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Books Reviewed

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BOOKS REVIEWED

PERSONAL KNOWLEDGE. By Michael Polanyi. Chicago: University of Chicago Press, 1958. Pp. xiv, 428. $6.75.

Michael Polanyi, scientist and philosopher, has written a remarkable volume to argue the proposition that all knowledge is "personal." He says that the purpose of his book is "to show that complete objectivity as usually attributed to the exact sciences is a delusion and is in fact a false ideal." (p. 18) In arguing thus, he proposes to move "towards a post-critical philosophy" in this "enquiry into the nature and justification of scientific knowledge"[1] in particular and of knowledge in general. Polanyi regards knowing "as an active comprehension of the things known, an action that requires skill." In order to achieve such active comprehension, whether theoretical or practical, "clues or tools" have to be employed, and they, he says, are "things used as such and not observed in themselves." He sees these clues and tools as extensions of the body, which change the comprehender's being. "Acts of comprehension are to this extent irreversible, and also non-critical." (p. vii) The reason, he says, is that "we cannot possess any fixed framework within which the re-shaping of our hitherto fixed framework could be critically tested." (*ibid.*) These statements indicate what Polanyi means by saying that knowledge is personal; there is a "personal participation of the knower in all acts of understanding." (*ibid.*) Statements of this sort are familiar enough in the social sciences and jurisprudence, although they have at times been challenged by the protagonists of certain methods, quantitative, positivist and the like, who desired to mold the social sciences in the image of what they conceived to be the essence of natural science. For those who oppose such notions it is of course exciting to hear a scientist challenge this image as false and misleading.

How does he go about his task? He rejects at the outset the notion of "subjectivism." The knowledge which science, all science, makes available to the knower is *more* objective than the subjective opining of less informed persons. What is the meaning of "objectivity" when it is thus placed into the comparative context of more or less? That is the first task to which Polanyi addresses himself; but before it is retraced, it may be well to indicate the general line of his treatment. In a first part, he discusses "the art of knowing" under four headings — "objectivity," "probability," "order," and "skills." In a second part, he explores what he calls "the tacit component," which consists of "articulation," "intellectual passions," and "conviviality." This leads, as "conviviality" con-

1. These are subtitles of PERSONAL KNOWLEDGE title page & vii. References to this volume will be given in parentheses without title; those to THE STUDY OF MAN (1959) will be preceded by SM; occasional references to THE LOGIC OF LIBERTY — REFLECTIONS AND REJOINDERS (Chicago U. Press, 1951) will be preceded by LL. It may be worth mentioning that Polanyi was enabled by his university (Manchester, England) to devote nine years to the completion of this work, unencumbered by teaching duties.

cludes with "post-Marxian liberalism," to the third part, in which "the justification of personal knowledge" is offered in terms of "the logic of affirmation" (ch. 8), "the critique of doubt" (ch. 9), and "commitment." (ch. 10) Ontological issues are finally explored, in Part Four, by considering "the logic of achievement" (ch. 11), "knowing life" (ch. 12), and "the rise of man." (ch. 13) Ultra-biology includes the noosphere.[2] "This is the point at which the theory of evolution finally bursts through the bounds of natural science and becomes entirely an affirmation of man's ultimate aims." (p. 404) The noosphere consists of that which we consider true and right. In its service, we employ our freedom; and a free society may therefore be defined as "a fellowship fostering truth and respecting the right." As a true liberal, Polanyi adds that this sphere "comprises everything in which we may be totally mistaken." (p. 404) All centers of living being strive for this ultimate point of liberation, but man alone as far as we know has achieved it. And he adds, as his last thought, that "that is also, I believe, how a Christian is placed when worshipping God." (p. 405) Leaving theology aside, how does Polanyi arrive at this conclusion?

