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Books Reviewed

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BOOKS REVIEWED

THE POVERTY OF HISTORICISM. By Karl R. Popper. Boston: The Beacon Press, 1957. Pp. xiv, 166. $4.00.

This fascinating little book, which appropriately is dedicated to the ". . . memory of the countless men and women of all creeds or nations or races who fell victims to the fascist and communist belief in Inexorable Laws of Historical Destiny," is the kind of scholarly work that brings to the reader at the same time a deep sense of flooding pleasure and a feeling of profoundly exciting disquietude which stems from the realization that a message of enormous importance is being delivered. Such a message, therefore, cannot simply be "reviewed" in the traditional meaning of the term. It must first be reported on and then evaluated.[1]

The fundamental thesis of Popper's book is (1) that the belief in "historical destiny" — a concept so attractive to babbling philosophers and so useful to scheming tyrants — is sheer superstition, not to say nonsense; and (2) that for strictly logical (or scientific) reasons it is absolutely impossible to predict the future course of human history by scientific or any other rational methods. (pp. vii; ix) This is so because the course of human history is strongly (and perhaps decisively) influenced by the growth of human knowledge. But if there is such a thing as a growing human knowledge, then we cannot possibly anticipate today what we shall or may know tomorrow. In other words, the present-day scientist, unless he be a hopeless fraud, cannot accurately predict by the use of accepted scientific methods the future results as well as the long-range effects of his research. And since we cannot possibly predict, by any known rational or scientific methods, the future growth of our knowledge, we cannot predict the future course of human history. Thus, Popper concludes, we must reject the scientific validity of any purely theoretical history.[2]

By the term "historicism" Popper means an approach to the social sciences (and to history in general) which implicitly or explicitly assumes, usually on the basis of some very common but nevertheless extremely fateful misunderstanding of the methods and aims of science in general, that historical prediction is the principal aim of the social sciences; and that this aim is attainable by the discovery of the rhythms, patterns, laws or trends that allegedly underlie the evolu-

1. Popper, it will be noted, first tries to make a strong case in favor of historicism in order to give substance and meaning to his subsequent criticism. He presents the various forms of historicism as types of a well-considered and close-knit philosophy. Thus he succeeds in building up a position worth attacking. In a way he perfects (and condemns) a philosophical theory which frequently — and perhaps all too frequently — has been advanced, but really has never been fully stated as to its methods and aims.

2. From all this it follows that there can be no scientific theory of historical development serving as the basis for historical prediction. (p. x)

tion of human history.[3] (p. 3) Popper correctly insists that the various attempts to imitate in the domain of the theoretical social sciences the methods applicable to the physical sciences have on the whole met with failure. Hence arose a violent dispute as to whether the methods of the physical sciences were at all applicable to the social sciences;[4] and, according to their particular views as to the applicability or nonapplicability of the methods of the physical sciences to the social sciences, "pronaturalistic" and "anti-naturalistic" schools of social thought developed. (p. 2)

The anti-naturalistic historicist asserts that owing to the radical differences that exist between physics and sociology, the methods of the physical sciences cannot be applied to the social sciences. Sociological "laws," it is said, differ in different places and different periods of history; they depend upon history and differences in culture. They are determined by a particular or unique historical (or cultural) situation. (p. 5) Also, the possibility of generalizations always rests upon the (alleged) general uniformity of nature (including human nature) — on the assumption that in like or similar situations or circumstances like or similar things will happen. This assumption the anti-naturalistic historicist rejects as useless and even erroneous. He points out that similar circumstances arise only within a single historical or cultural period. Since they never persist from one period to another, there cannot possibly be a long-run uniformity in human society on which long-run generalizations could be based. (p. 6) But more than that: he insists that all generalizations implicitly surmise that there is no such a thing as everlasting regularities in human history (that "nothing is really new under the sun"). This, in turn, would deny the possibility of any truly significant development or evolution in history.[5] (pp. 6-7) To the true anti-naturalistic historicist "social uniformities" differ widely from the "uniformities of nature" (if such a uniformity of nature exists at all) in that the former change from one historical period to another. He also maintains that human action is the real force that changes (and determines) them. Social uniformities are not "laws of nature," but are man-made facts. And although they depend on human nature, they do so because human nature has the power to change and, perhaps, to control them. Hence things and situations can be improved or worsened by man himself, and active reform is by no means futile. Such notions, it goes without saying, have a strong appeal for those "activists" or reformers who simply refuse to accept

3. Popper also insists that this historicistic approach to the social sciences is responsible for the unsatisfactory state of present-day theoretical social sciences. (p. 3)

4. Windelband's and Rickert's pioneering efforts to distinguish between the "natural sciences" and the "cultural sciences" would be in point.

5. Popper observes here that naturalistic theories of society which rely on such generalizations (or general "laws") are frequently used for apologetic purposes. Unpleasant or undesirable situations must simply be accepted since they are determined by "inexorable laws of nature." Thus the allegedly "inexorable laws of economics" have been invoked to denounce economic or social reforms. At the same time, by fostering a general feeling of inevitability, these naturalistic theories have instilled (or tried to instill) in people a kind of quietism or fatalism — a readiness to endure an unnecessarily bad situation without protest: what is now will be forever in the regularity of events, and all attempts to bring about a change are outright ridiculous and even blasphemous. But these are essentially "conservative" (and biased) arguments against all change and progress, and in favor of retaining the *status quo*.

things as they are, and who deny that certain situations are inevitable. (pp. 7-8)

The anti-naturalistic (or "idealistic") historicist also argues that significant social experiments, especially large scale social experiments, are never experiments in the sense of the physical sciences: they are made solely for socio-political purposes, but never to advance knowledge. Since social experiments change the conditions of society, and since they can never be repeated under precisely similar (or identical) conditions (because these conditions were changed in and through the first social experiment), they are not scientific at all. (p. 9) "History may repeat itself," but never on the same level, especially if the events concerned are of historical importance and if they exert a significant influence on society. Hence all "social newness," the anti-naturalistic historicist insists, is an "intrinsic sort of newness," while newness in the physical sciences is merely a newness in arrangement and combination and, hence, no real newness at all. Social newness, on the other hand, is genuine newness, because it is irreducible to the newness of arrangements. The "same old social factors" are never really the "same old social factors." But where nothing can repeat itself precisely, real newness emerges.[6] (p. 10) Social factors and social events may be classed together with other (and previous) social factors or events. But they are also unique in a very definite way. Even if we should be able to discover how and why any particular factor or event came about — if we should understand intuitively its causes and its effects and if we comprehend the forces which occasioned this factor or event — we would still be unable to formulate, in a manner analogous to that of the physical sciences, "general laws" which could serve as a general description of such causal nexi. (p. 11) The anti-naturalistic historicist who insists that nothing is more important than the emergence of a really new period, is justified, therefore, in proclaiming that the ordinary methods of the physical sciences are inapplicable to the most important feature of society: its division into historical epochs and the emergence of true newness. (p. 11) In addition, the complexity of social phenomena poses unique problems not shared by the physical sciences where investigations may artificially be simplified by the methods of experimental isolation. But such an artificial experimental isolation is not feasible in the social sciences, exactly because complexity is an essential aspect of society and history. (p. 12)

In the field of the social sciences, Popper points out, the problem of prediction is of acute significance. For the anti-naturalistic historicist (but not for the pronaturalistic historicist) social prediction is admittedly an extremely difficult if not impossible task. A prediction, we know, may actually have some influence upon the predicted event, especially in the social sciences, where there frequently exists a complex and complicated interaction between the predictor and the predicted event. The awareness of the existences of certain tendencies which might result in a particular event, as well as the realization that the prediction might itself exert a decisive influence on the predicted event, is likely to have a definite impact upon the content of the prediction itself. This impact, in turn, might be of such a nature as to impair and even determine the predicted event. A pre-

6. This insight is basic for the understanding of new epochs in human history, each of which significantly differs from any other historical epoch.

diction is actually a social happening which may well interact with other social happenings, among them the one which it predicts. Thus it may precipitate an event that otherwise might never have happened; or it may influence an event that otherwise might have occurred differently. It may actually cause the events which it predicts, or it may prevent the occurrence of an event by deliberately refusing to predict it.[7] (pp. 13-15) The interaction of the social scientist's pronouncements (or predictions) and social life invariably creates actual situations. Hence, according to Popper, we have to consider not only the truth of these pronouncements (or predictions), but also their actual influence on future events and developments. (p. 16) The social scientist may primarily be searching for truth, but in doing so he most decidedly exerts a definite influence on society and social life.[8] But where predictions or particular interests of one kind or another have such an influence on scientific theories, pronouncements or predictions, it becomes doubtful whether bias, prejudice, or ill will can be fully avoided or even always detected. (p. 16) In the social sciences there are probably as many tendencies as there can be found in social life. This, in turn, may well lead to that extreme form of relativism which holds that objectivity or truth is inapplicable to the social sciences where only success — that which actually works — can be decisive. (p. 16)

Another reason why the anti-naturalistic historicist denies that the methods of the physical sciences cannot successfully be applied to the social sciences is his assumption that all "sociology" must be understood in a comprehensive or "holistic" manner: the objects of the social sciences, such as social groups, are more than mere aggregates — more than a mere sum total (or "heap") of its members, as well as more than the mere sum total of relationships. Since, according to the historicist's point of view, all social groups have their own traditions, their own institutions, and their own rituals, these social groups must be studied as a whole if we are to understand them and, perhaps, foresee (and foretell) their future development. This holistic approach not only distinguishes the social sciences from the physical sciences (pp. 17-18), but it also strongly suggests a close connection between certain types of historicism and the "organic theory of social structures" — the theory which interprets social groups by analogy to biological organisms. Holism, then, seems to be characteristic of biological phenomena in general (and to the "organic social theories"), and the holistic approach is said to be indispensable for the understanding as to how the history of the various organisms — biological as well as social — influences and determines their behavior. Thus emerged the widespread theories of "group-spirit" or *"Volksgeist"* which becomes the carrier of "group traditions." (p. 19)

It has been argued by the anti-naturalistic historicists that the proper method of the social sciences, as contrasted with the methods of the physical sciences, is based upon an intimate or "intuitive" understanding of social phenomena: soci-

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7. Social science, in the hands of "progressive interests," may serve as a kind of midwife, helping to bring forth a new social situation. But it may equally well serve, in the hands of "conservative interests," to retard or prevent impending social changes. (p. 16)

8. The fact that his pronouncements exert an actual influence on society destroys, or at least greatly diminishes, his scientific objectivity to the degree that these pronouncements influence the objective which he investigates.

ology aims at an understanding of purpose and meaning rather than at a causal explanation; it tries to understand history and historical developments in "qualitative terms," that is, in terms of conflicting aims and tendencies, or in terms of "national character" or the "spirit of the age." This being so, sociology can operate only on the basis of a "sympathetic imagination," and, hence, must be content with the understanding of unique events and of the role they play in particular situations.[9] (p. 20) From all this it would follow that a method capable of understanding the meaning of social events must go beyond mere causal explanation. It must be holistic in character; it must aim at determining intuitively the role played by the event within a complex structure — within a whole which comprises not only contemporaneous parts but also the successive stages of a historical development. (p. 23) The method of "intuitive understanding," it should also be borne in mind, agrees not only with the theories of holism but also with the anti-naturalistic historicist's emphasis on novelty; novelty cannot be explained causally or rationally, but can only be grasped intuitively. (p. 23) But more than that, the social sciences must adopt a methodical (or methodological) essentialism (p. 30), for it is the task of the social sciences to understand and describe social and sociological entities. This can be done only by penetrating into their essences. Hence anti-naturalistic historicists, who stress the importance of social change, in the main are inclined to side with essentialism. (p. 30) Now in every change, they argue, there must be something that changes and at the same time something that preserves the essential identity of the thing that changes. In the social sciences, therefore, there can be no change or development without the assumption of an unchanging essence. (pp. 31-32) This "essentialism" not only enables the social scientist to detect a "lasting identity" in everything that changes, but it also furnishes some of the most persuasive arguments in support of historicism — of the doctrine that the social sciences must adopt a historical method or, to be more exact, the historicistic method.

Although strongly in favor of scholarly (or technical) investigations of social phenomena (pp. 55-58), Popper points out that any form of historicism, no matter how learned it may appear, is in the final analysis a poor method, unable to yield the scientific results which it promises. One of the main reasons for his rejection of historicism, especially of anti-naturalistic historicism, is the method or methods which the latter proposes, namely, Utopian or large-scale social engineering in order to realize its aims. At the same time Popper strongly sympathizes with what he himself calls "piecemeal social engineering," which signifies to him the practical piecemeal (and cautious) application of the results of piecemeal technology — the conscious utilization of all available technological knowledge to social life where the end is outside the province of technology. (p. 64) In this, piecemeal social engineering differs vastly from anti-naturalistic historicism which through its "total" or large-scale engineering theories regards the ends of human activities as dependent on historical forces and

9. The physical sciences, on the other hand, can arrive at universally valid uniformities, and can explain particular events as instances of such uniformities. As a matter of fact, the social sciences know nothing that could be compared to the mathematically formulated causal laws of physics. (p. 25)

thus within the province of technology. It is the prime task of the piecemeal social engineer to design new social institutions or to reconstruct, overhaul, or run already existing ones. Looking upon social institutions from a functional or instrumental point of view, the piecemeal social engineer always realizes that only a minority of the existing social institutions are consciously designed, while the vast majority have just "grown" and, hence, are the more or less accidental result of human actions. (p. 64) Although he may cherish some notions which concern society as a whole, he is sufficiently honest to realize how little we actually know and how much we can learn from our mistakes. Hence he does not believe, and consequently refuses to engage, in overly ambitious plans of redesigning society as a whole. Whatever his ends, he always tries to achieve them by small adjustments and re-adjustments which can continuously be improved upon.[10] (p. 66) He will avoid undertaking reforms of a complexity and grandeur which make it impossible for him to know exactly what he is doing.

Such rather modest and at the same time intelligent piecemeal social engineering, needless to say, runs contrary to the temperament of many "social activists" whose ambitious programs as often as not are plainly holistic or Utopian. Holistic or large-scale social reform programs aim at nothing less than the complete remodeling of the whole of society in accordance with a definite plan. (p. 67) By the same token the holistic social engineer rejects the piecemeal approach as being either too modest or too "inefficient" or too "cowardly," although at least in practice he is compelled always to resort to haphazard and crude applications of the piecemeal method, without, however, using the cautious and self-critical aspects of the latter. In the final analysis, successful holistic social engineering is simply impossible. The greater the total changes attempted, the greater are the unintended and unexpected repercussions, thus compelling the holist social engineer constantly to resort to piecemeal improvisations. This, in turn, continually forces him to do things which originally he did not intend to do, with the startling result that he becomes engaged in unplanned planning. (pp. 68-69) The basic difference between Utopian or large-scale social engineering and piecemeal social engineering, Popper correctly observes, is not so much a difference in scope or scale as a difference in caution, preparedness, and method of application. While the piecemeal social engineer can approach his task with an open mind as to the method or scope of the envisioned reform, the holistic or Utopian social engineer, who has decided beforehand that a complete, radical, and irrevocable social reconstruction of the whole of society is not only possible but necessary, attacks his task with a closed mind and, accordingly, tries to carry it out by ruthless means without any regard for people or facts.[11] "The well-known and frequently unmanageable uncertainties connected with the human factor often compel him, whether he likes it or not, to attempt to control this human factor by institutional means, thus trying to control man totally by completely transforming him. Instead of constructing a new

10. Also, he is never completely and irrevocably committed to just one line of action or policy.

11. In this sense the Utopian approach also violates the principles of scientific method.

society fit for men and women to live in, he ends up by reshaping these men and women to fit into his new society." (pp. 69-70)

It is this objectionable holistic approach to all social problems which not only distinguishes historicism radically from recommendable piecemeal social engineering, but which also makes possible an alliance between historicism and certain types of holistic or Utopian social engineering. As a matter of fact, the strongest element in this unholy alliance between historicism and utopianism is the decidedly holistic approach to all social problems which is common to both: historicism is interested in the development, not of limited aspects of social life, but of society as a whole; and Utopian social engineering is similarly holistic. Perhaps the two most pronounced representatives of this alliance are Plato and Marx. Plato, the pessimist, held that all change is decay. Hence his Utopian blueprint for the ideal society aimed at preventing or arresting all change and progress.[12] Marx, the optimist, devised a blueprint for society along the lines of a developing, changing, or dynamic theory, predicting a Utopian society which knows no political or economic coercion. (pp. 73-74) Another link between the historicistic and the Utopian approach is that both insist that their aims or ends are not a matter of choice, or of moral decision, but one of historical necessity. Hence both believe that by scientific methods they can actually find out what these necessary aims or ends of society are (pp. 74-75), and then take the appropriate steps. They also maintain that large-scale planning is simply inevitable — that we must plan whether we like it or not — because of the preordained direction in which history is moving. (p. 75)

The term "whole," Popper observes, has been used to denote (a) the totality of all the properties or aspects of a thing, and, especially, of all the relations holding between its constituent parts; and (b) certain special properties or aspects of the thing in question, namely, those aspects which make it appear an organized structure (*Gestalt*) rather than a "mere heap." Popper is correct when he insists that wholes in the sense of (a) can never be adequately studied or become the object of control or reconstruction. (pp. 76-77) They are simply too intricate to be understood at a glance. Planning to reconstruct and control society as a whole in the sense of (a), the holists are convinced that the power of the State is bound to increase until the State becomes identical (or nearly identical) with society. But for many obvious reasons it is quite impossible to control (or reconstruct) all (or "nearly all") social relationships which make up a concrete society, including such personal relations as those of a mother to her child. It is impossible simply because in doing so the holistic reformer must create a host of new relations likewise to be controlled, the control of which would require further controls, and so *ad infinitum*. Thus the Utopian effort to devise a "total plan" for wholes, like the assertion that the historical (or sociological) method is adequate for the treatment of wholes in the sense of totalities, is tantamount to attempting the impossible.[13]

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12. Cf. KARL R. POPPER, THE OPEN SOCIETY AND ITS ENEMIES, Vol. I (London, 1945; rev. ed., Princeton, 1950 & London, 1952; 3d ed., London, 1957).

13. Hence, in the final analysis, the holistic method necessarily remains a mere program. It is also a mistake to believe that there can be a true history in a holistic sense. Every worthwhile historiography is always a history of certain limited ("piecemeal") aspects of

(p. 80) To insist upon the planning and reconstruction of an entire society in all its complexities, like the attempt to regulate the whole of social life, is merely a cheap effort to threaten man with alleged "historical forces," "impending developments," "historical destinies," or "world trends" which supposedly make Utopian holistic planning and regimentation "inevitable." (p. 82)

Holistic thinking is particularly detrimental in its influence upon the anti-naturalistic historicist theory of social experiments in that it holds to the view that a social experiment could be of scientific value only if carried out on a holistic scale. (pp. 83-84) Such a view, it goes without saying, overlooks (a) those important (and successful) piecemeal social experiments which are fundamental for all social knowledge; and (b) that holistic or large-scale experiments are unlikely to contribute much, if anything, to our experimental knowledge.[14] Piecemeal experiments, by utilizing the method of trial and error, teach us to learn also from our mistakes. In a way, both trial and error are necessary. (pp. 87-88) The piecemeal social engineer not only expects mistakes, but he searches for them. On the other hand, it is not likely that we may learn much from holistic social experiments. For it is very hard to learn from very big mistakes (p. 88), and even harder to admit them. Since in a holistic social experiment so much is done at a time, it is well-nigh impossible to say which particular measure is responsible for any of the resulting situations. To complicate matters, within a holistic or totalitarian social experiment even the greatest efforts to secure well-informed, independent, and critical statements about its achievements are unlikely to prove successful. As a matter of fact, Popper points out, there is very little likelihood that a free and untrammelled discussion of the holistic plan and its results will be tolerated. Every attempt at social planning on a very large or total scale is an undertaking which must cause considerable inconvenience to many people over a considerable period of time. Accordingly, there will always be a tendency to oppose the plan or, at least, to complain about it. To many of these complaints the large-scale or Utopian social planner must turn a deaf ear if he wishes to get anywhere at all. In fact, he will have to suppress any opposition or expression of dissatisfaction, and with it any objections whatever.[15] But in doing so he invariably also suppresses reasonable and well-founded criticism.[16] (p. 89)

But there is an additional and perhaps even more fundamental argument

"total" history. The triviality as well as the vagueness of the statement that the whole is more than the sum of its component parts and, hence, "superior" to these parts, is not always realized. (p. 82) Such slogans as "reason of State" or "the paramount interest of the people" frequently are convenient and useful concepts for scheming tyrants.

14. Those holistic experiments can be called "experiments" only in the sense in which this term would be synonymous with an action the outcome of which is uncertain, but not in the sense in which this term is used to denote a means of acquiring knowledge by comparing the results obtained with the results expected. (p. 85)

15. In the long run he would have to suppress institutions of higher learning, banish books, independent writing, and in the end, speaking. This would lead to the closing down of laboratories for research, the abolishing of scientific journals or other means of scholarly communication and discussion, and the forbidding of scientific congresses and conferences. But with the total abolition of all means of further scientific and industrial progress the holistic plan would have to break down or, at least, deteriorate.

