origin. And men also taught that the highest power on earth was subject to the rules of natural law. They stood above the Pope and above the Emperor, above the Ruler and above the Sovereign People, nay, above the whole Community of Mortals.'⁷⁰

CHAPTER FOUR THE CHRISTIAN DOCTRINE OF NATURAL LAW.

I.

Natural Law in the New Testament and the Fathers.

The Corpus Iuris Civilis, though commissioned and published by a Christian Emperor and promulgated in nomine Domini nostri Iesu Christi, displays no fundamental sign of having been 'inspired' by a distinctively Christian view of human relations. In spite of the close association between Church and Emperor which was so marked a feature of the Byzantine Empire, 'the Empire...embraced within its borders a very heterogeneous population....Even the most forcefully Christian Emperors did not venture wholly to uproot the old law'¹ - i.e. the long-standing secular tradition of Roman jurisprudence itself, or the prevailing networks of local custom and law. Neither, we might add, were Emperors invariably disposed to show partiality, far less servility, towards the Christian Church - as the furious quarrels between the Emperor Theodosius and St Ambrose of Milan so vividly illustrate. Timothy Barnes and others have called attention to the possibility that the Tertullian whose writings are cited and excerpted in the Institutiones and Digesta is none other than the for-

midable Christian apologist Tertullian.² But, even if this be so (and the possibility seems to be reasonably strong), the somewhat sparse Justinianic samples of Tertullian's De Castrensi Peculio and Quaestiones 'give little idea of the scope or competence of either composition',³ and certainly have nothing about them which is peculiarly Christian. Broadly speaking, there is no doubt that the Roman jurists' doctrine of natural law is not primarily derived from or 'influenced by' Christian conceptions as such. Equally, it is clear that the Christian doctrine as it appears in the writings of the Fathers owes relatively little to Roman Law. Rather, both the Corpus Iuris Civilis and the emergent moral theology of Christianity seem to have independent roots in the common background of classical ethical reflection. This is a generalisation which must, of course, be made with caution; but it is a generalisation which finds adequate support in the available evidence.

In considering the early history of the Christian Church, one can hardly fail to be struck by the marked antipathy - indeed, the considerable antagonism - displayed by a significant number of Christian intellectuals towards many of the most cherished ideals of the classical mind. This is to be seen with particular clarity in the polemical writings of Tertullian himself. Thus, for example,

What has Jerusalem to do with Athens? Or the Church with the Academy? Or the Christian with the unbeliever? Our principles come from the

Porch of Solomon (i.e. not from the stoa of the Stoics), who taught that the Lord is to be sought in simplicity of heart. So I have no use for a Stoic or Platonic or dialectical Christianity. Since the coming of Christ, we have no need of speculation; since receiving the Gospel, we have no need of scholarship. ⁴

Indeed, if any document could be guaranteed, by reason of its vehement and calculatedly insulting repudiation of Graeco-Roman culture, to provoke violent suppression of the Church on the part of the authorities, that document is surely the Apologeticus of Tertullian. Tertullian, like a number of his contemporaries, actually went out of his way to court martyrdom, and 'Few', remarks R.W. Evans, 'had so learned an acquaintance with heathenism, and could expose its follies with a more bitter sarcasm...or whip its wickedness with a heavier lash.'⁵ In a nutshell, it may be said that the literature of early Christianity abounds with splendid gestures of condemnation and renunciation. At the same time, however, it is possible to make a good deal more of these gestures than is warranted by their currency and duration. The tendency towards suspicion and exclusivism, at least in its most extreme and heresy-hunting form, is (a) a characteristic of the Church during the fraught period before the conversion of Constantine; and (b) the peculiar province of radical and anti-intellectual minorities, such as the Montanists of Phrygia and the Donatists of North Africa. The

characteristic world-renouncing inclinations of chil-
 iastic religious movements has been amply illus-
 trated by Professor Cohn.⁶ We may in any case spec-
 ulate that, for those by whom God 'was conceived as a
 Being capable of...implacable jealousy, rage and
 desire for vengeance',⁷ any amount of renunciation
 and introspection was worthwhile for the sake of
 maintaining a comfortable margin of safety. We
 should not, however, take minority sects as typical
 of the whole Church; and there is a considerable
 positive side to the account. D.S. Wallace-Hadrill,
 for example, sets out 'to say something...to counteract
 the idea that Christianity necessarily ignores this
 world in favour of the next; that it necessarily
 involves denigration of the world and the flesh,
 and inevitably completes the satanic triad by ass-
 ociating them with the devil.'⁸ In pursuing this aim,
 he documents a response to the Greek understanding of
 humanity and nature on the part of the Eastern Fathers
 (Basil, Origen, Clement of Alexandria, Theophilus of
 Antioch, Gregory of Nyssa, Gregory Nazianzus, et al.)
 which, while certainly not one of uncritical and un-
 qualified admiration, is nevertheless positive, con-
 structive and sympathetic. Indeed, it would be diff-
 icult to find a more enthusiastic exponent of a part-
 icular department of pagan thought - neo-Platonism -
 than Gregory of Nyssa, whose 'whole doctrine of unity
 is a wonderful and successful example of the use of
 Plotinian philosophy in the service of Christian theol-

ogy.'⁹ Also, R. Stob has provided a brief and cogent account of the ways in which the Fathers (notably Athenagoras, Minucius Felix, Clement of Alexandria, Irenaeus, Origen, Basil, St Ambrose and St Augustine) accord a conscious place in their writings to the anthropological, ethical and cosmological themes of the Stoic philosophers.¹⁰ We cannot, of course, digress very far into these matters. But to put it as briefly as possible, there is no reason to doubt that those who exerted important formative influences upon the Christian world-view were, for the most part, at ease in the world of pagan philosophy, and were, moreover, ready to make positive use of its achievements insofar as those achievements were not actually inimical to Christian commitments.

In any case, it is hardly necessary to point out that Stoicism and Christianity occupy a large area of common ground. The conception of the universe as a moral order, pervaded throughout by a divine rationality and purpose 'as honey runs through a honeycomb'; the affirmation of the universal brotherhood of all mankind as children of God; the ethical non-relevance of conventional socio-economic rankings; the emphasis upon reciprocal justice, generosity and goodwill; and the supposed 'original' or 'natural' freedom and equality of all mankind - all these motifs are as much central to Christianity as they are to Stoicism. And there is, in fact, enough evidence in the New

Testament itself to entitle us to speak of a direct Stoic 'influence' upon the development of Christian thought. Two passages come to mind at once.

First, of course, there is the opening paragraph of the Gospel According to St John.

In the beginning was the logos, and the logos was with God, and God and the logos were one. The logos was with God from the beginning. All things came into being through him, and no single thing was made without him. In him was life, and that life was the light of man.¹¹

This Protean term logos was to become one of the key words in the 'technical' vocabulary of Christology; and it had already undergone a complex process of modification and colouring as part of the cross-fertilization between Jewish and Hellenistic culture which occurred during the so-called intertestamental period. Made familiar already to the Jewish intelligentsia by the writings of Philo Judaeus, the word is held to require no further glossing by the author of the Fourth Gospel: it makes its appearance at the beginning without a word or comment by way of introduction. And the impression is at once created that, in the words of Archbishop Bernard, 'the Prologue is the recommendation of the Gospel to those who have approached it through metaphysics rather than through history.'¹² However many distinctive or elaborated meanings it may already have acquired via intertestamental Judaism of questionable orthodoxy or from the Christian kerygma as such, it still signifies at

least 'a mode of divine manifestation, or a divine law.'¹³ The logos of the Johannine Prologue is the cosmic-divine potency introduced into cosmological speculation by Heraclitus and elaborated by the Stoics. It is immanent in the world, holding sway throughout it and providing the tonos through which it is drawn together and held in unity. It reduces chaos to order -

the light shines always in the darkness, and
the darkness has never overcome it. ¹⁴

It has to be conceded that, when we come to the sarx egeneto clause of the Fourth Gospel's exposition, the parallel with the Stoic logos-cosmology ceases to be so clearly discernible. At this point, the term ceases to be the name of a concept, or even of an immanent divine power, and becomes instead one of the proper names of God the Son. But it is nonetheless clear enough that the author (or redactor) of the Fourth Gospel has selected a point of departure which poises the Gospel towards an audience already at home with the Stoic family of ideas.

The second of the passages in question occurs as part of the account given in the Acts of the Apostles of St Paul's address on the Hill of the Areopagus to the people of Athens:

Men of Athens. I see that you are by way of being a religious people. As I was passing along, I took note of your objects of religion. In particular, I came across an altar upon which

was inscribed the words, 'To an Unknown God.'
And I now disclose to you who it is that you
worship unknowingly.

The God who created the world and everything
in it, and who is lord of Heaven and earth, does
not live in shrines made by human hands. It is
not because he is in need of anything that he
accepts the services of men. For it is he him-
self who is the giver of life, of breath, and
of everything else. He created the whole of
mankind from a single origin, to occupy the entire
face of the earth. He determined the phases of
their history and the limits of their territory.
They were to search for God and, perhaps, to
find him and touch him. Indeed, he is very
close to us all; for in him we live and move
and have our being. As some of your own poets
have said, 'We also are his children.' ¹⁵

Martin Dibelius has remarked that the address of which
this passage forms a part 'became a symbol of Christ-
ian theology in the environment of Greek culture.'¹⁶
In connection with its markedly Stoic flavour, we
note that it was indeed specifically addressed to
an audience containing 'some of the Epicurean and
Stoic philosophers'¹⁷ who had given St Paul such a mixed
reception on his arrival in Athens. More important
(or at least more definite) is the fact that the
'poets' mentioned in connection with the words 'we
also are his children' turn out to be none other than
the Stoics Aratus of Chios (a younger contemporary and
pupil of Zeno of Citium) and the venerable Cleanthes
of Assos. The phrase in question occurs verbatim in
Aratus' long poem Phaenomena, and something very close

to it appears in Cleanthes' Hymn to Zeus. Having noted this attribution, and reverting for a moment to the 'markedly Stoic flavour' of St Paul's words, it is interesting to compare the passage from the Acts just quoted with the following extract from Aratus' poem.

Let us begin with God, whose name is always on the lips of men. All the streets, all the meeting-places of men, the sea and its harbours, are full of God. We all have need of God at all times, for we also are his children....He it was who placed signs in the heavens and marked out the stars, and appointed the stars to be the chief guides for men of the seasons of the year, so that all things might grow without fail.¹⁸

In passing, there is the further possibility (mentioned by Theodore of Mopsuestia and the Syriac commentator Ishodad of Merv) that the words 'in him we live and move and have our being' are likewise an allusion to a Stoic original. Unfortunately, however, it is not possible to verify this suggestion.¹⁹

F.F. Bruce remarks, with reference to the address on the Areopagus, that St Paul 'consistently endeavours to have as much common ground as possible with his audience.'²⁰ (We are reminded of the preservation in the First Epistle to the Corinthians, of St Paul's recommendation of the controversial principle of catechesis subsequently patronised by Newman and excoriated by Kingsley: that of giving 'children'²¹ 'milk' before weaning them onto 'solid food'.) This is true enough, but, at least from our point of view,

a little beside the point. What, on the face of it, is impressive here is that St Paul should be so deeply imbued with Stoic thought and with its literary expression as to be able to furnish such common ground on demand, in a speech which betrays no sign of having been researched in advance. To say this, of course, is to lay oneself open to an obvious source of criticism: it is to prescind altogether from the numerous questions raised by the intricacies of New Testament textual criticism. But, even if it be suspected - or shown - that we do not here have the ipsissima verba of St Paul, the fact still remains that this passage stands as a clear indicator of the closeness of the relationship - we might almost say 'interchangeability' - between Stoic and Christian ideas.

Against this briefly-sketched background, and through the medium of Dominical as well as Pauline utterances, familiar Stoic themes are thrown into relief in the New Testament. In particular, both Christ and St Paul make repeated use of the characteristic Stoic notions of natural equality and cosmopolitanism; and they correspondingly emphasise the ethical non-relevance of distinctions between Jew and gentile, just as the Stoics had emphasised a similar irrelevance in relation to the distinction between Greek and barbarian:

And I tell you that many shall come from east and west, and shall take their seats in the Kingdom of Heaven with Abraham and Isaac and Jacob.²²

There is neither Jew nor Greek nor slave nor free man; for you are all one in Jesus Christ. Whether we are Jews or gentiles, slaves or free men, we are all baptised into a single body. ²³

Most conspicuous of all, however, is the following famous passage from St Paul's Epistle to the Romans.

With God there is no partiality. As many as have sinned outside the sphere of the law shall also perish outside the sphere of the law; and as many as have sinned within the sphere of the law shall be judged within the sphere of the law. For it is not those who hear the law who are vindicated before God, but those who act on it. And when the gentiles, who do not have the law, nevertheless do by nature the things which the law enjoins, then, not having the law, they are a law in their own right. They show that the requirements of the law are written into their hearts, and that their conscience and thoughts testify to them, accusing or exonerating them as the case may be. ²⁴

By way of what Karl Barth has somewhat mysteriously called this 'obscure and provocative piece of information', ²⁵ St Paul incorporates into his theology of salvation the principle that it is possible 'by nature and in the natural order (to) do the law.'²⁶

It may be, as he goes on to elaborate in the next chapter, that all men without exception are in fact 'subject to sin'; but his point is that, potentially, the capacity for right conduct is not the exclusive preserve of men as Jews - i.e. as recipients of the Torah or Mosaic Law - but the common property of men

as men. Thus, against the exclusivism of the Jewish-Christian community at Rome, it is said of the Gentiles that 'in their God-created natural disposition they are a law in themselves.'²⁷ It may be that St Paul came by this notion via the Hellenistic culture of his native city of Tarsus (in Cilicia), or through contact with educated 'Hellenising' Jews of his mature acquaintance as an expositor of the law in Jerusalem. One more specific possibility, mentioned by C.K. Barrett, is that he here has in mind Philo, who speaks of the Patriarchs (who, since they lived before Moses, had no access to a written law) as being in themselves 'laws endowed with life and reason.' It is, however, impossible to settle this question; and that it is does not, of course, matter in the least for our purposes. Neither need we concern ourselves with the purely technical questions of authorship or Redaktionsgeschichte.²⁸ Again, whether the passage in question actually comes from the pen of St Paul or not, and whatever its immediate antecedents may be, it remains of signal interest that there should be, in the New Testament itself, such a clear affirmation of natural law.

This is an affirmation which we subsequently find elaborated in the writings of the Fathers (assuming a Pauline origin) as an authentic understanding of possible moral experience. Thus, for example,

All men are born alike with a capacity for feeling and an ability to reason which does not depend

upon age or sex of status. Neither do they attain wisdom by fortune. Rather, they have it implanted by nature....And so it is that wealthy men, who are in love with their riches, have been accustomed to concentrate upon gold rather than upon heaven, while poor people like ourselves have both discovered wisdom and communicated it to others by teaching.²⁹

There are three kinds of law. The first is that of the Hebrews, which the Apostle (i.e. St Paul) calls 'the law of sin and death'. Then there is that of the gentiles, which he calls the law of nature. Third, there is the truth of which the Apostle speaks when he says, 'The law of the spirit of life in Jesus Christ has made me free from the law of sin and death'.³⁰

As far as the general Patristic attitude to natural law is concerned, we are justified in taking the remarks of St Augustine - regarded as decisively authoritative down to the thirteenth century - as a definitive statement. First of all, it is as well to note that, having acquired an intimate acquaintance during his omnivorous youth with its literature, Augustine always remained sympathetically-enough disposed towards Platonism to be quite at home with the idea of discernible, essential values which are part of the natural order. Second, neither Augustine nor any of the Fathers was in a position to hold that the natural order is irremediably corrupt, or, indeed, that nature as a whole, whatever may be the present condition of man himself, is at the last analysis anything but good. Plainly, this is a simple matter

of definition: the universe is the handiwork of a Creator who 'saw everything that he had made, and, behold, it was very good.'³¹ Thus, for Augustine, as for the Stoics, we live in the best of all possible worlds. The ordo naturalis must inevitably be seen as a repository of value, since it is the creation of a God whose every creation is necessarily perfect. In short, the sentence, 'The natural order is good' is a synthetic a priori statement - that is, a statement which is both logically and factually true.

To Augustine's mind, then, there are indeed changeless moral truths which are intrinsic to the very nature of things. And such truths are, in principle, intelligible. God has designed nature as a whole to be a model for our emulation. He has located everything in its appropriate place and has established such relations between things as are fitting to their natures. It is also worthy of note that Augustine, like Plato, constantly refers to these truths by way of an analogy with light. The rules of conduct which moral reflection discloses are, he tells us, lumina virtutum. They are lights which shed moral illumination upon the mind, in the same way that theoretical reflection sheds scientific illumination. Collectively, these moral lights comprise the natural law; and our immediate awareness of this law is called conscientia. Moreover, and as we might expect, this doctrine is associated with the belief that social life is natural to man. Even before the fall of Adam, God's intention

was that man should be a social creature. As soon as he had made Adam, he saw that 'it is not good for man to be alone', and made Eve to be a wife and companion to him. And this husband-and-wife relationship, presently extended to take in their children as well, is the fundamental 'natural bond of human society'. As social beings, men are by nature inclined to love their fellow men. This love embraces (or, more strictly, would ideally embrace) the whole of humanity - strangers and even enemies, as well as relatives and friends. And this, of course, is very like the Stoic doctrine of oikeiosis.

There is no-one in the entire human family towards whom kindly affection is not due by reason of the bond of shared humanity, even though it may not be due on the ground of love which is reciprocated.³²

God's original creative intention, then, was that the whole of nature should be good, and that human activity within the natural order should be intrinsically right activity. But God's original creative intention alone does not ensure that such activity will actually take place; for there is a fly in the ointment. Moral activity will only take place if the agents whose activity it is have a healthy intellect and a healthy will; since every activity is a conjoint operation involving both intellection and volition. (An unwilled 'good' action - that is, a 'good' action performed unconsciously or by accident - is not, of course, morally good at all. Morally good actions are those which are intended to be such.)

Healthy, however - i.e. rightly disposed - is precisely what the human intellect and will, taken as they now stand, are not. For man is the inheritor of the disabling guilt brought upon humanity by Adam's fall. So far as human excellence is concerned, Augustine leaves us in no doubt that the apparent virtues of courage, temperance, and so forth, displayed by the notables of antiquity were not really virtues - i.e. characteristics arising out of the exercise of healthy reason and will - at all. They merely reflect a basically ignoble desire for glory and praise. And when their practitioners win such praise

they have achieved the limit of their reward - a vain reward for vain men.³³

When God created the will of man, that will, like every creation of God, was of necessity the best of its kind that could possibly be: God would not (and perhaps cannot) create anything which falls short of perfection. But the will which God gave to the original man was not only a good will; it was a free will also - a will under the direction of which genuine moral activity might occur. In other words, Adam could, by his own unrestricted choice, elect either to sin or to refrain from sinning. Thus, his fall from the 'natural' state of perfection was possible, not through any flaw in God's creation, but through the choices of the created man. The fall was possible, though it was not necessary. When, contingently, Adam did fall,

he was driven into exile, and, by his sin, the whole race of which he was the root was corrupted in him, and thereby made subject to the penalty of death. And so it comes about that all who are descended from him and from the woman who had led him into sin...were polluted by the original sin, and by it led through numerous errors and sufferings into that last and eternal punishment, which they suffer together with the fallen angels, who are their corrupters and masters and the sharers in their doom. And thus, through one man, sin entered the world and, through sin, death. And so death passed into all men, for all men have sinned.³⁴

Especially (although not by any means exclusively) in his polemical writings against the heretical soteriology of Pelagius, Augustine repeatedly stresses the point that fallen man cannot save himself by any exertion of his own. When the fall occurred, human nature was not only disgraced by its act of defiance. It was actually and radically changed or flawed. Specifically, man became incapable of distinguishing between righteousness and unrighteousness, and consequently incapable of either knowing what is good or willing himself to pursue it. The penalty of death therefore attaches equally to all - 'for all men have sinned', both in their own right and, as it were, by inheritance from their first father.

Even at the cost of a short digression, it is not improper to mention that this doctrine of damnosa haereditas presents its defenders with a problem intractable enough to make it difficult to see why

the doctrine should have proved as perennially popular as it has. On Augustine's own account, it is part of the definition of guilt that it attaches to those acts which are performed by a free agent: Adam was 'driven into exile' precisely because, having freedom to do otherwise, he chose to sin. Yet Augustine also wishes to urge that, after and as a result of Adam's sin, human beings are unable freely to do anything at all. They are 'polluted by the original sin and led by it through numerous errors and sufferings'; they cannot now help sinning. Adam's act was guilty because it was a conscious act of disobedience; yet the helpless sinfulness of his successors is understood as a punishment for an act which they did not commit and did not will. And their condemnation is in no way mitigated by the fact that they cannot now act rightly. Augustine himself is not unaware of this difficulty; but - characteristically - he takes a short way with it, and appeals directly to the authority of scripture. According to scripture, the human condition is as he describes it, and if scripture provides no answer to such difficulties, this must be because it is not necessary to our salvation for us to know. The view which he expounds of the fallen nature of man is offered, not as a matter of reason, but as a point of faith.

In principle, then, morally right conduct springs from the individual's reflecting upon the ordo naturalis and acting, under the spur of conscientia, according to

its indications. Since the fall, however, this has been impossible for man as such. What, then, will restore the ability to discover good ends and to follow right means? Only, Augustine contends, the intervention and illumination of God's grace.

It is grace which separates the saved from the lost, because, through their common origin, all have been involved in one common perdition.³⁵

It must be noted in addition, however, that such grace cannot by any means be earned. All men are deserving of damnation. Those who receive the grace of faith receive it by an unmerited act of God in his mercy. Some are predestined to enjoy such mercy; others are not. And those who are not are simply damned without hope of reprieve or remission to an eternity of pain. No-one can say why this individual should be saved and that damned; but, in either case, human activity or personal merits do not enter the reckoning. Only after his intellect and will have been restored to their 'natural' state by grace does the individual have a chance of acting upon intelligible principles of right, of abstaining from sin, and of repenting of such sins as he does happen to commit. In short, St Augustine is clear that there are such intelligible or natural principles. But he is equally clear that we are cut off from them by the disabling effects of sin unless and until God choose to release us.

In order that the discussion be not entirely confined to St Augustine, let us also look briefly at the

remarks of his older contemporary and teacher, St Ambrose of Milan. On Ambrose's account, the 'moral law', which is the will of God, is presented to us, not only in scripture, but also in nature, reason and conscience. In the light of this, Ambrose readily repeats a familiar Stoic maxim:

Let us imitate nature. Conformity with nature furnishes us with a pattern of discipline and a standard of right conduct. ³⁶

Whatever is according to nature is necessarily virtuous - since the author of nature has made everything as good as it could possibly be. By the same token, whatever is contrary to nature is necessarily shameful. Ambrose holds that nature itself, through the media of reason and conscience, teaches men to behave with modesty; to seek the truth and follow it; to act with justice; to be moderate; to be faithful in marriage; to keep his appetites under the restraint of reason; to requite kindness with kindness; to refrain from seeking to secure his own advantage at the expense of others; and so on.³⁷ In a word, there is a law which is innate in man, distinct from and anterior to any written or enacted law, implanted within the human heart by God himself. As Ambrose puts it.

Law is twofold - natural and unwritten. The natural law is in the heart, and the written law on tables. First of all, nature herself teaches us to do what is good, afterwards came that law which was given through Moses. ³⁸

If there is such a natural law written into the heart, however, the question inevitably arises: Why do we also require a 'written law on tables' and those injunctions of scripture which are not coextensive with the natural law? St Ambrose's reply to this is not the familiar (Aristotelian) one - that natural law is too general to be adequate without interpretation, particularisation, and so forth. Rather, he maintains that the natural law has been weakened or obscured or corrupted in us by the fall. It is therefore in need of restoration and confirmation through the written law. But this confirmation cannot occur without the catalyst, as it were, of divine grace. Like Augustine, Ambrose accepts the problematical doctrine of damnosa haereditas. He insists that, unless the whole man is recreated by the operation of divine grace, there is no possibility of moral action. It is only by 'divine assistance', 'heavenly protection', 'the grace of God', 'the favour of God', that he can achieve even an approximation to virtue - only when he has within him, not his own life, but the life of Christ.³⁹ In short, human virtue or excellence - the Greek arete in its most directly moral sense - is a supernatural gift. It cannot be attained by unaided human effort, and it cannot be taught. It is made and given through the grace of God.

When all is said and done, however, it has to be conceded that the ideas so far discussed in this

chapter occupy only a relatively small amount of space in the literature in question. In particular, although they constitute a moral theory, this theory is not to any great degree extended into the sphere of specifically political discourse. After all - and as an obvious and uncontroversial generalisation - we may remark that the preoccupations of the authors in question were predominantly eschatological. That is, they look forward to the consummation of all things at the end of the world, rather than to the present details of daily living as such. And in this respect, of course, they differ markedly from the concern of Plato and Aristotle with the achievement of moral perfection through civic participation. Although they are not unconcerned with criteria of right conduct, they tend to be concerned with them only mediately - only, that is, to the extent that such conduct bears upon personal salvation. And, in view of this, it is not at all surprising to find that they do not develop what subsequently came to be seen as the radical possibilities of natural law. In this respect, they resemble the jurists of the Corpus Iuris Civilis. When we come to St Paul's treatment of slavery, for example, we find, on the one hand, that he, like the Stoics and the Roman lawyers, infers from the supposed fact of natural equality that slavery is not part of the order of nature. It is contra naturam, or at least not secundum naturam, in the sense of not being part of God's original

creative intention. But this is not seen as an occasion for criticism, nor does it form a point of departure for any recommendation for institutional change or reform. Indeed, St Paul's response to 'institutions' is quite uncompromising.

Let every soul be subject to the higher powers; for there is no power but of God: the powers which are in existence are ordained by God. Thus, whoever resists the power resists the ordinance of God; and those who resist shall receive damnation for themselves. ⁴⁰

As with the Roman lawyers, we have in the New Testament and the Fathers a conservative doctrine of natural law which, from the 'modern' perspective, might be thought a little odd. Why should an institution identified as 'unnatural' be thought tolerable by those who see naturalness as a moral guide?