"Understanding ourselves" calls for the recognition of "tacit" as well as "explicit" knowledge. "We always know tacitly that we are holding our explicit knowledge to be true." The participation of man in the shaping of his knowledge is thus inescapable, and while it impairs its objectivity, it does not invalidate it. (SM 12-13) Exploring the ways in which knowledge is acquired and showing that "fundamental novelty can be discovered only by the same tacit powers which rats use in learning a maze" (SM 18), he asserts that all mental operations of understanding "consist in comprehending experience, i.e., in making sense of it." This sort of insight leads to the recognition of the limitations in "Laplacean universal mechanics" which "induces the teaching that material welfare and the establishment of an unlimited power for imposing the conditions of material welfare are the supreme good." (p. 142; SM 48-49)

The "tacit component" of knowledge constitutes the subject of the whole of Part Two of *Personal Knowledge*. It is explored in three chapters, dealing with articulation, intellectual passions, and conviviality. The chapter on articulation contains Polanyi's theory of language. This is, as everybody knows, one of the hotly contested fields of contemporary philosophical interest and has been for some time. He starts from the now well-established fact that man's intellectual superiority over animals is almost entirely due to the use of language.[3] He proceeds to show that all linguistic symbolization involves a commitment to primary experience which remains inarticulate. From this follows a consequence, namely, that increasing formalization and symbolic manipulation imply decreasing contact with experience. "There is a corresponding variation in the tacit coefficient of speech. In order to describe experience move fully language must be less

2. A term coined by P. Teilhard de Chardin, The Phenomenon of Man (1959). Cf. esp. pp. 180-211. See also SM 60.

3. Polanyi himself states, 77, n, that he is *not* engaged in "constructing still another theory of the origin of language," or arguing that language is either "expressive," "evocative" or "representative," but that he is taking off from what are generally agreed by linguistic theorists to be the "three main kinds of utterances, namely: (1) expressions of feeling, (2) appeals to other persons, (3) statements of facts." (p. 77) His discussion is restricted, however, to the representative function of language.

precise." (p. 86) The more there is of this imprecision, the greater must be the powers of "inarticulate judgment." Though Polanyi does not say so in this context, such a consequence is most pronounced in the field of social and political inquiry; here as a result "judgment" is most important. These matters are more fully explored in the chapter on conviviality.

At this point, Polanyi undertakes to analyze the relations of thought and speech. To start with, he insists, in opposition to the logical positivists, that "nothing that we know can be said precisely . . . " (p. 87-88) Therefore there exists an "ineffable" domain of knowledge. "[A]rticulation always remains incomplete . . . . but must continue to rely on such mute acts of intelligence as we once had in common with chimpanzees of our own age." (p. 70) This inarticulateness does not prevent intelligence from functioning; indeed much learning operates within this sphere. Recent experiments have shown that even a one-celled animal does learn, but only in the sense of trick learning, which Polanyi distinguishes from sign learning and the more specific realm of intelligence which involves "a *true understanding of a situation which had been open to inspection* . . . " (p. 74; cf. also 328 ff.) With others, Polanyi would call this last form "latent learning," but it seems to me that "pattern learning" would be a more expressive term for this kind of learning; for it is exemplified by the behavior of a rat which having become acquainted with the pattern of a maze will choose the next shortest route to a goal, once the shortest route has been closed. At this point, the inventive or innovative potentialities become apparent: when "heuristic" acts are discovered, trick learning is at work; when sign learning, observation comes to the fore. "Latent" ("pattern") learning, on the other hand, involves an act of interpretation. Within this framework, language theory, based upon the three kinds of utterances already mentioned, rests upon the recognition that "language is primarily and always interpersonal and in some degree impassioned. . . " (p. 77) The operational principles of language are two: one controlling the process of linguistic representation, and the other the operation of symbols. Passing over the "demonstration" of these principles, we note that in Polanyi's view "so long as we feel that our language classifies things well, we remain satisfied that it is right and we continue to accept the theory of the universe implied in our language as true." (p. 80; SM 82)

This theory involves a commitment; the indeterminacy involved in our formal knowledge "must be resolved by the observer on the ground of unspecifiable criteria." (p. 81) If the two principles of language, representation and symbol operation, are used in classifying the sciences, in terms of the relative importance of the first and the second principle, we find the following sequence: (1) the descriptive sciences, (2) the exact sciences, (3) the deductive sciences. "It is a sequence of increasing formalization and symbolic manipulation, combined with *decreasing contact with experience.*" (p. 86, ital. added) It is not easy to place the social sciences within this classification, as most of them contain some elements of each of the three groups. The problem of the degree to which the tacit participates in the process of articulation is quite varied here. But before it can be resolved, three characteristic areas must first be examined: (1) the ineffable domain, (2) the co-extensive domain, and (3) the domain of sophistication.