16. The mere fact that all expressions of dissatisfaction are curbed reduces even the most enthusiastic expressions of satisfaction — whether they are voiced in the Red Square of Moscow or at the Party Rally in Nuremberg — to complete insignificance. (p. 89)

against the holistic planner. While it is relatively easy to concentrate political power, it is impossible to centralize all the knowledge and experience which is distributed over many individual minds.[17] Lacking this centralized knowledge and finding himself unable to ascertain what is in the minds of so many individuals, the holistic planner must simply eliminate individual differences, which in the long run constitute the greatest menace to his single or single-minded plan. He must try to control and stereotype interests, beliefs, and aspirations by strictly supervised control and stultifying propaganda—by gaining absolute control over the minds of men. But such "thought control" must destroy the last possibility of finding out what people really think; and ultimately it must destroy knowledge. The greater the gain in social and political power, the greater will be the loss of real knowledge.[18] (p. 90) Holism, then, implies also the colossal assumption that we need not, and actually should not, question the fundamental wisdom and benevolence of the planning Utopian social engineer who is, and must be, vested with dictatorial powers. But even granting the unlimited and unvarying benevolence of the holistic planner, it would be impossible for him as well as for the people ever to find out whether the results of his measures tally with his good intentions.[19] (p. 91)

The holistic historicist of the anti-naturalistic type insists that the experimental method cannot be applied to the social sciences (or to social life) simply because we cannot in the social domain reproduce at will precisely the same or even similar experimental conditions. Aside from the fact that this argument also holds good in the physical sciences (pp. 93-94), it should be borne in mind that it is exactly the social experiment which tells us of changes or dissimilarities in social conditions.[20] Hence there is no real basis for the historical assertion that the variability of historical or social conditions renders the experimental method (and with it, the piecemeal method of social engineering) inapplicable to the problems of society. (pp. 96-97)

If sociology is a theoretical science, the pronaturalistic (but not the anti-naturalistic) historicist maintains, it has not only to explain but also to predict events with the help of general theories or universal laws. Hence, at least from the point of view of the pronaturalistic historicist, sociology turns into a doctrine of historical laws and historical trends. (p. 36) But more than that: the ability of the physical (especially the astronomical) sciences to make certain scientific forecasts, the pronaturalistic historicist argues, must be duplicated in the domain

17. Obviously such centralization of all relevant knowledge would be necessary for a truly efficient and wise "centralized political power."

18. These observations are among the most fascinating and brilliant statements in Popper's fascinating book.

19. Conversely, no such telling criticism of piecemeal or small-scale social engineering could be made. Here success or failure — for instance, in the fight against unnecessary poverty, unemployment, maldistribution of the national income, exploitation, or certain forms of injustice — can more easily be appraised. Also, a fight against concrete wrongs or concrete dangers is likely to find the full support of the majority of the people. This would also explain why in truly democratic societies certain far-reaching reforms, especially in times of great and real crises, may be instituted without the suppression of public criticism or the free press. (pp. 91-92)

20. In fact, the study of human society is not so radically different from the study of nature as some sociologists or philosophers have suggested. See also pp. 139 ff.

of the social sciences. If it is possible for astronomy, for instance, to predict eclipses, why should it not be possible for the social sciences to predict social events? Although it is conceded that an exact scientific calendar of social events to come is impossible, the pronaturalistic historicist nevertheless maintains that the lack of exactness, which is typical of all social forecasts,[21] might be compensated by the sweep and the massive importance of such forecasts.[22] (p. 37) "Large-scale forecasts," the pronaturalistic historicist contends, are the kind of predictions which befit sociology. (p. 37) In sum, the pronaturalistic historicist visualizes sociology as a theoretical and empirical discipline, the empirical basis of which consists in a "chronicle of the facts of history" alone, and the ultimate aim of which is to make large-scale forecasts. (p. 39)

Sociology, at least for the pronaturalistic historicist, thus turns into an attempt to solve the age-old problem of foretelling the future — not so much the future of individuals as that of groups, nations, or perhaps the whole human race. (p. 42) It becomes the "science of things to come," of impending events; and social studies have the primary aim of revealing the social, cultural, and, above all, the political future. Popper points out that there are really two different kinds of predictions — "prophetic (or long-range) predictions" and "technological (or short-term) predictions." (pp. 43-44) To these two forms of predictions correspond two types of social engineering — long-term and comprehensive (large-scale) social planning and short-range or piecemeal social engineering.

The analogy between the social sciences and the natural sciences can also be extended into "dynamics" or the "theory of motions determined by forces." Whenever this is done, sociology turns into a theory of social dynamics, a theory of social movements determined by some social (or historical) forces. (p. 39) Sociology, as conceived by pronaturalistic historicists, is akin to dynamics because it is essentially a causal theory; and causal explanation in general is an explanation of how and why certain things happen or happened. (p. 40) But such an explanation must always contain a historical element. Sociology, then, at least to the pronaturalistic historicist, is theoretical history. But if this is so, then its scientific forecasts must be based on "laws" or, to be more exact, on "laws of history." (p. 41) According to the historicist, the only universally valid laws of history, it seems, are the laws which link successive historical periods or, better, which determine the transition from one historical (or cultural) period to another. (p. 41)

Although to the pronaturalistic historicist social science is nothing more than theoretical history, it is not history in the ordinary sense of the term, for it actually looks both back on the past and forward to the future: it is the study of the operative forces as well as of the laws of social development. These laws are laws of progress, change, or arrest. In keeping with this insight, the sociologist must

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21. This unavoidable inexactness is due to the inherent complexity of social events; it stems from the interconnections of these events and from the qualitative (rather than quantitative) nature of social facts.

22. Although on account of their substantial complexity as well as their qualitative nature the social sciences are relegated to suffer from vagueness, their qualitative character at the same time endows it with that kind of comprehensiveness of meaning which always underlines such ideas as "prosperity," "solidarity," and "common destiny."

acquire not only a general knowledge of the broad trends according to which social structures change, but also understand the causes of these changes, that is, the working of the forces responsible for these changes. (p. 45) He must try to formulate hypotheses about general trends underlying social developments in order that men may adjust themselves to impending changes. (p. 45) Such adjustments may frequently assume the forms and proportions of social planning and social engineering. But the pronaturalistic historicist will interject here that all social planning, even if it should be devised most realistically,[23] is in the final analysis wholly futile if not Utopian, because such planning does not take into account the inexorable laws of social development or "social destiny" which alone bring about social or historical situations. (p. 47) Hence the course of historical development is never shaped, and in fact can never be shaped, by rational planning or theoretical construction, however perfect.[24] All social engineering, therefore, no matter how realistic and intelligent, is doomed to remain a Utopian dream. (p. 47) It is doomed, because it operates on the false assumption that man, by proper planning, can inaugurate a new historical period more or less precisely in the way it has been planned or projected. A new period or epoch has its own intrinsic newness, and this intrinsic newness renders any detailed planning simply futile.[25] (p. 48)

Popper denies that this historicistic view of social development necessarily implies fatalism leading to inactivity. It merely predicts that no social planning, irrespective of its merits, will ever go "according to plan." (pp. 49-50) Only such schemes as are consonant with the main (preordained) currents of history can be effective and, hence, be termed "rational." Thus interpretation of history is the proper task of historicist thinking. Human efforts, then, cannot bring about a better world; neither can they prevent or even arrest the gradual deterioration of the world if it is the world's fate to deteriorate. Activism, which is typical of anti-naturalistic historicistic thinking, must acquiesce in this and restrict itself to helping along the inexorable changes: (p. 51) society will necessarily change, but only along a preordained path that cannot change, and through stages predetermined by inexorable necessity. In sum, pronaturalistic historicism teaches the utter futility of any attempt to alter impending changes or to bring about "planned changes." But this is really a peculiar kind of fatalism — a fatalism in regard to the trends of history. Historicistic pessimism, like historicistic optimism, is based on faith rather than reason. The most reasonable attitude to adopt, pronaturalistic historicism counsels, is to adjust oneself as well as one's set of values to make them conform with impending changes and preordained events. (p. 54)

The central doctrine of the pronaturalistic historicist, Popper points out in his criticism of this position, appears to be the belief that it is the task of the social sciences to uncover the law of evolution of society — the "natural laws" of

23. By "realistic" Popper means a plan which is both practical and realistic in the sense that it does not conflict with the known facts or laws of social life — that it is backed by an equally practicable further plan for transforming an existing society into a "new society."

24. It is conceded, however, that such rational plans might exert some influence.

25. Such intrinsic newness cannot be "known in advance" (for otherwise it would not be new) and, hence, cannot be planned for.

historical succession — in order to foretell its future. Popper emphatically denies that the search for the laws of unvarying order in evolution is the proper object of the social sciences. (pp 105-108) The evolution of life on this planet, or that of human society, according to him, is a unique historical process; and its description is a singular historical statement rather than a "law." (p. 108) But if we are forever confined to the observation of a unique process, we can hope neither to test a universal hypothesis nor ever to find a universal law: about unique matters or facts there can be no generalizations. Naturally, the uniqueness of the evolutionary or historical process may be denied with the remark, advanced by many philosophers, historians, or sociologists, that the life cycle of birth, childhood, adolescence, maturity, old age, and death, applies not only to man, individual animals and plants but also to societies (States), races, and perhaps even to the whole universe. But if history is cyclic or repetitive, then the laws of the life cycle of civilization, for instance, can be studied and ascertained in the same manner as the life cycle of a certain animal species. (pp. 109-110) Against this naturalistic view Popper argues that instances of "repetition" are quite possible, but that wherever they occur they occur under vastly dissimilar circumstances. Hence we may not reasonably expect of any apparent repetition of a historical event or development that it will continue to run parallel to its prototype.[26] (p. 111)

The pronaturalistic historicist frequently also proclaims that in any evolutionary process, even if it should be unique, we may discern a trend or tendency or direction, and that we may formulate a hypothesis which states this trend and tests this hypothesis by future experience. (pp. 109, 112) Such a trend, we are told, is usually "dynamic": it "moves" by a certain "velocity" under the influence of social or cultural "forces," it has a definite "direction," and it cannot be "reversed" without breaking the "law of motion." These terms, needless to say, are simply platitudinous metaphors. They are in fact instances of an ill-advised misuse of analogies taken from the physical sciences. (pp. 109, 112) But if used with anything like scientific pretensions, they become plain jargon or, more precise, holistic pronaturalistic jargon. The idea of the movement of society itself — the notion that society, like a physical body, can move as a whole thing along a certain (predictable) path and in a certain (predictable) direction — is merely a holistic fiction or confusion. (p. 114) The expectation that one day we may discover the "laws of motion of society" is in vain, because there is no motion in society analogous to the motion of physical bodies. No one will seriously deny that certain trends (or tendencies) in social change exist. But trends are not laws, simply because they lack that universality which is characteristic of laws.[27] Hence

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26. Admittedly, Popper observes (p. 111), once we believe in a law of repetitive life-cycles, we are certain to discover historical confirmation of this "law" nearly everywhere. But if we would examine more closely these confirmations, they turn out to be intentionally selected in support of the theory they are supposed to test. This is true not only with Toynbee, Spengler, and Vico, but also with Plato and to some extent even with Thucydides, not to mention Herodotus.

27. Thus the statement that a certain trend existed at a certain time or place would be a singular historical statement (an "existential statement"), and not a universal law.

we must always stress the basic difference between a law and a trend.[28] (pp. 115-116) Likewise mistaken is the idea, made famous by Comte and Mill, that any concrete sequence or succession of social events can be described or explained by any one law or by any definite set of laws. For there are neither laws of succession nor laws of evolution (p. 117), although there exist evolutionary trends which can be ascertained scientifically.

Trends, as opposed to laws, may never be used as the basis for scientific predictions. Persistent trends may exist (and may also be explained); but their persistence, in the final analysis, depends on the persistence of certain initial conditions (which, in turn, may sometimes be trends). Some historicists overlook the dependence of trends on initial conditions and, as a result, treat these trends (or operate with them) as if they were unconditional like laws. Their confusion of laws with trends makes them believe in trends which are unconditional (and, hence, general) or, better still, in absolute trends, such as the alleged general historical tendency towards universal human progress. This, Popper points out, is the central mistake of pronaturalistic historicism: its laws of development or evolution turn out to be absolute trends, that is, trends which, like laws, do not depend on initial conditions, and which carry us irresistibly in a certain direction into the future. These absolute trends then become the basis of unconditional prophecies. (p. 128) At the same time the historicist firmly, not to say stubbornly, believes in his favorite trend,[29] and conditions under which this trend would disappear are to him simply unthinkable. The poverty of historicism, then, Popper avers, is primarily an appalling poverty of imagination.[30] (p. 130)

Popper's discussion of the "sociological" and "historical" methods (pp. 130-146), which ought to be studied most carefully by every sociologist, historian, and philosopher, is both extremely subtle and informative. Admitting that there are differences between the theoretical sciences of nature and of society, he nevertheless insists that these differences are not so great as some people would have us believe. Among other matters, he also suggests ways of selecting and testing hypotheses.[31] He points out that frequently we have a more direct (intuitive) knowledge of the inside of human nature than we have of the physical world surrounding us.[32] And since we can never do more than exclude certain possibilities, we cannot possibly predict the precise result of any concrete situation.[33]

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28. The traditional habit of confusing trends and laws, Popper observes, together with the intuitive observation of certain trends, inspired the central doctrines of evolutionism and historicism — the doctrines of the inexorable laws of motion in society.

29. Karl Marx, for instance, believed in an absolute trend towards an accumulation of all means of production in a few hands.

30. As a matter of fact, the pure-blooded historicist cannot imagine a change in the conditions of change.

31. If we are uncritical or lack proper information we shall always find what we want: we shall look for, and find, confirmations, and we shall ignore (or distort) whatever might endanger our pet theories. At the same time we are frequently unaware of the fact that we are operating with hypotheses or theories, and we therefore mistake our theoretical models for concrete things.

32. We certainly use our knowledge of ourselves in order to frame hypotheses about some other people or, possibly, about all people.

33. If it is not our problem to find a prognosis but to discover the initial conditions (or some "universal laws") from which we may deduce a given prognosis, then we are

While conceding that the analysis of any concrete social situation is made extremely difficult by its inherent complexity, Popper denies that this concrete social situation is more complex than any concrete physical situation. As a matter of fact, there are good reasons, he insists, not only for the belief that social science is less complicated than physics, but also for the assumption that concrete social situations are in general less complicated than concrete physical situations. This is so because in most, if not all, social situations there is an element of rationality. To be sure, human beings do not always act altogether rationally,[34] but they do act nevertheless more or less rationally. This fact alone makes it possible to construct comparatively simple models of their actions and interrelations, and to use these models as approximations. (pp. 139-141) Hence it might be possible to construct a "social model" on the assumption of man's complete rationality and of man's possession of complete information on the part of all individuals concerned, and of estimating the deviation of the actual behavior of people from the model behavior. (p. 141)

The unity of the scientific method — a unity which relates the social sciences and the physical sciences — can, according to Popper, also be extended, with certain limitations, to the field of the historical sciences. Although history is primarily characterized by its interest in actual and singular (specific) events, rather than in "laws" or generalizations, the historical sciences take all kinds of universal laws for granted. But it should always be borne in mind that if history makes use of such universal laws it does so in the sense that it sees in a singular actual event the cause of another singular actual event (which is its "effect") relative to some universal law. (p. 145) Now one historicist "school" claims that any history which does not merely enumerate facts but attempts to present these facts in some kind of causal connection, must be interested in the formulation of historical laws, especially since causality means, fundamentally, determination by law. Another historicist "school" asserts that even "unique" events may be the cause of other events, and that it is this kind of causation that history is interested in. Popper insists that both "schools" are partly right and partly wrong: universal laws and specific events together are necessary for any causal explanation, but outside the theoretical sciences, universal laws arouse little interest. (p. 146) Obviously, so far as we are concerned with the historical explanation of typical events the latter must always be treated as typical or unique. One of the most important tasks of historiography is to describe events in their peculiarity or uniqueness. But such a description does not attempt to explain causally. Hence the tasks of history or historiography, namely, the disentanglement of causal nexi and the description of the "accidental" manner in which these threads are intertwined, are both necessary in that they supplement one another. (pp. 146-147)

Historicism, Popper concedes, has some justification: it is a reaction against

looking for an explanation. If we consider the laws and the initial conditions as given (rather than as to be found) and use them merely for the deduction of the prognosis (in order to get thus some new information), then we are trying to make a prediction. If we consider one of the premises (either a "universal law" or an initial condition) as problematic, and the prognosis as something to be compared with the results of experience, then we speak of a test of the problematic premise. (p. 133)

34. By "rational" Popper means the making of optimal use of all available information for the attainment of whatever end is envisioned. (p. 140)

the naive method of interpreting political history in terms of the "great men" or the "hero." Historicists rightly feel that there may be something better than this particular method; and it is this realization which makes their idea of the "spirit" — the "spirit of the age" or the "spirit of the nation" — so attractive to many people. Sensible scholar that he is, Popper has no sympathy with this "spirit," be it its idealistic prototype or its dialectical or materialistic incarnation. (p. 149) To him they indicate the existence of some vacuum, of a place which it is the task of sociology to fill with something more sensible. There is room, Popper argues, for a more detailed analysis of the logic of situations (p. 140) which are "responsible" for certain events. At the same time, since in history universal laws are for the most part insignificant,[35] their place must be taken by "a point of view": history must be selective. Hence Popper suggests that we must deliberately introduce a preconceived selective point of view into our history — write that kind of history which interests us — unless we are willing to run the risk of being overwhelmed by a host of unrelated (and meaningless) materials. (p. 150) All available evidence which has a bearing upon our point of view should be considered carefully and objectively.[36] But we need not worry about all those facts or aspects which have no bearing on our point of view. (p. 150) Such a selective approach, which may also be called "historical interpretation" (provided it can be formulated as a testable hypothesis), fulfills the functions in the study of history which is in some ways analogous to the functions of theories in the physical sciences.[37] (p. 151)

Historicism constantly confounds such interpretations with theories.[38] It is quite permissible to interpret "history" or a definite course of events as the history of "class struggle" or as the history of "industrial progress" — all these interpretations are more or less interesting points of view and as such certainly unobjectionable. But historicists, who apparently refuse to admit that there is necessarily a plurality of interpretations, present them as doctrines, "laws of history," or theories, claiming, for instance, that all history is the history of class struggle or the history of industrial progress. And since many historical facts can obviously be interpreted and organized in the light of such doctrines, the historicists mistake this for a true confirmation or proof of their specific theory or "law of history." [39]

Rejecting a reduction of all historical progress or regress simply to "human propensities," Popper shows in one of the most brilliant passages (pp. 152-159) that in order to understand progress we must first attempt to establish the con-

35. If they are used at all, they are used unconsciously.

36. Hence we may not twist the facts until they fit our preconceived selective point of view, but rather we may have to alter and, if necessary, even abandon our preconceived selective point of view if the facts demand it.

37. This is also the main reason why this selective approach has frequently been mistaken for a theory.

38. Popper considers this confusion the cardinal error of historicism. (p. 151)

39. The historians who reject this particular procedure fall, as a rule, into the opposite error: aiming at absolute objectivity they feel bound to avoid any and all selective points of view. But since this is simply impossible, they usually adopt a point of view without being aware of it. The way out of this dilemma, Popper insists, is to have a clear notion about the necessity of adopting a definite point of view; to state this point of view plainly as such; and always to remain conscious that it is only one among many possible points of view. (p. 152)

ditions of progress, or, to be more exact, analyze the institutional conditions of progress. To this end we must try to imagine conditions under which progress could and would be arrested. How, then, can scientific or industrial progress, for instance, be arrested? Simply by closing down or controlling laboratories for research; by suppressing and controlling scientific periodicals or other means of scientific discussion; by suppressing scientific congresses or conferences; by suppressing universities and other institutions of learning and research; by suppressing books, the printing press, writing and, in the end, speaking.[40] Science, and especially scientific progress, needs constant competition between hypothesis and ever more rigorous tests; it is the result not of isolated efforts, but of free and unhampered competition of thought. Competing scientific hypotheses need personal representation: they need advocates, they need a jury, and they need a public. This personal representation must be institutionally organized if it is intended to work efficiently. Ultimately, then, scientific progress (and, for that matter, human progress) depends to a very large extent on political-social factors, on political institutions that safeguard the freedom of thought — it depends on democracy. (p. 155) In this sense "scientific objectivity" is based to an appreciable degree on social (and political) institutions. The intersubjectivity of science and its institutions for the dissemination, discussion, and testing of new ideas or hypotheses, are the safeguards of scientific objectivity.

But despite the best and most efficient institutional organizations in the world, scientific progress may stop one day for a number of reasons.[41] Even near-perfect institutions can never be considered absolutely foolproof: they must be well designed and properly manned. But we can never be sure that the right men will always be attracted by scientific research and scholarship. Much depends on sheer luck in these matters. Conversely, the human factor or the "propensities of human nature" will always remain to a certain extent the "irrational factor" in most and perhaps even in all institutional (social) theories (and also in all of human history). This human factor is the ultimately uncertain element in social life and in all social institutions. It is that element which ultimately cannot completely be controlled by institutions.[42] Psychology, Popper contends, cannot possibly furnish the basis of social science: first, because it is itself but one of the social sciences; and, secondly, because the social sciences are largely concerned with the unintended consequences or repercussions of human actions. But if the growth of reason — knowledge and human rationality — is to survive, the diversity of individuals, and individual opinions, aims, and purposes must never be interfered with.[43] The historicist or evolutionist who demands the "scientific"

40. Also such devices as the suppression of scientific knowledge for "reasons of national security" by labelling it, for instance, "Top Secret," can in the long run seriously harm and even arrest scientific progress.

41. Such a possibility, Popper hopes (pp. 156-157), may perhaps be counteracted by devising a further set of social institutions, such as educational institutions, to discourage, among other matters, uniformity of outlook and encourage diversity of thought.