St Paul's own position is clearly set out in the brief Epistle to Philemon. It will be recalled that the Philemon to whom the Epistle is addressed is the Christian owner of a runaway slave, Onesimus. Since his bid for freedom, Onesimus has been converted to Christianity - apparently by St Paul himself, and he is now voluntarily returning to servitude. In his letter to the Church of the Galatians, St Paul had insisted that 'there is neither...slave nor free.' Yet we now find that he does not for a moment doubt the propriety of sending Onesimus back to his master with an amiable covering letter. In other words, the

standing of Onesimus as a slave - his legal status - is not a point at issue. Neither are we invited to do anything but accept that Philemon is perfectly within his rights as a Christian in owning a slave or slaves, and that Onesimus, having undergone the moral transformation of conversion, is acting rightly in returning to servitude. Indeed, the clear suggestion is that he would be acting wrongly were he not to go back to his master. In short, St Paul does not pronounce adversely upon either the morality or the legality of slavery - even though 'there is neither...slave nor free.' Rather, his position is that the social reality of slavery is no more than a purely external condition. In foro interno, it does not matter one way or the other. Whatever may be his standing in conventional terms, no man is a moral or spiritual slave - a slave 'by nature', in Aristotle's phrase - unless his soul is in bondage to sin. And this, too, is a theme taken up by the Fathers in their account of the human condition:

Some will say, 'Are there not in your company some people who are poor and others who are rich? Some who are servants and some who are masters? Is there not at least some difference between individuals?' There is none; and the fact that we believe ourselves to be equals is, of course, why we each call one another 'brother'. For since we evaluate all human things by reference to the spirit rather than to the body, we have no servants, even though there are indeed differences of bodily condition. We speak of them as 'brother' in spirit and as fellow servants in religion.⁴¹

Servants ought to be warned not to despise their masters, for fear that, by conducting themselves with pride, they offend God by denying his ordinance. In the same way, masters ought to be warned that, if they do not acknowledge those whom they hold in subjection by reason of their condition to be their equals by reason of their common nature, their pride is contrary to the wishes of God concerning his gift.⁴²

Although outwardly in the condition of servitude, a man may be free so long as he is not bound by love of this world, nor by the chains of greed or the shackles of fear (for nothing is more characteristic of the state of slavery than to be always afraid): when, in short, he can view the present with confidence and look forward to the future without trepidation.⁴³

The cynic might suppose that this is a very convenient doctrine indeed, unless you happen to be a slave; but, be that as it may, it is very widely taught. Similar passages appear, for example, in Salvian, in 'Ambrosiaster' and in Isidore of Seville.

These remarks all give us particular instances of a general tendency on the part of the Fathers to conceive purely political and social matters in terms of a sharp disjunction between the natural and the conventional. Once again, we may properly take St Augustine as a stalking-horse. His view is that, far from being integral with the natural order (as Plato and Aristotle had supposed) social inequalities and the political mechanisms which institutionalise them constitute a remedial or disciplinary system which

God allowed to become imposed upon the natural order after the fall. Such institutions are, in a sense, divinely intended, but they are not 'natural' - their existence is made necessary precisely by the unnatural condition of Adam's descendants. (Ernst Troeltsch suggests that they can be called 'natural', but in a secondary or relative sense of the term. They are 'natural' in that they answer to what is now the natural condition of 'fallen' man. This is undoubtedly a point; but it is not an interpretation which, as far as I can make out, finds any support in the texts themselves.)⁴⁴

The function of such institutions is 'remedial' in that they exist to restrain the evil impulses which took possession of man after the fall. They are necessary lest, without such restraint, such impulses should cause the natural order to collapse altogether in a welter of lust-driven self-destruction. The founder of the first city, we recall, was Cain, the fratricidal son of Adam. Originally, God had not intended that human beings should stand towards one another in relations of superiority and inferiority -

His did not intend that his rational creatures, made in the image of himself, should have dominion over any but the non-rational part of creation - not man over man, but man over the beasts. ⁴⁵

Now, however, both as a result of and as a remedy for sin, political arrangements have come into being to ameliorate the worst effects of the cupiditas which

engendered by Adam's disastrous lapse. And the same is true of private property, imperialism, slavery, and so on. (Incidentally, it does not occur to St Augustine, or to any of the many later exponents of this view, to wonder why it is that, if slavery is a punishment for sin and all men are sinners, only some men are slaves.)

Man, then, is naturally sociable - i.e. God made him sociable. But he is not naturally political - political life is a later and contingent supervention. In Augustine's mature thought, therefore, the theme of natural law, though present, is developed as a moral rather than as a political theory, for politics itself is necessarily separated from morality. Indeed, in a particularly splenetic moment, Augustine remarks that States differ from gangs of bandits only in point of size. I say 'in Augustine's mature thought' - making the assumption that 'mature' and 'later' come to much the same thing - because his views do, in fact, seem to have undergone certain changes. In his earlier writing, he more than once suggests that political arrangements are not merely adventitious to nature, and that they ought to conform to a natural model. He also suggests (as Cicero had suggested, and as Aquinas was to suggest) that a law not in conformity with nature does not deserve the status of law.⁴⁶ At this point in his career, it is clear that Augustine was still keeping closely to a Stoic-type model of human association. As H.A. Deane has pointed out, how-

ever, 'in none of the works written during the remaining forty years of his life (i.e. after the De Vera Religione) does Augustine ever state that positive law must conform to God's eternal law or to the law of nature to be valid.'⁴⁷

Even in his mature thought, of course, Augustine holds as a matter of necessity that the requirements of natural law ought to take precedence over those of custom and convention; but he, like many medieval and later theorists, does not find it inconsistent to hold this view in conjunction with a doctrine of non-resistance (a doctrine which is itself, of course, usually traced by its exponents back to the Apostle Paul.). Augustine's point is that, in the event of a ruler's attempting to force the Christian citizen to act against conscience (say, by insisting that he sacrifice to Jupiter), the proper recourse of the citizen is not protest, but martyrdom. The obligation upon the believer placed in this predicament is not to oppose the power of his earthly sovereign, but to entrust himself to the greater power of God. He does not really disobey. Rather, when he cannot obey both God and his sovereign, he must obey God.

The Apostle says, 'Let every soul be subject to the higher powers, for there is no power but of God: the powers which are in existence are ordained by God. Thus, whoever resists the power resists the ordinance of God.' But what if it command that which you ought not to do? In this case, by all means ignore the power for fear of the Power.⁴⁸

In fact, not even in the early writings mentioned above does Augustine suggest that, if a ruler, through unwisdom or wickedness, fails to frame his laws in accordance with a natural or eternal good, the subject has no obligation to obey such laws. He does not say that subjects are entitled to discover for themselves, by reference to the natural law, whether or not a positive law is properly framed. It is also notable that Augustine is largely concerned with the specific and topical issues raised by the ruler who wishes to seduce or coerce the faithful into a particular sin - namely, that of apostasy. In matters touching purely external considerations, where questions of religion are not at issue, Augustine is content to exhort the faithful to obey even a ruler who is patently wicked

Julian was an unbelieving Emperor - an apostate, a wicked man, a worshipper of images. In the service of the unbelieving Emperor were Christian soldiers. When they came to the cause of Christ, they acknowledged only him who was in heaven. If ever he (Julian) required them to worship images or to offer incense, they put God before him. But whenever he ordered them to form a line of battle or to march against this nation or that, they complied at once. They distinguished their eternal from their temporal master; but for the sake of their eternal master they were obedient to their temporal master.⁴⁹

While the 'temporal master' remains within his proper sphere, the injunction of St Paul to obey holds without

reference to any abuses of power on his part within that sphere; for, after all,

What does it matter under whose rule a man lives for the duration of this brief mortal life, provided only that his rulers do not compel him to do what is wicked? ⁵⁰

In all this, it seems at first sight that Augustine is departing very radically from the Platonic-Aristotelian tradition towards which he is in other respects not unsympathetic. This departure, however, is not as marked as it might appear. It is not, in fact, St Augustine's wish to develop the argument that membership of a communitas has no bearing whatever upon the fulfilment of human moral potential. Rather, his contention is that no earthly political organisation can in practice discharge the moral requirements of such a communitas. Such organisations serve to restrain men; but they do not perfect them. Thus, although the end towards which they tend - that of pax - is worthy enough as far as it goes, participation in existing political associations is not properly to be conceived as a moral enterprise. And, in this connection, Augustine takes specific issue with Cicero's theory of civil society - not as a theory about what a moral community would be, but insofar as it is offered as a justification for the way of life of a particular civil society, namely, Rome.

Cicero had characterised a civil society as somehow 'public' or 'popular' in its essential character. It

is a res publica or a res populi - the common property of the people whose society it is. And what makes a people a people - what imparts a cohesive element to a community - is a common agreement as to what is right. It is Cicero's contention that, in a community where there is such common agreement, justitia - the giving of every man what is due to him - will prevail. But, St Augustine now wishes to ask,

Where is the justice of a man who abandons the true God and makes himself over to evil demons? Is this giving to everyone what is due to him? Or is he who withholds a piece of land from its purchaser and gives it to a man who has no title to it unjust, while he who withholds himself from the God who made him and serves evil spirits just? ⁵¹

It may be that Augustine's assault on Cicero's position is, in the words of Donald Earl, 'wholly illicit from the point of view of strict argumentation'. But this criticism would only be to the point if Augustine were at all concerned with 'strict argumentation'. As it is, his intention is not so much that of refuting Cicero as of making an urgent and competing claim to moral allegiance. The point which he wishes to make is that the only moral communitas is the Civitas Dei; and the Civitas Dei is not a State distinguished by common agreement amongst its members as to what is right. It is a community with no territorial - indeed, no terrestrial - boundaries, whose members are related to one another by a common love of God. Without such a common love of God, St Augustine holds,

there cannot in any case be agreement as to what is right. Thus,

Two cities have been brought into being by two kinds of love - the earthly by love of self and contempt for God, and the heavenly by love for God and contempt for self. The one glories in itself, the other in the Lord; for the one seeks glory from men, while the greatest glory of the other is God....The one holds its head high in its own glory; the other says to its God, 'Thou art my glory and the uplifter of my head.'⁵²

He who sets himself the task of loving God and his neighbour as himself, not by the standards of men but by those of God, is because of this love said to be of good will....The right will, then, is well-directed love, whereas the wrong will is ill-directed love.⁵³

Moral rectitude, in short, is neither produced nor impaired by political transactions as such. It springs from a personal relationship existing between God and the reason and will of the redeemed individual.

Glancing, for comparative purposes, at the political remarks of St Ambrose, we find that Augustine has once again followed his teacher closely. To St Ambrose, as to St Augustine, social life is natural while political life is the reverse. That mankind is divinely intended to live in communities can be inferred, Ambrose suggests, from the fact that God, having created Adam, saw that it is not good for man to be alone, and

created Eve to be a help for him. The union of these two is, he remarks, both the origin and the ideal pattern of organised society: Communities were intended by God to consist, not of networks of subordination and superordination, but of persons related to one another by ties of mutual love and service, and directed by a common sense of justice. And justice is conceived, not in the narrow sense of 'giving to each his due', but in the broader and, we might say, the richer sense of preferring others to self. The ideal or 'natural' association of men is like that of a flock of birds, in which

the laws are common to all and kept by all with a common commitment, (in which) what is lawful and unlawful is the same without exception, (and in which) all share the same dwelling-place, obey the same ordinances, and take part in the same deliberations.⁵⁴

In such a society as this, each member would take a turn at ruling and being ruled. No-one would be either a perpetual ruler or a perpetual subject. But the fact that this does not happen may be explained in terms of the greed and lust for power characteristic of fallen man. Once an individual acquires power over others, he is unwilling to relinquish it. The great majority of men, permanently excluded from a share in government, and reduced, in effect, to servitude, are, not surprisingly, disaffected. The minority whose members exercise authority without interruption or correction are, also not surprisingly,

arrogant, overbearing and capricious. Monarchy, in particular, is a deterioration from the natural and proper state of things. But, at the same time, and given existing conditions, it is a necessary evil. It is a consequence of sin, arising out of the sinful lust for power. But it is also remedial: people who are themselves sinful and foolish stand in need of rulers who will subject them to discipline and compel them to obey. And similar remarks apply to slavery: God and nature created all men equal (and this essential equality is recognised by the Church. The sacraments, for example, are available to all who are in a state of Grace, regardless of rank - or not, as the case may be. Ambrose, we recall, was the man who refused point-blank to say Mass while the unshriven Emperor Theodosius I remained in the Church.). Slavery, like monarchy, is a result of sin and foolishness. Yet, things being as they are, it is better for a weak and foolish man to be a slave than to be free; so that it is really 'a blessing that such a state of servitude is given.'⁵⁵

To sum up this rather long section as briefly as possible: We may say that both the New Testament and the Patristic literature do indeed contain a recognisable doctrine of natural law, but that this doctrine has added to it a Christian superstructure built upon the features previously developed by pagan authors. Broadly speaking, it diverges from the classical account in two connected respects. First, it stresses the

primacy of faith as over against reason. Second, it emphasises the utter dependance of fallen human nature upon divine gratuity. Faith, and the grace through which faith is itself made possible, are the essential prerequisites of all enterprises. It provides the context within which, and only within which, human aspirations and activities become coherent and well-directed. As Augustine puts it, nisi credideritis, non intelligetis.

II.

Canon Law.

In spite of the eschatological and relatively apolitical character of its spokesmen's concerns, however, that part of the Civitas Dei undergoing its earthly pilgrimage⁵⁶ was inevitably faced with the problems of coming to terms with temporalities. At an early stage - although precisely how early it is impossible to say - the Church began to evolve an increasingly intricate mode of organising itself which owes much of its inspiration, and not a little of its content, to the Corpus Iuris Civilis. And that an institution of the size, and occupying the cultural milieu, of the medieval Church should gravitate, so to speak, towards such a legal mode of organisation is a development which, of itself, requires no explanation. It is surely rather quixotic of Walter Ullmann, for example, to try to formulate such an explanation in

terms of the 'influence' of Tertullian.⁵⁷ As it happens, however, we do not come across a comprehensive or definitive statement of canon law, as distinct from numerous local and unofficial collections, until the appearance of the Concordantia Discordantium Canonum, compiled by Gratian in about 1139 (probably at the law school of the University of Bologna.). The Concordantia Discordantium Canonum is more usually known as the Decretum Gratiani or Decretum. For brevity's sake, we shall refer to it as such in what follows.

As B. Kurtscheid and F. Wilches have shown, the history of canon law down to the time of the Decretum is so very complex as almost to defy generalisation altogether.⁵⁸ We may say, however, that, in the main, its sources are fivefold: scripture itself; the decrees of the General Councils of the Church; Papal letters on a variety of subjects of public or judicial import; the Patristic literature; and the Corpus Iuris Civilis. But, like all law, that of the Church is inevitably flexible and organic in character, undergoing a continual process of adaptation in response to specific circumstances and requirements, and of syncretism with local secular codes. Before the Decretum, something in excess of forty earlier collections of varying comprehensiveness had been made. (The most substantial of these were the Liber de Misericordia et Iustitia of Alger of Liege (ca. 1105) and the Sententiae Sidonensis (ca. 1130-1135).) The Decretum, however, is by far the most extensive and, by reason

of its breadth and authority, the most important. It would be fair to say that the Decretum stands in the same relation to the law of the Church down to the twelfth century as that of the Corpus Iuris Civilis to the earlier law of Imperial Rome. It provided the standard handbook for students in the Canon Law faculties which were developing in the Universities during the twelfth and thirteenth centuries. Also, Gratian's work was continued by a large number of canonists - amongst them his pupil, Roland Bandinelli, who, in 1159, became Pope Alexander III.⁵⁹ These approached the Decretum in much the same way as their civilian counterparts approached the Corpus Iuris Civilis - producing commentaries and glosses, by means of which they continued Gratian's enterprise of systematically expounding and applying the texts. Most significantly of all from the point of view of the medieval historian, the canonists 'evolved the theory of the universal domination of the Papacy, which came to embrace the claim to political supremacy over all the peoples of the world.'⁶⁰ The Decretum itself, with the addition of subsequent official compilations of Papal legislation, formed the substance of the Corpus Iuris Canonici of 1580, which, in turn, was to stand as the authoritative legal code of the Church until the promulgation, in 1917, of the much more short-lived Codex Iuris Canonici of Pope Benedict XV.

The Decretum Gratiani is very far from being a mere compilation of texts. The documents which it brings

together (arranged in subject-order rather than, as was the earlier and confusing practice, in chronological order) are accompanied by an original commentary which points up the distinctive features of the various opinions in question, while at the same time attempting to reconcile the disunanimities within each subject group. In this respect, it would not be unreasonable to conjecture that Gratian's work owes something to the famous Sic et Non of Abelard, which in turn stands in a dialectical tradition traceable back to the lost Antilogiae of Protagoras. But, at the same time and more broadly, this method of noting and reconciling distinctions is wholly typical of medieval philosophical debate at large.

Of particular interest to us, of course, is the understanding of the character of law which lies at the heart of Gratian's undertaking. It is an understanding which is derived directly from the Etymologiae of Isidore of Seville - although it clearly does not originate with him. Isidore mentions two possible methods of classifying laws. First, he proposes the three headings of ius civile, ius gentium and ius naturale which we have already considered in relation to Ulpian and his colleagues. In addition, however, Isidore suggests that law is properly to be divided into two components, 'human law' and 'divine law', the latter being that which is established 'by nature' and the former that which has its origin in custom or

convention.⁶¹ And the Decretum, while it accepts both these systems of classification, places especial emphasis on the second. Thus,

The human race is governed in two ways - by natural law and by custom. Natural law is that which is contained in the Old and New Testaments. It commands that each man should do to others what he would have done to himself. It forbids him to do to another anything that he would not have done to himself. Thus, Christ says in the Gospel, 'Whatever you wish men to do to you, do the same to them; for this is the law and the prophets.'⁶²

All laws are either divine or human. Divine laws come from nature, and human laws from custom. This is why the two differ - for different peoples are responsive to different laws.⁶³

The thought here is essentially the same as that embodied in the Patristic writings: that natural laws are obligatory standards of conduct in virtue of their having been made, not by man, but by a beneficent creator. In the above passages, we notice that all law which is not a human artifact is said to be natural. As such, it is said to be divine in character, contained in the canonical scriptures. But this way of putting it should not mislead us into the cardinal error of here supposing that natural law is held to depend on revelation. If it were, then, of course, its claim to universality would be destroyed. It would be available only to those who were members of the Church and/or had access to the canonical scrip-

tures; and this would be a direct contradiction of the teaching of St Paul in the Epistle to the Romans. Gratian's view is not that natural law depends upon revelation, but that it is fully confirmed by revelation. In itself, he says,

It came into being with the very creation of man as a rational creature; and it does not vary with time, but remains immutable.⁶⁴

We notice also that, in the second of the two passages quoted on the previous page, there is a reference to the most salient point of difference between the two types of law. Human laws vary widely, as functions of variable circumstances. Natural laws, on the other hand, are the same always and everywhere. This distinction is, in itself, straightforward and familiar enough. But what is particularly interesting here is the way in which, in the Decretum, it is affirmed that natural law not only differs from positive law in this way, but that it constitutes a higher law before which defective positive law ought actually to give way, and in the light of which undesirable customs and conventions ought to be changed. The following remarks are highly significant

The natural law takes precedence in point of dignity over custom and legislation. Anything accepted as custom or incorporated into legislation which is contrary to natural law is to be considered null and void.⁶⁵

Nothing is commanded by the law of nature except what God wishes. Nothing is prohibited by it

unless it is prohibited by God. And there is nothing in the canonical scriptures which is not also found in the divine law (which is itself consistent with nature). It is clear, then, that whatever can be shown to be contrary to the divine will or to the canonical scriptures or to the divine law is also opposed to natural law. Thus, when something is identified as part of the divine will or the canonical scriptures or the divine law, it is thereby also identified as part of the natural law. Thus, any legislation, whether secular or ecclesiastical, which is shown to be contrary to nature must be decisively rejected.⁶⁶

(There clearly are drawbacks to this view, which we must mention and leave alone. The canonical scriptures, divine law and natural law are treated as essentially one and the same thing. But the canonical scriptures enjoin a number of contradictory things - that one should and should not marry one's deceased brother's wife, for example. Also, many of the injunctions of scripture are of purely ceremonial or quaintly formal import. I do not imagine, for instance, that Gratian would wish to say that a man with a flat nose ought not to become a priest - although the Book of Leviticus does contain this stricture. Yet Gratian's model does not furnish a principle by reference to which we can distinguish minor matters from weightier ones. It would seem that we are to hold the Levitical dietary regulations (many of which are in any case palpable absurdities) and the Ten Commandments in the same esteem; and so

forth. These were difficulties of which the canonists were not unaware; but we cannot go far enough afield to consider their attempts to deal with them.)⁶⁷

On the subjects of slavery and private property, the Decretum follows the direction taken by the Fathers. These things are punishments and remedies for sin. Thus, though they are, strictly speaking, contra naturam, it does not follow that they should be 'considered null and void' - except, of course, in the internal moral and spiritual sense already mentioned. More generally, however, the individual is no longer merely urged to 'ignore' the wrongful injunctions of the civil power and thereby, if things so fall out, to win the crown of martyrdom. Also, such wrongful injunctions are no longer identified simply in terms of their invasion of the spiritual relation between God and the individual. In the Decretum, the earlier detachment of natural law from matters political is abandoned. It is asserted (with specific exceptions made for slavery and private property) that any positive stipulation, 'whether secular or ecclesiastical', which breaches natural law is to be 'decisively rejected'; and this is clearly a call to non-compliance. But the question is: What does this mean in practical terms? More specifically, who is to be the judge of when such an infringement has taken place? And this is a question which the canonists were keen to answer in a particular way. Again, we cannot dwell on the matter at

length; but it is important to note the close connection between the work of the canonists and a controversy which is traceable at least back to the correspondence of the fifth-century Pope Gelasius II, and which came dramatically to a head in the protracted controversy between the Emperors Henry IV and V and Popes Gregory VII, Urban II and Paschal II. Broadly stated, the essence of the matter is as follows.

Regnum and sacerdotium, the secular and spiritual powers or realms, each appear to have separate spheres of competence. And it would seem that, in the very nature of the case, each sphere is entirely different in its terms of reference from the other: the one deals with worldly, the other with other-worldly matters. One basis of this concept of Regnum and Sacerdotium is the Dominical saying, 'Render unto Caesar the things that are Caesar's and unto God the things that are God's.'⁶⁸ Another is the cryptic utterance of Jesus in the Garden of Gethsemane, as reported by St Luke:

And they said, 'Lord, behold, here are two swords.'
And he said unto them, 'It is enough.'⁶⁹

It is with this second passage in mind that medieval political writers so often refer to 'two swords' - meaning two kinds of power, one appropriate to spiritual and the other to worldly matters. But this notion of an earthly status quo comprising two self-

contained areas of jurisdiction proved to contain problems of principle sufficient to render it largely untenable in practice. What is to happen if the secular invade the spiritual realm? Has not the Church the right to require the Prince to raise his sword-arm in order to protect it and enforce what it commands? What if the Prince refuse? What is to be done in cases of jurisdictional dispute or overlapping - for example, in respect of the investiture of Bishops or the trial of clerics on criminal charges? (This latter, it will be recalled, was the chief occasion of the momentous quarrel between Henry II of England and Archbishop Beckett.) Finally (and this is the most fundamental grounding of all the claims of the Church), is not the final superiority of the Church, embodied in the power of the Papacy to give or withhold absolution, established by the authority of scripture itself. For did not Christ say to the first of the Popes,

'Thou art Peter, and upon this rock I will build my Church; and the gates of hell shall not prevail against it. And I will give unto thee the keys of the kingdom of heaven: and whatsoever thou shalt bind on earth shall be bound in heaven: and whatsoever thou shalt loose on earth shall be loosed in heaven.'⁷⁰

The contest between Regnum and Sacerdotium which distinguishes so much of the political history of the middle ages is, essentially, a contest over how far and into what areas this 'power of the keys' can

be construed as extending. It is, in short, a contest between disparate foci of authority, neither of which is prepared to see in the other a final judge, for potestas iurisdictionis on earth. As McIlwain remarks, it is in a broad sense a struggle 'between the canon law and the ius civile of Rome',⁷¹ with (generally speaking) the civilians ranged on the royal and the canonists on the Papal side. This dichotomy is particularly sharply seen in the bitter contest (ca 1303-1313) between Pope Boniface VIII and Philip IV, 'the Fair', of France. On the Papal side, "canon lawyers and other Papal theorists were redoubling the Pope's claim to possess 'fullness of power' over the Church and all Christendom. This plenitudo potestatis made him the fountain of law and justice, whose secrets were locked in his own bosom....'He rules and disposes all things, orders and governs everything as he pleases He can deprive anyone of his right, as it pleases him, for with him his will is right and reason; whatever pleases him has the force of law.' This account of the Pope's plenitudo potestatis was written in 1332 by a Spanish Franciscan, Alvarez Pelayo."⁷² In short, the Pope may utter divine law - he may, that is, interpret or extend Holy Writ - by reason of the power to which, as St Peter's successor, he is heir. But if divine law and natural law are one and the same, as the canonists wish to insist, then it follows that 'his will is right and reason; whatever pleases him

has the force of law', and, by the same token, that whatever displeases him is 'utterly null and void'. In practice - at least, within the terms of this theory - it is within the power of the Pope to dispense subjects from their oath of allegiance; to command a crusading army to invade the territory of an intransigent prince; to place the territory of such a prince under Papal interdict - in short, to do anything he likes, answering only and personally to God himself. As Otto Gierke puts it, 'All human laws (leges) find their boundaries set and their spheres of competence assigned to them by the law spiritual (canones). For this reason, the temporal power is subject to and should obey the spiritual. For this reason the offices of Emperor, King and Prince are ecclesiastical offices.'⁷³

The polemical literature surrounding the so-called 'investiture controversy' alone - and this is, as it were, the historical bench-mark of the conflict between regnum and sacerdotium - is very extensive and recondite. There is, however, no need for us to dwell any further upon the role of the canonists as ideologues, or the function of their interpretations as props to what Walter Ullmann designates as 'Caesaro-papalism'.⁷⁴ It is enough to note the way in which, largely during the course of such ideological conflict, the canonists develop a conception of natural law, not only as an unmade standard of right, but also as a set of higher socio-political norms by reference to which

existing custom and legislation can be rendered 'null and void'.