The first does not refer to mystic experience, but to "connoisseurship as the art of knowing and to skills as the art of doing . . . " (p. 88; cf. also pp. 54-55) Learning in these fields is a matter of becoming acquainted with practical examples: "the relationship of the particulars jointly forming a whole may be ineffable, even though all the particulars are explicitly specifiable." (*ibid.*) It is exemplified in topographic knowledge, such as a guide or a surgeon possesses. This ineffable domain of skillful knowing is similar in its inarticulateness to the knowledge possessed by animals and infants. "What I understand in this manner has a meaning for me, and it has this meaning in itself . . . " Polanyi calls it existential meaning. (p. 90, p. 58) It is crucial for Polanyi's entire approach that he thinks that "to assert that I have knowledge which is ineffable is not to deny that I can speak of it, but only that I can speak of it *adequately* . . . " (p. 91, ital. added) Polanyi in this connection stresses the importance between subsidiary and focal knowledge. This leads to the second area, the co-extensive domain. "Symbols can serve as instruments of meaning only by being subsidiarily known while fixing our focal attention on their meaning." (SM 30; cf. also 92ff. in *Personal Knowledge*) "[T]he meaning of a text resides in a focal comprehension of all the relevant instrumentally known particulars . . . This is what we mean by saying that we *read* a text . . . " (p. 92)

The domain of sophistication, finally, is "formed by *not fully understood* symbolic operations," which may be either "fumbling" or "pioneering." (p. 93) Polanyi observes that "the gap between the tacit and the articulate tends to produce everywhere a cleavage between sound common sense and dubious sophistication . . . " (p. 94) and "thus to speak a language is to commit ourselves to the double indeterminacy . . . " because "three things will have to be borne in mind: the *text*, the *conception* suggested by it, and the *experience* on which this may bear." (p. 95) There is much tacit assent which Polanyi explores with skill in terms of Gestalt psychology to which, in his view, we owe much in the way of evidence for showing "that perception is a comprehension of clues in terms of a whole." (p. 97; pp. 55ff.) He asserts a parallel between perception and drive satisfaction, and declares that "if perception prefigures all our knowing of things, drive satisfaction prefigures all practical skills, and the two are always interwoven." (p. 99)

At this point, Polanyi feels ready to begin to recognize "the nature of the tacit faculty" which he thinks in the last analysis accounts "for all the increase in knowledge achieved by articulation." (p. 100) All knowledge, even when acquired verbally, has a "latent" character; that is to say, it is the knowledge of patterns or designs — or so it seems to me, and the words we use to designate it are imperfect symbols for these patterns. Polanyi cites the great literary scholar Vossler here:

> The true artists of speech remain always conscious of the metaphorical character of language. They go on correcting and supplementing one metaphor by another, allowing their words to contradict each other and attending only to the unity and certainty of their thought.[4]

4. K. Vossler, Positivismus und Idealismus in der Sprachwissenschaft 25-6 (1904).

While this is true enough for the artistry of literary expression, it is a dangerous principle in scientific work, and the unhappy results of it are available in the writings of jurists and political theorists, e.g., Hobbes and Rousseau. But it has relevance to Polanyi's major objective. In a fine section on "the educated mind" he speaks in true humanist fashion of the rich potentialities of true education and knowledge. His remarks culminate in the striking sentence: "the capacity continually to enrich and enliven its own conceptual framework by assimilating new experience is the mark of an intelligent personality." (p. 103) This leads Polanyi into the sphere of responsibility; personal knowledge is a "responsible decision of the knower" (SM 43), and language has to be reinterpreted continually in a process of assimilation and adaptation. (p. 105 & n. 2) No two situations, no two experiences are ever wholly alike, and our efforts at coping with them involve continual "conceptual decisions." "To learn a language or to modify its meaning is a tacit, irreversible, heuristic feat; it is a transformation of our intellectual life, originating in our own desire for greater clarity and coherence, and yet sustained by the hope of coming by it into closer touch with reality." (p. 106)