42. This, to be sure, is the source of great solace in times when all sorts of drastic attempts are being made to submerge (and subvert) "human nature" in and through "institutions."

43. Popper insists that even the emotionally satisfying appeal for a common purpose, however excellent and praiseworthy, can become an appeal to abandon diversity and, hence, abandon rational thought. (p. 159)

control of human nature does not realize how suicidal his demand is: the mainspring of evolution and progress is the variety of the materials which may become subject to selection. Human evolution in a way is also "the right to be wrong," the "freedom to be odd and unlike one's neighbor, the privilege to disagree with the majority, and go one's own way."[44] Holistic control, which must lead, not to the equalization of human rights but to the Procrustean conformity of human minds, would mean the end of all progress. (p. 159)

In his conclusion Popper stresses the great antiquity of historicism. Its oldest form, such as the doctrines of the life cycles of clans, cities, or races, probably coincides with, and perhaps precedes, the earliest and most primitive theological belief that there are hidden purposes behind the apparently blind decrees of a merciless fate. This barbaric belief has left unmistakable traces upon modern historicism, which apparently still holds that we are being swept into the future by a tide of irresistible forces.[45] It would also explain why the essentially antique, tottering, and dismal philosophy of historicism is often (and successfully) proclaimed as the latest and thus the greatest revelation of modern science.[46]

This review has been written in terms of a report seeking out those passages which in the opinion of the reviewer most tellingly present the mature and well-thought-out ideas of a great scholar and a truly profound thinker who has reserved for himself the right "to be unlike one's neighbor," and "the privilege to disagree with the majority, and go [his] own way." Much must be left unsaid here. But for the record, the obvious should be stated: Popper's is a brilliant and arresting book which no philosopher, sociologist, or historian can afford to ignore. Whether or not the reader agrees with the author[47] — and it is to be expected that many people will reject and even denounce his views — no honest person can dispute the fact that Popper has made an immensely scholarly contribution to the methodology (and philosophy) of all future historiography, theoretical sociology, and philosophy of history.

ANTON-HERMANN CHROUST

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44. WADDINGTON, THE SCIENTIFIC ATTITUDE 111; 112 (1941). It should be noted that similar ideas were already expressed by Pericles in his famous *Funeral Oration*. See Thucydides 2.37-40.

45. Modern historicists, as a rule, seem to be blissfully unaware of the great antiquity of their theories of history. They are of the opinion that their particular brand of historicism is the newest and boldest achievement of the human mind. See, for instance, Toynbee, Spengler and, most recently, the ambitious work of ERIC VOEGELIN, ORDER AND HISTORY (Baton Rouge, 1956 ff.). See the reviewer's discussion of Voegelin, 21 THE THOMIST 381 (1958).

46. Popper suggests here (p. 161) that it might be fear of change — the Platonic fear and hatred of all change — which makes historicists and "philosophers of history" so incapable of reacting rationally to criticism, and which makes others only too frequently responsive to their dismal teachings.

47. It will be noted that Ludwig Freund, in his excellent article, *Vom Sinn und Unsinn der Theorien über den Gesellschaftswandel,* 43 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE 21 (1957), likewise deplores and denounces the lack of scientific methodology in the traditional forms of "historicism." A refreshing and at the same time critical attitude toward certain types of "historicism" is taken by JOHN K. GALBRAITH, THE AFFLUENT SOCIETY (Boston, 1958).

REVELATION, NATURAL LAW, AND THE THOUGHT OF REINHOLD NIEBUHR. Reflections Prompted by LOVE AND JUSTICE: SELECTIONS FROM THE SHORTER WRITINGS OF REINHOLD NIEBUHR. Edited by D. B. Robertson. Philadelphia: Westminster Press, 1957. Pp. 309. $6.00.

This volume is a collection of sixty-four essays, most of them journalistic in character, written from the mid-twenties to the mid-fifties, and dealing with a wide range of topics. Problems in ethical theory, domestic and foreign politics, the United Nations, war and pacificism, economics, race relations, and the atom bomb — all these are treated with unfailing intelligence and ethical passion. Yet these articles are only a sampling of the flood of occasional writings which pour from Niebuhr's pen. However, it is a good sampling and so displays his central interests perhaps even better than do his longer works.

Niebuhr is forever struggling to make Christianity socially relevant, to make Christian ethical insights bear on the urgent public issues of the day. It is out of this concern that his more specifically theological writings have grown. Thus, as he himself insists, even his *magnum opus, The Nature and Destiny of Man,*[1] is to be understood not primarily as the work of a theologian but as the effort of a man concerned with action to clarify the ethical and theological basis of his social and political work. What results is often superb theology — at least from the Protestant point of view — but unless one remembers its practical roots, one will never understand Niebuhr's tremendous public impact. He has been described as "the Christian theologian most quoted by secular sociologists and publicists in the United States and Great Britain today."[2] Arthur Schlesinger, Jr., says that "he helped accomplish in a single generation a revolution in the basis of American political thought."[3]

Yet it would be impossible on this occasion to review in detail Niebuhr's analyses, brilliant as they often are, of such diverse subjects as "The Ethic of Jesus and the Social Problem," (29-40) "Catholicism and Anarchism in Spain," (73-77) "Jews After the War," (132-142) and "The San Francisco Conference." (213-216) Instead, I shall refer to his other writings in order to characterize the ethical basis of his treatments of these and other specific problems.

Such a characterization can perhaps best be developed by comparing the Niebuhrian social ethics to the two major contemporary Christian alternatives. One of these, that of natural law, is familiar enough to readers of this journal. The second, dominant in Continental Protestant circles, is easily caricatured as being simply a blind plunge into faith, but it is much more than that. It is primarily an effort to construct an adequate ethics on the basis of Christian revelation. It assumes as quite self-evident that the metaphysical, epistemological, and theological postulates of traditional natural law theory are invalid. There is no

1. Two volumes (New York: Scribner's, 1941 and 1943). Since 1949 Scribner's has had in print a one-volume edition of these Gifford lectures.
2. D. R. DAVIES, REINHOLD NIEBUHR: PROPHET FROM AMERICA 70 (London, n.d.).
3. *Reinhold Niebuhr's Role in American Political Thought and Life,* in REINHOLD NIEBUHR: HIS RELIGIOUS, SOCIAL AND POLITICAL THOUGHT 150 (Ed. C. W. Kegley & R. W. Bretall, New York, 1956).

unchanging human essence determinative of the moral good; further, even if there were, it is doubtful that reason could know it; and, lastly, because nothing can be identified as "natural" in the traditional sense, we cannot distinguish two levels of duties and virtues, the natural and supernatural. All other philosophical attempts to discover universal norms, whether Kantian or idealist or utilitarian, are equally suspect. Yet these negations are merely preliminary, for the major effort is concentrated on making clear that, despite the inadequacy of reason, Christians are not doomed to moral nihilism. Revelation supplies guidance in all areas, including that of social ethics.

There are different ways of constructing a systematic ethics on this revelationist foundation. One group finds an approximation to natural law in what revelation, supplemented to an indeterminate degree by reason, tells us about the "orders of creation"; but as these have been distorted by sin and history, they must be understood as pointing towards a sometimes unobtainable ideal instead of being, as is "nature," the basis for universally binding moral prescriptions.[4] Others are doubtful about even such attempts to relate ethics to structures immanent in human life, and develop what has come to be called a "Christocentric" position. For instance, Karl Barth argues that human relations should in certain ways be analogous to the revelation of God in Christ to the world, and from this he attempts to derive the norms of political justice.[5] There is a note of fantasy — or, more charitably, poetry — in this procedure which contrasts sharply with the more sober and familiar approach through the orders of creation. Yet, as could be expected, both types of ethics are agreed in being partially "situational" or "existential." Thus, in reference to many moral problems for which traditional natural law teaching provides definite injunctions, they insist that the Christian can only search in faith, love, and obedience to discern what is the special will of God for this or that particular historical or personal circumstance.

At first glance, Reinhold Niebuhr appears to share the European Protestant impatience with the natural law tradition. He attacks it in this volume (46-54), and in many other places because, first of all, its concepts "do not allow for the historical character of human existence." There is "an historical elaboration of man's nature" [6] so that "fixed historical structures and norms . . . do not in fact exist" and "the moral certainties of Catholic thought are all dubious." [7] A second criticism is that "Catholic thought . . . fails to do justice to the positive character of the sinful element in all human definitions and realizations of natural justice." Thomistic definitions of justice are in part " 'rationalizations' of a

4. Two major examples of this approach have been translated into English: EMIL BRUNNER, THE DIVINE IMPERATIVE (Philadelphia, 1947); and WERNER ELERT, THE CHRISTIAN ETHOS (Philadelphia, 1957).

5. *Christengemeinde und Bürgergemeinde,* 7 KIRCHE FÜR DIE WELT 32-42 (Stuttgart, 1946). Translated in AGAINST THE STREAM (New York, 1954).

6. *Reply to Interpretation and Criticism,* in REINHOLD NIEBUHR: HIS RELIGIOUS, SOCIAL AND POLITICAL THOUGHT 435. Henceforth this essay will be cited as *"Reply."*

7. NATURE AND DESTINY OF MAN I, 172. It is doubtful that Niebuhr fully means what he here asserts, for in arguing against modern relativism, he cites the near universality of prohibitions against theft and murder as evidence of enduring structures and norms. Further, against Kinsey he points out that the organic relation between the physical and spiritual dimensions of man means that sexual relations are always also personal.

feudal aristocracy's dominant position in society," while eighteenth century natural law theories "justified the bourgeois classes in their ideals." (48-49) The third major objection is to the view that "natural justice is good as far as it goes, but it must be completed by the supernatural virtue of love." Niebuhr affirms, "the true situation is that anything short of love cannot be perfect justice." (49)

Thus the basic metaphysical, epistemological, and theological affirmations of natural law all seem to be rejected. There is no fixed essence, for the structures of human existence change; such structures as there are cannot adequately be defined by reason, for its insights are distorted by self-interest and historical bias; and, lastly, the distinction between natural and supernatural levels of morality must be denied, because the rules of justice "are specifications of the law of love and do not have independence apart from it." [8]

Yet over against this indictment of natural law must be set Niebuhr's emphatic and repeatedly elaborated affirmations that "men are not completely blinded by self-interest or lost in this maze of historical relativities. . . . What remains with them is the law of love, which they dimly recognize as the law of their being, as the structure of human freedom, and which, in Christian faith, Christ clarifies and redefines." (53) This certainly appears to be a natural law position. There is a law, rooted in the very nature of man, which men can and do apprehend apart from revelation. It is true that his description of the basic content of this law differs from that of most of the tradition. But is this not really a material difference within a formal and fundamental agreement?

I think the proper answer to this question is "yes," but in saying this I am uncomfortably aware of the danger of so broadening the notion of natural law that it comes to embrace all possible ethical positions. As Professor Paul Ramsay of Princeton University points out in the most comprehensive study so far made of the natural law elements in Niebuhr's thought, "any conception of the nature of man is so far a conception of the natural law." [9] Thus even Jean-Paul Sartre affirms, "When in all honesty I've recognized that man is a being in whom existence precedes essence, that he is a free being who, in various circumstances, can want only his own freedom, I have at the same time recognized that I can want only the freedom of others." [10] Here the very freedom which is said to destroy entirely a fixed essence, is still an immutable fact of human nature which is of decisive ethical significance. Niebuhr seems to go almost as far in his emphasis on mutability: "There is not much that is absolutely immutable in the structure of human nature except its animal basis, man's freedom to transmute this nature in varying degrees, and the unity of the natural [i.e., 'animal'] and spiritual in all the various transmutations and transfigurations of the original 'nature.'" [11] "Insofar as man has a determinate structure, it is possible to state the 'essential nature' of human existence to which his actions ought to conform and which they should fulfill. But insofar as he has freedom to transcend structure, standing

8. *Reply* 435.
9. *Love and Law,* in REINHOLD NIEBUHR: HIS RELIGIOUS, SOCIAL AND POLITICAL THOUGHT 82. Cited henceforth as "RAMSAY."
10. EXISTENTIALISM 15 (New York, 1947). Quoted by RAMSAY, *loc. cit.*
11. FAITH AND HISTORY 183 (New York, 1949). Quoted by RAMSAY 93.

beyond himself and beyond every particular social situation, every law is subject to indeterminate possibilities which finally exceed the limits of any specific definition of what he 'ought' to do." [12]

In the light of such statements, it may seem strange that Niebuhr is surprised by "the charge of relativism or affinity to modern existentialism." [13] The explanation is that the whole temper of his thought is opposed to such trends. He emphasizes human freedom in order to stress the universal obligation to love, not in order to release from all except spontaneously adopted obligations, as does Sartre. He says there is only one moral absolute, yet his intention is not to relativize ethics as much as possible, but to relate all duties to love.

Speaking more precisely, one could perhaps say that it is the teleological element, the notion that man is essentially directed towards a definite perfection of nature, which makes Niebuhr into a natural law thinker despite himself. Love is "a vision of health which even a sick man may envy, as the original righteousness which man does not possess but knows that he ought to possess." [14] As Ramsay puts it, man is "made for life-in-community whose quality is love." [15] It is only in such a life that there can be a "proper functioning of the total personality." [16] Implicit in such statements is the specifically natural law concept of man as essentially directed towards a determinate *telos*. Other conceptions of essential nature, such as the existentialist or utilitarian, also determine characteristic notions of the moral good; but these goods, freedom or pleasure, do not specify a final and unsurpassable goal of ethical activity. In contrast, love as described by Niebuhr does precisely that.

In summary, then, Niebuhr believes that man's self-transcendence is so radical that it can alter all the social and historical structures of human existence. There is, therefore, only one law which is fully and immutably adequate to man's freedom, the law of love. This is not a set of fixed precepts, and so it alone can guide man among the "indeterminate possibilities which finally exceed the limits of any specific definition of what he 'ought' to do." [17]

It would be a mistake to conclude from the last sentences that Niebuhr's final word is simply, "Love, and do what you will." For one thing, he does an admirable job of giving genuine content to the notion of love. Furthermore, his constant effort in all his works is to relate love to the problems of the world. He argues that the principles of justice are always specifications of the law of love. Thus, for example, the regulative principle of justice is equality, for "thou shalt love thy neighbor as thyself" (Mark 12:31) implies that every man has just as much right to the opportunities and privileges of the common life as do you yourself. To be sure, inequality arises in every society both because of sinfulness and because of diversity of social functions, but equality nevertheless remains the principle of criticism, inspired by love, which justifies the struggle against in-

12. *Love and Law in Protestantism and Catholicism,* CHRISTIAN REALISM AND POLITICAL PROBLEMS 154-55 (New York, 1953). Quoted by RAMSAY 89-90.
13. *Reply* 435.
14. NATURE AND DESTINY OF MAN I, 287.
15. RAMSAY 84.
16. NIEBUHR, CHRISTIANITY AND SOCIETY 27 (1948). RAMSAY 86.
17. *Supra,* note 12.

ordinate privileges, and which reminds us that our special advantages are not absolute rights but rather the accidental products of history and nature.[18] (54) Perhaps Niebuhr's main contribution has been in such analyses. He has shown that the relating of justice to love need be neither vague nor sentimental, but can rather guide and motivate the most realistic and morally sensitive social action. Founding justice in love has, furthermore, the great advantage of being far more persuasive to modern readers than are appeals to Aristotelian formulations of the principles of commutative and distributive justice. Those aware of the emphasis on the "natural" importance of love found in such depth psychologists as Menninger, Fromm, and Horney are particularly impressed.

As the primacy which Niebuhr accords the "law of love" is his central divergence from traditional natural law teaching, it is important to note that this tradition is far more open to the Niebuhrian emphasis than he himself realizes. Joseph Fuchs, S.J., deals with this issue in what is probably the most comprehensive recent treatment of the theological problems connected with natural law.[19] He is just as opposed as Niebuhr to the notion that love is simply a supernatural addendum to natural righteousness, or to the view that the natural order is simply one of justice and that the love which completes and perfects it is exclusively supernatural. (p. 158) Rather, nature also requires love of God and neighbor. (p. 161) The inner meaning of justice is love, and justice fulfills itself in love. (p. 162) Love belongs as much to the natural as to the supernatural order, and forms and perfects every virtue in its own domain. (p. 165) Supernatural, Christian love differs from the natural, not in what it demands, but because of the fact that it is love with a new power, bestowed by God, formed in the image of the love of God revealed in Christ. (p. 162) Such statements would not perhaps wholly satisfy Niebuhr, for Fuchs holds that certain principles of natural justice can be discerned independently of any reference to love, but they certainly go a long way towards meeting his objections.

This raises the question of the degree to which Niebuhr's two other criticisms of the natural law school may also be based on misunderstanding. His first complaint about the absolutizing of the historically relative simply does not apply to certain of the recent treatments of social and political ethics. Thus Fuchs, adapting an old distinction, sharply divides between the "absolute" and "secondary" natural law. He then says, "People often ask about the state, economy or legal system which is 'good in itself.' Absolute natural law has something to say about this, but what it says is relatively general, contentless, and formal: what is needed is a more precise specification of the historical situation." (p. 94) This, it seems, is pretty much what Niebuhr would say. However, real differences on this question of relativity would no doubt emerge if we were to consider family and sexual ethics (on which, by the way, Niebuhr has written little). Yet even here some agreement in principle, if not in conclusions, could be found with those who share the viewpoint expressed by the distinguished English Catholic philosopher, D.J.B. Hawkins: "In the matter of sexual morality it is not enough to consider an ac-

18. Cf. AN INTERPRETATION OF CHRISTIAN ETHICS 109-10 (New York, 1935).
19. LEX NATURAE: ZUR THEOLOGIE DES NATURRECHTS (Düsseldorf, 1955).

tion as wrong simply because it frustrates the natural purpose of the sexual faculty; an action is proved to be wrong only if it frustrates the nature of man. Such an argument can and, indeed, must be used to justify the traditional sexual morality. . . ." [20] Niebuhr also would insist upon this approach, even though he might doubt that it would lead to all the desired conclusions.

Niebuhr's last objection is that the Catholic natural law tradition seriously underestimates the extent to which the rational apprehension of natural justice is corrupted by sin, distorted by self-interest. This criticism seems to overlook the distinction between reason as a potency, and the actual use of reason. Although the natural capacity for rational insight into moral truth is said to be intact in fallen man, it remains an open question as to how far sin, apart from any healing influence of revelation, grace or faith, prevents the actual exercise of this faculty. Fuchs accords much more actual power to sinful reason than do some writers,[21] but he does admit that other views are possible: "The teaching of the Church . . . appears not to deny that perhaps all our knowledge of natural law is traceable back to divine revelation. . . ." [22] (p. 154) Of course it must be insisted that even when such knowledge is occasioned, or made possible, through revelation or faith, it is still grounded in reason and so genuinely natural. (p. 56)

There is, therefore, room within Catholic natural law teaching for a greater stress than Niebuhr's on the corruption of moral reason. He is not only willing, but eager, to grant that men, even apart from revelation, can be uncomfortably aware that love, including even the sacrificial aspect which Christ manifests, is the true law of their being. He would, of course, be impatient with any attempt to demonstrate rigorously that this is so to those unwilling to admit it; but then, even the pagan Aristotle agrees on the futility of trying to induce moral knowledge by argument in those who lack the proper dispositions. In short, the sort of belief in "an uncorrupted bit of reason," (p. 53) which Niebuhr thinks characteristic of natural law, finds more support in Enlightenment rationalism than in the older tradition.

Our conclusion, then, is that a writer whose references to natural law are generally critical, and who rarely has a kind word for Aristotle or St. Thomas Aquinas, is actually continuing that tradition in the modern world. Those who are convinced that this is indeed the "natural" road to moral knowledge, will not be surprised to discover a stranger walking in the way, and will be eager to learn from a man who makes old truths speak the language of the present.

GEORGE A. LINDBECK

20. *Nature as the Ethical Norm,* 16 AQUINAS PAPER 15 (London: The Aquinas Society, 1951).

21. E.g., Henri de Lubac, H. U. von Balthasar, and, perhaps, Karl Rahner.

22. For instance, to give an example for a point which Fuchs does not bother to illustrate, there is presumably nothing contrary to dogma in the Patristic theory that the pagans derived what they knew of moral goodness from the Old Testament patriarchs and from Moses.

SOVEREIGNTY. An Inquiry into the Political Good. By Bertrand de Jouvenel. Chicago: University of Chicago Press, 1957. Pp. xii, 319. $4.50.

This is one of the most substantial books in political theory in the last decade. Together with the author's previous *Power* and his critical editions of Rousseau's *Social Contract,* this book places Bertrand de Jouvenel with George Catlin, E. H. Carr, and Walter Lippmann among leading living political theorists.

Sovereignty is the work of a man who has spent a long time with the classics of Western thought. In many cases, with non-Catholic writers especially, he has approached them with little reliance on established critical conventions. And as De Jouvenel has a direct and piercing gallic mind of the stamp we associate with the greatest of the classic *dilettantes* (in the original honorific sense of that word), the result is a series of chapters on some of the fundamental problems of political theory which are usually refreshing and always stimulating.