The general impression created by the Christian doctrine of natural law as we have so far considered it, however, is of an ad hoc collection of themes lifted from classical writings and given a rough doctrinal coating. This is something of an oversimplification; but it is not too serious a distortion. It must be borne in mind that the New Testament authors or redactors, the Fathers, and the canonists were all, in some sense, primarily polemicists and only secondarily, if at all, moral or legal philosophers. What they have to say on the subject of morality is largely generated, not by the wish to build a system, but by the need for a response to some particular exigency - be it the exclusivism of the Jewish-Christian community at Rome, pagan responses to Christian claims, or the contest for superiority between Church and Empire. At this point, however, we depart from a more or less overtly polemical literature and turn to the systematic exposition given to the doctrine of natural law as part of St Thomas Aquinas' theory of politics and morality.

III.

St Thomas Aquinas.

The great bulk of this exposition is to be found in the Prima Secundae of the Summa Theologica. It is with

this part of St Thomas' prodigious output that we shall be for the most part concerned; although we shall also look elsewhere - mainly at other areas of the Summa Theologica and at some of his remarks in the De Regimine Principum. In fact, apart from the In Libros Politicorum Expositio (i.e. the Commentary on Aristotle's Politics), Aquinas has left no complete work on politics (the De Regimine is unfinished), and most of what he has to say on social and political matters has to be dissected out of his theological writings. It is at once apparent, however, not only that he gives systematic consideration to the legal and ethical motifs with which we have so far been concerned, but also that this consideration forms part of a large-scale architectonic synthesis of Christian doctrine and the lately 'recovered' metaphysical, ethical and political writings of Aristotle. St Thomas, continuing the work of his teacher Albertus Magnus, is, more than anyone else, responsible for the disengagement of the bulk of Aristotelian philosophy from the Islamic associations which, in 1215, moved the Papal legate to prohibit all lecturing at the University Of Paris on Aristotle's Physics and Metaphysics. And the most arresting feature of this Aristotelianism, from our point of view, is the way in which it leads St Thomas to attribute a wholly un-Patristic element of dignity and worth to political life and relationships as such.

Aquinas' attitude to the philosophy of Aristotle may briefly be depicted as follows. On the one hand, what-

ever may have been made of him in partibus infidelium - by al-Kindi, al-Farabi, Avicenna, Avenpace, Averroes, and so on - Aristotle himself is not in error. On the other hand, however, his writings do not express the whole truth. They certainly do not constitute the complete and rational world-centred philosophy for which the Islamic editors and commentators had sought. The correct assessment is that his work captures that part of the truth which is capable of being discovered by the intellect alone, without the assistance of revelation. And, as far as it goes, divine revelation has not annulled it. Thus, for example, Aquinas quite readily accepts that all things have a telos and that the particular telos of man is eudaimonia. But he remarks also that, although wellbeing of a kind - and a worthwhile kind - may indeed be achieved on earth, man has a higher end than such wellbeing: namely, eternal beatitude in contemplation of the vision of God. Aristotle, of course, could not have known about this higher eudaimonia. Had he known about it, he would have recommended it, since he is clear that all men seek their highest possible good. And the ultimate good of eternal beatitude is possible only in the next life. As Aquinas puts it,

The object of the will - that is, of the human appetite - is that which is universally good, just as the object of the intellect is that which is universally true. It is therefore evident that nothing can satisfy man's will except that which

is universally good. And this is to be found, not in anything created, but only in God, since every created thing has goodness only by participation. Thus, only God can fulfil the will of man....Therefore God alone constitutes the beatitude of man. ⁷⁵

In his specifically political writing, Aristotle had set out to examine the conditions which might best enable men to secure the end which is proper to humanity. He had, as Aquinas puts it, dealt with the ultimum et perfectum bonum in rebus humanis.⁷⁶ And, to Aquinas' mind, Aristotle was perfectly in the right to suppose that the good life on earth can be secured by political means. What Aquinas adds to Aristotle, of course, is the observation that the way to ultimate blessedness can itself only be prepared within the conditions provided by another social organisation - namely, the Church. According to Aquinas, then, Aristotle's theory of man and society may be adopted by the Christian believer without fear of error - provided only that it is recognised as a non-exhaustive theory, valid within limits but nevertheless incomplete. With this single reservation, Aquinas accepts the Aristotelian conception of civil society. By the same token, he relinquishes the by now time-honoured Augustinian conception of political organisation as an unnatural or disciplinary order. On his account, the secular power is not a distasteful though necessary excrescence upon nature. It is not a contender with the Church in a zero-sum

game for the allegiance of men. Neither does political organisation exist merely to provide the external conditions of peace and security which enable the Church to do its own work. On the contrary, it has positive moral and educational functions of its own. It can, so to speak, do part of the Church's job for it by teaching men to be morally better than they are. When it comes to slavery, Aquinas prefers to side with St Augustine rather than with Aristotle. Considered under the aspect of God's original intention, all men are equal - no-one is a slave 'by nature'. The fact that slavery now exists is to be explained in the usual way - i.e. in terms of sin and its consequences. Slavery apart, however, Aquinas asserts that human institutions figure amongst the essential requirements of human nature and that, as such, they would have existed even if there had been no fall. His position may be more fully outlined as follows.

St Augustine (Aquinas remarks) had held that, had the fall not occurred, no man would have been in subjection to any other. This view is based upon three considerations. First, man is a rational creature, made in the image of God. On the face of it, therefore, it is obvious that God's original intention (made explicit in the Book of Genesis) was that human beings should be sovereign, not over others of their own kind, but over the non-rational part of creation. Second, the fact that subjection and domination are punishments introduced after the fall is made clear

by God's words to Eve, 'Your husband shall rule over you.' Third, man's state before the fall was one of perfection. In this state, he necessarily had possession of every good thing and suffered nothing evil. Subjection to the will of another, however, is by common consent one of the greatest of evils, and freedom from such subjection one of the most highly-prized of goods. It follows, therefore, that subjection could not have existed before the fall.

Against all this, however, Aquinas notices what is, given his presuppositions, an obvious objection. Relatively elevated as it was, the human condition in the original state of grace was nevertheless lower than that of the angels. Yet we know from scripture that the angels themselves are arranged in a hierarchy of descending ranks, with the higher ranks exercising a form of rulership over the lower. Rulership as such, therefore, cannot be held to be incompatible with the dignity of man, since it is plainly not incompatible with the higher dignity of the angels. There is, then, a distinction to be drawn between two senses of the word 'rulership'. On the one hand, Aquinas remarks, we can speak of the rulership of the man who keeps a slave. On the other, however, we can also speak of the rulership of one who governs or directs a free man. The heart of the distinction is that the owner of a slave rules his slave (to paraphrase Aristotle) as though the slave were a living implement. In other words, the slave-master directs the slave towards

ends which are the slave-master's rather than the slave's. The ruler who governs a free man, on the other hand, directs the free man towards his own ends or, if he governs more than one free man, towards the common good. (This point is not, of course, original to Aquinas. Socrates had said something very similar to Thrasyarchus in the Republic, and Aristotle takes it up fully.) If we consider the phenomenon of rulership in the first of these senses, we shall see at once that it is an evil. No man will find it congenial to be invariably forced to toil towards objectives which are not his own. We may conclude, therefore, that the relationship of master and slave is indeed a punitive and 'unnatural' consequence of the fall. The dominion of a ruler over free subjects, however, is plainly a rather different kettle of fish; and Aquinas wishes to suggest that it is in this sense that rulership would have existed even if the fall had not occurred. He reiterates the dictum of Aristotle, that man is not only sociable but political; and his point here is that any form of corporate living, however good, will require a measure of central direction if it is to achieve its natural end, the common good. Since men, however well-intentioned, have different individual ends and preoccupations, and do not invariably see their own ends in relation to the whole of which they are a part, rulership would have been necessary even if ill-will had not been introduced into the proceedings by Adam. Moreover,

men are not all identically equipped in point of physical and intellectual ability. It is (according to Aquinas) a fact of nature that some men are cleverer or stronger than others; and it is, he suggests, naturally right and proper that the stronger and wiser should direct the whole community towards the common good. (In reply to the assertion of Callicles or Thrasymachus that it is natural for the strong man to manage public affairs in his own interests, Aquinas would presumably have said that such management is no more than the rulership of slaves, and so not 'natural' at all.)⁷⁷

This view of political association is clearly most congenial to a doctrine of natural law. It certainly establishes it on a far less ambiguous footing than it occupied - or could occupy - within the Augustinian tradition. And Aquinas' version is, in fact, presented as part of a fourfold classification of law as eternal, natural, divine and human. (Aquinas, unlike Gratian, does not hold that divine law and natural law are one and the same - thus overcoming objections of the kind mentioned on p. 215.) The first and most general type is the eternal law - which may be said to stand in direct line of descent from the logos-cosmology of Heraclitus and the Stoics. Aquinas defines it as

the reason existing in the mind of God, according to which the entire universe is governed.⁷⁸

And he goes on to develop an account of this eternal law in a way which reminds us somewhat of Montesquieu.

It is, he suggests, to be understood in two senses. First, it consists of natural necessity - that is, it comprises 'laws of nature' in the sense in which (let us say) Newton's laws of motion are laws of nature. In this sense, of course, it holds without distinction over both the rational and the non-rational parts of creation:

All things which are under the divine direction are subject to the regulation and measure of the eternal law.⁷⁹

If (let us say) Galileo throws a cannonball off the top of the Tower of Pisa, it will invariably fall to the earth. If Galileo throws himself off, he too will fall to the earth. In this primary sense, the eternal law is simply the blanket of necessity which covers animate and inanimate things. There is another sense, however, in which human beings may be said to 'participate' in the eternal law in a manner which is wholly peculiar to themselves -

for they are able to give direction to themselves and others, and so become sharers in the activity of direction.⁸⁰

In other words, man alone, in virtue of his unique rationality, can bring his actions deliberately into conformity with certain standards which he knows to be written into the eternal law, and which correspond to the nature of man himself. At the most general level, he is able to formulate a fundamental tautology - namely, that good ought to be done and evil avoided.

From this universal principle of right reason, all the more detailed precepts of natural law - relating to self-preservation, sexual relations, social life, and so on - are pragmatically derived through the application of 'practical reason' to the question, 'What, given the kind of creature that man is, is the good to be done and the evil avoided in the given circumstances?' It is not suggested that a detailed or exhaustive list of 'natural laws' could be stated in the form of 'rules'. Rather, the suggestion is that, as rational beings, we have it within our power to discover by reflection and in the light of the principle that good ought to be done and evil avoided what the 'naturally right' thing is in a particular predicament. And that part of the eternal law in which human beings 'participate' in this way is designated as 'natural law'.⁸¹

The inclination to follow the natural law is said to be a habit of mind which, using a term favoured by the Eastern Fathers, Aquinas calls synderesis (a somewhat obscure word, of which the most satisfactory translation is probably 'conscience'.). All who do not have this habit of mind are either unusually stupid or unusually corrupt. It is important to note, however, that man is not said to be bound to act upon natural law as a matter of necessity. Galileo is not forced to refrain from doing evil in the way that he is forced to fall to the ground. Prescriptive natural laws, in other words, do not simply describe states of affairs in the way that scientific natural

laws, which formulate apparently invariable regularities, do. And it is precisely in respect of his ability to act rationally in relation to nature that man's position is said to differ from that of the rest of creation. As Aquinas puts it,

Since the rational creature participates in the law by intellect and reason, his share of the eternal law is called 'law' in the strict sense of the term, for law belongs to reason....The non-rational being, on the other hand, does not participate in law through reason. His share of it can therefore be called 'law' only in a metaphorical sense.⁸²

In short, only man can be under obligations; and only man can incur the stigma of guilt when he fails to discharge his obligations.

This possibility of acting upon rationally-discovered 'natural' principles does, however, raise a problem - namely, that posed by the very generality of 'laws' which are universal in their application and force. For such laws are, in the very nature of the case, rather remote from particular situations. Reason reflecting upon man's place in God's eternal order can, it is said, discover general principles for itself. For example, since nature tells him that he is a sociable being, the reason of the individual concludes, negatively, that he ought not to offend those amongst whom he lives and, positively, that he ought as far as possible to seek the common good of his group. This is a general 'natural' precept which (since the uni-

formity of nature is taken as an absolute presupposition of the argument) is universally binding upon all men always and everywhere. Manifestly, however, such a precept does not take us very far. Although we can live in a manner consistent with such very abstract principles, we plainly cannot live by them. And this is so chiefly because our predicament consists in a succession of particular circumstances, in relation to which we often require more specific guidance than is given by a general principle. Given that the general principle 'do not harm your neighbour' may be said to 'stand to reason', I still require to know whether I shall in fact harm my neighbour if I ϕ . In addition, there are many purely contingent matters upon which the law of nature does not pronounce at all. To take a modern illustration, it is neither 'natural' nor the reverse to drive on the right or the left hand side of the road. The 'natural' rule here would be that I should secure the common good by doing what everybody else does. But the question of what the common practice should be, of how it should be decided upon, how enforced, and so forth, are not themselves answered by natural law; and neither is any one such practice in itself universal or immutable.

In a word, then, natural law is in need of particularisation, extension and administration. And this requires rules of a third kind - namely, rules established by purely human enactment or 'human law'. In this connection, and in words which once more ill-

ustrate his affinity with Aristotle, Aquinas makes the following remarks:

In the sphere of practical reason, man naturally participates in the natural law in the form of certain universal principles; but these do not of themselves provide rules for particular actions. ...It is therefore necessary to proceed by human reasoning beyond first principles to the setting up of certain particular rules. ⁸³

Practical reason is concerned with that which is capable of being altered by activity - that is to say, with whatever is individual and contingent rather than (as with theoretical reason) with what is necessary. Human laws, therefore, cannot have the final certitude and infallibility of the deductive sciences. Neither is it necessary that every standard should have such final certitude and infallibility, provided only that it has as great a degree of certainty as something of its kind is capable of having. ⁸⁴

In connection with the second of these two passages, we note that, although the formulation of human laws lessens the generality of natural law, it does not entirely eliminate it. Aquinas' point is the same as Aristotle's: that it is a mistake to demand of ethics more precision than the subject-matter is capable of yielding. When we 'proceed by human reasoning...to the setting up by legislation of certain particular rules', we are engaging in a process of deduction - of moving from what is general to what is particular. We might, for instance, proceed along the following lines.

It is wrong to do harm to my neighbour;
 To steal from my neighbour is to do him harm;
 Therefore I ought not to steal from my neighbour.

Thus, a human law (proscribing theft) might in a sense be said to 'follow from' the general 'natural' precept that it is wrong to do harm. The three statements given above are not, after all, merely thrown together at random. But, at the same time, this feat of 'practical reasoning' - this 'practical syllogism' - does not furnish the formal certainty of (say) geometrical deduction: it does not provide rules which determine their own application. Thus, rules of conduct deduced in this somewhat loose sense from general principles must be further interpreted in the light of what the circumstances in which they are to apply actually are. Thus, even after the human law proscribing theft has been formulated, the question of which particular acts count as theft remains open. Human laws, in short, require constant administration and adjudication in the light of practical reason. In turn, such reasoning must be conducted in the light of what is naturally right, but the natural law itself does not provide guidance on points of detail and application.

This inherent ambiguity or 'sponginess' of both natural and human law brings us conveniently to Aquinas' consideration of the nature and role of divine law. First of all, divine law differs from the eternal, and therefore from the natural, law in that it is pos-

itive. In other words, it is a product of God's will rather than an aspect or manifestation of his rational nature. As such, it could be changed from time to time. Indeed, such changes have occurred - the divine law is divided into an old law and a new, contained in the Old and New Testaments respectively. Eternal law, on the other hand, is, as one might expect, immutable: God may will different things from time to time, but he will not deny his own nature by acting against reason. (Whether he could act against reason or not is a vexed question; but this, for our present purposes, is neither here nor there.) And similar remarks apply to natural law, except to the extent that secondary precepts derived from natural law may be defeasible in relation to particular circumstances. The positive divine law, however, is necessary in addition to the other forms of law for the following reasons. First, natural law only provides guidance towards the achievement of the common good of men on earth. It does not immediately bear upon the achievement of the ultimate end of eternal beatitude. And there are many things which do bear upon this ultimate end which are not immediately obvious to the reason: keeping holy the sabbath day and not worshipping graven images are examples. Second, and as we have seen, human laws covering the same kind of behaviour may vary widely from one another from place to place or from time to time, precisely because they do not have 'the

final certitude and infallibility of the deductive sciences.' Indeed, they may in all good faith come actually into conflict with one another, simply because different men evaluate different situations in different ways. There are, however, no two ways about the achievement of beatitude; and a matter of such moment clearly requires detailed and unambiguous instruction. Third, human legislation can be drawn up only with regard to purely external matters; but the fact is that many things are sins which are not crimes. It is only from scripture, for example, that we know that covetousness is sinful. Thus, since

human law was unable adequately to restrain and direct inward acts...it was necessary that the divine law be added to it for this purpose.⁸⁵

Finally, human law is fallible. Not only is it the case that not every offender against human law is caught and punished. It is also the case that human law sometimes deliberately abstains from achieving all that it might achieve. It refrains from taking every external act into account since, if it were to try to eliminate all evils, it would inevitably destroy much that is good also.

In order, therefore, that no evil should remain unproscribed and unpunished, it was necessary that a divine law be added, by which all sins are forbidden.⁸⁶

In view of its standing in relation to natural law on the one hand and divine law on the other, it is

easy to see that human law must operate under certain limiting conditions. First of all, as we have already seen, matters ultimately relating to salvation fall outside its scope. These are covered by the divine law contained in scripture; and what this means in effect, of course, is that they are the special responsibility of the Church, which is entrusted with the application and interpretation of scripture. This division of roles is such as to imply, once again, that the ecclesiastical or spiritual power is superior to the secular or temporal. It establishes to Aquinas' satisfaction that "to the Summus Sacerdos, the successor of Peter and the Vicar of Christ, 'all kings in Christendom should be subject, as to the Lord Jesus Christ himself.'"⁸⁷ Using the kind of simile of which both Plato and Aristotle had been fond, St Thomas suggests that the role of the Prince is like that of the ship's carpenter. His job is to keep the vessel in good repair for the duration of the voyage. The Church, on the other hand, is like the ship's master, whose function is to steer accurately to the appointed destination. This simile is hardly flattering to the Prince; but that, so far as St Thomas is concerned, is too bad.⁸⁸

Second, so far as the standing of human law in relation to natural law is concerned, St Thomas' remarks echo the dictum of the Decretum that 'anything accepted as custom or incorporated into legislation which is contrary to the natural law is to be considered null

and void.' And it seems that, in general, he has in mind situations of two kinds. First, and most obviously, there is the case of the human law which stands in flagrant breach of a precept of nature, or which winks at the infringement of such a precept. (A positive law permitting, enjoining or not forbidding usury would be a case in point.) Any such law is not really 'law' at all: its enforcement - indeed, its very existence - amounts to nothing more than an act of violence. Second, there are the laws of the 'rules of the road' type - i.e. the range of laws which are morally neutral matters of convenience, which do not either infringe or uphold a precept of nature. In special circumstances, such rules as these might be required to give way to the higher requirements of natural justice; and an actual example of this defeasibility is provided by Aquinas' treatment of the laws which regulate private property.

It is in this connection important to note that Aquinas does not share the Patristic attitude towards the institution of private property. That is, he does not regard it tout court as 'unnatural' - as a regrettable but necessary consequence of the fall. Indeed, his view is best illustrated in his own words:

External things may be considered in two senses. First, as to their nature, which does not fall within the power of mankind, but only within that of the divine power whose will all things obey. Second, as to the use of such things; and here man has a natural control over externals, since he

is able by means of his reason and will to make use of external things for his own purposes, as though it were for this that they were made. For ...imperfect things always exist for the benefit of more perfect things. On this principle, the Philosopher (i.e. Aristotle) shows that the possession of external things is natural to man.⁸⁹

As far as Aquinas is concerned, any restriction imposed upon the use of externals by one individual as against another would be reprehensible as an infringement of the common 'natural control over externals'. Private ownership as such, however, does not in the ordinary way contravene the requirements of nature. On the contrary, it is a convenience which facilitates the orderly pursuit of practical purposes, and is intended for no purpose more morally momentous than that of securing this convenience. Its functionality in this respect arises out of the following considerations.

First, because everyone is more concerned with obtaining that which has to do with no-one but himself than with that which is common to all or shared by many; since everyone, wishing to avoid labour, leaves to others whatever concerns the community as a whole....Similarly, because human affairs are carried on with greater efficiency when each man has his own particular business to attend to - there would be utter confusion if everybody tried to do everything. And, third, because this produces a more peaceful state of things between men (assuming, that is, that everyone is satisfied with what he has.). Quarrels are most likely to break out between people who own property in common and jointly.⁹⁰

There is, then, a distinction (derived from Aristotle) to be observed in discussing the provisions of natural law concerning property. The distinction is one between private ownership in the sense of the power to acquire and dispose of goods, and common possession in the sense of a common right to the use of such goods. Private ownership is not a part of natural law; but it does not infringe it, either, provided that the natural right of common use is not disregarded.

The possession of things in common is to be attributed to natural law, not because natural law stipulates that all things are to be held in common without private ownership, but because property-distinctions are in accordance with human agreements rather than with natural law. In other words, they are a part of positive law....Private property is therefore not contrary to natural law, but an addition to natural law, devised by human reason.⁹¹

In view of this distinction, however, there will obviously be occasion upon which positive laws establishing private ownership will be overridden or nullified by more pressing claims, themselves resting upon the requirements of natural law. Thus,

The provisions of a human law cannot possibly derogate from those of natural or divine laws. Now, according to the law of nature, instituted by the divine providence, material goods are intended for the satisfaction of human needs. The distribution and appropriation of such things, therefore - which proceeds from human law - must not stand in the way of the actual satisfaction of human needs by such things. Thus, whatever a man has in greater quantity than he needs is,

under natural law, due to the poor for their support....Since there are many who are in need, and since they cannot all be relieved from the same source, it is left to the discretion of each man to provide from his own property for the relief of the needy. But if there is such urgent and evident necessity as to create an imperative need for essential relief (if, for example, a person is imminently in danger of having no means of providing for himself at all), then he may legitimately take what is necessary from the property of another. Strictly speaking, this is neither fraud nor theft.⁹²

So far as those laws which actually infringe natural laws are concerned, it must be remembered that, though there is very little room in the predominantly hierarchical political conceptions of the middle ages for the classical ideal of political participation, it is nevertheless Aquinas' view that political life can provide the means whereby the higher potentialities of human nature may be realised. Political life is said once more to be natural to man; and, in face of this, the stark nature-convention disjunction of earlier Christian political thought goes into abeyance. Canon law had, in fact, already proposed that an appeal to nature might serve as a remedy, in the hands of the Church, for the worst defects of an inherently unnatural system. But, under Aquinas' tutelage, natural law is erected as a last-resort ethical criterion by which man can evaluate, and if necessary condemn, a given organisation in terms of its correspondence or lack of correspondence with a natural model.

In human affairs, something is said to be just when it properly corresponds to the rule of reason; and, as we have seen already, the primary rule of reason is natural law. All man-made laws, therefore, are in accordance with reason to the extent that they are derived from the natural law. And if a human law departs in any significant respect from natural law, it is no longer legal. Rather, it is a corruption of law.⁹³

It follows from this that political obligation must itself be conditional upon the justice of the laws which the individual is called upon to comply with - or, more strictly, upon the rules which he is required to follow actually having the moral status of law. No-one is bound to comply with rules which are really no more than acts of force:

Such laws, therefore, are not binding in conscience, except perhaps in order to avoid scandal or disturbance.⁹⁴

Man is bound to obey the secular princes insofar as the order of justice requires. On the other hand, if the Prince's authority is not just but usurped, or if he commands what is unjust, his subjects are not bound to obey him, except perhaps in special circumstances, to avoid scandal or danger.⁹⁵

But Aquinas does not merely wish to reiterate the Augustinian injunction to 'ignore' or passively to disobey the Prince and suffer the consequences. On the contrary, his assertion is that the unjust Prince has no authority, and that his subjects are entitled to take collective action against him. He does not

use the stock vocabulary of political theory with the precision which we are now accustomed to require. For example, he does not find it odd to talk of 'unjust' or 'usurped' authority rather than unjust or usurped power. Also, his qualifiers might be thought a little compromising - 'scandal and disturbance' for whom? But his overall meaning is nevertheless clear from his remarks. The unjust or usurping Prince is simply not really a Prince. His rule is the unnatural one of the tyrant or the keeper of slaves:

The regime of the tyrant...is not ordered towards the common good but towards the private good of the ruler. This point is made by the Philosopher in Book Three of his Politics and Book Eight of his (Nicomachean) Ethics. Consequently, to disrupt government of this kind is not sedition (perturbatio huius regiminis non habet rationem seditionis)....Indeed, it is the tyrant himself who is seditious, since he nourishes discord and sedition amongst his subjects in order that he may dominate them the more effectively. This is tyranny, which conduces to the private good of the ruler and to the injury of the multitude.⁹⁶

It would not, however, be true to say that Aquinas develops anything like an unambiguous theory of resistance. He does not, in fact, give a consistent account of how this 'perturbation' of a tyrannical government should be conducted, or of how far it should go. In the early Scriptum Super Libros Sententiarum, Aquinas follows John of Salisbury in actually suggesting that, when a tyrant seizes power by force and against

the wishes of those who then become his 'subjects', he may rightly be assassinated if there is no earthly superior to whom his victims can appeal. This, however, does not appear to represent his mature judgment. Later (in the De Regimine Principum and the Summa Theologica) he stresses the desirability of taking every possible precaution against tyranny - by trying to secure a Prince whose personal qualities predispose him against tyranny, and by constitutionally limiting his powers. Also, in the De Regimine Principum, he abandons tyrannicide and suggests instead that the ruler who becomes a tyrant should be desposed peacefully, by whatever means are appropriate to local political practices. The underlying thought, however, is clear. We may look to nature, not only for moral standards, but for political standards as well. The basis of political allegiance is the conformity of the ruler to values which he does not create and may not abrogate. And, on the positive side, Aquinas is prepared to accept, contra Augustine, that even pagan States have a certain natural value of their own, in virtue of being the expression of a natural and rational order

The divine law, which springs from grace, does not detract from human law (non tollit ius humanum), which springs from natural reason. The distinction between the faithful and the unfaithful, therefore, taken by itself, does not take away the dominion and authority of infidels over the faithful. Such a right of government can indeed be removed by the Church. But this the Church sometimes does and sometimes does not do.⁹⁷

CHAPTER FIVE. RATIONALISM, INDIVIDUALISM,
RADICALISM.