For Polanyi, whether the anticipatory framework to a new experience is conceptual, perceptual, or appetitive, any modification is "an irreversible heuristic act." (p. 106) Such adaptation and modification proceeds on three levels. The first is that of seeking greater clarity for confused notions elicited by verbal symbols with uncertain referent. The second level is the clarification of scientific language by either (1) correcting the meaning or reinterpreting the text, (2) reinterpreting experience, or (3) dismissing the text as meaningless. Polanyi here states that his book is an effort of this kind: "I am attempting to resolve by conceptual reform the apparent self-contradiction entailed in believing what I might conceivably doubt." (p. 109) The third level is seen in the continuous reinterpretation of language in its everyday use: "Languages are the product of man's groping for words in the process of making new conceptual decisions . . . " and "different vocabularies for the interpretation of things divide men into groups which cannot understand each other's way of seeing things and of acting upon them." (p. 112) But this position must not be misunderstood as that of "nominalism" and its derivatives which see language merely as a set of convenient symbols.

Polanyi rightly observes that "the study of linguistic rules is used as a pseudo-substitute for the study of the things referred to in its terms." (p. 113) "Correspondingly, disagreements on the nature of things cannot be expressed as disagreements about the existing use of words." (p. 114) We should face up to the fact that we possess the faculty of recognizing real entities. Though Polanyi asserts that designations referring to these entities "form a rational vocabulary," it would seem more nearly correct to say that they *may* do so. *Definition* in this sense formalizes a meaning which is tacitly there, by reducing the informal elements and partly replacing them by a formal operation, the reference to the thing to be defined. Sharply rejecting the more extreme implications of linguistic positivism, Polanyi writes that "to study the recurrence of the word 'justice' as a mere noise in its repeated occurrence in appropriate situations is *impossible,* for only the meaningful use of the term can indicate

to us what situations we are to look at." (p. 116)[5] In this connection, Polanyi mentions the non-Euclidian geometries on the one hand, and certain conceptions in the arts on the other, as opening up new "realities," if they lead to a wide range of new and interesting ideas.

Problem solving can be fully appreciated only within this context. It is a process emerging from the "purposive tension" characteristic of all fully awake animals. But problems can be solved only when they are "seen." To recognize a problem is as much an addition to knowledge as to observe a thing, "to see a tree, or to see a mathematical proof — or a joke." (p. 120) In discussing problem solving, Polanyi makes extensive use of Köhler's famous study of the chimpanzees[6] in combination with Poincaré's analysis of "four stages of discovery: Preparation, Incubation, Illumination, Verification." (p. 121) He observes that a problem creates a strain and the discovery of its solution "great joy." "[T]rue discovery is not a strictly logical performance," (p. 123) and the obstacle to be overcome may be described as a "logical gap." This gap the discovery bridges, and all such discoveries are inventions which must be considered "unpredictable." The originality involved here is a consequence of universal biological adaptivity, and the difference between the highest and the lowest forms of life is a matter of degree: "genius makes contact with reality on an exceptionally wide range . . . " (p. 124) Here it is that Polanyi insists upon a point of crucial importance to his argument, and to effective scientific work, namely, the *risk* involved in choosing a problem: it may be insoluble or too difficult. "But to play safe may be equally wasteful." (*ibid.*) The researcher must select from a number of possible lines of inquiry the most promising problem for attack. Here, too, we find both personal involvement and the "plunge" man must take in coping with life. (cf. also pp. 365-68)

At this point of the analysis, Polanyi turns to what he calls "intellectual passions." We are told that all that went before was a "digression," caused by the scientist's involvement in the affirmations of science, which raised the question of its origin in "the very act of uttering speech." (p. 132) The intellectual passions are more central, and they are focused upon the *beauty* of science. Starting once more from the elation felt by a scientist at the moment of discovery, he quotes (p. 7; see also p. 134) Kepler's *Harmonices Mundi* (ch. 10 of Bk. V) and then states his dissent from the belief that the outbreak of such emotions does not affect the outcome of discovery:

> Passions charge objects with emotions, making them repulsive or attractive . . . The excitement of the scientist making a discovery is an *intellectual* passion, telling that something is *intellectually* precious and, more particularly, that it is *precious to science.* (p. 134)

The words of Kepler were not merely a report of personal feelings; they "asserted as a valid affirmation of science . . . the scientific interest of certain facts . . . " (p. 135)

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5. This range of questions has more recently been explored by Ernest Gellner in *Words and Things* (1959), which aroused the ire of the ordinary language philosophers to such a degree that the editor of *Mind* refused to have the book reviewed. See the letter of Lord Russell to the London *Times,* Nov. 7, 1959.

6. W. KÖHLER, THE MENTALITY OF APES (1927), esp. ch. VII.

> Scientific discovery reveals new knowledge, but the new vision . . . is not knowledge. . . . Our vision of the general nature of things is our guide for the interpretation of all future experience. Such guidance is indispensable. . . . Any process of enquiry unguided by intellectual passions would inevitably spread out into a desert of trivialities. (p. 135)

Three factors are involved in determining the relative value of a scientific discovery: (1) certainty (accuracy), (2) systematic relevance (profundity), and (3) intrinsic interest (relevancy). Happily one reads (and wishes one could shout it into the ears of some of the more rabid behaviorists): "the accuracy of an observation does not in itself make it valuable to science." (p. 136) All this shows, according to Polanyi, that the ideal of a strictly objective science must be abandoned; and the notion that (natural) science deals with recurrent events (regularities), while history (the human sciences) with unique events, is true only up to a point. "The difference between scientific and historical interest, moreover, arises, not from the uniqueness of historical events but from their interpersonal appeal . . . " (p. 137) In human society the most interesting subjects are politics and history; they are the stages of great moral decisions, and "the subjects which are most interesting in themselves do not lend themselves best to accurate observation and systematic study." (p. 139) The three factors determining scientific value are in a certain rivalry with each other, and their claims must be balanced for best results.

At this point, Polanyi critically reviews what he considers the Laplacean fallacy of a completely deterministic universe already alluded to. The ideal of absolute detachment is related to a world view of exactly determined particulars. It is at the core of the intellectual order of our time. "[I]nflexibly resolved to denature the vital facts of our existence," such a view is based upon the "sleight of hand" by which a knowledge of atomic data is substituted for a knowledge of all experience. (p. 141) Science thus conceived is a "perversion of truth" which may elicit a "sweeping reaction" such as occurred in the fourth century of our era, because the "wider intellectual disorder" which it entails is a "menace to all cultural values, including those of science." It reduces man to a collection of causally determined atoms, and this begets a peril of enormous potential: the use of "the Laplacean fallacy as a guide to human affairs." (*ibid.*) Here is the very heart and fundamental thrust of the challenge of Polanyi to most of his fellow scientists: "Applied to human affairs, the Laplacean universal mechanics induces the teaching that material welfare and the establishment of an unlimited power for imposing the conditions of material welfare are the supreme good." (p. 142) Its practical consequence, we might add, is the Brave New World. Views such as these have been commonplace among humanists and upholders of traditional religious positions; a long list of distinguished philosophers, political and social theorists, theologians and literary men could be cited in confirmation. But the striking significance of Polanyi's argumentation is that it arises from the very heart of natural scientific work itself, and that it addresses itself to the entire fraternity of science, asking it to take cognizance of the disaster which their world view is conjuring up.