Sovereignty is a work that demands to be taken seriously. For reasons which will become clear later, its significance is enhanced by the advent of De Gaulle to power and the dismantling of the Fourth Republic. De Jouvenel's writings may be used to great advantage in the attempt to place De Gaulle's forceful epilogue to traditional French constitutionalism in the larger historical perspective of the present crisis in Western liberal democracy. For the result of his book is to provide a defense for secularist economic liberalism divorced from the secularist political tradition of classical liberalism. In place of the political doctrines of traditional liberalism is substituted a revitalized conception of authority which draws its support from orthodox Catholic doctrines of natural law. Personalized notions of authority, will, and virtue take the place of the positive, structural, and depersonalized ingredients of traditional liberal theory. The theoretical backbone of the work is Thomist. However, St. Thomas' formal analysis is disregarded. The additional borrowings and engraftings are extensive. They come from such varied sources as Plato, Rousseau, and some of the more recent findings of anthropology, these latter adapted to the sociological tradition of defenders of the *ancien regime* such as Bossuet and De Maistre. All this, buttressed by a series of logical investigations which are sometimes closely reasoned and always interesting, leads De Jouvenel to conclude that the chief assumptions of political liberalism are indefensible, though its policy conclusions can be accepted. The result is a vastly expanded role for the charismatic leader in politics together with an identification of political science with moral science, or, as De Jouvenel feels justified in restating on the last page: "political science is a natural science dealing with moral agents."

The book opens with an attempt to define and distinguish things political. From this there emerges a discussion of leadership and authority. This accomplished, attention is shifted from individual political relationships to an analysis of groups, their formative and cohesive principles. Part II then deals with justice, or the "political good." This is the core of the book. Next, the traditional subjects of allegiance, sovereignty, and law are treated. The conclusion is that political justice consists not in an arrangement of things, but in a condition of will. From this Part III delves into prerevolutionary customs and develops implied

moral and spiritual restraints on sovereign will. All this has implications for the notion of liberty, which is taken up in Part IV. From discussions of "the political consequences" of Descartes and Hobbes there emerge revisions of traditional liberal notions of liberty.

The opening pages of *Sovereignty* outline a special way of looking at individual relationships which is relied on frequently throughout the book. This is introduced with a criticism of any effort which tries to design a picture of political relationships Crusoe fashion by starting with the isolated, solitary individual. Despite this, De Jouvenel's corrected picture is equally individualistic in being based on a series of individual relationships. It is theoretical equality, not individualism, to which he takes exception. To visualize political society, he suggests, conceive of a given individual as being represented by a dot on a piece of paper. This individual has relationships with other individuals around him (other dots); and these relationships may be shown by drawing lines between him and all other so related dots, and ending these with arrow points to show the direction of the relationship. It is then suggested that if one were to take a real individual and make an empirical survey of his relationships for one week there would result a great density of dots and connecting lines. The lines of greatest density (repeated relationships) would reveal his "neighbors." Single lines would point out nonrecurring relationships and these would reveal the "strangers."

Next, one takes each "neighbor" and does the same. It is assumed that in all such cases one will come to the end of each one's neighbors and the revelation of each one's strangers. It is further assumed that if this process is carried out extensively one of two things will happen: either the number of neighbors will expand or the neighbors will circle back on one another. If the first condition happens, the social order is termed "divergent." If the second, it is termed "convergent." Contemporary Western societies are called divergent; primitive societies are called convergent. Moreover, the dots which send out the most arrows will be the political loci of the group. As a number of fundamental conclusions about empirical social orders are drawn from this scheme, it requires closer inspection.

It is not clear whether De Jouvenel intends his system of dots and dashes as an empirical generalization or as a theoretical model. Empirical generalizations may help draw our attention to new empirical conditions which might otherwise have been overlooked. However, the test of validity is always an empirical one, not a logical one extrapolated from the initial empirical generalization.

As an empirical generalization De Jouvenel's view of politics has serious difficulties. It is no less individualistic than the Robinson Crusoe assumptions of traditional liberal contract theory. It merely looks at a connected series of individual relationships. The statistical frequency of individual contacts may mean nothing. By this test postmen and delivery boys would be revealed as the loci of American political power. Moreover, one cannot "see" a prescriptive norm (such as a law or a custom) from an empirical chart of behavior. From empirical generalizations one "sees" only statistical norms. For example, John Bartlow Martin made an empirical survey of the administration of American laws against murder and concluded that where capital punishment is in force only poor people are actually

awarded the death penalty. However, one is not justified in concluding much about the law of murder from this correlation between wealth and punishment. Nor does it follow that the law of murder is insignificant or ineffectual. It is merely that law cannot be seen in this fashion. Yet the prescriptive norms of every culture have large political significance in the kind of situation De Jouvenel describes. For every society stipulates the conditions under which contacts may be inaugurated between individuals. These norms will skew behavior in numerous ways. Rudimentary principles of anthropology teach us that knowledge of the norms relating to social relationships is necessary before we can evaluate the behavioral statistics of any group. Again, isolation or social distance is fully as important a characteristic of political leadership as is social involvement. This qualitative factor cannot be observed from his empirical picture.

An even more serious trouble with De Jouvenel's political diagram as an empirical picture is that it personalizes political relationships. This points to a difficulty that persists throughout the book and the point needs making now, because this is where the distortion starts. For it is not necessary to deny any significance to a personalistic view of politics to point out the distortion of a view that is *entirely* personalized. Nor does the fact that the deceptive enticement of the personalized approach is seldom avoided mitigate the errors it entails. For the only empirical evidence we have about politics is from people. They are the actors. When they report political events to us they report what they and other persons did. Memoirs and biographies of political figures are among the prime source materials of politics. Individual choices and actions are the raw materials presented to us for analysis. Political figures take great pains to tell us why they made certain crucial moves and how important it was for the outcome that someone else who might have made an erroneous choice was not in their shoes at the critical moment. Yet, in defense of their actions they also prove to us why the situation was such that no reasonable man could have taken a different action. Only *their* moves were in the cards. And it is obvious that the situational environment — the "logic of the situation" — of any course of action must have an important effect on the political choices made by individuals. Otherwise we term them ridiculous and quixotic. However, any view of politics which is exclusively personalistic at the expense of describing the logic of the political situation is certain to produce a false view of politics which can be compared to the anthropomorphic vanity with which history inevitably is painted by even deservedly great leaders such as Winston Churchill. And if one starts out, as De Jouvenel does, with an anthropomorphic picture of political relationships, this is all that will be seen. This is his gravest error and it permeates the book.

A separate series of difficulties follows if De Jouvenel's picture of political relationships is assumed to be a theoretical model as distinguished from an empirical generalization. One of the chief functions of a theoretical model is to permit the derivation of logical conclusions. However, these conclusions are always properties of the model, not of reality. To confuse them with empirical conditions is to court the old reification error. We may hunt till we find some empirical conditions sufficiently congruent to the model to warrant the application of its conclusions to reality; we may be able to tinker with reality a little

to make it fit the model (this is the political use of models); we may use the model heuristically, to draw our attention to problems not otherwise conceivable. But in every case validity for our operations depends upon our constant awareness of the distinction between the formal properties of the model as against the empirical conditions for which it is devised. There is no sign of such awareness in the book. Its theoretical sophistication does not proceed beyond the level of Aristotelian morphological empiricism. Finally, De Jouvenel's diagram of relationships is inapplicable to a bureaucratic culture with its characteristic proliferation of relationships between functions as such, rather than between the personal agents of these functions.

* * *

One of the best sections of the book results from De Jouvenel's attempt to define things "political" and to distinguish them from things "economic." First he states that when people have a political concern it is a concern over the "who" involved in action rather than the substantive task to be done. This involves the notion of legitimacy, for one may complain about a given action if it is done by an improper "who" but not if it is done by the legitimate "who."

Next it is said that economics is concerned with "the good employment of resources." But "whenever the help of other men is a necessary condition of . . . attaining [an] aim," behavior has a "political complexion." [1] Thus, "politics occurs whenever a project requires the support of other wills — to the extent to which its author sets out to rally those other wills." [2] This means that politics

1) Is a leadership-centered project.
2) Is collective, or otherwise it would be economics.
3) Is characterized by an "author" who actively rallies other wills (and presumably actions). A rallying author is the crucial factor. "Any action tending to rally wills is, in kind, a political action. . . . It is a technique for increasing the human energies at our disposal by rallying other men's wills to our cause." [3]
4) Involves no contractual element. The whole book is in a sense an effort to discuss politics without relying on contract theory.

The first point is that this is, despite the writer's apparent wish, an individualistic approach. It deals with individual rallying. Secondly, it is not at this point concerned with the "how" of political action — with the nature of a collectivity as such — but rather with the generation of a cooperative project. In the process described there is a distinction between material and human resources. This distinction becomes the real test of whether a project is "economic" or "political." If it concerns the rallying of material resources, it is economic. If it concerns the rallying of human resources, it is political.

This distinction will not hold up in theory. The most powerful proof of this

1. BERTRAND DE JOUVENEL, SOVEREIGNTY 16 (1957).
2. *Id.* at 17.
3. *Ibid.*

is found in the analytical development known as game theory. Game theory is a mathematical extension of neoclassical economic theory of the firm purporting to reduce decision-making problems to a mathematical formula through assumptions which permit constructing a static individualistic equilibrium model for the analysis of situations in which the choices of all competitors may affect the outcome and all competitors rationally attempt to minimize their maximum losses with imperfect knowledge about their opponents' strategies. This type of analysis is capable of extension to a wide range of problems in sociology, diplomacy, and political science as well as in economics. In general it is applicable to any theoretical system maintaining individualistic assumptions. It is applicable to systems relying on individual goal-seeking, such as that associated with Talcott Parsons. It is applicable to many types of power analysis when the analysis concentrates on relations between discrete power units in competition for scarce values, regardless of whether the power units are individual persons or collective units. On this basis it has been argued that all such activity is basically allocational and that in theory the same principles apply to economic as to political allocational behavior. Turning it around, there is no theoretical basis for a distinction between the rallying of political as distinguished from economic resources. There is no way out of this impasse short of abandonment of the noncontractual individualistic starting point.[4] De Jouvenel's distinction between economics and politics will not hold up. He has merely substituted men for materials as the scarcities and discussed the profit which is possible through organizing others. Men are considered as means to the end desired by the leader. It is essentially economic theory politicized. The fallacy is that he says nothing about the nature of organization per se. Had he concentrated on the characteristics of organization rather than on entrepreneurial rallying activity he might have gone on to make valid distinctions. A partial correction of this error occurs in later sections dealing with group theory.

* * *

"The keeping together of a team of human beings" is said to be harder than inauguration of the team. As "conservation is a harder task than construction" [5] its problems will be "political." Rallying political action is now termed "additive" when it results only in temporary organization, "aggregative" when it results in conserved organization. "Pure" politics is the action of politicians who engage in additive or aggregate work for their own sake rather than for the benefits possible from the achievements of an organization.[6] The one who wins out in these actions is the "sovereign." "Sovereignty is the visible sign of an inner conviction held by members of an aggregate that their aggregate has an absolute value." [7]

4. A fuller discussion of this problem occurs in Harvey Wheeler, "Appendix," *The Political Limitations of Game Theory,* 10 WESTERN POLITICAL QUARTERLY 669-74 (1957).
5. DE JOUVENEL, *op cit. supra,* note 1 at 19.
6. This is never satisfactory and is later abandoned with the proposition that "it is a condition of successful 'pure politics' that an ethic finds a place in them." (p. 25) But politics devoted to an ethical end is no different from politics in general and is thus no longer "pure," according to De Jouvenel's definition of pure politics.
7. DE JOUVENEL, *op. cit. supra,* note 1 at 21.

It is immediately apparent that politics has become quite mystical. The definition of sovereignty is strongly reminiscent of a sacrament or a state of grace. The sovereign, like the political leader, is one who is able to inspire this mystical feeling in others. He is essentially charismatic, the possessor of a highly attractive personal magnetism. His "authority" derives from his "capacity" to found aggregates, that is, his "ability to cause others to act." [8] One who can do this is an "auctor." His resulting "power" is the *"vis politica"* which is the "causative force of every social formation."

Vis politica has three aspects: "capacity to bring into being a stream of wills," "capacity to canalize the stream," "capacity to regularize and institutionalize the resulting cooperation." From the first of these are derived capacities of initiation and propagation. From the second and third it follows that "the man who leads into action a stream of wills . . . is *dux* [additive] . . . The man who institutionalizes cooperation is *rex,* the man who regularizes or rules" [9] [aggregative].

The analysis rests everything on the actions and abilities of individual leaders who are known as *auctors, dux* and *rex.* Thus it is necessary to say what it is that distinguishes these types of men from other men, for not all men have these abilities in the same degree. Otherwise, they would be leaders too, for there is no situational factor in the analysis. It is merely stated that politics assumes that most men will not be leaders, and then accounts for this by special faculties possessed by leaders.

It follows that essential to the understanding of politics is the understanding of the *vis politica* possessed by the leader. As this is a personal faculty it is not wrong to term the result a system of "facultative politics" directly comparable to seventeenth-century facultative psychology. Paracelsian medicine involved analogous biological notions. In order to show this I have collected most of the descriptions used by De Jouvenel in trying to state the essence of the political capacity. At various times the political leader is the one who has "a *flair* for recognizing whatever currents of will are astir in society, that he may use them to carry him on." He has *"the additive talent,* which enables him to dispose men favorably to his person." He has "a *force of attraction."* This becomes quite fanciful: "centripetal attraction is exerted by a modal centre, such as a dynasty, which is always visible and always operative . . . that auctor has laid weak foundations who has not intermarried the associates. The intimacy established between them must satisfy material, sentimental and moral needs." [10] De Jouvenel here apparently intends us to think in terms of Paracelsian prescriptions for finding the *vis potentia* of biological processes. Nor does this exhaust his probing the mysteries of the *Arcana Imperii.* An auctor is one who is *"apt* to receive impulsions," [11] one who has the *"impulsive power,"* one with *"natural ascendency"* [12] contained in a *"capacity* below the level of consciousness," [13] one who takes ad-

8. *Ibid.*
9. *Ibid.*
10. *Id.* at 22 and at 3.
11. *Id.* at 30.
12. *Id.* at 31.
13. *Id.* at 32.

vantage of the "mysterious operation of his *special virtue,*" [14] one who has *"natural seigniory,"* [15] one who incorporates the "principle of *formative attraction*" [16] in a "manifest and immediate presence," [17] relying on a *"natural disposition* to obedience" [18] as well as on his own "power of affection." [19] So long as power is conceived of as a substance possessed by the leader something like this difficulty always follows. It is only avoided by conceiving of power as a relationship.

Just as Gilbert imagined magnetic fields to be produced by the willful souls of iron particles, so De Jouvenel imagines politics as a magnetic field of affective and receptive wills creating a "hub of authority" because "propositions emanating from a certain source exercise a positive influence on the actions of certain men who are . . . for that reason within the 'area of authority' [20]. . . . I act as Primus wants me to act," explains De Jouvenel, "because he has infused his will into mine." "Natural authority has the pull for me of a lover; it is an attraction bound up with my liking for Primus." [21]

However appealing and analogically resourceful we may find this, it gets us nowhere. Politics is defined in terms of leaders. Leaders are defined in terms of politics: they are the people who have an innate capacity for politics. Though all theory moves through the discovery of identities, it can proceed nowhere from verbal identities which are built in from the start.

* * *

"Man is made of cooperation. . . . Every man is born helpless and wild. He wins control of himself through the education given by the group. . . . The individual is born of the group. . . . Man owes to the group his moral and material condition." [22] From this standpoint De Jouvenel mounts a well worked out attack on those parts of liberal contract theory which finds groups put into motion autonomously through situational pressures which issue in contracts of society. This is accomplished through the telling of a refreshingly "primitive" allegory along the lines of the liberal origin myth purporting to prove that all politics comes with groups already formed and concluding that it is apolitical to start a political analysis from Robinson Crusoe foundations. These passages of the book are very useful. Apparently he wishes them to disprove both situational and individualistic foundations. However, the conclusion of the analysis bears only on the latter. Indeed, by discrediting foolish individualist foundation myths he implicitly supports situational foundations.

Nor is this corrected by the substitution of his own equally foolish foundation myth: "Several promoters make incessant approaches to potential participants. . . . The process of formation gets into gear through the initiative of a single man,

14. *Id.* at 47.
15. *Id.* at 77.
16. *Id.* at 72.
17. *Id.* at 77.
18. *Id.* at 87.
19. *Id.* at 115.
20. *Id.* at 71.
21. *Id.* at 87.
22. *Id.* at 26.

who sows among others the seed of his purpose; some of them, in whom it rises, turn into a small group of apostles for the scheme. . . . At length the association comes into being, not by a mere coincidence of wishes, but as the fruit of one man working on another. The mistake of the classical theory is to overlook the role of the founder — the auctor — in the formation of the group." [23]

This is still a charismatic theory of politics, fitting with the previous assumptions. That is, it is still individualistic. Everything depends upon the galvanizing ability of a leader. Either this is just as "primitive" and prepolitical as the primitive situational theory of liberalism, or the prior society presumed by charismatic leaders such as Hitler or De Gaulle is absent. It is, in effect, a conquest theory of politics, as are all authoritarian theories of politics. "By authority I mean the faculty of gaining another man's assent. . . . The efficient cause of voluntary associations. In any voluntary association that comes to my notice I see the work of a force: that force is authority." [24] More transparent circularity is hard to imagine.

The trouble is that politics involves extraindividual elements. This was stated in the opening criticism of liberal theory. Any individualistically based genetic analysis of politics is doomed because it is impossible to "see" politics before it exists, just as you cannot "see" implicit in the prior elements any new compound substance which their mixture will produce. An attempt is made to escape from this impasse through reference to a principle of creativity existing apart from men. This creative principle is seen in the creator of a family. It is given validity by the way in which it links with a pre-existing chain of authority established by the "Creator of the universe." [25] The principle of harmony, authority, and organization is not really human or political after all. It is divine. It was inaugurated by God. This was always implicit in the charismatic foundations already announced. And though it may be true, there is no way of establishing the fact empirically or theoretically, and there is no analytical benefit to be gained from making the assumption. "The ascendency of a settled will. . . summons and orients uncertain wills. Man is, under Providence, apt to receive the impulsions of other men. . . . The impulsive power never ceases its work of mobilizing human energies. To it we owe every advance we make; it may fairly be called providential.[26]. . . What makes leaders, now as always, is natural ascendency — authority as such." [27] Even if we assume this to be true, it would deprive us of the ability to analyze politics except intuitively or through a revelatory gift of God. Politics comes from a mystical providential leader possessed of charisma whose potentiality for political success rests in an emotional predisposition inherent in other men. Politics is authoritarian, spiritual and providential. "What men today banish from their beliefs was naively accepted by them in the past: that certain leaders are chosen of heaven. This feature of the leader, if he has it, is the simplest explanation of the benefits of life in society; and it is a most salutary one as well.

23. *Id.* at 28.
24. *Id.* at 29.
25. *Id.* at 30.
26. *Id.* at 30-1.
27. *Id.* at 32.

For in buttressing the authority which is the binding force it strengthens the social tie and makes cooperation smoother and more fruitful." [28]

From this point De Jouvenel proceeds to a discussion of the characteristics of "dux" and "rex." To do this he relies on anthropolitical, mythical, and distant historical episodes. He does so, however, not as an analyst, but as an advocate. He assumes that in such material there is direct analogical significance and then seeks the wisdom hidden in them rather than analyzing their functional meanings. For example, after discussing some biblical anecdotes he concludes: "Reflection on the various episodes which center on Bathsheba makes us inevitably ask whether their lesson is not that violence and defilement are natural to the enterprise of founding worldly dominion." [29] The analyst does not ask what is going on concretely in a myth, or what hidden wisdom it expresses: this would be to assume the answer in the question. Rather, he asks, Why did this people develop such a myth? how did it fit with their other forms and needs?

De Jouvenel now seemingly begins to realize the difficulties piled up in the foregoing sections, for the discussion shifts to a new and more fruitful approach: group theory. This is one of the best sections of the book. In making it so he reverses the earlier assumptions: "To consider groups as secondary phenomena resulting from a synthesis of individuals is a wrong approach; they should be regarded as primary phenomena of human existence.[30]. . . The man who has dedicated himself to the success of the project. . . no longer has any freedom: his conduct is now determined altogether by the constraining force of the end. . . . It is the project which is in command." [31] Discussions of stability, innovation, and circulation follow Moscan assumptions and are in general sound.

* * *

Parts II and III deal with the "political good," justice, and sovereignty. Through reference to the earlier facultative theories of political leadership the discussion of authority is converted into a discussion of will. On this basis the traditional liberal paradox of sovereignty under law and the rule of law is analyzed. The argument is involved and aphoristic, incorporating a number of very interesting historical interpretations. I have found the device of numbered paragraphs useful in summarizing it:

1. Is the sovereign bound by law? Austinian jurisprudence says *yes*: the sovereign makes law and is bound by it. But this creates the paradox of sovereignty under law. For this and other reasons the liberal approach to law is meaningless. Liberal theory creates the situation whereby the sovereign is able to change the law and is therefore "absolute" because the sovereign is by definition freed from the laws. This means that the Austinian sovereign is more "absolute" than the traditional (*ancien regime*) sovereign who always acknowledged a moral obligation to obey the laws. The conclusion drawn here is that "the movement in time toward a sovereignty with unrestricted legislative power has been a move-

28. *Id.* at 38.
29. *Id.* at 50.
30. *Id.* at 56.
31. *Id.* at 66.

ment toward absolutism, and the period which we call the absolutist period was in fact only that of the gestation of absolutism. . . . The modern absolutism, which we find the most natural thing in the world, would have been quite beyond the dreams of the most absolute of kings." [32] It makes no difference whether the sovereign is regarded as a person or an institution: the resulting will may still be judged "more or less good"; and the less his will is bounded by an external framework, the more absolute and the more arbitrary it is. Thus the formal institutional approach to constitutionalism is abandoned in favor of a substantive ethical approach. This requires elucidation of substantive political good and justice.