This chapter will be somewhat less expository than its predecessors. We could not, in a single chapter, dwell upon the seventeenth and eighteenth century hey-day of natural law in any depth; and, as we have already said, there would in any case be little point in trying to do so. It will be as well, therefore, to treat the matter very generally. I shall do so (chiefly) by expanding and commenting upon A.P. d'Entrevés' definition of the so-called 'modern' theory of natural law in terms of its 'rationalism', its 'individualism' and its 'radicalism'.¹ And I shall try to emphasise an aspect of the 'modern' doctrine which has tended to be overlooked in favour of its 'revolutionary' tendencies - namely, the essential continuities which subsist between it and its predecessors.

I.

'Rationalism'/'Secularism'.

We look, first, at the distinction between 'modern' natural law and its classical and medieval precursors in terms of the alleged 'rationalism' of the modern version. And we note at once that both Professor d'

Entreves and Sir Ernest Barker also use the word 'secular' and its relations in this context, in such a way as to suggest that 'rationalism' and 'secularism' come to much the same thing.² They do, of course, emphasise that 'modern' natural law is 'modern' largely in the sense that an appeal to it is made in relation to very different social and political circumstances from those prevailing in classical antiquity or the middle ages. And, though these different circumstances are very familiar, we might pause for a moment to sum them up in the words of Sir Winston Churchill (writing of the period between 1688 and 1815): 'Whereas the older conceptions had been towards a religious unity, there now opened European struggles for national aggrandisement, in which religious currents played a dwindling part.'³ Nevertheless, both d'Entreves and Barker seem also to wish to suggest that 'modern' natural law is in some important sense logically or conceptually different from its older counterparts. And this is a suggestion which we are not entitled to accept without first looking rather carefully at the force of these two words 'rationalism' and 'secularism'.

A consideration of the 'rationalism' of modern natural law is a little muddled by the fact that the term 'rationalism' may be used in a number of clearly distinguishable senses, at least three of which are applicable to the matter in hand. The senses in question are all well-known; but it will aid clarity to state them briefly

(a) There is the sense in which 'rationalism' is opposed to 'empiricism' - as, for example, in the phrase 'continental rationalists', as applied to Leibniz, Descartes and Spinoza. In this sense, it denotes a theory of knowledge which emphasises the a priori and which holds that the criteria of certainty are wholly or mainly intellectual and deductive rather than sensory and inductive.

(b) There is the sense, particularly important in the study of medieval jurisprudence, in which 'rationalism' is opposed to 'voluntarism'. In this sense, 'rationalism' denotes the view that law derives its character from, or has its origin in, reason rather than will. This is a view which we have already glimpsed in Aquinas, and to which we shall return presently. More specifically, 'rationalism' in this sense holds that natural law is an aspect of the inherent rationality of things rather than the result of an operation of God's will.

(c) There is the rather looser or more 'popular' sense in which 'rationalism' is applied to (say) Voltaire or Condorcet or Diderot. When so used, it indicates, amongst other things, a view of the world and of human activity which does not rely upon any presuppositions of a religious character.

For our purposes, the first and second of these senses tend to blend in to one another. Given that natural law is an aspect of the rational nature of

things, and given also that we are rational creatures who somehow have a share of that nature, then there is also a sense in which natural law is an aspect of our human nature. In other words, it is available to our reason as such, without our having to rely upon any special revelation. This is a view of which we have already seen numerous instances, and we find a 'modern' reaffirmation of it in John Locke's Essays on the Law of Nature:

I admit that all people are by nature endowed with reason, and I say that natural law can be known by reason, but from this it does not necessarily follow that it is known to any and every one. For there are some who make no use of the light of reason but prefer darkness and would not wish to show themselves to themselves.⁴

But since we are searching now for the principle and origin of this law and for the way in which it becomes known to mankind, I declare that the foundation of all knowledge of it is derived from those things which we perceive through our senses. From these things, then, reason and the power of arguing, which are both distinctive marks of man, advance to the notion of the maker of these things... and at last they conclude and establish for themselves as certain that some Deity is the author of these things. As soon as this is laid down, the notion of a universal law of nature binding on all men necessarily emerges.⁵

In the second of these passages, we note that, although God comes into the picture, natural law is not said to be revealed by God or to be a creation of his will. Rather, the argument is that we can infer natural law

from the evidence given to us by our senses of design in the universe. It has to be granted that this is quite clearly a mistake. It is a mistake made by a large number of exponents of the argument from design - namely, that of illicitly conflating the notion of order with that of purpose. When we look at a watch, we see an orderly relationship existing between its parts.⁶ When we look at the universe, we see an orderly relationship existing between its parts (so, at least, it is said); but we are not entitled to infer from our knowledge of the fact that a watch has been made for some purpose that the universe also has been made for some purpose. Let us not digress, however. For the present, let us simply note that Aquinas and Locke both agree that our knowledge of natural law does not depend upon revelation, and that the existence of natural law is not accounted for as an act of God's will. Both of them are in a clear sense 'rationalists'; but this is not to say that either of them takes a view of the world involving no religious presuppositions.

(This is incidental, but it is proper to glance also at Locke's suggestion that we derive our knowledge of natural law 'from those things which we perceive through our senses' - an unfortunate way of putting it, but one which is nevertheless clear. This is enough to dispose of the objection (raised by Sir James Stephen, for example) that Locke's espousal of natural law conflicts with his insistence, in the Essay Con-

cerning Human Understanding, that there are no innate ideas. Stephen's objection was, of course, made long before Professor von Leyden's editorial work on Locke's Essays on the Law of Nature. But he does seem to have overlooked the distinction drawn by Locke in the Essay Concerning Human Understanding between an innate moral idea (which is nonsense) and a 'natural law':

I would not be here mistaken as if, because I deny an innate law, I thought there were none but positive laws. There is a great deal of difference between an innate law and a law of nature; between something imprinted on our minds in their very original, and something that we, being ignorant of, may attain to the knowledge of by the use and application of our natural faculties. ⁷

In his own use of the term 'rationalistic' and its grammatical relatives, it seems that Professor d'Entreves conflates the first and third of the senses given above. He wishes to indicate that the seventeenth and eighteenth century doctrine, as adopted by Hobbes, Locke, Pufendorf, Jefferson or the French Revolutionaries of 1789, 'has nothing to do with theology. It is a purely rational construction, though it does not refuse to pay homage to some remote notion of God.'⁸ And, strictly speaking, of course, this is an unacceptably loose way of putting it. Natural law has never had anything 'to do with theology' in any formal sense. It is an aspect, not of theology, but of jurisprudence and moral and political thought. It is true that, in the middle ages, these were matters with which men

who also happened to be theologians - or at least churchmen - were concerned. But the medieval Church's virtual monopoly of literacy and learning is purely contingent. It does not tell us anything about the inner rationale of either medieval or modern natural law. It certainly does not establish that the former is a species of theology, and it is odd that this point should so commonly have escaped notice. Also, we notice that the use of the word 'secular' which we have mentioned does not make any clear distinction between two important senses of the word - namely, 'non-ecclesiastical' and 'non-religious'. This is a distinction in respect of which confusion is apt to arise and it is, for our purposes, an important distinction.

We notice, then, that there is an essential continuity between the position of St Thomas and that of Locke (although virtually any two examples would have illustrated such a continuity). In the following pages, we shall amplify this continuity by considering two themes. First, we shall notice that the 'rationalism' of the 'modern' theory of natural law is, after all, not a particular index of its modernity. Second, we shall also notice that, if 'secular' is taken to mean 'non-religious' (a sense which its use in conjunction with the ambiguous word 'rationalism' tends to promote), then its application to the 'modern' theory of natural law is simply beside the point. The natural-law argument has never been held to depend

upon religious belief, and recognition of its separateness from such belief far predates what are called 'modern' times. And from this, it will emerge that the other (and weaker) sense of the word 'secular' - i.e. 'non-ecclesiastical' - is the only sense in which the term really applies in the present context.

II.

It is customary to regard Hugo Grotius as the founding father of the 'modern' version of natural law. This is a judgment which apparently goes back to the first incumbent of the first Chair of Natural Law to be endowed in a German University (Heidelberg) - Samuel von Pufendorf. The following judgment of T.A. Walker is, however, rather nearer the mark: 'There was little novel in the legal system of Grotius, and there was equally but little original in either the arrangement or the matter of his work.'⁹ Moreover, the frequent supposition (or apparent supposition) that Grotius was engaged in an academic critique of previous writers on natural law is quite unfounded. His earlier and little-known work, the De Iure Praedae, was written in the Dutch interest as part of a dispute with Spain and Portugal over the Dutch seizure of a Portuguese vessel in the Straits of Malacca; and, on his own account, the more famous De Iure Belli et Pacis was motivated by strictly practical, albeit far wider, concerns.

Grotius, however, is certainly 'rationalistic', and

he certainly makes some very heterodox-sounding claims. It is possible, he suggests, to

refer the proofs of things which concern the laws of nature to certain fundamental conceptions which are beyond question - that is, which are such that no-one can contradict them without doing violence to himself. For the principles of that law...are in themselves manifest and clear. Indeed, they are almost as evident as are those things which we perceive externally by means of the senses.¹⁰

The logical relations of natural law are, Grotius suggests, as much self-evident when considered in the abstract as are the principles of mathematics itself.

What is more,

The law of nature...is immutable. Not even God himself can change it. Limitless as is God's power, we can nevertheless identify certain areas into which it does not extend....Thus, just as God cannot make two and two equal not-four, so also he cannot cause that which is intrinsically evil to be not-evil.¹¹

Finally, of course, there is his oft-quoted claim that what he has to say about natural law would still 'be valid'

Even if it were to be conceded that God does not exist (which concession cannot be granted without the greatest possible wickedness), or that he takes no interest in human concerns.¹²

It is worth reiterating, however, that, in spite of the immediately striking appearance of all this, Grotius simply does not have the 'modernity' which has so often been attributed to him. Even in the field of

international law, which is supposed to be his own special province, he had been to a large extent anticipated by the Spanish schoolmen Francisco Suarez and Francisco de Vittoria. And we note, in addition, that his treatment of natural law is based upon considerations of a kind which have been familiar since the time of Plato:

Amongst the characteristics of man is a pressing desire for society - not of any and every kind, but for a social life which is peaceful and organised as far as the limits of the intellect allow with others of his kind. ...This maintenance of the social order... which is consonant with the human intellect itself...is the origin of law properly so-called. This sphere of law includes refraining from taking that which belongs to another; restoring to another anything of his that we might have, together with any gains derived from it; the obligation to honour promises; the making-good of any losses which arise out of our own fault; and the infliction of penalties upon offenders according to what they deserve.¹³

Also, although his assertion that natural law has a quasi-mathematical exactitude may be cited as an instance of the seventeenth-century fascination with deduction, we must not forget that Aquinas himself - and, for that matter, Plato and Aristotle - had adopted the deductive method as the means by which we are to arrive at the precepts of natural law. As Aquinas puts it,

Theoretical reasoning begins from indemonstrable first principles which are known by nature, and produces from these the conclusions of all the different sciences. This knowledge is not naturally intrinsic to us, but is acquired by effort of reasoning. In the same way, in the practical realm, reason begins from the precepts of natural law, which are universal and indemonstrable principles; but it must proceed to a more particular deduction of specific rules. ¹⁴

Finally, it is as well to be clear that Grotius does not push the theme of God's possible non-existence very hard or very far. Immediately after the famous 'even if God did not exist' passage, he goes on to say that

The precise opposite of this view has been inculcated in us, partly by reason and partly by a continuous tradition. What is more, it has been supported by many proofs and by unanimously-attested miracles. From this, it follows that we must always obey God our creator, to whom we owe all that we are and all that we have.... The law of nature, proceeding as it does from essential characteristics implanted in man, can nevertheless rightly be attributed to God, since it is he who has willed that there should be such characteristics in us.¹⁵

Grotius' point, in short, is that the laws of nature derive their validity from no more than their being appropriate to what we are. The state of affairs constituted by our actually being what we are, however, is attributed to God. In other words, Grotius' 'rationalism' does not seem to be accompanied by a

notion of God which is only 'somewhat remote'. What is more, it very quickly becomes clear that this 'rationalism' is itself by no means a distinctive signal of his 'modernity'.

This is immediately apparent from the briefest glance at the 'rationalist' (as distinct from 'voluntarist') theory of natural law developed, not only by Aquinas, but also by Gabriel Biel, Francisco Suarez, Gabriel Vasquez and others. One of the central contentions of this theory is that God has not made the natural law and cannot change it. The natural law is simply timeless reason in its application to the human predicament, and not even God can act against reason, since reason is a part of his very being. He cannot, for example, cause the past to be other than it is; and he cannot command us to hate him. Stating the matter at its most general, God cannot act in any way which will infringe the law of contradiction. As Aquinas puts it,

There does not fall under the scope of God's omnipotence anything in which a contradiction is implied.¹⁶

(We can only regret the fact that this passage, taken literally, is a piece of the purest nonsense.) Indeed, on one occasion, Aquinas suggests that it would be blasphemous even to suggest that God could act irrationally. In short, then, of the two possibilities - that God wills us to obey the natural law because it is right, and that it is right that we should obey the

natural law because God wills it - the 'rationalist' theory opts for the former. It is conceded - by Suarez, for example - that the command of God may properly be said to be that which binds us to obey the natural law as law in the strict sense of the term; for law is by definition that which is commanded by a superior. But although God's will may be said to make natural law obligatory, it does not create it and it does not make it right. It is right in itself, qua rational, and independently of any volition.

Thus, the independence of the rightness of natural law from any creative or volitional act of God is not, after all, a peculiar feature of the 'modern' theory of natural law, distinguished by its 'rationalism' and/or 'secularism'. It certainly is not an invention of Grotius, and it does not betoken a striking new exclusion of God from seventeenth and eighteenth century discussions. Indeed, it is most interesting to note the way in which the following passage from the fifteenth century Gabriel Biel anticipates the more celebrated dictum of Grotius.

Even if God, who is divine reason, did not exist (which is impossible)...anyone who acted against right reason, whether angel or human being or anything else, would still sin.¹⁷

The hypothetical non-existence of God is introduced, by Biel and Grotius alike, not as a remark about God, but about the ontological and epistemological standing of natural law itself. Essentially, their point comes

down to this: The fact that an action is condemned by a superior being is - at most - an indication that the action in question is wrong. It cannot be the ground upon which it is wrong unless the claim that there is an absolute or objective value involved is abandoned altogether. If (let us say) the needless infliction of pain is wrong per se, then it would be wrong even if the superior being did not condemn it. Similarly, the superior being himself would be wrong if he refrained from condemning it - which is why it is said that God cannot act contrary to natural law: it is by definition impossible for us to say that God is in the wrong. Also, and ex hypothesi, it would be wrong even if there were no superior being to condemn it. If values are absolute, then they hold independently of what anyone thinks or wills. This is part of what it is for a value to be absolute.

Thus, if you wish to operate with the concept of natural law, you can, as it were, take God or leave him. The fact that natural-law talk in the middle ages is very tightly bound up with God talk does not, as we have said, establish that natural law is in some sense a branch of theology. And, on the other hand, there is plenty of God-talk in the allegedly 'secular' writings of 'modern' theorists. We saw this a little while ago in Locke's Essays on the Law of Nature; and Thomas Jefferson, too, speaks of a time when men

dissolve the political bands...and...assume the separate and equal station to which the laws of nature and of nature's God entitle them.¹⁸

Edmund Burke, also, vilifies anti-Catholic legislation as a violation of, amongst other things,

the will of Him who gave us our nature and, in giving, impressed an invariable law upon it.¹⁹

To take one more example - the significance of which has come to be particularly noticed in recent years: even the allegedly atheistical Thomas Hobbes qualifies his account of the 'laws of nature' as follows:

These dictates of reason men used to call by the name of laws, but improperly. for they are but conclusions or theorems concerning what conduceth to the conservation and defence of themselves; whereas law, properly, is the word of him that by right hath command over others. But yet, if we consider the same theorems as delivered in the word of God, that by right commandeth all things, then they are properly called laws.²⁰

There are, then, clearly good reasons for looking more closely at the distinction between two of the possible meanings of the word 'secular' and at the sense in which the 'rationalism' of modern theories of natural law is supposed to be a particular defining of 'modernity'. Broadly speaking, the 'modern' doctrine cannot be considered apart from the accelerating transformation of medieval Christendom into unified nation-states. Moreover, undoubtedly the single most important cultural factor in this process was the passing away, under the pressure of the Reformation, of the universal authority of the Church of Rome. The continued vigour of natural law in these

changing circumstances is indeed plausibly to be explained in terms of its having become disengaged from its ecclesiastical connections. But to say this is to point, not to any fundamental logical or conceptual change, but to an historical contingency. And Professor d'Entreves rather misses the point when he says that 'The self-evidence of natural law has made the existence of God superfluous.'²¹ On the one hand, it is demonstrable that many 'modern' exponents of natural law do, in fact, invoke the name of God in what they have to say. It is not immediately obvious what warrant there is for the assertion that such invocations are merely lip-service. On the other hand - and this is the crux of the matter - natural law has, throughout its history, invariably been seen as in some sense 'self-evident' - as 'standing to reason'. It is precisely by reason of its self-evidence that natural law is said to be distinguished from positive law and from revelation. It constitutes a body of norms which are what they are simply in virtue of our being what we are - a body of norms specifically appropriate to us and available to us as rational beings. To say that God made us rational beings or sociable animals, or to say in general terms that nature is as it is because God has created it in one way rather than another - this is speculative anthropology or cosmology; but it is not moral or social philosophy. It has nothing to do with natural law itself. That is, it tells us nothing about the

logic of natural law. Even St Augustine's insistence that we are cut off from sin from the inherent 'rightness' of the natural order unless and until God release us by Grace, is an observation, not about natural law, but about the perverted condition of the human intellect and will. Furthermore, it was never essential to the argument that God be postulated as the commander through whose will natural law acquires its obligatory character. We are not, in other words, inevitably committed by our acceptance of law to a concurrent acceptance of the command theory of law. If it be possible rationally to identify a given course of action as the right course, then command may be regarded as simply irrelevant to the question of whether or not we are obliged to pursue it. It makes perfect sense to say that we are obliged to pursue it, not because we are commanded (although we may be commanded), but because it is right; for what else does the word 'right' mean but 'that which we are obliged to do'? A modern exponent of this view is, of course, Immanuel Kant.

Through reason, we are conscious of a law to which all our maxims are subject, as if at the same time a natural order must be originated from our own will.²²

We can become conscious of pure practical laws just as we are conscious of pure theoretical principles, by attending to the necessity with which reason prescribes them and the elimination of all empirical conditions.²³

Kant's point (to put it very briefly) is this The

nature of morality cannot be determined by referring to any specific end in the external world. Consequentialist moral theory, for instance, is not satisfactory, because it leaves unanswered the question of whether we should pursue one consequence in preference to another. Indeed, there are no a priori reasons for preferring any one end to any other, so that ends-means reasoning is not an appropriate preparation for moral action. Morality must simply be the activity of a rational being willing according to a universal principle of duty. Only acts done 'on principle' are moral acts, and we are obliged to act according to moral principles for no reason other than that they are moral principles - they are such that we see it to be our duty to act on them. I do not suggest that Kant's moral theory has nothing wrong with it. On the contrary, I think it contains fatal flaws. But it is at least enough to show that we are not necessarily committed to the idea that, if a maxim is to be binding on us, it must be put as a command by an acknowledged commander.

In a nutshell, then, in discussing the 'modern' theory of natural law, we are not justified in saying, with d'Entreves, that 'the existence of God' has become 'superfluous', for the existence of God has always been a contingent feature, and never a necessary presupposition, of the doctrine. At any point in its history, therefore, the doctrine could have survived the subtraction of God - just as, if there is still

anything of value in Newtonian physics, such value is neither increased nor diminished by the fact that Newton himself thought it proper to postulate God as the creator of the mechanical universe. If the laws of motion hold, they do so quite independently of whether or not the universe was created by God, or of whether or not it was created at all. And so, too, to draw an invidious parallel, it is quite possible to hold that there are 'natural laws' which bind us morally and still be uncommitted as to any religious question.

The conclusion which we may draw from all this is that the alleged 'rationalism' and/or 'secularism' of 'modern' natural law are to a large extent red herrings. What is distinctive about modern natural law is not the religious belief or otherwise of its exponents. Neither is it their contention that reason is a moral faculty, nor their commitment to a particular understanding of what it is to be rational. Rather, it is the disentanglement of natural law from the ideological activity surrounding the Church, and its redeployment in other areas of moral and political discourse. We must now pass to a very broad consideration of the kind of discourse in relation to which 'modern' natural law characteristically stands.

III.

Individualism and Radicalism.

Ernst Troeltsch remarks that the natural law theories

of the middle ages were 'predominantly conservative'. This conservatism he attributes in large measure, and no doubt correctly, to 'The Christian doctrine of inherited sin....For' (he remarks) 'the realm of natural law was overshadowed and dominated by the Kingdom of God or the Church, and in this way, and on the assumption that nature could never be free from the taint of sin, the natural-law principles of autonomy and rational self-realisation were kept within definite limits and prevented from going too far.'²⁴In short, the damnosa haereditas of Ambrose and Augustine acted as a damper upon the claims which might possibly be made on behalf of natural law. We recall that the idea of actually doing away with (rather than merely condemning and ignoring) bad laws by reference to natural standards had emerged under the auspices of the canon lawyers. This development, however, only reflected the deep pessimism infecting the esteem in which the Church held human nature. Also, there is no doubt that it was largely directed towards the conservation of the Church's jurisdiction against lay encroachment, or in defence of the Church's own claims to be entitled to intervene in temporal affairs. It was certainly not an abstract assertion of the primacy of 'the people' or of their right to change or abolish a government.

From the discussion in the foregoing sections, it is clear that, although judgments emanating from Christian beliefs as to the 'fallen' condition of man may bear upon the kind of appeals which are made to nat-

ural law, they do not bear upon its fundamental logic. Similarly, the 'modern' radicalisation and individualisation of natural law, though they may be held to reflect changed doctrinal and social perceptions, are themselves not logical or conceptual changes in the rationale of natural law. Rather, they indicate a change of application occasioned by such changed extrinsic perceptions. Specifically, 'the doctrine of inherited sin has crumbled away; and its place has been taken by a convinced optimism in regard to human nature and reason, and a belief that, if left to themselves, men will follow the lead of their natural interests in the community.'²⁵

It is, however, as well to stress once more the aspect of continuity which holds as between medieval and 'modern' natural-law theories of legitimacy. We recall, for example, that, in the twelfth century, John of Salisbury had uttered a defence of tyrannicide; and, as McIlwain points out, John of Salisbury was by no means unique in this respect. 'Tyrannicide, in truth, had been implicit in current political thought ever since the acceptance of Isidore's dictum that one is a king only so far and just so long as his acts are kingly. It always was and always remained a doctrine of tyrannicide, never of regicide, and the very glory of true kingship which so marks the theory of John of Salisbury and of all in his age, tends also by inevitable logic to widen the gulf between this

26

and its opposite.' We note the way in which this

theory is ultimately rooted in the conception of natural justice. We are entitled to resist the Prince, says Peter Abelard, only to the extent that, in so doing, we are resisting something which comes, not from above - i.e. not from transcendent and unmade standards - but from within himself.²⁷ And this distinction between licit and illicit resistance reappears, of course, in John Locke

May the commands, then, of a Prince be opposed? May he be resisted as often as anyone shall find himself aggrieved, and but imagine he has not right done him?...To this I answer that force is to be opposed to nothing but to unjust and unlawful force, whoever makes any opposition in any other case draws on himself a just condemnation both from God and man.²⁸

In Aquinas, too, there is a theory of what we might call 'bloodless revolution', superimposed upon his own earlier defence of tyrannicide. In circumstances where the tyrannical Prince has been elected by his subjects, the subjects may depose him. In circumstances where there is a superior power with a right of appointment and dismissal, the aggrieved subjects may appeal to the superior to dismiss him. In either case, a form of resistance to tyranny, presupposing a moral purpose in political life, is depicted as being a justifiable public act of the whole people. For Aquinas, and for medieval theorists generally, the office of ruler is a trusteeship - a notion which was also to be relied upon heavily by Locke. The

power of its incumbent is legitimate if, and only if, he acts for the common good in conformity with law - and, ultimately, in conformity with the natural law.