The heuristic passion, the passion helpful to investigation — that is, to discover a new world — is a matter of guesswork. "Scientists — that is, creative scien-

tists — spend their lives in trying to guess right," that is, to transcend the previous interpretative framework. (p. 143) The work of Einstein, no less than that of Kepler, serves to show that "this truth-bearing passion is far from infallible." (*ibid.*) In this connection an observation is worth citing which a certain school of political philosophy ought to ponder: "Number rules to which no scientist will pay attention are frequently put forward today by the adherents of occult sciences." (p. 144, n. 1) With this aside in mind, we may conclude with Polanyi that "both Kepler and Einstein approached nature with intellectual passions and with beliefs inherent in these passions, which led them to their triumphs and misguided them to their errors." (p. 145)

Elegance and beauty are, as we have mentioned, the values at the focal point of the scientific enterprise. Intellectual beauty serves as a token of reality (*ibid.*), and new scientific insights are not merely hypotheses about an unknowable reality — operational principles with which to manipulate a hidden nature. (Polanyi here points once more to the parallels between late medieval nominalism and modern positivism and skepticism.) Giordano Bruno, Galileo, and Kepler joined in rejecting such a notion. The frankest of them, Bruno, was burned for his insistence that scientific propositions describe reality. "[T]ruth lies in the achievement of a contact with reality . . . " (p. 147) You cannot escape by talking of "fruitfulness"; erroneous views and superstitions, such as astrology and Marxism, have been "fruitful," and the substitution of "fruitful" for "true" is specious. It is also nonsensical. It is the reality which matters, and the intellectual beauty of a theory "establishes a new contact with external reality." (p. 148) Polanyi cites as illustrations the work of Louis de Broglie on wave theory (which his examiners could not grasp and therefore consulted Einstein), Dirac's mathematical formulas reconciling quantum mechanics and relativity (confirmed by the discovery of the "positive" electron four years later), and Willard Gibbs's phase rule — all intellectually beautiful theories leading to the discovery of new reality. But the "dilution of the meritorious by floods of triviality makes the recognition of true scientific value particularly difficult." (p. 149)

We shall pass over Polanyi's interesting accounts of scientific controversy, and of the premises of science, to consider briefly the "passions, private and public" (pp. 171 ff.) by which through a process of verification, scientific discoveries become embodied in textbooks and general opinion. It is a matter of the ever more general appreciation of the beauty of the theory. "[I]t is still for the sake of this remote and inaccessible beauty . . . that relativity continues to be valued as an intellectual triumph and accepted as a great truth." (p. 172) This beauty is the *Inbegriff* of the values which the multitude "have been taught to entrust to a group of men whose cultural guidance they have accepted." (*ibid.*) This "routinization" of the original passion finally brings about a state in which all dynamic quality is lost.

Polanyi next undertakes to compare and contrast the intellectual passions to bodily emotions, more especially hunger, sex, and fear; their gratification through eating, copulation and flight is "a manner of verification," but he thinks that the "intellectual passions perpetuate themselves by their fulfilment." (p. 173) Do not the bodily passions do the same, if seen in the proper time perspective? Does

their satisfaction terminate "the situation which evoked them"? In maintaining life, they recreate themselves, as do the intellectual passions. It is, however, true that "by contrast to the satisfaction of appetites, the enjoyment of culture creates no scarcity in the objects of [*sic*] offering gratification, but secures and ever widens their availability to others." (p. 174) But this is a result of the nature of the goods involved, and not of the passions which arouse the search for them. The gratification of a desire never quenches it for long, and this is as true of the *libido intelligendi* as of the other *libidines*. The pursuit of the "why?" is as endless as the pursuit of other pleasures.