2. Democracy does not solve the problem of good rule. This requires a ruler who is a "rectifier" redressing the scales of justice when they are unbalanced. This raises the problem of how to recover the ancient rectifying function under contemporary conditions.

3. The proper approach is to assume that "the sovereign Will must tend to the public good";[33] it must know good and will to do it.

4. We know from Rousseau that such will can form only in the mind inspired with a feeling for the whole to the exclusion of all else. But as this is unlikely and runs against fundamental human predispositions to selfishness, there must occur a transformation in the sovereign — a conversion in which he loses his personal aspects and becomes identified with the collective "ego" or "we."

5. But no individual can be trusted to make this conversion, and thus political power cannot be trusted in any personal hands. Moreover, the Madisonian solution is worse than placing despotism in the hands of one. "There is no remedy in the form of government for the evil caused by the instinct for despotism." [34] However, coronation ceremonies of ancient sovereigns were transformations involving death and rebirth containing a political truth. This and the royal environment tended to buttress the depersonalized conversion and spiritual change in the crowned sovereign.

6. But there are two sovereign functions: the converted king who wills the good (*rex*), and the executor who is able to get it done (*dux*). These can never be in the same hands.

7. Is the common good self-evident? Politics would be simple if it were; but politics would also be despotic, leading to the Robespierre type of despot suppressing any disagreement.

8. Is the common good subjective? If we assume that it is, then within each subjective interpretation there would lie a "common substance" because it may be assumed that all subjective desires for the common good aim toward something common. From this it follows that "the duty of rulers is exclusively to individuals." [35] It achieves the good of the social whole only as that good is comprised in the personal good of each of the individuals who compose it. No ruler could compose the differences between particular goods if they were all selfish,

32. *Id.* at 90.
33. *Id.* at 92.
34. *Id.* at 95.
35. *Id.* at 109.

but when they are all desires for the common good it is easy to compose their differences. Moreover, no authority could know each man's true individual good better than he himself could know it; only God would be capable of this. Thus "it is impossible for the ruler to consider individual goods particularly: he can only conceive of them in general terms." [36]

9. But the ruler stigmatizing all action but the good would be detestable, always persecuting the nonconformist. Thus it is equally bad for authority to try to procure the goods of individuals or for individuals to try to. "It is not the office of the public authority to procure the personal goods of individuals." [37]

10. It appears that the social good consists, at least in part, in the social tie itself. In upholding this the sovereign cannot go so far as to subvert the individual's mastery over his own actions. What he can uphold, however, is the institutionalization of trust; for without this, society could not exist at all, uncertainty being the great principle of disassociation. But only through religion can this be maintained in such a way as to support the general notion of trust and obligation while reserving the autonomy of individual wills. At least, this is so of the Christian religion, and that is why Christian societies have been "progressive" as distinguished from religions which have institutionalized concrete codes. Thus, K. R. Popper is right in arguing that all utopian or ideal social states are wrong and implicitly totalitarian in the same sense as are religions which institutionalize concrete codes. Utopianism is a heresy.

11. Justice must tend in the same direction. Thus it cannot be an arrangement of concrete things. This would be the utopian heresy. In any case, it is impossible for men to devise a just arrangement of concrete things in problems such as the allocation of valuables. "Justice is a quality, not of social arrangements, but of the human will." [38]

12. It was previously argued that the liberal depersonalization of sovereignty was evil and absolutist. "The traditional view of the king was, in effect, that of a will at the service of justice." [39] This view, moreover, fits well with justice as described above. The justice of a personal ruler need not be regarded as absolutist. Individual freedom is just as consistent with it as free will is consistent with the sovereignty of God. Leibnitz proved this in arguing that a thing is reasonable not because God wills it, but rather God wills it because it is reasonable. The political problem then is to get rulers who will things because they are reasonable (just). "It is this ideal will which is sovereign." [40] And because of this there can be "no bounds or limits to obedience." [41]

13. The institution of a just sovereign will is admittedly difficult to achieve in practice, but recalling the *ancien regime* it appears that certain forms were instituted to see that insofar as possible the royal will lived up to this ideal. Some of these forms ultimately became liberal constitutional forms of state machinery. However, these must not be regarded as checks on the ruler, but rather as organs

36. *Id.* at 112.
37. *Ibid.*
38. *Id.* at 165.
39. *Id.* at 194.
40. *Id.* at 207.
41. *Ibid.*

through which he wills what is just. "The sovereign will is absolute, but . . . every precaution, moral and material, has been taken to ensure that this will coincides with reason. . . . There are natural laws which can be known by reason and it is the royal duty to apply them." [42]

* * *

These thirteen points embody the reasoning in Parts II and III of *Sovereignty* and presumably comprise what De Jouvenel regards as the heart of his message. Even so, the above summary falls far short of doing justice to that discussion, for throughout are numerous passages showing ingenuity and brilliance which are up to the best standards of political writing available. These sections should be read and pondered for those virtues. Moreover, it can be seen that the ideological result of the argument is to defend the amalgamation of two elements traditionally regarded as incompatible: economic individualism and political authoritarianism. Justice is prohibited from encroaching on economic realms in something like the way Lippmann would limit politics, but the political authority which remains is royalized and absolutized. From the standpoint of practical mid-twentieth century Western politics, therefore, it would seem to be a very useful ideological contribution. It furnishes a direct rationale for the De Gaulle constitution as well as for the constitutional trend in America over the past decade. The book should retain its currency at least so long as these constitutional trends prosper. In this sense it is deserving of comparison with the writings of Locke. This is by no means a criticism. To be worth the name, political theory must direct itself to the solution of real problems.

The intrinsic merit of the analysis of justice is quite another thing. The argument concluding in favor of traditional over modern absolutism rests on the identification of Austinian sovereignty with "an unchecked and unbounded sovereignty of a human will." [43] But this is just the opposite of Austinian legal theory, which dealt with legal as opposed to personalized sovereignty. It was absolute only in the sense that a law in theory applies with generality to all equally. Austinian theory was absolutist only to the extent that any such regulation in any type of society is absolute. If there were any laws of general applicability in De Jouvenel's imagined regal order, these laws would be "absolute" in theory. De Jouvenel does not avoid the problems of legal theory by avoiding their theorists.

In eulogizing the *ancien regime* a different error is made. It is assumed that because kings claimed to rule according to natural law this was in fact the case and could again be the case. This amounts to the historical reification of the royal ideology. The problem of the rule of law is avoided by assuming the practical possibility of the rule of morality. Basically, what is offered is a theocratic solution, and this is true of each section of the book.

Even if there were no problems here, further ones are incurred by placing all authority (except in allocational matters) in the hands of an ethical ruler. For he is given the task of resolving noneconomic individual conflicts. It is as-

42. *Id.* at 209-10.
43. *Id.* at 199.

sumed he will be able to do this through an ability and a desire to perceive the common good underlying individual desires. That is to say, except for economic matters, individuals do not participate in the resolution of their apparent conflicts. Thus they have no real basis for knowing that the royal resolution is truly just and really an expression of their inner wills. Consent is missing. It must be; otherwise, contract theory would re-enter.

It is for this reason that the obligation to obedience had to be made absolute. Having failed to deal with conflict resolution in society, he had to make the social tie itself into a generalized obligation. Society for its own sake required obligation for its own sake. This difficulty is evaded, not met, by the suggestion that Christian societies are different. For once again the path out of the difficulty is found by reifying an ethic: by assuming that a society which deemed itself Christian would *ipso facto* realize Christian morality in practice. Had this been true the practical problems of political theory and constitutionalism would have been solved many centuries ago. A grave deficiency of the book is that it is nowhere concerned with constitutionalism. De Jouvenel rests politics on providential rulers observing economic self-restraints and seeking natural principles of justice. His state is a neoclassical theocracy. This is probably not what De Jouvenel intended. However, it is easy to see how this presumably unintended consequence resulted.

The above quotations have shown not only how extensively De Jouvenel has borrowed from St. Thomas but also the maneuvers through which the Thomistic system was given a neoclassical economic revision. However, as it was pointed out earlier, the crucial role St. Thomas gave to formal analysis is lacking in De Jouvenel. This distinguishing feature of Thomistic conceptualism permitted the construction of an imperative political ethic informed by natural law, relevant to empirical political problems but not tied directly to a divine order. In this fashion St. Thomas produced a political ethic which was not theocratic. De Jouvenel, in omitting St. Thomas' distinctive analytical framework, incurred errors his great master avoided.

HARVEY WHEELER

VOM GESETZESSTAAT ZUM RICHTERSTAAT. RECHT ALS MASS DER MACHT. GEDANKEN ÜBER DEN DEMOKRATISCHEN RECHTS– UND SOZIALSTAAT. By René Marcic. Wien: Springer, 1957. Pp. 548. Dm. 48.00.

The work of René Marcic under review contains a political program which is clearly apparent in its title and is further stressed by the jacket description: The Road between Security and Freedom. To indicate this is not to depreciate the author's comprehensive erudition, and it is not to be regarded as a criticism, for certainly politics as a science must be founded on, and as a policy of law must serve the objectives of, truth and justice, yet it is a clue to the author's personal concern. This concern can then be seen as the author's desire, indeed his passion, to contribute to the realization of a legal order warranting security

and freedom at the same time, and bringing together into a well-balanced relation both of these basic essentials of community life.

If one asks then which factor, according to Marcic's point of view, would seem to provide a balance, the answer is to be found in a "third power" and therefore in an independent judiciary. But Europe's special situation requires proof that judicial independence can exist only when it finds its ultimate source in the law and not in mere legal opinions (statutes). The Third Reich and the Soviet State furnish ample evidence that a merely statutory state which poses as a law state can maliciously lead to a full subjugation of the judiciary, when, that is to say, positive statutes (statutory law) are set up as equal with the law (justice).

Thus the author achieves an extensive probing of law in which there is a contribution to legal ontology. Legal positivism alone — which in Europe always showed a tendency to bureaucratize the "third power" and thus to make it subservient to the executive will of the state — is shown to be lacking in moral principles.

In support, the author cites concrete examples of cases in Austria and in the German Republic where natural law, or in a broader sense something more than positivistic legal thinking, has presently won out within the administration of law itself. Generally there is a resultant development which can be indicated as a tendency, after the superseding of principles of mere legality, towards a substantial rule of law (*materialer Rechtsstaat*).

Not only a scholar but an outstanding journalist, the author has with courage and success repeatedly interceded for the independence of the courts at judicial congresses and especially on the pages of the *Salzburger Nachrichten.* Marcic is able to give a report of success in reviewing a judgment of the Austrian Supreme Constitutional Court (and his conclusion serves also as a supplement to the reviewed work): "Through the strong controlling function given by our Constitution to the Supreme Constitutional Court and through the Court's determination to do its duty, the balance of power is restored in Austria warranting the freedom of the people, and a politically sound division of powers is guaranteed. Parliament is not autocratic; the legislator is also compelled to observe the standards of law. . . . Thus, the Constitutional Court has become a second source of the state power and the first pillar of the citizens' trust. Alongside the Parliament and alongside the government, in legal robes the Constitutional Court exercises the state power for the freedom of the people."

In the last chapter of his work, the author deals with problems of democracy and especially with the aim to attain a real democracy after the merely formal democracy which appears to be threatened in many ways today. Here he also demonstrates a basic tendency to stress the moral power of men, and he calls upon citizens to step out of their indifference, to assert a belief in freedom and an acknowledgment of Europe as a common human destiny.

One must criticize the disturbing number of problems which are touched upon but not developed and answered because of limitations of space. This overabundance gives the book a lexicographic cast, and it is hopefully recommended that in a new edition some material will be cut down and eliminated. This reser-

vation, however, is not meant to detract from pleasure that a book has finally been written whose purpose is to defend man's freedom against the power encroachments of the savage.

ERNST VON HIPPEL

(Translated by JURIJ FEDYNSKYJ)

EDMUND BURKE AND THE NATURAL LAW. By Peter J. Stanlis. Preface by Russell Kirk. Ann Arbor: The University of Michigan Press, 1958. Pp. xiii, 311. $5.75.

As the title of Mr. Stanlis' book implies, its purpose is to demonstrate that Edmund Burke was a natural law theorist, and not, as some of his commentators have stated, the first of the utilitarians or the theorist who "accepted Hume's negations of reason and the law of nature."[1] Unfortunately, what could have been a valuable contribution to our understanding of Burke's thought is marred by a regrettable tone of contentiousness and *parti pris.* Instead of a balanced reassessment of Burke's thought to determine what elements of traditional natural law thinking are contained therein, *Edmund Burke and the Natural Law* is a polemical tract. It seeks to identify all that is evil in the modern world, "Jacobin types of popular collectivism," "impersonal leviathan states," and the "sophisters, economists, and calculators of our century"[2] with a tradition which commences with the Epicureans, continues through modern "natural rights" theorists (under which rubric both Hobbes and Locke are lumped together) to Bentham and the utilitarians and down to "the cannibal state that devours its young."[3] On the other side are the forces of righteousness which are identified as the Stoic and Christian natural law tradition, from Aristotle, through Cicero, St. Thomas, Bracton, the medieval canonists, Hooker, Coke, Blackstone, and ending presumably with Burke.

Now this game of intellectual cops-and-robbers has been played before, and sometimes with different results. For instance, a recent article in *Daedalus,* the publication of the American Academy of Arts and Sciences, has bracketed St. Thomas and Hobbes together as apologists for a natural order of conservatism and absolutism, and distinguished them from the liberal adherents of natural law "running through the Stoics, Spinoza, Locke, and thence to the founders of the American republic."[4] Still another division is used by some of the publications of the Catholic University of America which link Locke and Jefferson to St. Thomas Aquinas by way of Richard Hooker.

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1. GEORGE H. SABINE, A HISTORY OF POLITICAL THEORY 607 (New York, 1937). The best known of the interpretations of Burke as a proto-utilitarian is that of C. E. VAUGHAN in volume 2 of STUDIES IN THE HISTORY OF POLITICAL PHILOSOPHY BEFORE AND AFTER ROUSSEAU (New York, 1925).
2. PETER STANLIS, EDMUND BURKE AND THE NATURAL LAW 247-249 (Ann Arbor, 1958).
3. *Id.* at 247.
4. Abraham Kaplan, *American Ethics and Public Policy,* DAEDALUS (Spring, 1958) 56.

Stanlis' particular version of the history of political theory is not original with him. He admits his dependence upon two theorists of what has been termed the New Conservative school in America, Russell Kirk and Leo Strauss. Kirk in a series of articles and finally in a book, *The Conservative Mind* (Chicago, 1953), pleads for the reassertion of an American Conservatism based upon Burkean principles which could oppose the forces of liberalism, radicalism, and socialism. "For a century and a half," he laments, "conservatives have yielded ground in a manner which, except for occasionally successful rear-guard actions, must be described as a rout."[5] Ignoring the obvious dependence of American theory and practice upon the principles of the liberal, John Locke, he describes the American Revolution as a "conservative reaction" and even makes Abraham Lincoln a charter member of his Conservative school.

Despite, or perhaps because of, the influence of the principles of John Locke on the Founding Fathers, a case can be made for the essential conservatism of the American Revolution; and Edmund Burke's support of that revolution can be cited to demonstrate that it embodied principles consonant with his views. But the New Conservatives have gone one step further in their effort to find angels and devils in Western intellectual history. They have not only assimilated Burke to the American way of life; they now wish to cast out Locke as a subversive influence. The contemporary scholar responsible for this questionable contribution to the ideology of American conservatism is Leo Strauss. Since Stanlis accepts Strauss without question, and since the single most important defect in his interpretation of Burke is his slavish devotion to the Strauss thesis, it might be in order to say a word or two about it, before discussing the Stanlis book itself.

The classic statement of Strauss' unorthodox view of the history of political theory is contained in his book, *Natural Right and History* (Chicago, 1953), and the distinction between modern and traditional natural law theory which Stanlis uses is drawn from this book. For Strauss, modern and traditional natural law are in essential opposition. The one is objective, pluralistic, and oriented to society; the other is subjective, unitary, and individualistic. The one is based on a rational order of values in the universe, perceptible to man's intellect; the other, on the nominalist denial of reason and exaltation of human will. The one finds its highest expression in the natural law theories of St. Thomas Aquinas; the other, in the natural right of Thomas Hobbes.

Now the distinction between medieval and modern natural law theories has been analyzed by others before Strauss.[6] What marks Strauss' interpretation is that in emphasizing the discontinuity between medieval and modern natural law he rejects the medieval elements of continuity in the classic expression of modern natural law theory, Locke's *Second Treatise on Civil Government.* Where everyone else has noted Locke's concern to refute the theories of Hobbes, and his acknowledged indebtedness to Hooker's restatement of medieval natural law, Strauss sees Locke merely as a clever propagandist who dressed up the theories of Hobbes in a traditionalist disguise in order to deceive a gullible public which

5. RUSSELL KIRK, THE CONSERVATIVE MIND 4 (Chicago, 1953).
6. See, for example, the admirable discussion in A. P. D'ENTREVES, NATURAL LAW ch. 3 (London, 1951).

had rejected Hobbesianism in its original form. In order to support this argument Strauss is compelled to dismiss all the statements which Locke drew from Hooker as so much window dressing, included by Locke because he was a "cautious man." Strauss seizes upon the hedonism of the *Essay Concerning Human Understanding,* arguing that because Locke's *Essay* expressed a hedonist ethic, and Hobbes had built his *Leviathan* on a hedonist ethic, therefore Locke's *Second Treatise* must have *really* been based on the theories of the *Leviathan* and not on the traditional natural law theories, as had been believed up to the time of Strauss' book. He adds to this an obscure argument that since Locke held that there was no law without sanctions, and since he stated that the sanctions of the natural law were in the afterlife — the existence of which could not be proved by reason — he did not really believe in natural law.

In developing this argument Strauss virtually ignores the vast literature on the interpretation of Locke, although he makes a passing reference in a footnote to *John Locke's Political Philosophy,* by J. W. Gough (Oxford, 1950). Gough based his study on a hitherto unpublished set of essays on the Law of Nature, written by Locke between 1660 and 1664 (a decade after the publication of the *Leviathan*), and containing a most orthodox medieval interpretation of natural law, in which Locke not only used Thomistic argumentation throughout, but even quoted St. Thomas directly. Gough noted that the eleventh essay threw some light on the seeming contradiction between Locke's hedonism in the *Essay* and his natural law theories in the *Second Treatise.* There, Locke specifically denied that utility is the basis of the rightness of action, but held that a right action would also have useful consequences. Gough speculated that this may have been Locke's way of incorporating hedonism into his natural law ethic. As he put it, "Pleasure and pain may be the consequences of, and the means by which we recognize good and bad actions, but they are not the motives of the good man's conduct." (p. 16)

A full and scholarly treatment of this problem was undertaken by W. von Leyden in his extensive introduction to the *Essays on the Law of Nature,* published by Oxford in 1954. According to Von Leyden, Locke always maintained his belief in a traditional natural law theory, and held that his hedonist ethic in the *Essay on Human Understanding* was merely an attempt to describe how men actually come to their knowledge of good and evil (through pleasure and pain), not to determine what is the basis of the moral worth of an action.

Strauss belatedly recognized that the publication of *Essays on the Law of Nature* undercut his thesis that Locke was Hobbes in disguise. In the *American Political Science Review* for June, 1958, he published a complicated analysis of the work, attempting to support his point of view from the *Essays* themselves. This took a bit of straining, but he managed to point out that Locke agreed with Hobbes in rejecting universal consent as a source of natural law (would any traditional natural law theorist hold that it was?) and that Locke, like Hobbes, clearly distinguished between natural law and natural right (ignoring the fact that Locke did so in order to refute Hobbes' view). He also maintained that the *Essays* show that Locke was an empiricist in deriving all knowledge from the senses, while neglecting to inform the reader of the thoroughly Scholastic fashion in which

Locke did so. (*Nihil in intellectu nisi prius in sensu* is a Scholastic, not a Hobbesian, dictum.)

Certainly it is important to emphasize the difference between the theories of Hobbes and those of the classical natural law. As nearly all interpreters of Hobbes have noted, the whole conception of natural law is distorted by Hobbes into a utilitarian calculus of interest. Moreover, Hobbes replaces the pluralistic teleological approach of St. Thomas which sees moral values in purposes implanted by God in nature with a mathematical model based on the single goal of self-preservation. But why force Locke into the Hobbesian mold, and erect an elaborate "conspiracy" theory to do so? The concepts of the state of nature and the social contract which Strauss associates with Hobbes are also found in Richard Hooker's *Laws of Ecclesiastical Polity* in a formulation much closer to that of Locke than is the version put forward in the *Leviathan.*[7]

No one has better stated the difference between Locke and Hobbes than John Plamenatz in the opening pages of *The English Utilitarians* (Oxford, 1949), and yet (and this brings us back to the book under consideration) Stanlis quotes him in support of the Strauss point of view! On page 21, Stanlis quotes Plamenatz as saying, "We need not wonder . . . if we find in the political writings of Locke most of the ideas of Hobbes, except those explicitly rejected by the younger philosopher." Stanlis does *not* quote Plamenatz's next sentence, which reads, "But this does not mean that the systems of Hobbes and Locke are not profoundly different." Again on page 26 (this time without a footnote), Stanlis says, "As Plamenatz observed, it would 'have been as easy to prove that the spiritual ancestor of Bentham was Locke rather than Hobbes.' " What did Plamenatz actually say? The sentence which Stanlis excerpts is not a declarative statement but a question, "Would it not have been as easy to prove that the spiritual ancestor of Bentham was Locke rather than Hobbes?" And Plamenatz goes on to answer the question *in the negative,* concluding, "it is to Hobbes rather than to Locke that the utilitarians are indebted."[8] Now this, I submit, is not just careless scholarship. It is deliberate distortion of the truth in order to fit a partisan point of view.