The 'convinced optimism' which Troeltsch identifies as the obverse of the doctrine of original sin is accompanied in 'modern' expositions of natural law by individualistic presuppositions as to the nature of social and political life. It has in recent years been claimed that, in the case of the Levellers or Hobbes or Locke or Pufendorf, this individualism is not as marked or thoroughgoing or, we might say, as 'genuine' as it seems.²⁹ The suggestion here is that it is, in reality, made the occasion for a piece of covert special-pleading on behalf of the acquisitive ideology of an increasingly-politicised bourgeoisie. And, in this connection, we do indeed note the way in which the 'natural right' to property which we found in Aquinas has, in the hands of the Levellers or Locke, become a right to appropriate and dispose of property, rather than a right to common use. As C.B. MacPherson puts it, 'The individual was seen neither as a moral whole nor as a part of a larger social whole, but as an owner of himself'³⁰ - the keynote is not moral autonomy but proprietorial freedom. And, in the light of this, it might be supposed that grandiloquent claims to 'natural rights' really boil down to nothing more dignified than a demand to be allowed to compete without restraint in the cut-throat forum of a competitive market society. These consid-

erations are not, however, very important for our purposes. They do not alter the central meaning of the term 'individualism' - that it is the atomic man rather than the molecular unit who is to be rightly identified as the basic unit of political discussion and prescription.

In contrast to this individualism, both the classical and medieval forms of natural law were group-centred. They stressed the role of the individual as a component of a political whole and, ultimately, as a denizen of a rational and purposeful cosmos, forming, for him, an intelligible matrix of obligation. This organic conception is perhaps most readily and fully seen in John of Salisbury's amplification of an analogy already familiar to us from Aristotle.

The place of the head in the body of the commonwealth is filled by the Prince, who is subject only to God and to those who exercise his office and represent him on earth, even as in the human body the head is quickened and governed by the soul. The place of the heart is filled by the Senate, from which proceeds the initiation of good works and ill. The duties of eyes, ears and tongue are claimed by the judges and the governors of provinces. Officials and soldiers correspond to the hands....The husbandmen correspond to the feet, which always cleave to the soil.³¹

In short, the whole body politic is a versatile, many-functioned organism composed of different and unequal parts, all of which make different and unequal contributions to the corporate life. And we may note that,

in addition, a tincture of religious sanctity was imparted to this view during the middle ages by the writings of the so-called Pseudo-Dionysius or Pseudo-Denys. The Dionysius in question is supposedly the Dionysius ('the Areopagite') who is said to have been converted to Christianity by St Paul during the latter's visit to Athens. Thus, an 'almost Pauline' authority is brought in as stiffening to the already considerable reputation of the 'father' of the organic theory of the State, Plato. The Pseudo-Dionysian writings provide a source which is 'for inscrutable reasons usually overlooked, although it exercised throughout the Middle Ages a very great influence upon both ecclesiastical and royal governments.'* In fact, on the strength of external and the very scanty internal evidence, there is reason to suppose that the treatises originated in Syria in about the year 500; although their actual provenance remains notoriously obscure. Their mysterious author's intellectual heritage, however, is Hellenistic, neo-Platonic and Pauline; and his authority is considerable. His writings were cited as authentic by Pope Martin I during the first Lateran Council of 649; a translation and commentary was produced in about 858 by John Scotus Eriugena, and further commentaries were made by Hugh of St Victor, Robert Grosseteste and Albertus Magnus.

Curious though it may sound, the Pseudo-Dionysian treatises remind us of nothing so much as of Max Weber's theory of bureaucracy. The orderly conduct of affairs, Pseudo-Dionysius tells us, is possible

* W. Ullmann Medieval Political Theory, pp 304

only when power is contained within a tightly-stratified system of rankings, with each member of the system subordinate to the one immediately above him. God is the principle of unity from which all power is derived. It is he who stands, so to speak, at the apex of a pyramid of power, and the principle of an orderly distribution of power is to be found exemplified in the celestial hierarchy. Good order on earth, therefore, depends upon this hierarchical principle being reproduced in the conduct of human affairs. And this theory, as we might expect, provided a useful recourse both for those who wished to assert the Papal plenitudo potestatis and for exponents of the theory of monarchical divine right. The Pseudo-Dionysian writings are used, for example, in the correspondence of Gregory I and in the Bull Unam Sanctam of Boniface VIII. It is indeed rather strange that an authority of the stature of J.N. Figgis should, in his book on The Divine Right of Kings, make no mention of Pseudo-Dionysius at all.³²

Within this way of conceiving relationships of power, there is plainly no place for individualism. By contrast, however, the 'modern' theory of natural law is individualistic both as to its presuppositions about the nature of society, and in its socio-political recommendations. Here, a conception of society is advanced within which the 'body politic' has no collective life above or beyond or in addition to the life of each member. Society is no longer seen as an enter-

prise in which, through co-operation, some mysterious perfection beyond the individual can be realised. It is seen simply as a means to the realisation of personal interests. The individualistic conception of the State embodies what Hegel would call civil society, while the organic understanding of human co-operation which Hegel was to characterise as the State properly so-called falls into a long, though temporary, abeyance. The venerable and familiar arguments from a God-made normative cosmos to the individual as an hierarchical component now give place to an 'inverted' argument starting from the individual as rational creature and as bearer of unique and personal rights, and justifying or condemning a political association in the light of how it answers to the requirements of the individual. What is more, the old notion of natural equality now comes to the fore, in support of the central contention that each man's rights have the same sanctity, and are held in the same measure and on the same conditions, as those of every other.

Rights of some kind, of course, had always been implicit in the doctrine of natural law. If it is to be argued at all that we are naturally obliged in relation to others to $\emptyset$, then it is inescapable, whether made explicit or not, that those others have a right to expect us to $\emptyset$ in relation to them. This³³ is a point made by Jacques Maritain, for example, and it is, indeed, an inevitable part of the logic of 'rights-and-duties' talk. We saw something of this

kind in connection with the Stoics, for example. To hold that each man has a duty to include others within the widening scope of his oikeiosis is necessarily to imply that such others have a correlative right to be so included. In the 'modern' form of the doctrine, however, the avowal of rights - of possible claims against others - becomes central and explicit. Broadly speaking, natural rights are stated as specific and individual rights of life, liberty, property, freedom of conscience, freedom of expression, 'the pursuit of happiness', and so on. And so the kind of political activity towards which 'modern' natural law points is to be directed, not towards the preservation of a generalised, collective 'natural justice', but to the preservation and assertion of the specific rights of this man. Moreover, one of the accompaniments of this is a theory of government called - by one of the weightiest contemporary exponents of individualism - the 'minimal State',

limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on...Any more extensive State will violate persons' rights not to be forced to do certain things, and is unjustified.³⁴

In other words, the functions of government are negative and protective, and freedom consists in being left alone as far as is consistent with the maintenance of the lowest acceptable common denominator or peace.

The character of this individualism may perhaps best

be illustrated by reference to the theorist who is, on the face of it, its most 'extreme' exponent - namely, Thomas Hobbes. To Hobbes' mind, the life of politics is not 'natural' in the sense of existing ab initio. In other words, it is at least possible for us to conceive of a 'state of nature' - i.e. a state from which formal coercive or regulative machinery is entirely absent - out of which it would be necessary to move, by way of a 'social compact', into political engagement. Such a move would, however, be necessary in a vividly and easily comprehensible sense. This is so for reasons which are too well-known to require more than the briefest exposition, but which arise precisely out of the fact that man is an individual. Specifically, he is a highly complex pleasure-seeking and pain-avoiding mechanism. Moreover, all men, when cultural or social or society-dependent skills are subtracted, are all more or less equal with one another. Also, 'felicity' - the maximum satisfaction of desire for the minimum expenditure of risk - is a scarce resource. It often happens that your desires can only be satisfied in a way which occasions loss to me, and vice versa. The state of nature, therefore, will plainly be intolerable to each of the individuals living in it. Not even the strongest is so strong as to be able to feel secure against ambush or conspiracy. The state of nature is a 'war of every man against every man'. In it (and it would be a pity to depart from hallowed tradition

by omitting to quote this passage),

there is no place for industry, because the fruit thereof is uncertain. and consequently no culture of the earth; no navigation nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts, no letters, no society, and which is worst of all, continual fear, and danger of violent death, and the life of man solitary, poor, nasty, brutish and short.³⁵

Political engagement, therefore, is not really something that the individual can take or leave. Political association and social co-operation are entirely coextensive - or, at least, virtually so. In other words, the formation of political commitment is essential if men are to satisfy needs which are natural in the sense of being determined by their unalterable psychological dispositions. Commentators frequently remark that, in Hobbes' view, political life is unnatural. But this is only true in the sense that the State, as he understands it, is an artifact - as it is for Plato and Aristotle. In other respects, the following words of Spinoza might equally well have come from the pen of Hobbes:

I...conclude that the right of nature proper to the human race can hardly be conceived except where men have rights in a community and are thus able to defend their possession of lands which they can inhabit and cultivate; to protect themselves, to repel all force, and to live according

to the common judgment of all. For...the more men there be who thus come together, the more right they collectively possess. And if it is because men in a state of nature can hardly be possessed of their own right that the Scholastic philosophers wish to say that man is a sociable creature, I have nothing to say against them. ³⁶

Whether, for Hobbes, the 'laws of nature' which form 'convenient articles of peace upon which men may be drawn to agreement' are genuinely moral laws or not has, fairly recently, become the subject of a rather complex debate. Whether they are or not, however, it is important to realise that Hobbes' argument begins from an individualistic standpoint presupposing self-love. If you and I are in a state of nature, and that state of nature is intolerable to us both, the fact that it is intolerable to you is not of the slightest consequence to me, and the fact that it is intolerable to me likewise does not matter to you. If we make an arrangement to submit ourselves to the direction of a government, I do not enter into that arrangement with you to secure any remission or advantage for you. On the contrary, my only wish is to secure peace and security for myself; and I give up only as much of my 'right of nature' as is necessary to enable me to secure my own ends. In Hobbes, we find no suggestion of a theme which recurs throughout the writings of classical antiquity and the middle ages, and which emerges again in much nineteenth-century political thought. That is, we find no trace of the notion of 'self-realisation' understood in terms of the possibility

that, by submitting to rules and government, we may in some sense make our lives spiritually richer or more noble. Hobbes' laws of nature, whether moral or not, point towards the setting-up of the State as a rational imperative. Such an imperative is said to be deductively available to men as users of reason. But Hobbes' view is merely that political life allows men to do in safety what they would have wanted to do in any case. Nowhere does he consider it a possibility that the State might enable its citizens to realise to the full their spiritual and intellectual capacities as human beings. The State, according to Hobbes, comes into being so that men may live. But he does not go on, with Aristotle, to say that it enables them to live well.

At least broadly speaking, then, we may sum up much of what the 'modern' theory of natural law has to say in terms of the sanctity with which it invests the following themes. First, there is the theme of rights. It is said that natural law confers upon men certain natural rights, which he holds, not by reason of his membership of a group or his standing as a component of a political 'organism', but simply as an individual who, in all important respects, is the equal of every other individual. Such rights are said to be universal. They adhere to each individual regardless of all adventitious considerations; and, as such, they hold even between men who have no common background at all in terms of culture, language, creed or political affil-

iation.

The promises and bargains for truck, etc., between the two men in the desert island mentioned by Garcilasso de la Vega in his History of Peru, or between a Swiss and an Indian, in the woods of America, are binding to them, though they are perfectly in a state of nature in reference to one another. For truth and keeping of faith belong to men as men, and not as members of society.³⁷

Such rights are, moreover, indefeasible or imprescriptible. They are not prescriptive or socially-sanctioned. They cannot, therefore, be unilaterally taken away, and, if their exercise is impeded by any unilateral action, then an offence has been committed against an unmade law.

Second, there is the theme of the ultimate political sovereignty of the individual. Since being under government inevitably involves the curtailment of the exercise of rights, and since it is by definition wrong to deprive a man of what is his against his will, it follows that the setting up and maintenance of government requires the consent of each of those who are to be the government's subjects. And this is one of the most important of the thoughts underlying the social contract theory of legitimacy. It must be said, of course, that contractual theories of government were not new to or unique in the seventeenth and eighteenth centuries. They occur, for example, in the classical literature and in the Old Testament.³⁸ Again, we note

that the old notion of natural equality had already been pressed into service by Nicholas of Cusa, Richard Hooker and Francisco Suarez as a basis for a theory of government by consent.³⁹ Also, during the middle ages, the Ciceronian notion of a res publica or res populi, in which governmental power is somehow the property of the whole people, issues in many actual examples of 'contracts of government' and 'contracts of submission'.⁴⁰ It is, however, important to be clear that the seventeenth-century contract is not a corporate agreement. It is not an agreement between the whole of a governed people and their sovereign. It is a social contract - an agreement of each individual member of the association with every other member that each of them will, on certain specified conditions, submit themselves to government.

Moreover, the argument from contract is, in this form, coupled not only with an avowal of natural rights, but also with a far more central and explicit theory of resistance than has been met with hitherto. It is at this point that the 'radicalism' of modern natural law comes into play. The theory of resistance here in question takes the following paradigmatic form. Given that the legitimacy of a government must be established by - indeed, can only be established by - the consent of those who are to be under it, it is equally the case that this consent must be capable of withdrawal at need. What will count as a sufficiently pressing need is, of course, extremely difficult to specify, and depends to

a great extent upon the other assumptions of the particular theorist. To Hobbes' mind, for example, people will tolerate virtually anything rather than confront the horrors of the state of nature. Thus, in the Leviathan, the social compact is made the basis for absolute government. For his part, John Locke, although much readier to envisage possible circumstances of rebellion, can only present us with a rather vague formula when it comes to specifying what such circumstances might be.

Such revolutions happen not upon every little mismanagement of public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be borne without mutiny or murmur. But if a long trail of abuses, prevarications and artifices, all tending the same way, make the design visible to all the people...it is not to be wondered that they should then rouse themselves and endeavour to put the rule into such hands as may secure to them the ends for which government was at first erected.⁴¹

Obviously, there is an acute practical difficulty here - or a cluster of such difficulties. Who is to decide when the government has gone too far? On what basis is such a decision to be made? and so forth. Leaving this difficulty aside, however, the point remains that, at the last analysis, real sovereignty rests, not with the political sovereign, but with those over whom his sovereignty is exercised. Since men are held to enter a political community out of self-interest and in order

to secure certain ends specified in terms of their 'natural rights', they will plainly not remain within such a community if it fails or ceases to secure their 'natural rights', or if it actually attacks them. This assumed self-interest may, incidentally, itself be thought to serve as a check upon abuses of government. The sovereign will no more wish to court revolution than his subjects will wish to submit to tyranny. Thus, Spinoza remarks,

Only very rarely does it happen that sovereigns issue commands which are totally absurd. For their chief task is to plan for the common good and direct everything according to what reason dictates - if they are to safeguard themselves and retain their sovereignty. For, as Seneca puts it, no-one can continue as a tyrant for long.⁴²

The 'modern' theory of natural law, then, embodies a theory of resistance - indeed, a theory of moral transformation through revolutionary action. Such a theory (often present in some form in the past, but now central and explicit) turns upon the related notions of natural rights and individual consent. These themes figure prominently in the polemical discussions of the period of the English Civil Wars, for example:

To every individual in nature is given an individual property by nature, not to be invaded or usurped by any. for everyone as he is himself, so he has a self-propriety, else could he not be himself, and on this no second may presume to deprive any of, without manifest violation

and affront to the very principles of nature....
 Every man by nature being a king, priest and
 prophet in his own natural circuit and compass,
 whereof no second may partake, but by deputation,
 commission and free consent from him, whose
 natural right and freedom it is. ⁴³

It is certainly true that the Leveller literature is,
 in reality, only an expression of 'the glorious hope
 of men who lacked all possibility of gaining power.'⁴⁴
 But as an indicator of the potency of the doctrine of
 natural rights as a factor in revolutionary action,
 we may point out that its perhaps best known assertions
 were both made as deliberate contributions to successful
 instances of such action. The assertions in question
 are, of course, the American Declaration of Independence
 and the French Declaration of the Rights of Man and
the Citizen. The following is, of course, the opening
 of the American Declaration of 1776:

When in the course of human events it becomes nec-
 essary for one people to dissolve the political
 bands which have connected them with another,
 and to assume among the powers of the earth the
 separate and equal station which the laws of nature
 and of nature's God entitle them, a decent respect
 to the opinions of mankind requires that they
 should declare the causes which impel them to
 the separation. We hold these truths to be self-
 evident, that all men are created equal, that they
 are endowed by their creator with certain unalienable
 rights, that among these are life, liberty and the
 pursuit of happiness. That to secure these rights,
 governments are instituted among men, deriving their
 just powers from the consent of the governed. That

whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles, and organising its powers in such form, as to them shall seem most likely to effect their safety and happiness.⁴⁵

This, quite clearly, is a revolutionary document. It contains statements which are far more than merely academic or piously moral statements of what 'ought to be'. Rather, these statements are political claims and assertions as to the possibilities of political transformation. They are accompaniments to practical activity and symbols of the aspirations by which such activity is claimed to be inspired.

CHAPTER SIX A CRITICAL PERSPECTIVE.

A survey of natural law, however brief and superficial, discloses a 'tradition of civility' which extends backwards as far as our knowledge of human reflection itself. It is certainly true that it is only within comparatively recent times that the doctrine has been turned into a relatively pugnacious assertion of rights which may, if necessary, be enforced against an intransigent sovereign. But its history is, nevertheless, 'perfectly continuous' to all intents and purposes. No clear distinction can be sustained, for example, between the classical and medieval and the 'modern' forms in terms of the 'secularism'/'rationalism' of the last. And, in view of this historical continuity, it is difficult not to assent to the well-known words of Sir Ernest Barker. 'The origin of the idea of natural law may be ascribed to an old and indefeasible movement of the human mind...which impels it towards the notion of an eternal and immutable justice; a justice which human authority expresses, or ought to express - but does not make.'

Even though, from the point of view of practical life, its heyday may be said to have occurred during the seventeenth and eighteenth centuries, and in spite of its lengthy eclipse by moral theories which repudiate 'any advantage...derived...from the idea of abstract

right as a thing independent of utility'², natural law is still very much alive and kicking. To be sure, the phrase 'natural law', chastised by Karl Popper for its ambiguity, has almost died out, save in the writings of Catholic moralists (and even here it is much less prevalent than it was). But it would not be too fanciful to see a recrudescence of Barker's 'old and indefeasible movement of the human mind' in John Rawls' mighty attempt to rehabilitate the social-contract argument. Moreover, contemporary references to 'human rights', 'the rights of man', and so forth, all clearly derive from the tradition which we have been considering.

Indeed, the most obvious contemporary case in point is the Universal Declaration of Human Rights, adopted and proclaimed by the General Assembly of the United Nations on 10th December, 1948. This is a curious document, even the title of which is riddled with ambiguity. Does the adjective 'Universal' qualify the noun 'Declaration' or 'Rights'? If the former, then the title is pure nonsense, since the Declaration is not 'universal', but merely the declaration of the signatory nations. If the latter, then it is hardly less absurd, since many of the rights claimed to be 'universal' are palpably nothing of the kind. But we shall not digress into yet another critique of the Universal Declaration of Human Rights. What is interesting, from our point of view, is the - presumably not unintended - similarity between its wording and

that of the famous eighteenth-century declarations of the rights of man.

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people;...

WHEREAS the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, and have determined to promote social progress and better standards of life in larger freedom,...

NOW, THEREFORE,

THE GENERAL ASSEMBLY

PROCLAIMS this Universal Declaration of Human Rights as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the peoples of territories under their jurisdiction.

The root position here being enunciated is clearly, in

essence, the same deontological one as that adopted by seventeenth and eighteenth century advocates of natural rights. There are, it is claimed, certain fundamental rights which are simply part of the definition of what it is to be a human being. These are said to be immediately obvious to the 'conscience of mankind' - just as Locke's Swiss and Indian, though having no common sovereign and no mutual culture, know by the light of reason that each has the right to require the other to deal fairly. Infringements of such rights amount to a violation of the dignity said to be inherent in 'the human person' as such. They are not contingent upon what is posited in any particular system of law. They do not depend upon membership of or subscription to any one creed or denomination, upon colour or nationality or talent, or upon any other contingent fact. They are just human rights; and all human beings everywhere can appeal to them - or ought to be able to appeal to them - against oppression or persecution and in pursuance of 'better standards of life'.

In short, we are still very much in medias res as far as natural law and natural rights are concerned. This, in itself, is sufficient to warrant a brief critical investigation, intended to discover, as far as possible, exactly what can be made of the natural law theorists' claims as set out in typical form in our introduction, and as subsequently illustrated.

I.

'Hume's Fallacy'.

The development of the argument which it will be convenient to call 'Hume's fallacy' has long been appealed to as the event which administered a coup de grace to the traditional claims of natural law. For, according to Hume, the view that 'there are eternal fitnesses and unfitnesses of things which are the same for every rational being that considers them'³ is simply founded upon a fundamental logical error. What Hume takes to be the truth of the matter is put in the following rather striking way

'Tis not contrary to reason to prefer the destruction of the whole world to the scratching of my finger. 'Tis not contrary to reason for me to choose my total ruin to prevent the least uneasiness of...a person wholly unknown to me. ⁴

In the following passage, Hume draws attention to the logical error which he supposes himself to have detected

In every system of morality which I have hitherto met with, I have always remarked that the author proceeds for some time in the ordinary way of reasoning...when, of a sudden, I am surprised to find that, instead of the usual copulations of propositions 'is' and 'is not', I meet with no proposition that is not connected with an 'ought' or 'ought not'. This change is imperceptible; but it is, however, of the last consequence. For as this 'ought' or 'ought not' expresses some new

relation or affirmation, 'tis necessary that it should be observed and explained and, at the same time, that a reason should be given for what seems altogether inconceivable, how this new relation can be a deduction from others which are entirely different from it.⁵

A little later on, incidentally, Hume makes the point which, more than anything else, accounts for the now virtual disuse of the term 'natural' in moral discourse. 'Natural', he points out, is nothing if not imprecise. It can bear at least three constructions. It can mean the reverse of 'supernatural', it can mean 'frequent' or 'common', and it can mean 'non-artificial' or 'non-conventional'. But he here also repeats the point which is, for the moment, our concern that none of these possible meanings helps us in the least to determine what is moral and what is not.⁶ To take a contemporary and topical example there would seem to be a sense in which homosexual practices are 'unnatural' - that is, they are relatively infrequent or uncommon. And it seems also to come very easily to us to say that they are therefore wrong - that 'wrongness' follows deductively from 'unnaturalness'. It is precisely this allegedly deductive move which Hume takes to be an error; and we must now clarify what he holds to be the nature of this error.

We may do so by way of a quick and elementary glance at the nature of deductive reasoning. Deduction has always recommended itself as a peculiarly reliable

procedure - particularly during the seventeenth century, when it became something of a mania amongst philosophers. And this appeal stems chiefly from the fact that deduction is a process of necessary inference. In other words, valid deductive inferences have the characteristic of being self-evidently or necessarily such. What this means, for practical purposes, is that there is a simple and built-in test by means of which we can satisfy ourselves as to the validity or otherwise of any deductive inference. If it is valid, we shall find that to deny it and simultaneously to affirm the premisses from which it is derived is to utter a self-contradiction. To take the most standard of all possible examples. to say that all men are mortal and that Socrates is a man, yet to deny that Socrates is mortal, is to give voice, not only to nonsense, but to demonstrable or obvious nonsense. And this test works because the process of deduction is a process of analysis. That is to say, a scrutiny or analysis of the premisses is of itself sufficient to yield all the elements of the conclusion there is no need to import any adventitious material into the sequence of reasoning. By the same token, it is clear that an inference will not be 'self-evident' or 'analytically valid' unless all the evidence for its validity is already contained somewhere in the premisses from which it is held to follow.⁷ In the light of these remarks, then, let us look at one of the commonest and most controversial instances of what purports to be natural-law reasoning.

the prohibition of artificial means of birth-control set out in the Papal Encyclicals Casti Connubii and Humanae Vitae (the remarks which apply in this context will also apply to the homosexuality argument mentioned above). The following passage is taken from Pope Paul VI's Humanae Vitae

The Church...in urging men to an observance of the precepts of natural law...teaches as absolutely required that in any use whatever of marriage there must be no impairment of its natural capacity to procreate human life.

The same argument is stated more fully by Dr John Rock (quoting from a Catholic marriage manual), in a book published four years before Humanae Vitae

'The reason why the artificial practice of birth control is immoral is written into the very nature of the sexual organs and the marital act itself. The sex organs were made by God to reproduce the human race. Only when husband and wife unite naturally is the union of sperm possible. Therefore the primary purpose of the marital act is the conception of human life.'⁸

It is interesting to notice - which its proponents do not - that the argument, put like this, makes any attempt to impede the fertility of rabbits or mosquitoes immoral too, but let us not chase red herrings.

On the face of it, the foregoing argument appears to recommend to our moral sense an elegantly brief chain of deductive reasoning - that since the natural function of the sexual organs is to 'procreate human life', we therefore ought not to do anything to hamper the discharge

of this function. Reflection soon discloses, however, that there does not appear to be a shred of evidence in favour of any conclusion as to what ought to be done contained within the purely factual statement that the natural function of the organs of reproduction is reproduction. To put it more fully: if I were to accept that the natural function of the genital organs is indeed reproduction, while at the same time opting not to reproduce and to take steps to prevent myself from doing so, I should not be 'acting out a contradiction', so to speak. It will not be as if I had said, 'All men are mortal, Socrates is a man; therefore Socrates is not mortal', or as if, having said 'I love life', I had straightway blown out my brains. On the contrary, is there not a common and uncontroversial sense in which my decision to adopt contraceptive means and my decision as to which of the available means to choose could properly be called eminently rational decisions? Such decisions would, after all, be directed towards the achievement of formulated and desired ends, and they would be reached in the light of certain kinds of knowledge. of physical and chemical reactions, of mammalian physiology, and so on. In a nutshell, though I might incur the censure of moralists of a certain complexion once I had taken such decisions, I certainly should not, in taking them, expose myself to the ridicule of all who understand the laws of logic. And this indeed would be the case were the deduction in question a valid one. If anyone wishes to disagree with

this and accept the inference with which we are quarrelling, then they must also accept that, since the 'natural function' of a rattlesnake's fangs is to inflict fatal injuries, they ought to submit peaceably to being bitten by one should the occasion ever arise. As far as I can see, the point of principle involved in each case is the same.