If the uncritical acceptance and development of Strauss' views indicates a complete lack of acquaintance with the available literature on Locke and Hobbes, the general survey of the history of natural law doctrine with which he opens the book also demonstrates the shallowness of Stanlis' knowledge of other political theorists. Thus he speaks of Aristotle as a natural law theorist and even excerpts a bit of Aristotle's *Ethics* and *Rhetoric,* but omits the very serious qualifications that Aristotle introduces. (The passages in the *Rhetoric,* for example, are simply a recommendation to the Athenian lawyer to argue natural law if positive law was against him.)

Then our tour through history stops at Bracton, whom Stanlis describes as an exponent of natural law, although "he seems not to have read his contemporary, St. Thomas Aquinas."[9] Stanlis himself seems not to have read Bracton, since the

7. RICHARD HOOKER, LAWS OF ECCLESIASTICAL POLITY, bk. I, chap. 10, no. 4.
8. JOHN PLAMENATZ, THE ENGLISH UTILITARIANS 19 and *id.* at 21 (Oxford, 1949).
9. PETER STANLIS, *op. cit. supra,* note 2 at 10.

medieval English jurist never mentions natural law, and it would be difficult for Bracton to have read St. Thomas' treatment of the subject, since it was written several years after his death. On St. Thomas himself, Stanlis holds that he believed that "legislation ought to be for and by the people," whereas Aquinas only said that law should be made by the "one who has the care of the community."[10] While Grotius may have been "the first modern to say that natural law would be valid even if God did not exist,"[11] much the same thing had already been said by a number of writers in the scholastic tradition (e.g., Vasquez and Suarez). Moreover, it is not true that "the chief question in every problem of sovereignty is — what makes an act or law just or unjust?"[12] It is, rather, who has "the supreme and unlimited power (or perhaps better, 'authority' — *potestas*) to give laws to the citizenry." (Bodin) All of these are misstatements which indicate that Stanlis does not understand political theory and has not consulted the original or secondary sources, but relies exclusively on the arbitrary divisions of Strauss into which he tries to fit Burke's thought.

Even when he finally moves to a discussion of Burke, the war on Locke goes on. He is called a variety of names, none of them defined, but all presumed to be derogatory in implication. Locke is a "mechanist," a "voluntarist";[13] he is accused of "Augustinianism"; and his natural right theories are called a "disguised form of power or will."[14] On a single page he is accused of "making the social contract revocable at will" and of having "championed the absolute and arbitrary will of parliament."[15]

Now in these accusations, there is some truth and much confusion. Locke did believe that God's will was the source of obligation of the natural law, but so did Suarez. Locke did speak of the right of self-preservation as a natural right (making him sound superficially like Hobbes), but so did Aquinas. Locke did talk about a right to overthrow an unjust government, but so did many medieval thinkers.[16] The very complicated question of the relationship of Locke to earlier theorists is not answered by name-calling.[17]

When Stanlis ceases denouncing Locke long enough to talk about Burke, he analyzes Burke's background and education for the light they may throw on his political thought. Burke was a lawyer, and he had studied Cicero, Coke, and Blackstone, and derived from them a belief in eternal and unchanging principles of natural justice. This much seems clear. Moreover, he seems even to have gone

10. ST. THOMAS AQUINAS, SUMMA THEOLOGIAE I-II, qu. 90, art. 4. See also I-II, qu. 105, on the role of the people in government.
11. PETER STANLIS, *op. cit. supra,* note 2 at 23.
12. *Id.* at 233.
13. *Id.* at 137.
14. *Id.* at 138.
15. *Id.* at 23.
16. See, for example, ST. THOMAS AQUINAS, SUMMA THEOLOGIAE II-II, qu. 42, art. 2. In his commentary on the sentences, Dist. 44, qu. 2, art. 2, resp. ad obj. 5, St. Thomas even defends tyrannicide.
17. E.g., "the inept compromises of Locke" (p. 26); "the cynical Hobbist theory" (p. 181); and the frequent use of the term "nonsense" for the views with which the author disagrees. Cf. pp. 172, 181, etc.

further and accepted the basic Lockean principles that (as Stanlis quotes him on pages 43 and 48) "a conservation and secure enjoyment of our natural rights is the great and ultimate purpose of civil society. . . . When tyranny is extreme and abuses of government intolerable, men resort to the rights of nature to shake it off." Otherwise it would be difficult to explain his support of the American Revolution, which — conservative as its character may have been — was based on the principles of John Locke.

Yet, as Stanlis admits, Burke's appeals to natural law and to natural rights were much less frequent and important in his thought than his appeals to the British Constitution, to which the colonists also appealed. It is not enough to say, with Stanlis, that these appeals to the British Constitution were "indirect" appeals to natural law. The logic of this type of argument is most clearly faulty when he tries to prove that Burke's attack on the natural rights theories of the French revolutionists was really a defense of the natural law. "As the English constitution was itself based upon the traditional natural law, Burke's attack on the false claims of revolutionary 'natural rights' was direct defense of the prescriptive English constitution and an indirect defense of the traditional natural law." Why all this twisted logic? Why not just say that Burke believed in the British Constitution and in the moral principles which were embodied in it, and he thought that the French natural right theorists were subverting both these principles and their application?

Burke appealed primarily to tradition and the British Constitution. If he also believed in eternal moral principles applied in different ways in different circumstances, this does not make him "a Thomist in political philosophy."[18] Nor does the fact that he felt that "it was perfectly *natural* for revolted subjects to form an alliance"[19] with France make him an adherent of the natural law school. While he believed in fundamental principles of justice, natural law, in the Thomistic sense of a set of teleological goals in man's nature, does not seem to have been an important concept in Burke's political theory, except in the early "Tract on the Popery Laws." The only real similarity between Burke's thought and that of St. Thomas is a certain reluctance to spell out the exact content of fundamental law and an awareness of its changing content in various circumstances. However, I doubt if this would be enough to make a political theorist into a Thomist. If it were, Thomism would have many more adherents.

A similar tendency to find a nonexistent Thomism in Burke appears in Stanlis' discussion of Burke's use of "the principle of prudence," as opposed to the "utilitarian precept for survival in the jungle of nature." Stanlis distinguishes between Burke's frequent appeals to the principle of utility from the moral principle of the utilitarians by stating that "to Burke a law or action was not good because it was useful, but utility was merely one of several positive social consequences of morality." Later, "moral prudence" is described as "Burke's own unique addition"[20] to the natural law tradition. Now the belief that natural law has its own

18. PETER STANLIS, *op. cit. supra*, note 2 at 249.
19. *Id.* at 90. (Italics supplied.)
20. *Id.* at 122-123.

built-in sanctions was already a commonplace of Scholastic thought. From the time of Plato and Aristotle, the just man was believed to be the only truly happy one. That, at least in the long run, crime does not pay and honesty is the best policy, is taught by nearly every moralist. What the utilitarians did was to turn from the a priori standard in nature to the a posteriori consequences of any given action, and say that the real basis of the moral worth of an action lay in its consequences, narrowly defined as pleasure and pain, and not in any principles derived from or rooted in man's nature. While one cannot label Burke as a utilitarian, he shared with the utilitarians a very considerable concern for the social and practical consequences of action in opposition to the abstractions of the natural law (or, to use Stanlis' terminology, "natural rights") theorists of his day, and thus he prepared the way for the adoption of the principle of utility as a moral and political standard. Stanlis has not proved, at least to my satisfaction, that Burke's emphasis on expediency was in any way consciously related to a Thomistic theory of prudence in the application of moral principle. In the two quotations given by Stanlis[21] in which the word "prudence" is used, it means nothing more than restraint in proposing reforms for fear that they will be carried to extremes. Burke seems to have believed that there were eternal moral principles (although he never became very specific about what they were), and Stanlis quite rightly brings this out; but Burke also seems to have held that the important consideration, at least in political decision-making, was the social consequence of a given action, and this was not rationalized in any Thomistic fashion as the "moral principle of prudence."

More than any theoretical system, it is his general belief in moderation and his respect for traditional and institutional forms which distinguish Burke from the utilitarians. This fundamental conservatism also links him to Locke, to whom Stanlis attempts to set him up in opposition. Of course, there are very important differences between the two thinkers, and Stanlis brings out some of them. Locke constructed his theory on the basis of a real or assumed state of nature and social contract. Burke rejected the state of nature and put forward a mystical conception of the social contract which was altogether different from that of Locke. Locke's great emphasis was on the individual and his rights, while Burke looked toward society and its history and experience. Locke, like the Scholastics, believed in a rationally perceived natural law; Burke, in certain fundamental moral truths which were felt with the emotions as much as perceived with the intelligence.

Yet both were conservatives; both stood for the same things in British politics. Both defended the settlement of 1688, and both felt that in extreme cases one could resort to revolution to defend the established order. Moreover, both held that the best constitution for England was the mixed form in which elements of democracy, aristocracy, and monarchy were combined. While to uphold these principles in 1790 meant something different from doing so a century earlier, Locke would probably have been just as shocked as was Burke at the excesses of the French Revolution and the demands of the utilitarian reformers for annual parliaments and universal suffrage.

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21. *Id.* at 116-117.

The fact that Burke looked first to society rather than to the individual in his political writings demonstrates another defect in the analysis by Stanlis. He endeavors to prove that the tradition deriving from Locke and the utilitarians leads to collectivism, while Burke and the classical and scholastic natural law school constitute a bulwark against it. Now one can certainly find collectivist elements in some of the writings of Bentham; and if one accepts the analysis of Willmoore Kendall,[22] perhaps they can also be found in Locke. Yet surely the emphasis in Locke's writings is on the safeguard and protection of the individual, and the emphasis in Burke's writings is on the importance of the community.

One can say that Locke's theory is, in its general outlines, a theory of individualism, and Burke contains more collectivist elements, but it is much less helpful to link the one to a school of "natural rights"-cum-utilitarians and attribute to it all the evils of the present-day world, and to assimilate the other to a natural law school which is the source of all that is good. Natural law can be used in a variety of ways. It is a method of thinking about morals, law, and politics, rather than a body of substantive propositions. The distinction on which it is based, between what is natural and what is not natural ("conventional," "artificial" — Stanlis in excessively heavy reliance on a Chicago Ph.D. thesis calls it the "antithesis of nature and art") contains implications for reform or even revolution. On the other hand, a transient and even unjust feature of contemporary society can be linked to the natural law, and thus placed above change, criticism, or improvement. Thus, on the basis of differences perceived in the nature of man, Aristotle said that slavery was naturally just. On the basis of similarities in man's rational nature, Locke and Jefferson and Jacques Maritain have said that all men are by nature equal. In both cases the argument is couched in terms of natural law, rational a priori principles which can be perceived by man.

The same thing is true of utilitarianism. On the basis of utility, the greatest good of the greatest number, Bentham advocated prison reform and universal suffrage. On the same basis, he had earlier advocated authoritarian government. Both natural law and utility can justify both revolution and reaction, and it is both illogical and unhistorical to oppose the two methods as absolutely as Stanlis has done, and then to place Locke in the utilitarian camp (although, as noted before, there is more justification for doing so with Hobbes).

To take a contemporary example, perhaps the most important domestic problem in contemporary America is that of desegregation. Some Southern apologists will use natural law arguments and maintain that Negroes are naturally inferior to whites and, therefore, should be educated in separate schools. Their integrationist opponents appeal to the natural law principles of equality enshrined in the Declaration of Independence, and assert that Negroes are entitled to equal treatment by the government and protection against discrimination on the basis of race. A segregationist might appeal to utility and say that the only way to prevent violence is to keep the schools separate, while an integrationist might

22. WILLMOORE KENDALL, JOHN LOCKE AND THE DOCTRINE OF MAJORITY RULE (Urbana, 1941).

appeal to the adverse effect of segregation on the American position in world public opinion. A Burkean appeal to the historical folkways of the South could be counterbalanced by reference to the American tradition of equality, or to Burke's own belief in fundamental moral principle. The method of argument does not lead inevitably to one conclusion or the other, although — as a matter of historical record — the utilitarians are more closely linked with reform movements, and the natural law theorists (on the whole, and with important exceptions) with justification of the *status quo*. Natural law, however, was used by Locke, Jefferson, and Paine to justify revolution; and if Stanlis is opposed to revolution (or to some revolutions and not to others, since presumably he approves of the American Revolution), let him say so, rather than attack those he dislikes as applications of "natural rights" and praise those of which he approves as embodying the principles of natural law.

What I object to in this book is the uncritical acceptance of a partisan attitude toward the history of political thought, and its application to Burke in a way which distorts his point of view and that of many others. Burke was not a prophet for contemporary America. We would not accept his defense of entrenched privilege, his belief in the virtue of "rotten boroughs" in parliament, and his opposition to universal suffrage. We would not accept his attempts to justify a society rigidly divided into social classes, and I would very seriously disagree with Stanlis' statement that "the Christian concept of equality" implies a Burkean "hierarchy of values *and classes*."[23] On the other hand, many of us would share Burke's belief in fundamental and unchanging moral principles combined with moderation and flexibility in their application to concrete circumstances. I wish that Stanlis had restricted himself to examining this aspect of Burke's theory; i.e., the relation of morals and politics, instead of engaging in polemics.

If the contentious and intemperate language of this book is overlooked, there is much in it from which the student of Burke can profit. The picture which emerges of a great Anglo-Irish statesman who combines the best qualities of the moralist and the politician is a very attractive one. A true Christian humanist, Burke has furnished a model for British conservatism ever since his day. Whether he can have the same appeal for Americans brought up in the tradition of Locke and Jefferson, will depend to a considerable extent on whether we feel the need of a historical model for the conservative attitude which seems to have been forced upon us by the exigencies of the world power struggle, our own increasing prosperity, and our inability to elaborate a new and dynamic theory which can capture the imaginations of America and the world.

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23. PETER STANLIS, *op. cit. supra*, note 2 at 191.

STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY. By Jerome Hall. New York: Oceana Publications, Inc., 1958. Pp. vi, 300. $6.00.

"It was said of Socrates, that he brought philosophy down from heaven, to inhabit among men; and I shall be ambitious to have it said of me, that I have brought philosophy out of closets and libraries, schools and colleges, to dwell in clubs and assemblies, at tea tables, and in coffee houses." These confident remarks of Joseph Addison in the March 12, 1711, issue of *The Spectator* could not but please his avid readers. For the philosopher is constantly being challenged to show the relevance of his thought to contemporary problems. And while it is well to caution against expecting spectacular results, it would surely be amiss for him to regard this challenge as an affront, or worse, as beside the point.

Nor is the legal philosopher spared this insistence. What relation, he is asked, is there between your thinking and what goes on in the courtroom or the legislative assembly? Professor Jerome Hall is not one to back away from this question, and his efforts have been fruitful.

This book is a collection of pieces covering a wide variety of subjects, but all bear Hall's distinctive stamp and consider important jurisprudential problems of our time. Of the fifteen, twelve have appeared before;[1] and three are new.[2]

Of the new contributions, perhaps the most noteworthy is the chapter entitled "Causation." In this the author explores the meaning of "causal relationship" between legally proscribed harms and conduct, giving particular attention to problems in criminal law.

Initially, he distinguishes "mechanical or physical causation" (*sine qua non*) from a principle of causation which is relevant to legal liability. Quoting from a New York case, he notes that the object of legal inquiry is not some cause "in general" but "some cause for which the defendant is responsible."[3] He continues: "From a wider perspective the cause of any given event is the sum of all the necessary conditions of that event; i.e., conditions are in no way distinguishable from causes."[4] Hence, "causation" in law involves an evaluation,

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1. *Integrative Jurisprudence,* as revised from INTERPRETATIONS OF MODERN LEGAL PHILOSOPHIES 313 (ed. Sayre, 1947); *Plato's Legal Philosophy,* 31 INDIANA LAW JOURNAL 171 (1956); *Unification of Political and Legal Theory,* 69 POLITICAL SCIENCE QUARTERLY 15 (1954); *Authority,* reprinted from first ANNUAL PROCEEDINGS OF AMERICAN SOCIETY FOR POLITICAL AND LEGAL PHILOSOPHY (1958); *American Tendencies in Legal Philosophy and the Definition of "Law,"* 3 COMPARATIVE LAW REVIEW OF JAPAN (1956); *The Progress of American Jurisprudence, 1906-1956,* from THE ADMINISTRATION OF JUSTICE IN RETROSPECT 24 (Harding ed., 1957); *Legal Classification,* 5 JOURNAL OF LEGAL EDUCATION 329 (1953); *Crime as Social Reality,* 217 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 1 (1941); *Federal Criminal Procedure,* 51 YALE LAW JOURNAL 723 (1942); *Science and Reform in Criminal Law,* 100 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 787 (1952); *Revision of Criminal Law—Objectives and Methods,* 33 NEBRASKA LAW REVIEW 3 (1954); *Psychiatry and Criminal Responsibility,* 65 YALE LAW JOURNAL 761 (1956).

2. *Legal Theory and Jurisprudence; Culture, Comparative Law and Jurisprudence; Causation.*

3. Laidlaw v. Sage, 52 N.E. 679, 689 (N. Y. 1899).

4. HALL, STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY 160 (1958).

an ascribing to an event the "cause." That is, it must be decided what *ought* to be denominated the "cause."

Against this background Hall examines several criminal law situations in which there has been a tendency by the courts to downgrade *mens rea* under the guise of applying a "principle of causation." For example, in *State v. Frazier,*[5] the Supreme Court of Missouri upheld the manslaughter conviction of a defendant who struck the deceased a blow which would not have been fatal but for the fact that the latter was a hemophiliac. The court approved the following standard text quotation: "It is immaterial that defendant did not know that the deceased was in a feeble condition which facilitated the killing, or that he did not reasonably anticipate that his act would cause death."[6] Hall directs his fire against those opinions which pass over knowledge of the risk of harm because of an apparent belief that "substantial physical causation" is determinative. In his view, "[t]he temptation to exclude *mens rea* from problems of causation arises from overconcentration on mechanical causation. This encourages the view that causation is not a legal problem . . ." [7]

Going further, Hall undertakes to show that even the factual inquiries are defined and, to a considerable degree, determined by policy. "[W]hile policy alone does not distinguish causes from conditions, and although a factual process is included in the determination of that question, nevertheless, policy demarks the limits of relevant factual inquiry and participates in the definition of causes."[8]

Hall's ideas emphasize the normative character of judicial inquiry and adjudication. If more widely adopted by the courts, this emphasis would result in more intelligible (and I believe, intelligent) statements regarding the difficult problems presented. For courts would then have to bring into the open more of those factors determinative of their decisions. Responsibility could not be evaded for choices made on the ground that only one possible choice was open and that simply a question of fact.

"Psychiatry has much to contribute to law; but it also has many limitations which lawyers and judges do not appreciate. Moreover, because Anglo-American criminal law embodies and safeguards important values, it ought to be obvious that not all the discoveries of psychiatry are grounds for modification of the criminal law."[9] Thus does Hall introduce a timely chapter on "Psychiatry and Criminal Responsibility."

If, as some believe, a serious dialogue is emerging between medical and legal representatives respecting criminal insanity, a share of the credit must surely go to Hall. His approach has been rigorous, but not unbending. While anxious to learn from the psychiatrist, he has demanded that the latter consider certain recognized legal values. For example, he affirms the necessity for criminal law, as a normative science, to postulate a degree of autonomy for the individual. Regarding punishment as a corollary of man's responsibility, he states: "To take no punitive measure against normal persons who voluntarily harm others would

5. 339 Mo. 966, 98 S.W. 2d 707 (1936).
6. 29 CORPUS JURIS 1082.
7. HALL, *op. cit. supra,* note 4 at 185.
8. *Id.* at 194.
9. *Id.* at 267.

be the grossest sort of social irresponsibility. . . A dogma that equates normal adults with helpless victims of disease is incompatible with respect for personality and distinctive human traits."[10]

Similarly, Hall cautions that individualization of punishment (or "therapy") must not be permitted to efface the "Western tradition of the sovereignty of law." While favoring a measure of individualization, and indeed offering suggestions as to how it might be accelerated within our present legal framework, he nonetheless warns: "[O]ne cannot have his cake and eat it too. We cannot have the advantages of protection by law and also have all the advantages that in particular instances might flow from completely unfettered discretion in the treatment of criminals."[11]

This rather conservative approach, coupled with a determination to subject new proposals to exacting critiques, is no doubt exasperating to some. But if, for instance, they are annoyed by his championing of the M'Naghten Rules, they must acknowledge that he has buttressed them in a way few thought possible. And it is still true that before we discard what we have, we ought to know precisely what it is. Hall helps us do this, and he does it well.

Hall neither recoils from unfamiliar concepts nor is he satisfied with anything less than painstaking investigation. This leads, it seems to me, to a fundamental attitude on his part which is slow to condemn that which has gone before and does not presume to know fully what exists today. Statements of the following type abound in this book: "In ancient China . . . as long ago as 2500 B.C. there were discussions of criminal negligence which are quite modern in their appraisal of the ethics of criminal responsibility."[12] "As a matter of fact, if we go back as far as the thirteenth century and read Bracton fairly, we may come away with no little admiration for the understanding and moderation of those days regarding the lack of responsibility of mentally diseased persons. The history of ethics and epistemology is ancient and pregnant with ideas current today."[13] "The organic view emphasizes that the present is an emergence from the past, and that to understand the present law we must study it as a development from past institutions, past customs, and past law, recognizing the enduring bonds which unite the entire process."[14]

Therefore, it might come as a surprise to observe flashes of virtually unlimited optimism in the book. On the first page we find the following: "From an appreciation of the principal levels of legal thought [positive law, legal theory and jurisprudence] and of the potential consequence of their compatibility, the road to a verifiable and systematic development of jurisprudence can be clearly discerned."[15] This contrasting attitude is most pronounced in a chapter which he entitles "Integrative Jurisprudence" and in which he undertakes to outline the elements (or perspective) of an "adequate" legal philosophy. After indicting natural law philosophy, American legal realism and legal positivism as "partic-

10. *Id.* at 272.
11. *Id.* at 273.
12. *Id.* at 103.
13. *Id.* at 210.
14. *Id.* at 111.
15. *Id.* at 1.

ularistic" he argues that this "Integrative Jurisprudence" would alone have the requisite "ultimacy," "comprehensiveness," and "consistency." He advances as the "central insight" the statement that "the juridical object of knowledge is the legal philosopher's experience in relation to the application of organized force by reference to certain situations concerning public interests, in accordance with prescribed norms that represent defensible value-judgments."[16] Emphasizing a concept of "law-process," he maintains that for one to understand judicial and legislative process it is necessary that he participate, at least vicariously, in the problem-solving activity of the law. He puts it this way: "[N]o philosophical account, however suggestive, can be as illuminating as the knowledge that is experienced in actual participation in the process of law-making and breaking, litigation and trial, adjudication and enforcement, etc. It is not unlikely that the actual participation gives rise to a knowledge that is not entirely conceptual — a knowledge that may be uniquely derived in action."[17]

The foregoing does not, of course, purport to be a complete statement of Hall's "Integrative Jurisprudence," nor, I take it, does he suggest that any such elaboration is contained in this book. However, until further statement appears, I cannot escape the notion that he overestimates its significance. Is it merely another methodology? Or even perhaps an old one under a new label? One would be foolish to discount altogether the advantage of the type of engagement Hall recommends, but will this insure the success he envisions? Possibly the difficulty for me lies in what I regard as the limited nature of the philosophical inquiry itself, a limitation which militates against such great expectations.

To conclude, it might be well to comment regarding a suggestion of Hall's that the use of the term "natural law" be discontinued. Indeed, as if wearied of all the semantic in-fighting and breakdowns in communication, he cites this as an "obvious need."[18] But is it? It is necessary to have a term evoking those things which "natural law" evokes. And in view of its long usage and the rather careful articulation of various natural law theories, it is difficult to foresee any gain from the introduction of a new nomenclature. Our vocabulary is adequate; if there has not been effective, meaningful communication, the reasons must be sought elsewhere. But in this quest, too, so long as there are men like Jerome Hall, there is hope.

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16. *Id.* at 38.
17. *Id.* at 42.
18. *Id.* at 27, n. 9.

THE DEFINITION OF LAW. By H. Kantorowicz. Edited by A. H. Campbell. Cambridge University Press, 1958. Pp. xiv, 113. $3.00.

This small volume was intended as the first part of an introduction to a proposed Oxford History of Legal Science, of which Professor Kantorowicz was the chief designer. His death in 1940 put an end to the project. *The Definition of Law* was edited and otherwise prepared for publication by Professor A. H. Camp-

bell. In an introduction Professor A. L. Goodhart describes the project for the *History* and its abandonment at Kantorowicz's death. In a moving tribute to the dead scholar, Goodhart says, "Whether [the project] can ever be revived in the future is uncertain because it is unlikely that another editor possessed of his encyclopaedic knowledge, wide interests, and unlimited energy can be found." (p. xii)

The Definition of Law was intended, therefore, not as an abstract study in analytical jurisprudence. Its very practical function was to serve as guiding principles for a comprehensive history of the science of law. Kantorowicz meant to put his notions of fundamental legal definition into practice and to test them against the panorama of world legal history. It turns out that his definition of law is narrow, but it is easy to see that if it had not been, then the subject matter could easily have swamped even so comprehensive a mind as Kantorowicz's. Not that these considerations of expediency induced Kantorowicz to limit his conception of legal science. He was and apparently always had been in sympathy with English analytical jurisprudence. But Kantorowicz's definition of law is much broader than that of traditional analytical jurisprudence. He discarded the limitations of "command," of "sanction," and of "sovereignty." He recognized that the social matrix out of which law arises is part of the very definition of law. It would be strange if this were otherwise in a legal historian, especially one writing after half a century of sociological jurisprudence. Still it is undoubtedly an extension of the traditional habit of regarding jurisprudence as strictly an inside job. Nor does Kantorowicz hold himself to the modern institutional forms by which the business of law is done. Again, such a limitation would have been too confining for a historian.

With all this said, however, Kantorowicz is still very much the analytical jurist, and his departures from its tradition are in matters of emphasis, not principle. He defines law as "a body of social rules prescribing external conduct and considered justiciable." (p. 79)

We have said that Kantorowicz expressly rules out of the definition of law, the older analytical notion of command. Legal science, he says, deals not only with commands, but also with precepts and dogmas. For sanction and sovereignty he substitutes the very much broader notion of "prescription." By "social rules" he means to release himself from the limitations of sovereign legislation, and in the notion of "justiciable" he means to include not only the work of courts but also that of all other social institutions prescribing and enforcing rules for external behavior. He does not explicitly include the element of "force" in his definition of law but makes the idea of "prescriptions" do for that as well. It is thus evident that sociological jurisprudence, as well as Kantorowicz's vast knowledge of the history and the present state of the world's great legal systems, has worked on him to broaden the narrow confines of the notion of law as "the command of the sovereign."

In discussing the nature of definition, Kantorowicz warns his readers that he intends to shun "verbal realism," by which he means the taking of the name of a thing for the very thing itself. Definition for him is teleological. Unless one understands what he intends to do with his definitions he cannot define ade-

quately. Terms do not possess meaning independent of the use to which they are put. This does not mean that one can play fast and loose with them. It is to suggest that the test of a definition is its comparative usefulness: ". . .we must choose the most fruitful among several linguistically possible definitions of a term denoting a thing, before we can examine and demonstrate the truth of any (descriptive or analytical) assertion regarding the thing denoted." (p. 9) With quiet dogmatism Kantorowicz announces this as *The* Right Method of definition and calls it Conceptual Pragmatism. By this term he does not mean to be understood as accepting what he calls "propositional pragmatism," that is, "the sophistical, mischievous doctrine tending to identify the truth of any proposition with its usefulness for some practical purpose." (p. 90, note 8)

The style of the book is simple, direct, and forceful. From this point of view it is indeed unfortunate that his proposed History of Legal Science was never written; for if it had been, no reader would be at a loss to understand what the great legal scholar intended to say. The Introduction convinces one that with his simplified notion of what he took legal science to be, and with his incomparable scholarly equipment and personal vigor, Kantorowicz would have made an impressive addition to the world's scant store of learning on the subject of "the science of law."

Nowhere in this Introduction does Kantorowicz indicate that he has consciously chosen only a part of jurisprudence for his study, namely, the history of *legal science.* Are we to suppose that he therefore expressly passed up the philosophy of law, except as this subject touches upon legal science? If so, the proposal would almost amount to a conscious bypassing of the history of the concept of justice. This could not be his intent. And yet if he intended to treat this concept as part of the science of law, he would have to take a stand on the relationship of morality to law. And I suggest that it is fair to suppose that, for him, only positive morality as it enters into the formulation of rules and adjudication of cases involving external conduct would be appropriate to consider in a context of "science of law." To this extent he embraced the Kantian dualism between "is" and "ought" and would labor to focus attention exclusively on morality as it affected legal "existents." In this resolve (if it was his) he would be at one with the logical positivists and the traditional analytical jurists. But again, if so, Kantorowicz's analytical jurisprudence is outmoded, at least as compared with that of H. L. A. Hart, who in his inaugural address[1] as Professor of Jurisprudence at Oxford wrote very differently on the Definition of Law.

The Index of this book lists only three pages in which the term "natural law" is mentioned. The first (p. 13) is merely a passing reference. The second (p. 33) is a historical allusion. In the third (p. 35), Kantorowicz takes a critical stand toward natural law, and that only in its "radical form," in which, he says, the mistake was made of regarding law as nothing but "a body of *precepts,* viz. of justice or morality." It is impossible to suppose that a legal historian could ignore the immense body of legal materials known as "natural law," and it is therefore reasonable to believe that Kantorowicz intended to treat this vast agglomeration

1. 70 LAW QUARTERLY REVIEW 37(1954).

of legal materials as part of the general social matrix out of which arise "social rules prescribing external behavior and considered justiciable." The intent then was to conform the whole corpus of natural law doctrines to the expanded form of analytical jurisprudence which Kantorowicz espoused. It is perhaps just as well that this Procrustean task was never pursued.

It is fair to ask why Kantorowicz was so little concerned with natural law in his attempted definition of legal science, especially since, as Roscoe Pound said as early as 1911, something very like a resurrection of natural law was going on the world over. Apparently for Kantorowicz, natural law was, as we have said, only one of many elements of the social milieu out of which come "justiciable rules that prescribe external behavior." He adds it to a list which includes state-made law, judge-made law, church-made law, customary law and international law. (p. 13) All kinds of law are grist for the legal scientist's mill. And natural law is to go into the hopper with state-made law, and the rest, as just another kind of law. There is no indication that for most of the legal community "natural law" stands, in some vital way, in antithesis to state-made law; or that to many jurists it presents a profoundly different aspect from that of state-made law. Hence it is that many positivists deny any validity to natural law as "law," whereas most natural law theorists insist upon its paramountcy over the prescriptions of any form of positive human law.

If Kantorowicz had announced his definition of law not as *the* definition of law, but as *his* definition of law, no one would have the right to object. By the standards of modern formal science, one is permitted to select his definitions with an eye to the work they are to do. Formal criteria of defining, such as clarity, consistency, and nonredundancy, go not to the material character of the elements of definitions, but to their logical structure. In the nonformal aspects of definition, selection can be very broad. These aspects set the self-imposed limits of scholarly choice. Therefore, if Kantorowicz had merely asserted the scholar's freedom to limit the domain of his inquiry, it would have been perfectly proper for him to define law as "a body of social rules prescribing external conduct and considered justiciable." Indeed, any serious exercise in analytical jurisprudence, in the light of modern disregard of this important area of the law, would be welcome. But the present book was published as a self-contained though rather abbreviated treatise on the nature of legal defining and it speaks of The Right Method. It also assumes tacitly that the Science of Law covers the whole domain of jurisprudence. These assumptions are worth investigating.

To the reviewer's mind, law is a complex of two main elements — science and morality. Though amalgamated in legal practice, both elements still retain much of their original autonomy, so that an attempt to reduce one to the other leads to intolerable paradoxes. This is the element of truth in the Kantian separation of the legal "is" and "ought," or in the distinction between "fact" and "law." To be sure, a genuine scholarly attempt, such as Kantorowicz could undoubtedly be counted on to make, to reduce the mixed moral and factual elements of law to a science, is always in order. What matter if one is convinced that the attempt is "doomed to failure"? A philosopher, to be any good at all, must ride his horse to death. Therefore, if Kantorowicz had written a History of Legal

Science, one would be forced to judge it on its merits, and the author's introductory abstract definition of law would have paled into insignificance. If, then, one could have had a comparable history written from the point of view that reduced all legal phenomena to the ideal of justice, a balance might have been struck.

Lacking such antagonistic briefs, one is permitted to consider how the History of Law could be written from the point of view that is gradually emerging, namely, that law is a synthesis of science and morality, of positivism and natural law.

The reviewer believes that nothing less than a revolution in the twin methods of science and morality will suffice for this task. In his view law is a combination of minimal morality and outmoded science. It awaits a new order of methodological synthesis in which an expanded conception of science, a more nearly adequate behavioral science, will be able to handle the scientific (factual, actual) aspects of man's moral behavior, and a vigorous, rejuvenated "moral science" which will be able to reach down into the very foundations of natural science to show that every scientific act, however factual it may purport to be, is also a moral decision.

Otherwise put, as scientific methodology turns from measurement theory to theory of decision, the moral quality of every scientific "decision" (even if it is only the reading of an oscillating counter) becomes more apparent. Conversely, every moral decision rests upon an assumption of fact. This much modern pragmatism has done for us. We need scientists willing to confront moral decisions with the inadequacy of the data upon which they are based and moralists skilled enough in scientific methodology to be able to show that a nonmoral scientific choice is a contradiction in terms.

Elsewhere,[2] the reviewer has stated the matter for law in the form of postulates which assert that every legal disposition is a matter of choice and that every instance of choice involves a moral decision. This is an effort in the direction of a philosophical synthesis for the new science and the new morality which law needs in order to raise its fact-finding above the level of outmoded science and its law-giving higher than that of a minimal morality.

THOMAS A. COWAN

2. *A Postulate Set for Experimental Jurisprudence,* 18 PHILOSOPHY OF SCIENCE 1 (1951); *Postulates for Experimental Jurisprudence,* 9 RUTGERS LAW REVIEW 404 (1954).

EARLY ENGLISH LEGAL LITERATURE. Cambridge Studies in English Legal History. By T. F. T. Plucknett. New York: Cambridge University Press, 1958. Pp. viii, 120. $3.75.

In some quarters, it would seem, it is still thought that there must be a choice between jurisprudence and legal history. Some acquaintance with both is surely a necessary part of the training and equipment of an excellent lawyer today,

though any real competence in either seems difficult, if not impossible, to achieve within the already bursting limits of the highly technical law school curriculum of our times. As Plucknett observes, jurisprudence is in effect "the product of a philosopher surveying the law," and surely Maitland's belief that it would give English students "a liberal and liberating influence in their study of English law" (p. 18) was sound for the English context and is sound for the American, and there is no challenge here to Jurisprudentia's importance.

But legal history is not a deadening influence to be opposed to the liberating force of jurisprudence — unless one thinks of history only in terms of the technical treatment of a Reeves. Legal history is also a liberating influence, for it involves comparsion, "and the English lawyer who knew nothing and cared nothing for any system but his own hardly came in sight of the idea of legal history." [1]

Legal history further involves intellectual and social life: that Maitland came to his work in legal history from his early Cambridge studies in philosophy and political science is one explanation for the depth and precision of his writing in legal history.[2] There is an enormous difference between the technical work of a Reeves and the full reach of legal history of a Maitland. But to the question of Maitland's achievement and of Plucknett's view of Maitland in Chapter I of the book under review, I shall return after considering Plucknett's five lectures on the beginnings of English legal science, which I propose to take up *seriatim*.

1) *'The Early Literature of English Law.'* * — To examine the genesis and development of English legal literature demands indeed considerable breadth of approach, for no field of learning in the twelfth century can be approached in isolation, and England during this century was too intimately connected with the continent for any part of its intellectual life to be considered in isolation: "the mental atmosphere which could nourish books of systematic scholarship was no more confined to any one science than to any one country." (p. 20)

Plucknett approaches the problem of the first writers of law books in England through the aims and methods of the theologian and the canonist, and he writes cogently. Yet it is, I think, too much of a simplification to concentrate on the arrangement of authorities and omit both the function of the gloss and its importance in developing the apparatus, for the development of the Gloss to the Justinian and the Canon Law (as well as to the Bible) is an essential element in the history of thought from the eleventh through the fourteenth century, in techniques of research as in methods of teaching. For (to turn to a brilliant analytic history of the study of the Bible in the Middle Ages),

> In the middle ages both teaching and original thinking centered in texts which had been handed down from an earlier period, whether it were

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* This is the title of Ch. II in Plucknett.

1. F. W. Maitland, *Why the History of English Law is not Written* (1888). Reprinted in 1 COLLECTED PAPERS 480 (ed. by H. A. L. Fisher, 1911). Quoted by PLUCKNETT, *op. cit.* at 11.

2. "He brought to the law a mind exercised in the wide open spaces of philosophy," as Plucknett (p. 14) writes.

> an inspired text, the Bible, or a *corpus iuris,* or a classical author. Hence it was essential for teaching purposes that the text should have some standard exposition accompanying it as a gloss, for use in lectures, which should be accessible to all scholars and students, and which everyone could refer to in the certainty of being understood. We find this development both in biblical study and in Roman and canon law. All three sciences produced a *Glossa ordinaria.*[3]

But part of the task for the twelfth-century English legal writer was to gather and organize the authorities — indeed, to ascertain what the authority was — and only against such a background of both the intellectual currents and the techniques of scholarship can the situation in late eleventh- and early twelfth-century England be understood; and the earliest effort to achieve a real law-book was by the anonymous royalist cleric who wrote a collection of Anglo-Saxon laws later called *Quadripartitus.*[4] (1114-18) One must praise the soundness with which this book of then contemporary law is put into a full and meaningful context. Instead of Stubbs' judgment of the book as "an undigested mass of detail" [5] — an opinion still widely held — we can now see "that the author studied his authorities thoroughly, translating Cnut [and Cnut first as "the most recent and authoritative statement of Anglo-Saxon law"] and the rest of the laws from the difficult Anglo-Saxon into his own brand of Latin in *Quadripartitus I.*" We see too that he searched "for authority into the remote and Continental past," using the outmoded rhetorical organization[6] of Isidore's *Etymologiae* and "such unusual sources as the Salic and Ripuarian laws"; he fared better when he turned to the *Decretum* and *Panormia* of Ivo of Chartres, showing that he chose "the most advanced of his recent contemporaries." Perhaps his greatest achievement,

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3. BERYL SMALLEY, THE STUDY OF THE BIBLE IN THE MIDDLE AGES 52 (2nd ed., Oxford: Blackwell, 1952). I do not pretend to give an adequate summary of her rich contribution to this problem, a contribution which rests upon "the interplay of ideas, institutions and character"; see esp. her Introduction, pp. xi-xxii, and further, my review in 38 CATHOLIC HISTORICAL REVIEW 442 (1953). Although there is a mass of modern scholarship on the glossators, no comprehensive history of the juristic gloss has yet been written; for an introduction one may turn to Hermann Kantorowicz's *Note on the Development of the Gloss to the Justinian and the Canon Law,* in SMALLEY, *op. cit.* at 52-6.

4. The later fortunes of *Quadripartitus* are rather curious, and not, of course, indicated by Plucknett in this survey. Kenneth Sisam's claim that Lambarde's texts of 1 Athelstan and Athelstan's Charitable Ordinance were translations into an Elizabethan Anglo-Saxon from the medieval Latin was contested by F. Liebermann, the great editor of Anglo-Saxon laws, but Sisam seems to have won his case. The laws are printed by Liebermann in *Gesetze der Angelsachsen* (Halle, 1903-1916) and by F. L. Attenborough, *The Laws of the Earliest English Kings* (Cambridge, 1922). For Sisam's argument, see *The Authenticity of Certain Texts in Lambarde's* Archaionomia *1568,* 18 MODERN LANGUAGE REVIEW 98 ff. (1923), and *ibid.,* vol. 20 (1925), reprinted in SISAM, STUDIES IN THE HISTORY OF OLD ENGLISH LITERATURE (Oxford, 1953); Liebermann contested in *Ist Lambardes Text der Gesetze Aethelstans neuzeitliche Fälschung?,* 25 BEIBLATT ZUR ANGLIA (1924). See also my *Early Anglo-Saxon Studies and Legal Scholarship in the Renaissance,* 5 STUDIES IN THE RENAISSANCE 102, 106 (New York, 1958).

5. WILLIAM STUBBS, LECTURES ON EARLY ENGLISH HISTORY 143 (ed. by A. Hassall, London, 1906).

6. The history of the kinship of rhetoric and law is an ancient one, and honorable; I have sketched some aspects of it in England in *Rhetoric and Law in Sixteenth-Century England,* 50 STUDIES IN PHILOLOGY 110 (1953).

in fact, was to have thought that a law-book ought to be written in England, "no small exploit in 1118." (pp. 29-30)

But with Glanvill (1187-9) we are on higher ground:

> we are, for the first time in the history of our law, presented with a law-book, written by a lawyer, framed upon principles derived from the law, and not from those of any other science. (p. 36)

All of this is, perhaps, not strikingly new, though the clarity with which Plucknett perceives and presents the historical context of these works is exemplary, and by virtue of this presentation he illuminates each work. He enables the modern student to see that the achievement of the author of *Quadripartitus* and *Leges Henrici Primi* and of Glanvill parallels the adventures of Englishmen in the great achievements being made in theology and philosophy, and to a lesser degree in canon and civil law. Like Gratian, Glanvill built his book around authorities, "but his authorities were not canons nor decretals nor their English equivalents, but writs." (p. 40) It was indeed a momentous choice which fixed the conviction of subsequent lawyers that writs were the backbone of English law, and it marked a cleavage between English and continental law.