To put it at its most general, then, it is clear that there is no formal relation of entailment between statements about what is the case and statements which enjoin that one is obliged to act or to refrain from acting in certain ways. In the modern parlance, descriptions do not entail prescriptions. Statements of fact and statements of value simply occupy different logical categories, and the argument or assumption that one can move by 'rational' steps from one category to the other turns out, after the most cursory trial, to be mistaken. Yet, at first sight, it seems that this is a trap into which natural law theorists have consistently walked they seem to have claimed to be able to derive indubitable moral prescriptions from allegedly factual statements about human equality, the nature of the world or cosmos, 'human nature', and what have you. An early instance of this tendency to mix up fact and value would seem to be perceptible in the Pythagorean doctrine that moral goodness can somehow be secured by or through mastering the mathematical structure of reality. More explicitly, of

course, it appears in the seventeenth-century view so clearly exemplified in Grotius and Hobbes: that it is possible to arrive at moral recommendations by a process of reasoning directly analogous to that used in mathematical calculation. According to Hume, the supposition that such moral 'computation' is possible simply rests upon a failure to appreciate the categorical distinctions which characterise our utterances as being of different kinds, and upon a mistaken belief in the possibility of hopping from one category to another.

If it can be shown that natural law theorists have - or even that they have in the main - indeed tried to derive prescriptive inferences from premisses which are purely factual, then the objection just sketched will clearly be fatal to their enterprise. There are, however, at least three considerations which may be brought forward in defence of the view that, for the most part, they have not committed this error. First, and most generally, if we look at natural-law reasoning as a whole, we shall find that it tends to proceed upon the basis of certain presuppositions which are themselves evaluative in character. Plato, for example, is obviously an exponent of deduction. The mind of the man who has achieved knowledge in the full sense moves 'from Ideas to Ideas (and) finally rests at Ideas'. But, according to Plato, the source from which all moral knowledge is derived is the Idea of the Good. And to derive or deduce good from Good is not to derive good from fact, except in the sense

in which it might be said that the Idea of the Good is in fact Good. Similarly, from classical antiquity onwards, we find it constantly taken for granted that the universe is in some intrinsic sense a repository of values or purposes. Most commonly, we encounter the assumption that it is the creation of a Deity who has commanded that humanity shall have certain ends (such as earthly happiness and ultimate beatitude), and whose commands are both intelligible in the world and binding upon those who apprehend them.

The second point is closely related to the first. To the extent that they have appealed to deduction as such rather than (as in the case of St Paul or the Universal Declaration) to conscience or direct moral intuition, natural law theorists have tended to take as the first principles of their deductions statements which are themselves of an evaluative character. St Thomas Aquinas' account of natural law, for example, takes its departure from the self-evident principle that good ought to be done and evil avoided - a principle which is not only true by definition, but also normative in all its possible implications. Similarly, the nineteen 'laws of nature' identified by Thomas Hobbes are all said to be given analytically in a single normative principle - namely, do unto others as you would have them do unto you.⁹

Finally, we might do worse than recall that, after all, the motive informing natural-law reasoning from Plato onwards is not simply a scholarly wish to engage

in pure theoretical speculation. It is a desire to discover, by rational means, how best to achieve ends which are, on the whole, assumed to be natural to us - namely, the goals of social co-operation. St Thomas' dictum that good ought to be done and evil avoided is, of course, devoid of factual content in itself. But, when he comes to the question of what in fact we ought to do, his answer, put most broadly, is this: man's earthly good cannot be achieved unless he acts in such a way as to make social life viable; and the practical reasoning by which we arrive at moral conclusions from the original general principle must take this fact into account. The assumption here - which is at least as old as Protagoras - is simply the truism that men have certain needs and desires which they cannot satisfy single-handed, that man is 'by nature' a political animal and/or a social animal. In short, this kind of reasoning does not pretend to move from the purely factual to the purely moral. Neither, incidentally, does it claim to be 'deadly accurate' in the way that (say) geometry or algebra is. Rather, it sets out to clarify or specify certain evaluative first principles which it either takes for granted as matters of faith or conscience, or which it holds to be simply obvious in the light of our experience of self and others.

(Incidentally, we ought also to beware of seeing deductive inferences in statements where no such inferences are intended. Thomas Jefferson, for instance,

does not wish us to accept that the 'bald fact' that all men are created equal implies that they have certain 'unalienable' rights (or, as the legendary American schoolchild put it, 'unamiable' rights) - which clearly would be a mistake. Rather, his point is that it is self-evidently true both that God has created all men equal and that he has endowed them with the rights in question. Nothing of the kind is self-evidently true, of course - or can only be made so at the cost of great artificiality. But this inappropriate use of logical terminology for rhetorical purposes does not convict Jefferson of 'Hume's fallacy'.)

The most important conclusion to arise out of these remarks is this: Deductive reasoning which arrives at prescriptions from premisses at least one of which is itself an evaluation (or a crypto-evaluation) is plainly not fallacious in the manner complained of. It is not a case of arriving at a statement 'from others which are entirely different from it.' The following are examples by way of illustration:

Øing is wrong,
 Θ is a case of Øing,
 therefore, you ought not to Θ.

x is good,
 y is a means to x,
 therefore y is right.

Provided we accept the - surely straightforward and purely lexicographical - point that you 'ought not' to do what is 'wrong' and that it is 'right' to do what

is a means to 'good', then the two syllogisms just given are indeed unexceptionable. Similarly, this provides us with a way of rescuing the Catholic Church's teaching on contraception, or the traditional condemnatory attitude towards homosexuality

You ought not to frustrate the will of God;
To employ artificial means of contraception/engage
in homosexual practices is to frustrate the will
of God;
therefore you ought not to employ artificial means
of contraception/engage in homosexual practices.

In a word, valid deductive reasoning in the sphere of morals is perfectly possible, given only that there is a prior consensus between the reasoning parties over such first principles as 'Øing is wrong' or 'x is good'.¹⁰ Provided that we are agreed in the first place as to ends, as to what are the rules and principles to which we are committed, as to what shall count as unacceptable behaviour, and so forth, then there is no logical problem. All that we then have to do is proceed to the settlement of certain practical issues - that Ø is indeed a case of Øing; that Mr Capone has indeed Øed, and so forth. The settlement of these matters may involve us in all sorts of difficulties, and the difficulties may be very intractable ones. But they will not be difficulties of a logical kind. And, when we have settled them, a normative conclusion follows in a perfectly legitimate way.

II.

These remarks, however, do not enable us altogether to dispose of Hume. For, though you can make premisses of a certain kind yield conclusions which function as moral imperatives or exhortations, you cannot by a similar process of inference arrive at the premisses themselves. And it is here, it would seem, that the real difficulties of the natural law theorist begin. For he wishes to claim something more than that moral reasoning is possible within an agreed framework of commitment to first principles. He wishes to establish a universal and necessary morality on an objective basis by an appeal to naturalis ratio. In other words, he wishes to hold that there are certain first principles of the kind 'Øing is wrong' or 'x is good' which themselves 'stand to reason', and which do so in such a way that they are able to command the assent of all right-thinking persons. It is this claim that we must now examine.

For the purposes of the argument, let us engage in the kind of exercise which R.M. Nozick has called a 'thought experiment'. In other words, let us make certain assumptions without, for the moment, worrying about whether such assumptions are justifiable or not. Let us assume, for example, that there is, within the community of which our natural law theorist is a member, an individual who claims that he does not regard any aspect of that community's legal and moral systems as binding upon himself. Let us suppose that,

having consulted Hume's essay Of the Original Contract, he insists that, if he were not a poor peasant or artisan, he would not remain in the community a moment longer. the only thing holding him there is his inability to leave. More radically, let us assume that, on his travels, our natural law theorist comes across a community whose form of life is utterly different in all respects from his own - whose 'language-game' is constituted by rules which are, to him, totally unfamiliar. Having made these assumptions, our question is as follows. How might our natural law theorist, placed in some position of this kind, show - simply by an appeal to the 'natural reason' which is allegedly common to all mankind - that (say) ϕ ing is wrong, or that x is good, or that all men have certain intrinsic and inalienable rights, or that all men are equal in morally relevant respects, or that distinctions of race, creed, colour, and so forth are not morally relevant? (We are assuming, of course, that such notions are foreign and repugnant to his hearers.) In the first place, granting that such an appeal would, in an intelligible sense, be an appeal to 'human rationality', he quite clearly is not here in a position to appeal to conscience or to moral intuition. The very fact that such disagreements as those with which he is dealing have arisen at all is sufficient to indicate that such an appeal would be a sheer waste of time. It would seem, then, that only two rational resources are open to him. deduction and induction. And, unfortun-

ately, both these resources succumb to difficulties sufficient to indicate that there is no way of demonstrating to anyone who is not already convinced that any one set of values is morally preferable to any other on so-called rational grounds.

On the one hand, if our natural law theorist were to appeal to deduction, he would at once have to concede the point which we have called 'Hume's fallacy'. He would have to admit, on the grounds already adduced, that he could not have derived an evaluative conclusion by inference from premisses which do not have a value-statement lurking in them somewhere. But if his hearer then demanded a demonstration of the evaluative premiss or premisses, he would immediately find himself back to square one. And he would find himself in a not-dissimilar predicament if he purported to produce an inductive generalisation - for example, that $\emptyset$ ing is wrong because all or most past instances of it have been accompanied by mischievous consequences. It is plain enough (this point has been hammered far harder than it need be by such writers as A.J. Ayer)¹¹ that empirical evidence can only settle questions of fact - i.e. questions which are capable of being verified, or at least falsified, by experience or experimental data.. In the case which we are considering, however, the very most that such evidence (in the form of past successions of event $\emptyset$ and event c) could show would be that cn are consequences of $\emptyset$. No amount of such evidence could of itself establish

that can are mischievous consequences rather than just consequences. And if the moralist requires that it be just taken for granted that consequence c be accepted as mischievous, then he is asking his hearer merely to accept another value-judgment - c is mischievous - which no more stands to reason than does 'Øing is wrong'. And this, of course, once again puts him back to square one.

Exponents of natural law, in supposing that it is possible to reason with anyone anywhere in much the same way, have consistently assumed that the structure of reality - of 'nature' - determines the structure of thought and language in some final and absolute way. It is this which enables them to believe in a common or 'universal' morality. But in view of the apparent immunity of moral disagreements to what one might ordinarily be tempted to call 'rational argument', it is not implausible to suggest that no one form of moral language depicts a moral order available to anyone who uses the correct method of discovery. Indeed, this is a suggestion which, in some hands, is carried to great lengths, with a rather surprising result: namely, the 'historicist' suggestion that language in general does not refer to epistemological objects which are potentially the common property of all. Instead, it is held, all forms of understanding are merely historical and contingent. Each such form depends upon a particular Weltanschauung - or, more accurately, is an inseparable part of a particular Weltanschauung.

On this view, the categories of theoretical understanding and the basic values appropriate to each Weltanschauung are simply inseparable from each other. not even in principle is it possible to dissociate judgments of fact from judgments of value. Thus, for example, the values of modern, Western, technological capitalist societies are entirely contingent upon their being technological and capitalistic in their world-view. Substitute another world view, and you necessarily substitute another set of values. Take, for example, the values built-in to our modern educational system, which is almost entirely geared to the production of skilled recruits to the capitalist mode of production, which values the production of scientists more than of artists, and so on. No matter how insistently educators might claim to be instructing their charges in absolute or basic values, they are doing (or so the historicist argument runs) nothing of the sort. Christian instruction, too, is not a communication of absolute values. It is merely the communication of the kind of values which will be appropriate to a world in which the vast majority of men must be alienated, poor and relative failures, and who will benefit both from injunctions to be humble and meek and from the promise of a terrible revenge in the world to come. On this account, since every conception of good and right belongs to a specific Weltanschauung which is in turn determined by a particular mode of production, there cannot be a natural law specifying

that some things are right independently of opinion.

In order to expose the weaknesses of natural law, however, it is not necessary to rely upon this rather extreme form of epistemological and moral scepticism. Instead, the problem can be specified in the following rather less drastic way. Deadlocks in moral discourse do not necessarily (or, I would imagine, often) arise out of complete failures to grasp the nature of the language-game being played. That is, they do not necessarily involve our not understanding the kind of discourse which we are hearing, or being baffled by a Weltanschauung which, from where we stand, is utterly incomprehensible. After all, I can listen to a man whose manner of viewing the world is significantly different from mine and still understand perfectly well what he means. I can see how he 'pictures the world', but I still don't agree with him. It would seem, in a word, that the kind of thing which we have been considering need be nothing more epistemologically spectacular than a simple case of disagreement. The problem confronting the devotee of natural law is not - or not necessarily - the relatively straightforward one of making himself understood. It is that, when disagreements of a certain kind occur, there is simply nothing to which he can point to break the deadlock which such disagreements occasion.

This is not to suggest that the parties to a moral disagreement have nothing at all to say to one another.

It may be possible, perhaps, for one party to point out inconsistencies or incoherences within the moral scheme favoured by the other - and to have his point taken. Again, the parties may perhaps give each other advice as to the best means of achieving ends which are acknowledged by each to be beyond adjudication as to their goodness or otherwise. Moreover, such advice may quite intelligibly and uncontroversially be said to be rooted in an understanding of 'nature'. It might be technological advice, for example. There clearly is a sense in which the 'right' way to (say) discover oil is by identifying oil-bearing rock and boring the appropriate sort of hole in it to the correct depth. Similarly, there is a sense in which it would be 'wrong' to try to discover oil by disembowelling chickens and praying to Apollo. And all this is quite apart from such questions as whether it would be 'right' or 'wrong' to ruin a beautiful landscape, to depopulate a village, or to expose workmen to horrible dangers in the quest for oil. But it is moral right and not mere technical efficacy which is of interest to us. And so far as moral issues as such are concerned, there is, as Hume says, nothing irrational in preferring pain to pleasure, falsehood to truth or total personal ruin to avoid the most trifling inconvenience to a stranger. Confronted, then, by a man whose moral life is conducted quite coherently and quite purposefully, but in a manner utterly different from and inimical to his own, the natural law theorist

is not logically entitled to say that he is being 'irrational'. His rationality may be different from that of the natural law theorist, but, if he can give reasons for what he does, it is still a rationality - 'being able to give reasons for what you do' is surely a large part of what we mean by 'being rational'. For their part, natural law theorists have constantly supposed that 'reason' is a 'thing' 'out there', like the Clapham omnibus, democratically available 'by nature' to anyone who wishes to catch it. But there seem to be good grounds for supposing that rationality, like love, is a many-splendoured thing. And we can accept that this is so without for one moment abandoning the time-honoured dictum that man is 'by nature' a rational creature, and without adopting a thoroughgoing 'historicist' account of what it is to have knowledge. The plain fact would seem to be that, when Jones and Smith disagree over a moral issue of a fundamental kind, it is impossible for the self-appointed 'rational man' to lead them by the intellectual nose towards blanket, universally-applicable prescriptions of the natural-law kind. In a nutshell, whoever wishes to hold that (say) a certain course of action is objectively or 'naturally' right, come hell or high water, will inevitably succumb to the sceptic who says, 'Prove it.'

The extent of this problem is dramatically illustrated over and over again by the literature of social anthropology - a literature unavailable when Hobbes,

with blithe asides about 'the savage peoples of North America', was delivering himself of generalisations about human nature. The possible examples are so numerous that we might as well content ourselves with one. But let us approach it by way of the improbable-sounding route of Immanuel Kant.

Kant's moral philosophy (to the scope of which we can hardly hope to do justice here) is in many ways a deliberate attempt to rehabilitate natural law from the strictures of Hume. On the one hand, Kant declares himself to be, at least in some sense, an exponent of natural law in the following passages

Obligatory laws for which an external legislation is possible are called generally external laws. Those external laws, the obligatoriness of which can be recognised by reason a priori even without an external legislation, are called natural laws.¹²

Law...is divided into natural law and positive law. Natural law rests upon pure rational principles a priori, positive or statutory law is what proceeds from the will of a legislator.¹³

On the other hand (and we have touched briefly on this in the previous chapter) Kant repudiates the consequentialist or 'utilitarian' moral philosophy espoused by Hume. He does so on three grounds. Utility, he says, cannot be regarded as an absolute standard of value, first, because it depends upon the external world and therefore upon circumstances which are themselves subject to change, second, because there is

no a priori reason why utility as such should be sought as an end; and, third, because utilitarian action is prudential or instrumental calculation. In other words, it proceeds according to maxims of the form 'If you desire so-and-so, you ought to do such-and-such' - statements which Kant calls 'hypothetical imperatives', and which he regards as something very different from moral imperatives. By contrast, pure moral action is neither dependent upon any feature of the external world, nor is it undertaken as a means of bringing about any consequence in the external world. Rather, it is the action of a rational being on the pure and sole a priori basis of duty. And his conception of duty involves, first, that one should act on principle rather than in anticipation of calculated results and, second, that the principles or maxims according to which moral actions are conducted should be what he calls 'categorical imperatives'. Finally, a categorical imperative is the kind of thing 'the obligatoriness of which can be recognised...even without an external legislation.' This recognition is possible because a categorical imperative is 'universal', in the sense of being capable, in principle, of being acted on by every single member of the human race. The basic idea is that, before acting, one ought to ask oneself, 'What would happen if everybody did what I am now about to do?' and refrain from doing anything which could not be done by all.

There is undoubtedly much amiss with what Kant has

to say. For example, granted that there is no a priori reason for pursuing utility as an end, what a priori reason is there for supposing that we ought to act on 'universalisable maxims'? Doing so would certainly involve us frequently in situations of a kind which most moralists would wish to deplore - for example (and see below), it would require us to tell the truth even when, by telling a lie, the most abominable catastrophes might be averted. Again, it seems that there must, in every specific decision as to whether a given maxim is 'universalisable' or not, be an implied judgment as to the probable outcome of an action based on that maxim in terms of its good or bad consequences. But any instance of this procedure, of course, will produce only a hypothetical imperative, which is said by Kant himself to be inadequate as a standard for moral action. Leaving all this to one side, however, let us consider Kant's treatment of one particular case, that of lying or making an insincere promise. Suppose that you yourself intend to act on the maxim, 'Tell a lie whenever it serves your turn to do so.' Apply the test of universalisability. Ask yourself what would happen if everyone decided to act on that maxim. Clearly, the outcome would be logically and practically preposterous. Lying depends upon there being a certain minimum of trust on the part of those to whom you might lie, since you cannot successfully lie unless people are, in the main, prepared to believe you. Lying, in other words, is parasitic upon

truth-telling. But what if everybody adopts the maxim, 'Lie whenever it suits you'? In these circumstances, the necessary minimum of trust would vanish. The practice of telling the truth would therefore atrophy, since no-one would believe anyone anyway. And so the practice of lying, which depends upon that of truth-telling, would itself cease to be possible. No form of co-operation or collective activity would be possible; therefore, you ought not to lie (and similar remarks apply, of course, to such things as stealing, murder, and what have you).

And so we come, by way of Kant, back to social anthropology. The argument about - or against - lying which we have just outlined seems, on the face of it, to be quite unanswerable. One might very readily be forgiven for supposing that here, at least, we have a universal moral principle which 'stands to reason' - that, irrespective of time or place, telling the truth most of the time is an absolutely necessary prerequisite of social viability. But now consider the Ba-Ila tribe of Northern Rhodesia. 'They lie in the most bare-faced and strenuous manner...without the least shame. They lie often when it is to their advantage to tell the truth.'¹⁴ Investigation reveals that such behaviour is quite coherent with their view of the world. 'If a man believes, as the Bantu does, that any of his neighbours may be, and that some of them in fact are, endowed with supernatural powers which may be used to do him and his neighbours harm; and if

he further believes that giving them information provides them with the means of using these powers, we have a state of affairs in which not mutual trust and confidence but mutual fear and suspicion are likely to flourish. In such circumstances, truth-telling¹⁵ is not likely to be regarded as a virtue.'

Instances such as this do indeed raise, in an acute form, the question of whether or not there is any fixed datum at all in the bewildering world of moral experience. Indeed, such instances seem to point rather clearly in the direction of a purely positivistic understanding of law and morality - to the view, that is, that their content could be anything at all. But it is time, now, to let our imaginary natural law theorist have a say.

III.

A 'Minimum Content' of Natural Law.

Since there is still a lot to be said for dialectic as a means of clarifying issues, let us attribute to our natural law theorist the following speech

'While I see the force of much of what you say, I cannot see that any of it is ultimately fatal to the kind of position which I hold. Of course I accept that it is not possible to prove that an evaluative or prescriptive statement is 'true' in the way that you might prove that metal expands when heated or that temporal precedence is transitive but irreflexive. In short, I accept that ethics, physics and logic are 'categorially dis-

tinct'. But the weak point of your argument comes when you invite the supposition that I encounter, not only the disaffected citizen but - 'more radically' - 'a form of life utterly different in all respects' from my own. That you are yourself aware of your weakness here is shown by your own words - 'let us make certain assumptions without, for the moment, worrying about whether such assumptions are justifiable or not.' I think they are not. Indeed, I strongly suspect you of trying on a petitio principii. In order to make the point that the content of law and morality could be anything at all, you first choose to assume that any conceivable form of life (or Weltanschauung, or what have you) would be possible. And this, of course, is one of the very questions at issue. My point is that, great as I know human diversity to be, it is still possible to point to certain principles which must be accepted, and will be accepted, human nature and the nature of the world being what they are.'

This is the position which we must now consider.

In fact, one of the curious features of the natural-law debate is the way in which even its most implacable opponents allow themselves to be betrayed into making statements which look remarkably like those of the very tradition they criticise. By way of illustration, let us briefly examine some instances of this. First, let us consider the account which David Hume offers in place of natural law as an explanation of moral commitment. One of the uses to which we put reason, he suggests (and here his position is not unlike that of Hobbes on the same subject) is the encompassing of valued goals - specifically, to

the devising of rules which we expect to accomplish them and, most generally, to the achievement of an acceptable degree of social peace and harmony. What actually causes us to value goals and to venerate rules which secure them, however, is not reason itself, but what Hume calls 'passion' (that is, what we should now, broadly speaking, call 'emotion'). As he puts it,

Reason is, and ought only to be, the slave of the passions, and can never pretend to any other office than to serve and obey them.¹⁶

Undeniably, this is rather a curious way of putting it. If reason is the slave of the passions and can never pretend to anything else, what is the point of saying that it 'ought only to be' so? But let us not split hairs. In essence, Hume's thesis is that the rules and principles by which we live are ultimately matters of preference and habit rather than objectives which are 'out there', prior to any convention, and discoverable by 'natural reason'. They originate, he suggests, in the most general and inescapable of all our preferences - namely, the preference for pleasure and its corresponding aversion from what is unpleasant or painful. What has mistakenly been taken for 'natural reason' in the past is no more than the presence, in man, of 'calm passions' (such as benevolence) existing alongside such turbulent and impulsive passions as anger and self-love. Rules of justice become rules of justice, not because they partake of some

intangible but intelligible natural justice, but because they have been identified as successful means of satisfying the desire to limit human impulsiveness and selfishness sufficiently to establish general conditions of peace and security. Having devised and adopted such rules, we reflect upon them and approve of them until they do indeed seem to 'stand to reason'. But all that really happens is that our 'calm passion' of sympathy for the wellbeing of society is habitually engaged by them. And this engagement is not entirely disinterested, of course, since, in the long run, the interests of society as a whole are also the interests of every individual member.

This is all very well, but it still seems clear that Hume's theory of 'moral sentiments' is in an obvious sense a theory about 'human nature'. Reason, he says, cannot establish what it is that we ought to desire. It can only show us ways of achieving what we do in fact desire. But it is nonetheless conceded that we are creatures whose needs, desires and behavioural characteristics are such that we must formulate rules of justice if we are to secure our desired ends. It is part of our nature to need such rules, just as it is part of our nature to desire what we do desire. Equally, it is part of our nature to be able to use our intellect to formulate the rules by which we live. Hume has shown, convincingly enough, that you cannot deduce 'ought' from 'is' - or, at least, that you can only do so if the 'is' is really an 'ought' in disguise.

But he has also concluded that our 'oughts' are formulated in the light of what is by creatures who are 'naturally rational' in the significant sense of being able to make sense of and cope with their experiences. And so it is surely still open to anyone to claim that 'nature' requires that there be rules of conduct, and that our 'nature' is such that we can discover by the practical exercise of reason what rules will best suit our requirements. And this claim is perfectly compatible with the admission - made, after all, by Aristotle - that moral reasoning does not have the formal exactitude of deduction as it figures in such activities as geometry.

Second, let us consider Jeremy Bentham. Bentham, as we recall from the Introduction, inveighs with some asperity against those who chase the 'obscure phantom' of natural law. Specifically, he has no patience at all with the claim that there are 'natural rights'. The following is perhaps his most celebrated broadside on the subject

How stands the truth of things? That there are no such things as natural rights - no such things as rights anterior to the establishment of government - no such things as natural rights opposed to, in contradistinction to, legal....That which has no existence cannot be destroyed - that which cannot be destroyed cannot require anything to preserve it Natural Rights is simple nonsense, natural and imprescriptible rights, rhetorical nonsense - nonsense upon stilts.¹⁷

In place of this nonsense, Bentham's system, in best Gradgrind and Bounderby fashion, purports to deliver a principle which, if applied by legislators to their deliberations, will enable them to forge good laws with factory precision. namely, the Greatest Happiness principle. A good law is that which secures the greatest happiness of the greatest number and, by extension, a good government is one which recognises its obligation to make such laws as far as possible. According to Bentham, all the rules which confer rights and impose duties are created by governments. We do not discover them. We make them - or, rather, we should make them - in the image of the Greatest Happiness principle. But (quite apart from the grotesque inadequacies of Bentham's system as it stands) what kind of thing does this Greatest Happiness principle turn out to be? What general conclusions as to the nature of law and morals does acceptance of it commit us to? It would seem that we here have a principle - that is, a general rule for the making and applying of more particular rules - which cannot be conventional. It is not posterior in date to the establishment of government. On the contrary, it is itself said to be the principle upon which any government worth its salt is founded. It is, therefore, 'anterior to the establishment of government'. In other words, there seems to be at least one principle which is 'natural' in the familiar sense of being prior to and constitutive of conventions. And if a government is said to be under a non-conventional

obligation to secure the greatest happiness of the greatest number of its subjects (which is what it boils down to), it is surely not absurd to say that the subjects have a non-conventional right to require or expect it to do so. Nothing much is lost if we refuse to call non-conventional rights and obligations 'natural'. The point still survives that they are non-conventional - quod erat demonstrandum.