2) *'Bracton and His Work'* and *'Bractonian Problems.'**— For the study of any medieval text today, manuscript study is crucial; no scholar can long remain ignorant of or indifferent to manuscript problems.[7] Hence Plucknett begins his survey of Bracton with an excursus into textual criticism, for upon the brilliant textual work of the late Hermann Kantorowicz rests a still contested interpretation of Bracton as "a consummate Romanist, using Roman terminology with surprising skill, improving upon its definitions, correcting Justinian, seeing points that Mommsen missed, and systematizing better than his master Azo." [8] (p. 53) Yet Bracton's legal career, Kantorowicz believed, was not that of a civilian or a canonist but that of a common lawyer. Working from native writs and plea rolls (and not wanting to romanize English law) Bracton

> deliberately separated the law of things from the law of actions and he took that to mean the separation of substantive law from procedural law. The magnitude of that achievement is the measure of Bracton's contribution to English legal service. . . . (p. 60)

But his book (c. 1259), Plucknett declares, does not split into two parts:

> With sure judgment, he gave us our substantive principles, but his cross-

* These are the titles of Ch. III and IV respectively, in Plucknett.

7. Thus R. W. Southern's recent *Note on the Text of "Glanvill,"* 55 ENGLISH HISTORICAL REVIEW 81 (1950), called into question G. E. Woodbine's edition of 1932 on the grounds that too little attention had been paid to one of the manuscript traditions. This has led to the preparation of a new edition of Glanvill by R. W. Southern and G. D. G. Hall.

8. Maitland, sometimes offered as leader of the opposition to such a view, made it clear in his BRACTON AND AZO, 8 SELDEN SOCIETY 41 ff., that "the text of Bracton presented considerable difficulties which made him cautious in dealing with the question of Bracton's Romanism. The theory of a Redactor would not have come as a surprise to him." PLUCKNETT, *op. cit.* at 56.

> references make it clear that, to him, cases illustrated not only procedural but substantive law as well. His book therefore suffers no dichotomy but is a well-knit whole. The first foreshadows all our textbooks; the second part, all our books of practice. (p. 60)

Bractonian problems, it might be said, begin with the manuscript page; and though Maitland read the manuscripts of Bracton, Kantorowicz endeavored to get to the true text of Bracton concealed beneath the bewildering confusions contained in those manuscripts.

Even the modern reader interested only generally in Bracton should be aware of the special problems for the student of Bracton — he must "decide whether the book he reads is by the master, or by his bungling thirteenth-century editor" (p. 66) — and first perhaps among these problems is that of the *addiciones,* passages written at a later date than the main text and then incorporated into the text. After presenting most objectively the openness of the question, Plucknett offers a most appealing modification of Kantorowicz's theory of a Redactor of Bracton: the Redactor was Bracton's clerk or secretary, who travelled constantly about the country with the immensely hard-working Bracton. Written intermittently and continually interrupted, the book was "merely the roughest preliminary draft"; "in all essentials it was merely a working draft," however, and the author himself "continued to make *addiciones* to it," and copies got into circulation before it was finished — even before the important chapter on dower was written. Hence these working drafts "became the archetype of all the surviving manuscripts, with all the resulting complications which have worried editors from the sixteenth century until today." [9] (pp. 72-73)

Enormous, and costly, as it was, Bracton's book was deeply studied, annotated and commented upon, and widely copied in the next two generations. (p. 77) Some portions were separated and incorporated with other tracts; manuscripts show attempts both to shorten the work and to bring it up to date. The two tracts known as Hengham *Magna* and Hengham *Parva* — works of 50 and 20 pages, respectively, apparently students' books of the last third of the thirteenth century and both very popular — are examples of such efforts. Plucknett's survey of these, and of *Fleta,* Thornton's *Summa de Legibus,* and 'Britton,' is necessarily brief, yet it is readable and offers a sharply focused perspective.[10]

Clearly, 'Britton' is the end of an age. The "massive, learned cosmopolitan Bracton" has been abridged, excerpted and vulgarized: "it is the end of a tradition which runs from *Quadripartitus* and the *Leges Henrici Primi* through Glanvill to Bracton — a tradition rooted in general scientific method as applied

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9. Plucknett is not here concerned with political theories in Bracton. There has been increasing interest in Bracton among historians of political thought, especially in the notion of 'Bracton on Kingship' and the "seemingly self-contradictory concept of a kingship at once above and below the law": a brilliant contribution was made by C. H. McIlwain in Constitutionalism: Ancient and Modern 67 ff. (2nd ed., Ithaca, N. Y., 1947), clarifying apparent contradictions; for a magisterial discussion, together with relevant scholarship, see E. H. Kantorowicz, The King's Two Bodies 143 ff. (Princeton, 1957), and my forthcoming review in The Review of Politics (1959).

10. One must add Dr. Kantorowicz's recent paper on *The Prologue to* Fleta *and the School of Petrus de Vinea,* 32 Speculum 231 (1957), which establishes some important connections.

by the Middle Ages to all the major fields of study, a tradition in all its essentials academic." (pp. 60, 79)

3) *'Fresh Beginnings.'* * — Among other things the thirteenth century witnessed a growing preference for French over Latin: Britton alone of the epitomes of Bracton had been in French, now Glanvill is finally put into French and brought up to date. (p. 81) Towards the end of Edward II's reign the statutes, at first in Latin, generally become French. French treatises on law begin after 1260, reports of cases in law in the 1270's, and the French translation of Glanvill dates from 1265: the change of language clearly marks a revolution, one already under way during the last years of Bracton's own lifetime,[11] and that revolution has important implications. First, these changes suggest that there is a new class of lettered laymen who, though they may understand Latin, are fluent only in French; and second, judges and serjeants are becoming lay, and rapidly so, during the reign of Edward I, "and that implies that for a generation there had been in training a body of lay lawyers." (p. 82)

The investigation of the non-Bractonian literature of the later thirteenth century is, as Plucknett remarks, a difficult but fascinating task, for some of the examples in print have been edited only summarily, and many manuscripts in the university and Inns of Court libraries are not adequately catalogued or easily identified. *Brevia Placitata* — one of the earliest (c. 1260) and one of the most significant of this type of legal literature — has recently been well edited by G. J. Turner, and of this important 'formula book' Plucknett writes:

> The breadth and depth of Bracton's thought about law is utterly rejected by this unknown writer who took up his pen at the moment when Bracton abandoned his. If Bracton was Latin, Roman and clerical, this author was French, insular and lay. Where Bracton strove to emulate the contemporary Italian masters, this man gave us the primitive, indeed, the archaic, in legal literature. I have entitled this lecture 'Fresh Beginnings' and in truth *Brevia Placitata* takes us back to the antique when it gives us forms, and nothing but forms. (p. 84)

Others followed. Plucknett singles out the much-neglected *Fet Asaver,* and avers that the shortcomings of Woodbine's edition of 1910 — unsound text, faulty punctuation, etc., — have been responsible for the failure to recognize the quality of *Fet Asaver.* And he emphasizes the achievement of "our new legal profession": "Bracton's great merit is to have shown for the first time that English law *ought* to be studied analytically; the merit of *Fet Asaver* is to have shown for the first time how it could be *done* in purely native terms." (pp. 95-96)

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* This is the title of Ch. V in Plucknett.

11. Maitland's pioneering study of Year-Book French is still classic: Introduction to YEAR BOOK 1 & 2 EDWARD II, 1307-9 xxxiii ff. 17 SELDEN SOCIETY (1903). This famous essay was reprinted, in part, in *Cambridge History of English Literature* I, ch. 20. For a summary discussion of the whole subject of the language of the Year Books, see POLLOCK AND MAITLAND, 1 HISTORY OF ENGLISH LAW 80 ff. (1952 reprint of 2nd ed. 1898). I have endeavored to bring that account up to date and to make some adjustments in the light of present scholarship in a forthcoming paper, *Law-French,* KENTUCKY FOREIGN LANGUAGE QUARTERLY (1959).

4) *'Cases and Year Books.'* * — Plucknett begins with a stimulating paralleling of the law of Normandy with the English; few commentators and historians have been competent to make a comparative survey of this phase and aspect of English common law. Certain features and circumstances in English law-reporting — the tendency to cast the report into dialogue form, the indifference to the decision, and the prominence of the serjeants — lead to the conclusion that "our English reporters are not primarily looking for 'authority,' still less for substantive law. . . . Their great preoccupation, I believe, was pleading and procedure." [12] Plucknett's views on the origin of the Year Books are challenging and fruitful, as is his discussion of the reasons behind the printing of the Year Books and of the role of the practicing lawyer-teachers. Tough the law certainly was, Plucknett writes in his final paragraph (which looks forward to a badly-neglected field of legal study, the early Tudor, and which will turn us back to Plucknett's introductory essay on Maitland):

> and Maitland divined the secret when he pointed to the teachers as the explanation. Professor Thorne's work has already thrown much new light upon the Inns of Court, their Readers, their moots, and their readings. It was these picked men whose oral lectures replaced the written book, reminding us of the archaic times when literature was handed on by the spoken word before the use of writing. [What is paradoxical is that these Readings should have flowered after the introduction of printing into England.] By the end of the century they get written down, and there are clear signs that the Readers, if no one else, had been looking at the Year Books. They were indeed a slender thread, but it held. It was the Year Books, in this most obscure epoch, which maintained the continuity of English law. There was indeed the sun of Bracton and the moon of Littleton to illuminate the scene each in his season, but for most of the time English lawyers walked by the light of faint anonymous stars. Of science there was very little (and I have been at some pains to lament it rather loudly). Nevertheless, English law plodded on, with its eyes stubbornly turned away from the glittering pages of the Digest to pursue its own course — insular, lay, and French (what French!). Altogether an odd story, which may well arouse our interest; indeed, it fascinated Maitland. (p. 114)

5) *'Maitland's View of Law and History.'** — This volume of lectures is clearly an introductory survey, one which takes the law student back to the beginnings of legal writing in England. That it is so lively and entertaining a story is in the best tradition of Maitland's style; that it offers the highest excellence of English legal scholarship — locating the early writings in their intellectual milieu and sketching the important interactions between English law and

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* This is the title of Ch. VI in Plucknett.

* This is the title of Plucknett's concluding chapter.

12. "The whole business of pleading orally, in face of the court and with opponents ready to pounce at any moment, was an immensely skilful and recondite game, conducted with great virtuosity by the leaders of the bar, and keenly relished by all others who were sufficiently learned to understand what it was all about. After such a display, it was an anti-climax to think of a decision. . . ." PLUCKNETT, *op. cit.* at 103. See also the author's *Rhetoric and Law in Sixteenth-Century England, loc. cit. supra,* note 6 at 117-18.

the Roman and canon laws, as well as certain related disciplines — is perhaps the ultimate tribute to the achievement of Maitland. For it was under Maitland's guidance that the history of law in England was transformed from a sterile, technical, and obscure study, one which had no relationship to historical methods in other fields, into a great discipline and a great intellectual adventure.

In Chapter I (reprinted from the *Law Quarterly Review*), Plucknett gives a splendid notion of Maitland's enormous range, and superbly enables us to catch a glimpse of the man. In one important aspect of his discussion he refutes the legend of Vinogradoff's influence, the story that Maitland "first learned from the lips of a foreigner the matchless riches of the Public Record Office": for (as Plucknett clearly establishes) Maitland had been working on plea rolls well before his "decisive meeting" with Vinogradoff. But perhaps best of all is Plucknett's elucidation of Maitland's curiously disconcerting inaugural lecture as Downing Professor on "Why the history of English law is not written" (1888) and his clear establishment of the fact that Maitland's later career "must be read as the gradual abandonment of the propositions laid down in 1888." And at the end "Maitland had so enlarged the bounds of legal history that the separatism of his inaugural had completely vanished. He had finally established the fact that legal history is not law, but history, and that all history is one." (p. 16) Thus, detesting the insularity of nineteenth-century law (as did Holmes, at Harvard Law School after the Civil War), "he joined forces with Brunner, Stubbs, Holmes, Thayer, Ames, Vinogradoff, Viollet, Liebermann, Gierke, and how many others, in maintaining that English legal history can only be studied in comparison with that of other systems: 'history involves comparison'. . ." (p. 17) But Maitland's mission was dual: first to separate legal history from law, and second "to make certain that history should not be 'the handmaid of dogma.'"

All aspects of Maitland's coupling of jurisprudence with legal history have not been explored by Plucknett in his introductory essay (though some others have borne good fruit in the studies that follow). Much of the best of Maitland's work is a constant bringing of legal history to bear on problems of jurisprudence, a steady illumination of problems of legal history by a philosophic mind surveying the law — we may cite his brilliant pages on the metaphysics of corporate personality: witness the justly celebrated studies on 'The Crown as Corporation' and 'The Corporation Sole.'[13] With Maitland in mind, then, one might indeed adapt Bosanquet's famous dictum on aesthetics and declare that jurisprudential thinking has always been most vital when most historical; but that is a contention which goes beyond the limits of our present consideration.

R. J. SCHOECK

13. SELECTED ESSAYS 104-26, and *id.* at 73-103 (Cambridge, 1936).

LEÇONS D'HISTOIRE DE LA PHILOSOPHIE DU DROIT. By Michel Villey. Paris: Dalloz, 1957. Pp. 442. Fs. 1975.

The work of Michel Villey comprises three sections. The first is a short and brilliant sketch of the history of legal philosophy from antiquity to the present. (pp. 11-120) The second, which presents a dozen detailed studies of particular topics, reveals the background of long and scholarly research which the author brings to the vast panorama presented in the first section. The short final section need not detain us as it is devoted to general reflections on history.

One notes that M. Villey writes as a historian, and that it is through the study of history that he approaches the philosophy of law. He maintains that "the science of law is a historical discipline." By this he means that a juridical system is a long time building and hence is not truly intelligible unless one has traced through the centuries the formation of its operative principles and concepts. But legal history is not simply a conglomeration of learned studies of the rules governing dowry in the thirteenth century or the forms of testamentary dispositions in the time of the Twelve Tables. Nor is it simply a general description of the institutions of public and private law. Even the reconstruction of the juridical systems as they worked out in actual practice at different periods of time does not exhaust its scope. "The key to legal history is the history of philosophy." It is the philosophers, the great philosophers, who have laid down the dominant themes of legal development, the guiding principles which give to each legal system its unique quality. To be sure, legislators and jurists are not in the habit of consulting metaphysicians, but they move in a culture which is continually being leavened with metaphysical speculations. Some of them, moreover, read a certain amount of philosophy. These introduce into the law new ideas which enrich the common doctrine for a long time thereafter.

Thus when Villey speaks of the philosophy of law, what he has in mind is not primarily the kind of "metajuridical" reflections which philosophically minded jurists pursue, using their art and science as a starting point — the kind of work that is done by a Dabin in Belgium, a Roubier or a Batiffol in France, a Del Vecchio in Italy, a Coing or a Fechner in Germany. His primary concern is with general philosophy, the domain of such men as Plato, Aristotle, St. Thomas, Kant, and Hegel, or with political and social philosophy where such names as Hobbes, Locke, Rosseau, Comte, and Marx are added to those of Plato and Aristotle. These great thinkers have had their influence in every intellectual sphere, that of law not excepted.

Villey takes great pains in tracing the ways in which various streams came to meet in the different legal systems which confront the historian (and one might add, the student of comparative law).

In Roman law he observes the impact of Greek philosophy, with its idea of Greek justice — a justice expressed in terms of equality (arithmetical or geometrical) and, hence, an objective justice which presupposes the existence of an order or harmony in nature, and which forms the basis for distinguishing morality from law.

This influence seems to him stronger and more lasting than that of Christian

thought. To be sure, in an early period (from Constantine to the thirteenth century) there was established "a law of religious origin comparable in this regard to the modern Moslem law." With the advent of St. Thomas the renewal of Aristotelian thought based on the natural order of things set in motion a progressive secularization of the law — which, incidentally, becomes in this way more faithful to the spirit of the Gospel.

Since the Renaissance, modern thought has transformed profoundly the conception of natural law. No longer are we to understand by it an objective law, a relation subsisting among things and imposed upon us from without. We must see it rather as a law of personal rights ("subjective law"), a manifestation of a primal liberty which is to be safeguarded either through the institutions of society or despite them, these institutions being in either event of purely human origin. Here we see coming to light various basic lines of approach which still figure largely in the thinking of modern jurists. Among these are the doctrine of positivism ("so called because it recognizes as true law only the positive law emanating from the legislative will"), and especially the concept of personal rights, with its subsidiary notions of legal capacity, law of persons, and law of things, and the related theories of property and contract.

It is this idea of personal rights that furnishes the theme for three of the most interesting of the topical studies in this volume. In opposition to a widely held opinion, Villey maintains that the Romans never developed any real conception of subjective law, their *jura* and even their *proprietas* being primarily concerned with the ordering of society. This is no accident. The foremost task set by the Greek philosophy which formed their inspiration was that of establishing for each thing its particular place in the universal order.

It is from another philosophy that we get our first clear analyses of personal rights. This is the philosophy which at the end of the Middle Ages gives an indication of what is to come, the philosophy of men like Duns Scotus and Occam, who, long before Hobbes and Gassendi, ridiculed "the world of quiddities, essences and final causes" envisioned in Scholastic philosophy. These men no longer believed in the immutable order which had been supposed to govern the world; in the social order which confronted them they could see no more than the arbitrary dispositions of human judgment. Where, then, were they to find the basis of a natural law if not in the "free and separate individuals" who alone were immune to the work of destructive criticism? Thus Occam, the first it seems, came to analyze law powerfully and clearly as "a liberty, a power, a *potestas.*"

We have digressed somewhat in order to afford an insight into the contribution the author makes with his own researches. It remains for us to conclude our review of the general schema of history which he puts before us.

This brings us to the nineteenth century with its cult of science and its new patterns of juridical thought such as economism, historicism, sociologism. These various scientifically oriented "isms" seem already dated. While they have broadened our perspectives, they have also to a certain extent sapped the foundations of law by a precipitous transition from "is" to "ought."

In analyzing the movements of the twentieth century, Villey practices the reserve of the historian who knows that he is not at a sufficient remove from his

subject. His diffidence is our loss. We would have liked to learn what his own position is. But in presenting the various currents of present-day juridical thinking, he does no more than give us the impression that his preferences lie in the direction of phenomenological studies and existentialist thought.

Personally, we would gladly join him in these preferences. Doubtless, however, we would do so in a spirit rather different from his. Making the philosophy of law the object of a purely historical study as he does, one runs the risk of subjecting to a principle of relativism a field which should concern itself above all with uncovering the bedrock of absolute truth. To be sure, it is vital to any kind of legal learning to understand the ties linking the major philosophical and religious choices open to man with the legal systems to be found in various times and places. But it is not enough to set forth and explain these systems. Above all, we must see what lies at the root of all of them, however they have grown up — their common purpose of ordering human relations. It is at this point that the idea of a natural order with binding force suggests itself readily to the mind. But Villey is too much the historian to put much faith in the modern attempts to restore the doctrine of natural law. "We must relinquish the hope of finding in 'nature' immutable, concrete, consistent principles of law. What we describe as nature, human nature, the nature of things, is most often no more than a product of civilization, the effect of human choice within a historical context." (p. 99)

We ourselves are well aware that the old term "nature" is, for many, a pitfall. Villey, indeed, may perhaps be counted among its victims; for he does not conceal his sympathy for the works of Coing and Fechner, works in which it is not difficult to recognize, in rejuvenated form, the familiar features of the traditional natural law.

RENÉ THÉRY

(Translated by JEANNE RODES)

CORRIGENDA

[Because of a misunderstanding on the part of the staff of the NATURAL LAW FORUM, certain of the editorial changes made in Professor Arnold Brecht's review of Erik Wolf's *Das Problem der Naturrechtslehre, Versuch einer Orientierung,* 3 NATURAL LAW FORUM 192 (1958), have distorted the original meaning Professor Brecht wished to convey. We are happy to publish the following corrections prepared by Professor Brecht.—Ed.]

Professor Wolf, at the end of his book, enumerates four approaches to the problem of natural law: the ontological, the ethical, the logical, and the metaphysical. My review called attention to the fact that Wolf explicitly declares all four, including the metaphysical approach, to be necessary in order to establish and justify natural law. In its edited version, the review then goes on to say that this view of Wolf's "enhances greatly the importance of the theory of natural law." But what I had actually written was rather the opposite, namely, that Wolf's statement was "an admission of the greatest importance for the theory of natural law," not that it enhanced the importance of that theory. The point I wanted to make was that Wolf's admission implied a rejection of the secular theory that moral laws can be derived from nature irrespective of whether or not divine forces are operative within nature. The importance of this rejection for the natural law controversy should be clear. If the theory of a moral natural law presupposes divine forces, then its acceptance depends logically on the previous or simultaneous acceptance of divinity. It is then illogical to teach that the existence of a moral natural law can be scientifically verified but that the existence of divine forces cannot, although it is not illogical — even in the absence of scientific verification — to *believe* in both divine will and its expression in a moral law of nature. This corresponds to my own views in this matter.

Second, in the context of scientific verifiability I distinguished between knowledge that is intersubjectively "transmissible *qua* knowledge," and knowledge, real or putative, that is not so transmissible. The term "transmissible" has been editorially changed to "communicable." This is in conflict with my well-considered use of terms. There is no doubt that metaphysical knowledge is "communicable" in the sense of "relatable"; but it is doubtful and controversial whether such knowledge, real or putative, is scientifically "transmissible *qua* knowledge." Having introduced this distinction of terms in several of my former articles and elaborated on it in my book *Political Theory — The Foundations of Twentieth-Century Political Thought,* a full-length review of natural law doctrines just published by Princeton University Press (603 pp.), I wish to prevent confusion in stating here that the term used in my review of Wolf's book was "transmissible," and not "communicable."

Finally, I did not write "We must postulate some 'basic norm,'" as it was printed (p. 197), but I wrote that Kelsen had said so. My own opinions deviate from Kelsen's in this point, as explained more thoroughly in the aforementioned book.

ARNOLD BRECHT