As a final instance, we might call attention to the rather peculiar status, in Marxist thought, of the so-called 'theory of alienation'. On the one hand, Marxists are disqualified on the grounds of 'historicism' from espousing a theory of natural law. On the other hand, what is the 'alienated man' alienated from, if not his 'true nature', which is suppressed or distorted by the demands made upon him by the capitalist mode of production? As Sidney Hook points out, adoption of the theory of alienation - which is, he says, 'foreign to Marx's concept of man' - 'would entail the acceptance of a natural law morality', involving as a presupposition of political and moral argument the 'standard of the unalienated self.'¹⁸

There is, however, no need to multiply examples any further. It is enough, generally speaking, to say that this is only a minute selection of ways of thought which are overtly opposed to the claims of natural law, yet which turn out in the end to seem remarkably favourable to them. And the incidence of this kind of

thing might well be taken as lending credence to the point which we are here considering - that there is something ultimately inescapable about the view that the very nature of things compels us to certain conclusions about 'ought' and 'ought not'. There is good reason, therefore, to consider whether there is, after all, what H.L.A. Hart calls 'a core of good sense' to be discovered in the doctrine of natural law, if only we can strip away its questionable or too-ambitious claims, its 'essentialism', its teleology, and so on.¹⁹ If fact, there has been, in recent years, a number of attempts to identify such a core - to specify something which can reasonably be regarded as either a formal or a substantive 'minimum content' of natural law. Some of these attempts are highly abstract and speculative;²⁰ but we may at least consider some of the most fundamental and least controversial aspects of the case.

Before we can make any progress at all, however, it is necessary to take three basic points for granted. I do not myself experience any difficulty in doing so, but, in any case, they must here be stated for what they are worth. First of all, we must agree that human beings are, in the main, characterised by a powerful instinct or 'passion' for survival. We clearly must accept this if we are to get anywhere since, as H.L.A. Hart points out,

To raise...any...question concerning how men should live together, we must assume that their aim, generally speaking, is to live.²¹

But there are good grounds for accepting it anyway. Certainly, we may occasionally run across a suicidal maniac. Also, Lon Fuller holds that 'the proposition that the overwhelming majority of men wish to survive even at the cost of hideous misery...seems...of doubtful truth.'²² But the existence (however temporary) of a suicidal maniac or two does not show anything, and to say that a point may be reached for all of us when life ceases to be worth living does not damage the claim that the desire to survive is, in the main, very strong. Perhaps it is unwise to take anything on trust; but the cause of intellectual rigour is not well served by flying in the face of clear historical and social experience. The sheer vigour of past social movements of the desperate - the tragic crusades of the poor in the eleventh to the fourteenth centuries, for example - furnishes evidence of how strong the instinct for survival is.

Second, we must accept that, at least as a broad generalisation, the old dictum that man is by nature a social creature holds good. To accept this is to say only that, given the limitations of human strength and versatility, the desideratum of survival and other less pressing desiderata can only, or can best, be met through communal living and co-operation. Again, it is possible to cite exceptions. But to point to Alexander Selkirk, hermits, feral children, and what have you, only serves to reinforce the dictum in question. Such cases are, after all, so very striking because

they are so at variance with our ordinary experience and expectations. They are, so to speak, the exceptions which prove the rule.

Third, it is necessary to accept that, as Hobbes, Hume and Hart point out in their different ways, while man has need of the society of others, he is not so totally or so consistently altruistic as to be able to enjoy it for any length of time unless his actions are governed by rules reinforced by coercive sanctions. And this generalisation is amply backed up by the findings of social anthropology, which - for all the diversity which it has uncovered - reveals no society, however 'primitive' or 'stateless', which does not have a system of enforceable rules, however scanty or rudimentary. In any case, it would be possible to salvage something of this point even if the claim that men are inclined to be selfish and short-sighted were disallowed. Aquinas, we recall, had insisted that government would have been necessary even if the fall had not occurred. Even men of continual goodwill would have different viewpoints, pursuits and interests, and so would require the reconciliation of wise and able leadership.

If these three points are accepted, then it will not be objectionable to say that law itself, considered in abstracto, is 'natural'. In other words, we may say that men need moral and/or legal rules of some kind if the needs and desires of their 'nature' are

to be met - or, at least, are to be met with a satisfactory degree of safety and consistency. And it would also be reasonable to make the point that there are certain basic formal requirements which any legal system must satisfy if it is to answer at all to the nature of law - requirements which may, perhaps (to stretch the meaning of the term 'content' a bit), be set down as the 'minimum content' for which we are seeking, or at least as part of that content. A novel, or a volume of verse, or the rules of chess are not codes of law. They would not be codes of law even if they were written by the President or the Prime Minister or even by the whole of Parliament in collaboration. A code of law must meet certain requirements. It must be a body of rules. It must issue from an acknowledged law-making authority - i.e. from an authority capable of securing the compliance of those subject to it. It must make coercion legitimate (otherwise, to paraphrase Hart, there would be no difference between a legislator and a gunman). And it must be self-consistent or non-contradictory. These requirements are not merely arbitrary stipulations pulled out of thin air on caprice. On the contrary, they are some of the requirements which the law must meet if it is to do what law is for - namely, regulating the life of the community whose law it is. To assert that something from which these requirements are wholly absent is 'law' would simply be to use the word 'law' in a very

unusual sense.

Rather more broadly - i.e. moving away from law as such - it is possible to argue that the regulation of affairs cannot satisfactorily be conducted unless the old principle of natural equality is taken for granted - at least in a modernised or rehabilitated form. This form is the administrative principle that similar cases should be treated in similar ways. And this is a point which is favoured by Sir Isaiah Berlin and Chaim²³ Perelman. The argument here, it must be noted, is not merely that equality of treatment or the 'equalitarian presumption' is 'simply one among many ethical principles vying for our allegiance'.²⁴ It is not even that it is a very basic, or the most basic, principle of morality at all. Rather, the point is that the principle 'similar treatment for similar cases' is a part of what constitutes rationality itself. To ignore it would (it is claimed) be to act absurdly, as a man would be acting if he insisted that, in a single and isolated case, two and two are five instead of four. And what this boils down to from the point of view of practical activity is this: that if the administrator disregards the 'similar treatment for similar cases' principle - if he acts entirely at whim or arbitrarily - he simply will not be able to achieve the kinds of thing that administrators in fact wish to achieve.

So far, so good. But these considerations are of a purely formal kind. They are answers to the question, What must law or rational administration be? rather

than attempts to specify a minimum content in the strict sense of the word. A legal theorist might perfectly well take all these formal points, yet still be an out-and-out positivist - Hans Kelsen is a contemporary case in point. Kelsen's view is that a code of law is indeed necessary - or 'natural' - in the sense that, without such a code, social living could not be carried on; and he understands a 'legal system' to be an internally-consistent set of rules derived from a basic or fundamental norm. But he will not commit himself to the view that any one basic norm is of itself to be preferred to any other. Indeed, his view is that no norm could be anything more than a purely subjective preference, rather than a basis for law and morality which is 'objective' in its own right. In other words, any basic norm might generate a 'legal system'.²⁵ Here, then, we encounter an awkward possibility namely, that, on the one hand, certain formal definienda of legal systems will be accepted as 'natural' - i.e. as axiomatic and inescapable, coupled with, on the other, an insistence that a legal system could contain anything at all, provided only that the formal criteria were not breached. On Kelsen's account, as Edgar Bodenheimer puts it, 'Even the purely capricious and personal rule of a despot is an order of law as long as the basic norm of his State sanctions this type of arbitrary regime.'²⁶ And this is hardly likely to satisfy the natural law theorist, who wishes to regard substantive jurisprudence as it-

self a distinctively moral enterprise.

Also, although the principle of similar treatment for similar cases is indeed plausibly to be considered as a fundamental prerequisite of rational administration, this consideration is not really helpful to the exponent of natural law. Ever since the principle was first fully formulated (by Aristotle - though we saw a suggestion of it when we considered the Pythagoreans), it has run up against a rather obvious difficulty. In all cases of any great complexity, the persons whose treatment is at issue are not equal or similar in every respect. What the principle requires is that, if we treat two individuals differently, we give a justification of such different or unequal treatment in terms of differences which are relevant. And if the principle is to have any moral force - which it must, if it is to be of use to the natural law theorist - then these differences must be morally relevant differences. But what are we to do with the man who insists that, so far as he is concerned, having woolly hair or a hooked nose or blue eyes or blonde hair, and so on, are morally relevant differences? In the light of 'Hume's fallacy', it is clear that he cannot prove that they are. But it is by the same token clear that the exponent of natural law cannot prove that they are not. (I am assuming, of course, that natural law theorists would wish to hold such grounds for discriminatory treatment in abhorrence. I imagine that this assumption requires no elaboration.) It

is true that any given justificatory argument might, in principle, be subject to disproof. Thus, if his opponent were to claim justification for unequal treatment of Jews on the grounds that Jews are less intelligent than Aryans, the natural law theorist would not, at this stage, be left helpless. By comparing the results of a sufficiently large number of un-rigged IQ tests, he might be able to show that the assertion in question is in fact false. But this is not the point. The real difficulty is the man whose view of the world includes the unshakeable belief that merely being Jewish or negroid or whatever the case may be, constitutes a morally-relevant ground for discriminatory treatment; for such an individual would indeed be logically impregnable.

Let us, then, turn from purely abstract and formal matters to the question of whether there is any substantive content - a 'content' in the more obvious sense of the word - which might be acknowledged as a 'minimum content of natural law'. In this connection, a very valid point is made by H.L.A. Hart, when he remarks that a system of laws is hardly likely to survive for long unless it commands, for most of the time, the allegiance of most of those who are subject to it. He points out that a legal system which does not meet, or which actually frustrates, the fundamental needs of the community whose system it is will very likely not endure - since the members of the community will have no motive for keeping and enforcing it, and

may, indeed, have excellent reasons for breaking and subverting it.²⁷ Such a doomed legal system will be intelligibly criticisable on 'natural' grounds, precisely because it fails to meet the natural needs of human beings. And it would seem that we can, in broad terms, and by reference to nothing more controversial than human biology, identify the kind of requirements which would count as 'natural needs'. Human beings, after all, require at least something in the way of food, and therefore some means of producing or obtaining food, if they are to keep alive. Similarly, their vulnerability creates a need for certain provisions for shelter and protection against attack. And their sexuality, coupled with the protracted helplessness of the human infant, makes necessary at least some rules providing for an appropriate environment for the rearing of offspring. On grounds such as these, then, we might suggest that, if there are to be conventional institutions at all, they must achieve certain things dictated by 'nature' if they are not to vitiate the very purposes for which they are brought into being. This is a suggestion which has indeed been made fairly recently by at least two American writers - Paul Sigmund and Thomas Davitt - who wish to adopt a rehabilitated form of natural law.²⁸

Also, it is a suggestion which receives convincing support from the findings of social anthropologists. Research in social anthropology has tended to confirm and elaborate the position of the Roman jurists who

grounded the concept of ius gentium on the basis of elements common to all known legal systems. However much variation there may be between societies, the experience of researchers so far indicates that there is indeed a 'universal' substantive element - mainly prohibitive or minatory - common to them all. There is no society in which some form of homicide is not prohibited - the lives of members of the same community are protected even amongst headhunters and cannibals. There is no society in which some form of property relationship is not recognised. There is none in which sexual relations are allowed to be entirely promiscuous. And there is none in which mother-son marriages are not prohibited as incestuous.²⁹ In short, if it is possible to establish by empirical investigation a basic code of universal prescriptions of this kind, then it is at least not unreasonable to speculate that these prescriptions are the minima which must be present if social living is to be possible at all. So much, then, stands on the credit side of our natural law theorist's claim that there are 'certain principles which must be accepted, and will be accepted, human nature and the nature of the world being what they are.'

IV.

Conclusions.

There are obviously excellent reasons for accepting these arguments in favour of a 'minimum content' of

natural law. But we ought not to forget something which 'theorists' are, perhaps, rather apt to forget. namely, that the tradition with which we are dealing is supposed to have definite - and often very ambitious - practical implications. It is not merely a matter of abstract or armchair intellectual interest. On the contrary, it is supposed to yield indications of what we should actually do - what we should submit to and what we should resist, what we should praise and what condemn. And, viewed in this light, it is difficult to see that the line which we have just followed - however unexceptionable - carries the argument for natural law very far. The minimum content thesis, whether presented as an account of the formal requirements of law or, more strictly, as a specification of an actual content, certainly does not involve 'Hume's fallacy' of illicitly deriving 'ought' from 'is'. It claims no more than that, in view of our knowledge of the nature of the world and of human nature, there are certain non-conventional criteria or provisions which law must satisfy or contain if it is not to thwart its own purposes. But this is surely only of very minimal help to us when it comes to the making of specific ethico-legal judgments - judgments, let us say, of the kind which the Nuremberg judges wished to make.

The case of Nazi Germany is, in fact, a useful example in more ways than one. First, the war-crimes trials which followed the Second World War certainly

were conducted in what we might call a 'natural-law spirit'. The allied participants in the trial regarded themselves as perfectly justified in condemning those who had complied with the legal requirements of their State; and this condemnation was itself justified in terms of an appeal to standards held to be higher than positive law. Second, I assume that the Third Reich was a regime which most contemporary writers would regard as the very incarnation of political wickednesses - unfair discrimination, arbitrary behaviour, and so on. And, third, the celebrated debate between Lon Fuller and H.L.A. Hart on the relation between law and morality turned very largely upon the question of whether or not the legal system of the Third Reich can properly be regarded as a legal system at all.³⁰ For our present purposes, the point is this. In the Third Reich, there undeniably was a system of rules. The rules were kept at least consistently enough to prevent the collapse of the social and political order whose rules they were. There was machinery for their enforcement, extensive planning for the 'thousand year' future, and so on. So far as I know, sexual relations were regulated with unusual strictness, the lives and property-rights of the members of the community were protected, and so on. It is true enough that the community's 'language game' involved a use of 'community' in such a way as to exclude and earmark for persecution certain specified minorities. But we - participants in a very diff-

erent 'language game' - could no more show that this use of 'community' is 'wrong' as against our 'right' use than we could show that the rules of bridge are better than the rules of hockey. As we have seen, no amount of evidence, and no amount of reasoning, however rigorous, would provide formal proof that the values of Nazi Germany were defective, or that they 'ought' to have been other than they were. And it is obvious that, here, an appeal to a 'minimum content' of natural law simply will not help us. If we examine the legal system of the Third Reich in the light of such an appeal, we shall find that it was indeed the legal system of a viable social order. As a community, however narrowly defined, the Third Reich satisfied the 'natural' requirements of its members in every sense in which those requirements could conceivably be held to be demonstrable. And it would not be obviously absurd to explain its eventual collapse, not in terms of its moral degeneracy, but by reference to its defeat by overwhelming military opposition. In short, if, out of our passionate 'ideological' commitment to the position that minorities should not be persecuted, we wished to 'convert' an adherent of National Socialism, we might coerce him or preach at him - but we could not, strictly speaking, reason with him. We should have to fall back upon a standpoint not so very different from that of Gorgias - to a conclusion that there are certain areas of experience such that, in the event of a disagreement, our

only recourse is to the art of rhetoric. And, though it may be true that rhetoric is itself a form of rationality, it certainly is not a form through which we can identify 'self-evident' principles of right - principles which are absolutely right, regardless of what anybody thinks.

Arguments about points of detail apart, there clearly are good reasons for accepting as constant (or very nearly so) certain procedural rules and certain basic material provisions of law and morality. Without these, we shall either not be able to act at all, or our actions will simply not achieve their purposes. And it will be recalled, incidentally, that this is essentially the point made long ago by Socrates, in his debate with Thrasymachus. But to take this point is surely to accept no more than that we live in the world and that the number of possible arrangements open to us is limited by what is the case. There plainly is a sense in which all our activities are rooted in 'nature' - in what we are and in our environment. It is equally true that, unless certain conditions are present, we cannot even survive. But these considerations form only a very general backdrop to our immediate concerns - to the activity of making our way from day to day in a contingent and unpredictable world or, as Michael Oakeshott puts it, of 'keep(ing) afloat on an even keel' in the 'boundless and bottomless sea' of political activity.³¹ Experience points to, and

logic does not prohibit, the conclusion that, subject only to the most general of conditions, success in this enterprise does not depend upon our subscribing to any one set of specific moral or legal values as against any other. The number of possible viable forms of life may indeed not be infinite, but it is at least very large. And to point to similarities of form or content existing in the legal or moral codes of all known societies may be a procedure justified on empirical grounds; but to do so is to point only to the same kind of family resemblances in virtue of which poker and netball are both games. Both the statement that there are such resemblances, and the nature of the resemblances themselves, are matters of such extreme generality that they are, for practical purposes, simply trivial. The differing passions and commitments of men are not necessarily so widely divergent as to render compromise and mutuality impossible. But if they do diverge so widely as to be inimical to one another, it seems that there is no impartial standard of Good by reference to which the 'rational man' can adjudicate between them. The most, it seems, that we could possibly say is that a moral or political system is adequate if it is appropriate to the form of life of those whose system it is. And to say this, of course, is only to re-state the dictum of Protagoras - that

Whatever seems rights and praiseworthy to a particular State is right and praiseworthy to it, for as long as it holds it to be so.

Perhaps, then, there is a great deal to be said for the conservatism of Protagoras or Burke or Popper - which recommends that we abstain from theorising and accept the devil we know in preference to the devil we don't. Also, however - since we are now concerned with practicalities - we can hardly help reminding ourselves of the importance to practical affairs of sheer power. the 'power of the majority to act and conclude the rest'; the cultural authoritarianism of the masses dreaded by writers so far apart in time and temperament as Plato, J.S. Mill and T.S. Eliot; and the disposition or state of mind of the relatively new minorities who wield increasingly sophisticated, relentless and implacable means of coercion and manipulation. The cynic might be forgiven for supposing that, when it comes to practical affairs, moral arguments are - logical difficulties apart - merely irrelevant, since you need not argue with someone less powerful than yourself, and you cannot argue with someone more powerful than yourself. Even the possibility of moral discourse vanishes when you are confronted with someone who does not have to give a justification of what he does - who does not care, and who does not need to care. If you live under a tyrannical regime, you achieve nothing in the way of actual improvement of your position by theorising. Indeed, not even the most highly-developed phronesis or practical wisdom is of itself sufficient to help me as a practitioner. It is practical achievement that

is important in political life; but practical gains are surely achieved only when practical activity is combined with a degree of force sufficient to give it effect. If a Russian peasant of the 1930s were to play Socrates to Stalin's Thrasymachus and assure him that his conception of rulership were all wrong, he might suffer the consequences with the equanimity of one confident in righteousness, or with the noble resignation of one who knows that his natural rights are being unwarrantably infringed. But he would not thereby evade the practical outcome of being on the wrong side of the disposition of forces. Nothing could compel him to subscribe to the radical Sophist thesis that 'might is right'. But he could hardly abstain from conceding that right without might is helpless.

It might be thought regrettable that a study of so long a tradition of moral and political discourse should yield such scanty, such unfavourable and such 'Calliclean' conclusions. But if such unscholarly disappointment be allowed to creep into a professedly scholarly examination, there is perhaps some grain of comfort in the reflection that moral commitment has at least one thing in common with religious commitment: if nothing can count as evidence for it, nothing can count as evidence against it, either - le coeur a ses raisons que la raison connaît point. I do not imagine that our natural law theorist's zeal for natural law or 'human rights' would be weakened for one moment by

any amount of scepticism as to the concept's logical defensibility or practicability. However weighty the arguments against him, he might find refuge in the response to the Professor who saw 'in the growing pile of civilisation only a foolish heaping that must inevitably fall back upon and destroy its makers' given by the anonymous narrator of H.G. Wells' The Time Machine. 'If that is so, it remains for us to live as though it were not so.'

NOTES.

Chapter One Nature and Convention.

1. The Open Society and Its Enemies, I, Ch. 5 -
The whole of this chapter bears in an important degree on our subject.
2. Natural Right and History, p.81.
3. Genesis XIX, Cf. virtually any Patristic reference to the destruction of the cities of the plain and older commentaries of a didactic kind on Genesis. Cf. also Romans I,26 and, for a Pauline condemnation of effeminacy in general, see I Corinthians, XI,14.
4. This notion of a positive divine law will re-appear presently, in the form of St Thomas Aquinas' concept of divine law as contrasted with natural law and human law. See Ch. 4
5. See Homer, Iliad, XVI,433, XIX,186; XXI,82; Odyssey, III, 226, 236, XI, 558, Ovid, Metamorph., IX, 435.
6. For a full discussion of the concepts of Themis, Eunomia and Dike, with sources, see J.L. Myres, The Political Ideas of the Greeks, Chs. III & IV.
7. H. Tudor, Political Myth, p.27. The author is here referring to Fontenelle's De l'Origine des Fables
8. Op.cit., p.139.

9. Throughout this thesis, I shall use the word 'philosophy', at least for the most part, in its widest or more traditional sense. For the modern reader, this may seem unpardonably loose, but our subject-matter is so broad as to make any more specialised use unacceptably clumsy and narrow.
10. History of Philosophy, I, p.38.
11. See, e.g., Journal of the History of Ideas, XII.
12. But on this subject see F.M. Cornford, Classical Quarterly 28 (1934) and G.S. Kirk, Classical Quarterly 5 (New Series) (1955). Cf. Diels and Kranz, Die Fragmente der Vorsokratiker, 12A17.
13. DK 12A passim.
14. DK 12A27.
15. DK 12A9 & B1
16. Bertrand Russell, A History of Western Philosophy, p.49.
17. Ibid.
18. Diogenes Laertius, VIII,3.
19. Op.cit., VIII,44,45.
20. DK p.99 - Introductory paragraph to the section on Pythagoras, and 22B129, 22B40, 31B129.
21. W.K.C. Guthrie, History of Greek Philosophy, I, p.146.

22. DK 14,17. DK add that 'before the time of Philolaus (of Tarentum or Croton) only the oral tradition of the actual school exists' - which is rather an odd way of putting it. The point is simply that, although there are suggestions that Pythagoras and/or his immediate followers committed themselves to writing, nothing at all remains of any of their works.
23. DK 14,9, Diogenes Laertius, VIII,17-19. Actually, accounts of exactly what membership of the Pythagorean communities involved very somewhat, but we need not spend time on this.
- Incidentally, there are several explanations - all of them curious - of the Pythagoreans' reverence for beans: they are shaped like testicles, they are shaped like the gates of Hades, they are shaped like the universe, they provide temporary habitations for the souls of the dead. (See, e.g., Diogenes Laertius, VIII,34, Pliny, Nat.Hist., XVIII, 118.) I seem to recollect that the Manichaeans had a similar soft spot for melons, which they took to be the homes of the dead. As to what put it into peoples' heads to believe such things, we can only guess.
24. On the subject of Orphism, see W.K.C. Guthrie, Orpheus and Greek Religion, esp. Chs. VI & VII, The Greeks and their Gods, Ch. XI, I.M. Linforth, The Arts of Orpheus, passim
25. Herodotus, II,123. Guthrie and Kirk and Raven all remark that Herodotus is mistaken on this point, but they do not say why. There is a very considerable body of evidence - not the least part of which is the Old Testament - which bears out the view that this doctrine did originate in the ancient Near-East.

26. DK 21B7.
27. W. James, Essays in Radical Empiricism, quoted by Bertrand Russell, Sceptical Essays, p.41.
28. DK 51 This fragment is, however, corrupt - see DK's note.
29. DK 14,21, 58,6.
30. Quoted by W.K.C. Guthrie, The Greek Philosophers, p.40.
31. Metaph. 985b31ff.
32. Early Greek Poetry and Philosophy, p.275.
33. Diogenes Laertius, VIII,26-32.
34. Porphyrius, VP,46.
35. DK 44A23; Cf. DK 58B41 and Plato, Phaedo, 86Bf.
36. Diogenes Laertius, VIII,33.
37. DK 58D2.
38. Alexander Aphrodisiensis, In Met., XXXVIII,10, Cf. Aristotle, Mag.Mor., 1182a11, DK 58B4; 38A16.
39. For the politics of Pythagoreanism, see E.L. Minar, Early Pythagorean Politics, A. Delatte, Essai sur la Politique Pythagoricienne.
40. There are, in fact, many accounts of the alleged Heraclitean treatise On Nature - that it was modelled on the style of the Delphic Oracle,

that it was placed as a votive offering in the famous Temple of Artemis at Ephesus, and so on. The fact that so many of Heraclitus' utterances seem to be acroamatic lends support to the contention that there never was an actual treatise as such. It has been suggested (by Kirk and Raven, for example) that a collection of Heraclitus' sayings was made at a later date - possibly by Stoic editors - and called On Nature by them. On the other hand, the fragment numbered 1 by DK, which is very Heraclitean in style, does look very like the opening paragraph of a written work.

41. DK 22B40.
42. DK 22B129.
43. DK 22B58.
44. DK 22B80.
45. DK 22B76.
46. DK 22B126.
47. DK 22B67 - DK supply the word 'fire'.
48. DK 22B62.
49. One and Many in Presocratic Philosophy, p.97.
50. DK 22B30.
51. DK 22B90.
52. DK 22B51.
53. Aristotle, Eudem. Ethics, 1235a25.

54. DK 22B42; Cf. Iliad, XVIII, 107.
55. DK 22B91.
56. DK 22B41.
57. DK 22B112.
58. DK 22B104.
59. DK 22B2
60. DK 22B114.
61. See Journal of the History of Ideas, XXIV (1963).
62. DK 22B94.
63. DK 22A16.
64. DK 22B107. The literal translation of this passage is 'Eyes and ears are bad witnesses to those who have barbarian souls.' The translation which I have given is suggested by DK. The idea seems to be that a 'barbarian' soul is one which does not understand the language of the senses, just as a 'barbarian' in the ordinary sense is one who does not understand the language of those who apply the term 'barbarian' to him.
65. DK 22A1, 22B101.
66. DK 22B49.
67. DK 22B43.
68. DK 22B29.

69. Greek Philosophy, pp.41f.
70. Pol. 1341a30ff.
71. Greek Political Theory, p.64.
72. A History of Greek Political Thought, p.79.
73. History of Philosophy, I,p.354.
74. See, e.g., Iliad, XV,412, Pindar, Pyth. V,115;
Aristophanes, Frogs, 761ff, Xenophon, Mem. I,1,11;
Plato, Symp. 208C, Lysis, 204A.
75. Paideia, I,p.290.
76. A History of Greek Literature, p.169.
77. Op.cit., I,p.5.
78. A full account of the Sophists' other interests is given, insofar as such an account is now possible, in Mario Untersteiner's The Sophists - a book which is unfortunately somewhat marred by Kathleen Freeman's rather opaque English translation.
79. For this remark and its place within the context of Socrates' treatment of Protagoras, see Theaetetus, 151Eff.
80. He would presumably wish to say what (in effect) Gorgias says in his treatise On Nature that if you cannot communicate what you know then, for most practical purposes, your position is no better than it would have been if you did not know. If, as with the Sophists, you hold that the only 'point' of intellectual enquiry is the practical advantage to be derived from it, then

this is a fair point.

81. See n.79 supra.
82. DK 82B3.
83. Op.cit., p.79.
84. Theaetetus, 167C.
85. See Gorgias' Funeral Oration or Epitaph, DK 82B5a - 6.
86. DK 82B11. I have here borrowed the translation given in the Introduction to the Loeb Classical Library edition of Isocrates - a loan suggested to me by H. Tudor, Esq. The translation is somewhat loose, but it very cleverly captures Gorgias' highly ornamented style. Unfortunately, Gorgias loses much in translation - as does Heraclitus, incidentally - because of the impossibility of rendering puns into a language other than that in which they were originally made. With the solitary exception of 'non Angli sed Angeli', I have never come across a pun which works in more than one language.
87. Ibid.
88. Gorgias, 456B.
89. 'Doubtful consistency', of course, because there are no more grounds for saying that a given use of rhetoric is 'improper' than there are for saying that Helen acted improperly in deserting her husband. Unfortunately for Gorgias, what is sauce for the goose is sauce for the gander.
90. Loc.cit
91. Gorgias, 457Af.

92. Thucydides, LXXXIX, CV.
93. Republic 344C.
94. Translation (slightly amended) given by Sir Ernest Barker, Greek Political Theory, p.98.
95. Op.cit., pp.170f

Chapter Two Nature and Purpose.

1. See Plato, Rep. 352D, Aristotle, e.g. Metaph. 1045bff, Physics, 194a, 199a, Cf. de Caelo, 217a, de Part.Animal., 677a. For a fuller account of Aristotle's teleological world-view see F. Solmsen, Aristotle's System of the Physical World, esp. Ch. 5.
2. Pol. 1252b
3. Nic. Ethics, 1097b.
4. See, e.g., Metaph 1045bff, 1048af, 1049a, 1050a.
5. Nic. Ethics, 1097bf.
6. Protag. 320Cff.
7. Pol. 1253a.
8. Nic. Ethics 1094af.
9. For this idea, see J. Althusius, Politica Methodice Digesta, and Cf. G.H. Sabine, A History of Political Theory, pp. 355ff.
10. Pol. 1253a.

11. Philosophy of Right, p.123.
12. K.R. Popper, The Open Society and Its Enemies, I, p.173.
13. Rep. 349Dff
14. Rep. 441E.
15. Rep. 353E.
16. Mark, V,30 (AV).
17. The question of whether or not Plato actually tries to develop an 'analogy' between State and soul and, if so, of the nature and viability of such an enterprise, is a complex and much discussed matter. For our purposes, however, this is neither here nor there.
18. Rep. 434C, Cf. 428D, 432Df.
19. Rep. 473Cf.
20. See G. Kateb's article on 'Utopianism' in The International Encyclopaedia of the Social Sciences.
21. Rep. 592B, Cf. 540D.
22. Rep. 475C.
23. Rep. 476B.
24. Diogenes Laertius VI,24ff.
25. Rep. 505A.
26. Lectures on the 'Republic' of Plato, p.225.

- 27 Rep. 508Aff.
28. Paidaea, II, p.288.
29. I quote from memory. The quotation is, of course,
quite unnecessary to make the point But it is
irresistible because - apparently by pure accident
- it 'translates' into a bit of doggerel verse.

 And so no force, however great,
 Will stretch a cord, however fine,
 Into a horizontal line
 Which shall be absolutely straight.
30. Jaeger, op.cit., pp.289f
31. Rep. 525B.
32. Rep. 523A
33. Rep. 540Af.
34. Op.cit., p.261.
35. Rep. 602C, Cf. 595A-602B.
36. Classical Quarterly, XVI.
37. Rep. 517Df.
38. Sir Ernest Barker, Greek Political Theory, p.170.
39. Loc.cit.
40. Eudem. Ethics 1216b; Cf. Mag.Mor. 1183b.
41. Nic Ethics, 1106bff.
42. Rep. 331Cff.
43. Nic Ethics 1094b

44. Ibid.
45. Philosophy, XLII.
46. Pol. 1254af.
47. Nic. Ethics 1134a.
48. Nic Ethics 1134bf.
49. For a discussion of this, see Sir Ernest Barker,
The Politics of Aristotle, pp 362ff
50. Nic Ethics 1162bf.
51. Pol. 1256b.
52. Nic Ethics 1107a
53. Rhetoric 1374b.
54. Pol. 1258b, 1263af.
55. Nic. Ethics 1179bf, Pol. 1253b.
56. Treatise of Human Nature, III,1,1.
57. Laws 889.
58. Pol. 1284a.
59. Laws 875Jf
60. Loc.cit.
61. Rhetoric 1374a.
62. Nic. Ethics 1137b.

63. Vinogradoff, Outlines of Historical Jurisprudence, II,iii,5, cited by Sir Ernest Barker, The Politics of Aristotle, p.371.
64. Rhetoric 1373b.
65. See Ch.5, p.277 and note.
66. Natural Rights, p.30.
67. Aristotle's occasional references to a man 'utterly superior in goodness' are sometimes supposed by commentators to be made with Alexander the Great in mind, but this, of course, is pure conjecture.
68. Sandbach, The Stoics, p.23.

Chapter Three, Beyond the Polis.

1. For examples of this see, e.g., G.H. Sabine, A History of Political Theory, P.E. Sigmund, Natural Law in Political Thought, and, indeed, virtually any of the standard histories of political thinking.
2. Dio Cassius LXXII,i
3. Or is, at least, a matter of universal agreement amongst students of the subject.
4. This much more closely resembles the Milesian than the Heraclitean philosophy. Anaximenes of Miletus had something rather similar to say.
5. For the sources of the foregoing paragraph, see Hans von Arnim, S(toicorum) V(eterum) F(ragmenta), II,663, Seneca, De Benef., IV,7, SVF I,85, II,300, II,316, I,529, I,155; I,88, II,1132f, II,1027,

II,717, II,1074, I,102, II,581, Marcus Aurelius, Medit., IV,xiv,43, V,xxii, SVF II,451, Cicero, De Nat. Deorum, II,xxiiiff, SVF II,434; II,527, II,555, II,579, II,596, II,604, II,611, Cicero, Tusc.Disp., I,xxxii,79.

6. The Philosophy of Chrysippus, p.157.
7. SVF I,176.
8. SVF I,177.
9. See, e.g., SVF II,1150.
10. SVF III,4.
11. That is, the Stoics do not acknowledge that branch of education which we should now call 'training'. In this respect, quite clearly, they differ signally from the Sophists, to whom, as we saw, 'training' is (broadly speaking) the whole point of education.
12. Cicero, De Finibus, III,viii,29; SVF III,662.
13. SVF I,184, III,16.
14. Diogenes Laertius, VII,87f.
15. Seneca, Epist. XCVI,2.
16. Epictetus, Disc., IV,i,89f.
17. Tacitus, Ann., XV,62ff.
18. SVF I,361.
19. Stobaeus, IV,iv,29.

20. Op.cit., p.139.
21. Diogenes Laertius, VII,87f.
22. De Re Publica, I,xlvi, II,xi,16.
23. Acad., I,x,36, De Finibus, III,ix,31.
24. Epist. CXXIII,3.
25. SVF III,314; III,178; Cf. III, 182, I, 197; II,83, II,87, II,764, II,835, Cicero, De Finibus, V,lxv; De Officiis, I,xi For a fuller discussion of the notion of oikeiosis, see S.G. Pembroke's article in A.A. Long (ed), Problems in Stoicism
26. Epictetus, Disc., I,xiii,4.
27. Cicero, Tusc.Disp. V,xxxvii,108; Diogenes Laertius, VI,63, Epictetus, Disc., I,ix,1.
28. SVF II,528, II,1131.
29. It is hardly necessary to say that this is not to postulate an 'influence' between the Stoics and, say, the French Revolutionaries of 1789 - but see p. 153 infra.
30. I,x,29.
31. De Officiis, III,v.
32. A History of Medieval Political Theory in the West, I, p.9, Cf. Cicero, De Legibus, I,xv,43.
33. Roman Stoicism, p.281 - the suggestion that the Stoics were revolutionaries is unfortunate, however. It would perhaps be better to substit-

ute the word 'repudiation' for 'revolt'.

34. Sir P. Vinogradoff, Roman Law in Medieval Europe, p.56.
35. Medieval Political Theory, p.47.
36. Op.cit., p.141.
37. Digesta, I,11,2.
38. Digesta, I,1,1
39. As we shall see in a moment, however, the term ius civile soon came to be used more broadly, to refer to the peculiar code of law of any city (and see Inst. I,11,2.). There are minor but worthwhile reasons for preferring the translation 'civic' law. In modern usage, civil law is contrasted with criminal law, but the ius civile encompassed what we should now call indictable and actionable matters equally. Also, the chief contrast in medieval jurisprudence is not between 'civil' and 'criminal' law, but between civil and canon law - practitioners of the former being called 'civilians' and of the latter 'canonists'.
40. Ancient Law, p.59.
41. op.cit., p.76.
42. Digesta I,i,1.
43. Digesta I,1,9.
44. Inst. I,11,2.
45. Tusc.Disp. I,x111,37.

46. Digesta I,1,9.
47. Second Treatise, V,26ff.
48. Gaius, Inst., II,65f.
49. Digesta, I,1,11.
50. Inst., I,11,1.
51. Digesta, I,1,1.
52. Historical Introduction to the Study of Roman Law, p.168.
53. Digesta, XLI,11,12, XLIII,xxvi,2, L,xvii,35, I,1,4, I,xvii,32
54. Digesta, XII,vi,64.
55. Digesta, I,v,4.
56. Digesta, I,1,v.
57. Inst., I,11,2.
58. Natural Law, pp.8f.
59. Op.cit., Introduction, p.vii.
60. Cicero, Ad Att., XII,412.
61. F. Schulz, Principles of Roman Law, p.35, emphasis mine. Something of the same idea survives in modern judicial procedure, when the question is asked, 'What would the reasonable man do in the circumstances?' The question could be re-phrased as, 'What would be the 'most natural' thing to do/expect/say?'

62. See Ch.2,fn.63.
63. For some account of these matters, see B. Nicholas, An Introduction to Roman Law, pp.54ff and Part II, passim. See also Digesta, I,vii.
64. For examples and discussion, see P.E. Sigmund's contribution to J.R. Pennock and J.W. Chapman, (eds) Equality
65. Digesta, I,1,10.
66. Inst.,I,x1,11.
67. 'Le Couronnement de Louis', quoted by Carlyle, op.cit.,III,p.32,n.1.
68. Hanegold of Lautenbach, Ad Geberhardum,47, quoted by Carlyle, op.cit.,III,pp.112f,n.3, Cf. John of Salisbury, Polycraticus, e.g. IV,2.
69. Op.cit.,III,pp.87f.
70. Political Theories of the Middle Age - but I have slightly amended F.V. Maitland's translation in the 1900 Oxford edition, in order to get rid of such archaic Teutonisms as 'Kaiser'.

Chapter Four The Christian Doctrine of Natural Law.

1. B. Nicholas, An Introduction to Roman Law, pp.86f.
2. See, e.g. T.D. Barnes, Tertullian, Ch.IV.
3. Barnes, op.cit.,p.22.
4. De. Praescrip. Haeret ,VII.

5. Quoted by J.E.B. Mayor, Q. Septimi Florentis Tertullian's Apologeticus, Introduction, p.xiv.
6. The Pursuit of the Millennium, passim.
7. W.H.C. Frend, The Donatist Church, p.99.
8. The Greek Patristic View of Nature, Introduction and passim.
9. H. Armstrong, Eastern Churches Quarterly, VIII (Supplementary Volume).
10. Classical Journal, XXX.
11. John, I,1ff - my translation. The proper translation of this passage is a matter of some dispute; but this does not detract from the point here being made.
12. A Critical and Exegetical Commentary on the Gospel According to St John, p.cxlili.
13. R. Bultmann, The Gospel of John, p.19.
14. John, I,5 - my translation.
15. Acts XVII,22ff - my translation.
16. Studies in the Acts of the Apostles, p.77.
17. Acts XVII,18ff.
18. Phaenom.,1-13.
19. For a fuller discussion see K.Lake and F.J. Foakes-Jackson, The Beginnings of Christianity, V,246ff. See also C.S.C. Williams, A Commem-

tary on the Acts of the Apostles, p.204ff.

20. The Acts of the Apostles, p.336.

21. I Corinthians, III,2, Cf. Matt.,VII,6. This doctrine - called the disciplina arcani from the late seventeenth century onwards - was the starting-point of the controversy which may be said to have culminated with Newman's Apologia Pro Vita Sua. It appears, with the scriptural warrants just given, in the Catechism of the Council of Trent as a central principle of religious instruction.

22. Matt.,VIII,11.

23. Galatians III,28, Cf. I Corinthians,XII,13; Colossians III,11. My translation.

24. Romans,II,11ff. My translation of the last sentence of this passage is inevitably a little free, for the very good reason that the original makes no sense. St Paul is a well-known exponent - especially in Romans - of unintelligible Greek; although the gist of what he is trying to say is clear enough. The Pauline epistles generally are clearly the work of a man dictating at high speed in a language with which he is not entirely familiar. But it is amusing to reflect that, in the nineteenth century, many commentators - reluctant to convict the Apostle of solecisms - concluded that Paul's murky language is a special form of Greek devised by the Holy Spirit for the communication of religious information to the elect. Rather similar explanations were current in antiquity to account for the remarkably difficult utterances of Heraclitus.

25. The Epistle to the Romans, p.65f.

26. Loc.cit.
27. E. Brunner, The Letter to the Romans, p.21.
28. For a general discussion of such issues, see J.C. O'Neill, Paul's Letter to the Romans, pp.45ff.
29. St Ambrose, De Jacob et Vita Beata, VI,20.
30. St Augustine, Contra Faustum, XIX,2, Cf. Romans, VIII,2.
31. Genesis, I,31.
32. Epist.,CXXX,vi,13.
33. Ennarat.in Psalmos, CXVIII,xii,2.
34. Ench.XXVI, Cf. Epist.,CXL,ii,4, De Lib. Arbit., I,viii,18, In Joh. Evang. XIX,xix,5,12.
35. Ench.XCIX.
36. De Offic. I,84.
37. De Offic. I,222; III,28, I,77f, I,125ff, Epist.LXIII,27, De Abraham.,I,8, De Offic. I,228; I,161, III,19, III,23ff.
38. De Fuga,XV.
39. De Fuga,II, De Jacob,I,16, De Obitu Theod.,XXV, De Poenitentia, II,11.
40. Romans,XIII,1ff.
41. Lactantius, Inst.Div.,V,16.

42. Ambrosiaster, Comm. in Coloss., IV, 1.
43. Ambrose, De Joseph, XX.
44. The Social Teaching of the Christian Churches, I, 154.
45. De Civ. Dei, XIX, 15.
46. De Lib. Arbit., I, v, 11; I, vi, 15, De Ver. Rel., XXI, 58.
47. The Political and Social Ideas of St Augustine, p. 90.
48. Serm. LXII, 13.
49. Ennarat. in Psalmos, CXXIV.
50. De Civ. Dei, V, 17.
51. De Civ. Dei, XIX, 21.
52. De Civ. Dei, XIV, 28.
53. De Civ. Dei, XIV, 6.
54. Hexaem. V, 66.
55. Epist. LXXVII, 6.
56. That is, the so-called 'civitas peregrina'.
57. Medieval Political Theory, pp. 20f.
58. See Historia Iuris Canonici, and, more briefly, G. LeBras' contribution to C.G. Crump and E.F. Jacob (eds), The Legacy of the Middle Ages.
59. And who was - or so I am told by Dr P.J. Fitzpatrick - the coiner of the term 'transubstantiation'

60. F.Heer, The Medieval World,p.240.
61. Etym.V,ii,4.
62. Decretum, I,1 - quoting Matt.VII,12.
63. Decretum I,1,1.
64. Decretum I,v,1.
65. Decretum I,viii,1.
66. Decretum I,ix,1.
67. Gratian does distinguish between 'moral' and 'ceremonial' precepts in the Bible (Decretum I,vi,3). This distinction, however, does not of itself enable us to assign differing weights to differing injunctions. The difficulty is well-illustrated by the furious controversies in the post-Ascension Church over whether circumcision eight days after birth is a moral or merely a ceremonial (and therefore waivable) requirement of scripture.
68. Luke XX,25 (AV, slightly amended).
69. Luke XXII,38 (AV).
70. Matthew XVI,18f.
71. The Growth of Political Thought in the West, p.224.
72. Heer, op.cit.,p.329,emphasis mine.
73. Political Theories of the Middle Age, p.13.
74. Medieval Political Theory, passim.
75. Summa Theol. IaIIae,II,8.

76. Comm. in Libros Polit. I.
77. De Civ. Dei XIX,15, Summa Theol. IaIIae,XCVI,4.
78. Summa Theol. IaIIae,XCI,1.
79. Summa Theol. IaIIae,XCI,2.
80. Ibid.
81. Aquinas might have made the distinction clearer; but he does not commit the fallacy complained of by Popper in The Open Society, I,5.
82. Summa Theol. IaIIae,XCI,2.
83. Summa Theol. IaIIae,CXI,3.
84. Ibid.
85. Summa Theol. IaIIae,CXI,4.
86. Ibid.
87. A.P. d'Entrevies, Aquinas. Selected Political Writings, Introduction, pp.xxf.
88. De Reg. Princ., I,14.
89. Summa Theol. IIaIIae,LXVI,1.
90. Summa Theol. IIaIIae,LXVI,2.
91. Ibid.
92. Summa Theol. IIaIIae,LXVI,7.
93. Summa Theol. IaIIae,XCV,2.

94. Summa Theol. IaIIae, XCV, 4.
95. Summa Theol. IaIIae, CIV, 6.
96. Summa Theol. IIaIIae, XLII, 2.
97. Summa Theol. IIaIIae, X, 10.

Chapter Five Rationalism, Individualism, Radicalism.

1. Natural Law, Ch.III, p.49 and passim.
2. d'Entreves, loc.cit.; Barker, Traditions of Civility, pp.312ff.
3. A History of the English-Speaking Peoples, III, p.xi
4. Essays on the Law of Nature, I.
5. Op.cit., II.
6. The illustration comes, of course, from William Paley's Natural Theology (pp.2ff). Cf. Thomas MacPherson, The Argument from Design, Ch.1.
7. Essay Concerning Human Understanding, I, ii, 13.
8. d'Entreves, op.cit., p.52.
9. History of the Law of Nations, I, p.338.
10. De Iure Belli ac Pacis, Proleg. 39.
11. De Iure, I, 1, 5.
12. De Iure, Proleg. 11.
13. De Iure, Proleg. 8.

14. Summa Theol. IaIIae, CXI,3.
15. De Iure, Proleg. 11.
16. Summa Theol. Ia,XXV,3, Cf. Ia,VII,2.
17. Quoted by Otto Gierke, Political Theories of the Middle Age, p.174.
18. Declaration of Independence (The full text appears in H.S. Commager (ed), Documents of American History).
19. Tract on the Popery Laws, in R. Hoffman and P. Levack, Burke's Politics, p.152.
20. Leviathan, XV.
21. Op.cit.,p.53.
22. Kant's Critique of Pure Reason and other works on the Theory of Ethics, ed and trans F.K. Abbott, p.123.
23. Op.cit.,p.118.
24. 'The Ideas of Natural Law and Humanity in World Politics', Appendix I of Gierke's Natural Law and the Theory of Society, p.206ff.
25. Op.cit.,p.207.
26. The Growth of Political Thought in the West, p.322f.
27. Comm. Super S. Pauli Epist. ad Romanos, IV,13.
28. Second Treatise, XVIII,203.

29. See, e.g., C.B. MacPherson, The Political Theory of Possessive Individualism, L. Krieger, The Politics of Discretion Pufendorf and the Acceptance of Natural Law.
30. Op.cit.,p.3.
31. Policraticus, V,2.
32. The Pseudo-Dionysian treatises (Migne, Patrologia Graeca, III-IV) are De Divinis Nominibus, De Mystica Theologica, De Coelesti Hierarchia, and De Ecclesiastica Hierarchia.
33. Man and the State,p.95.
34. R.M. Nozick, Anarchy, State and Utopia,p.ix.
35. Leviathan, XIII.
36. Tractatus Politicus, II,15.
37. Locke, Second Treatise, II,14.
38. See, e.g., Republic, 358Eff; Politics, 1280b10, Joshua,XIV,24f.
39. Nicholas of Cusa, De Concordantia Catholica, II,14, Hooker, Laws of Ecclesiastical Polity, I,x,3-4; Suarez, De Legibus, II,xvii,8, II,ii.
40. See J.W. Gough, The Social Contract, esp. Chs. III,IV & V.
41. Second Treatise, XIX,225.
42. Tractatus Politico-Theologicus, XVI,4f.
43. Quoted by C.B. MacPherson, op.cit.,p.140, from Overton's An Arrow Against All Tyrants.

44. P. Zagorin, A History of Political Thought in The English Revolution, p.41
45. See n.18, supra.

Chapter Six. A Critical Perspective.

1. Traditions of Civility, p.312.
2. J.S. Mill, On Liberty, Introduction.
3. Treatise of Human Nature, III,1,1.
4. Op.cit., II,iii,3.
5. Op.cit., III,1,1.
6. Op.cit., III,1,2.
7. We must, of course, keep in mind the distinction between 'truth' and 'validity'. It has been pointed out to me that we do indeed sometimes 'arrive' at factually true conclusions from premisses which are factually false. For example, the conclusion of the following (leaving out the 'therefore') is 'true', even though, as it happens, the minor premiss is false

Durham is south of Newcastle;
Gateshead is south of Durham;
Therefore Gateshead is south of Newcastle.

The above is a matter of pure luck. But it is in any case to be noticed that we are not here remarking about logical validity. Logically, the conclusion does follow from the premisses, even though, in fact, Gateshead is not south of Durham.

8. John Rock, The Time has Come, p.63.
9. Leviathan, XIIIff.
10. The 'ought'/'is' question has been much discussed. To select one item from the voluminous literature The point which I am here making has been more fully discussed by John R. Searle, in his paper 'How to Derive 'Ought' from 'Is'', reprinted in Philippa Foot's Theories of Ethics.
11. See Ayer's Language, Truth and Logic, passim, but especially Ch. 6.
12. Kant, The Philosophy of Law, ed and trans W. Hastie, Introduction.
13. Op.cit., B1.
14. G.W. Smith and A.H. Dole, The Ila-Speaking Peoples of Northern Rhodesia, quoted by A.MacBeath, Experiments in Living, p.379.
15. MacBeath, loc.cit.
16. Treatise of Human Nature, II,iii,3. In view of the paragraph following this quotation, it is perhaps as well to make it clear that Hume is not, as Hobbes was, a individualistic hedonist. His point, rather, is that we derive 'pleasure from the view of such actions as tend to the peace of society.'
17. From Bentham's remarks on the French Declaration of 1789, Article II, in J.Bowring, The Works of Jeremy Bentham, II.
18. From Hegel to Marx, pp.6ff.

19. H.L.A. Hart, The Concept of Law, Ch.9.
20. See, e.g., John Rawls, 'Distributive Justice', in P. Laslett and W.G. Runciman (eds), Philosophy, Politics and Society, Third Series, F. Olafson, 'Essence and Concept in Natural Law Theory', in S. Hook (ed), Law and Philosophy, F.H. Green, Lectures on the Principles of Political Obligation, pp.32f, C.J. Friedrich, Man and his Government, pp.38ff.
21. Hart, op.cit., p188.
22. The Morality of Law, p.185
23. Sir Isaiah Berlin, 'Equality as an Ideal', in Proceedings of the Aristotelian Society, LVI; C. Perelman, The Idea of Justice and the Problem of Argument, p.1-60.
24. J. Feinberg, Social Philosophy, p.99.
25. H. Kelsen, General Theory of Law and the State, pp.437ff.
26. E. Bodenheimer, 'The Natural Law Doctrine. A Reply to Hans Kelsen', Western Political Quarterly, III., p.362.
27. The Concept of Law, Ch.9.
28. P.E. Sigmund, Natural Law in Political Thought, Conclusion; T.E. Davitt, The Basic Values in Law, passim.
29. See, e.g., Max Radin, 'Natural Law and Natural Rights', Yale Law Journal, 59.
30. Reprinted in F.A. Olafson (ed), Society, Law and Morality, pp.439ff.

31. 'Political Education', in P. Laslett, Philosophy, Politics and Society, First Series, p.15.

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(The dates given are in all cases the dates of the editions used or referred to.)

1. PRIMARY SOURCES.(a) Classical.

Subject to the list given in the remainder of this section, all classical references are to the Loeb Classical Library edition of the work in question, although I have not invariably followed the editor's translation. The following are exceptions

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1909.)

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- Vita Pythagorica (ed. L.
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