The distinction in the goods to be secured is "vital to the existence of culture." (*ibid.*) The relation of science and technology must be seen in this perspective. (p. 331-32) Involved here is the distinction between theoretical and practical knowledge — applicable knowledge which determines whether an action will be successful or not, i.e., will be right or wrong. Polanyi observes that this distinction is paralleled by that between the science of inanimate things and of living beings (to be discussed below). His view of technology can be summed up in the proposition that "technology teaches action." (p. 176) There is an imperative involved in technology which is oriented toward material advantages and which uses *implements* according to specifiable *rules*. Characteristically, technology proceeds by *inventions*, while science does so by *discoveries*. Whether these can be as sharply differentiated as is here suggested may well be doubted, and Polanyi himself admits that "it may happen that a new invention involves a new discovery." (p. 177) In Fernald (*English Synonyms*, p. 197) we read: "We discover what has existed but has not been known to us; we invent combinations or arrangements not before in use." Thus, for many inventions it would first be necessary to discover a relationship or potential; likewise, for many discoveries an invention would have to provide the instrumentality for observing what had not previously been known. One might, in view of the latter, well question whether one should go as far as to say that "in addition to the disclosure of a new operational principle, technology requires that an invention should be economic and thus achieve a material advantage." (p. 177) Surely the invention of the telescope was a vital step in the development of astronomy, but hardly "economic" in the sense in which the automobile or the airplane is. This point is made here, because in the human field, and more especially in politics and jurisprudence, discoveries and inventions are going hand in hand; and these inventions, such as the "constructive non-confidence vote" or "association" as an extension of federalism, are neither economic nor do they achieve a "material" advantage, except in the vaguest sense.

What binds technology and science together, however, is the "beauty" of both discoveries and inventions. This beauty differs, though both exhibit originality. "[B]ut in science originality lies in the power of seeing more deeply than others into the nature of things, while in technology it consists in the ingenuity of the artificer in turning known facts to a surprising advantage." (p. 178) Until recently, the difference between science and technology was generally taken for granted. But the Neo-Marxian theory of science sharply challenged this distinction. Both in the USSR and outside it, the difference is obscured by "a radically utilitarian conception of the public good." (p. 180) The

spread of this kind of doctrine seems to Polanyi to raise the question whether the distinctive passions which have produced science "may simply fade away." (p. 181) Once again he reminds the reader of what happened at the end of the ancient world, when St. Augustine discredited science. This reflection leads him to consider another important political perspective of contemporary science: "In all parts of the world where science is just beginning to be cultivated, it suffers from a lack of response to its true values." Hence "encircled today between the crude utilitarianism of the philistine and the ideological utilitarianism of the modern revolutionary movement, the love of pure science may falter and die." (p. 182)

Passing over Polanyi's interesting observations on mathematics in this context, it remains to speak of his reinforcing the argument about intellectual passions by his pointing to the parallels in the abstract arts, especially music. There is a kinship between different kinds of order and beauty, whether in nature, in mathematics, or in art. "In each of these domains it is the relevant intellectual passion which affirms the distinctive intellectual values by which any particular performance may qualify for admittance to the domain." (p. 194) The identification of order and beauty implied here involves a highly debatable kind of esthetics, reminiscent of the more academic writers of classical antiquity and the Renaissance. Whether the design of a painting "bears the same kinship to geometry as music does to arithmetic," doubtful in itself, raises the further question whether "the attempts made ever since Vitruvius, to formulate geometrical rules for the appreciation of harmonious . . . composition" (p. 193) have been or ever will be successful.

In a final section of this chapter, on "Dwelling In and Breaking Out," Polanyi turns from art and beauty to religion and mysticism. (pp. 197-202) This must be read with Chapter 8, where "The Logic of Affirmation" culminates in an "invitation to dogmatism." (p. 268) Though seemingly shocking, it is "but the corollary to the greatly increased critical powers of man." (*ibid.*) And though Polanyi thinks it is part of his "post-critical philosophy," it is actually a striking extension of Kant's critical philosophy which undertook to determine the limits of man's reasoning capacity and thereby "liberated" man's capacity for faith. When Polanyi says that "we must now go back to St. Augustine to restore the balance of our cognitive powers" (p. 266), he thinks that we must once again recognize that *nisi credideritis, non intelligitis,* that belief is the source of all knowledge. Only a genuine appreciation of the "religious passion," involving, as it does, surrender, can provide the basis for this acceptance of belief. Such "indwelling" is the radical "breaking out" of the bonds of the world of the senses and the world which it represents, the "casting off the condition of man." (p. 198)

The arts lie between science and worship, Polanyi says. There are penetrating observations made in this connection on Sartre, Proust, and existentialism; but they must be passed over, since they are asides. The main argument turns upon what the author calls "conviviality." The very unusualness of the term suggests that we are face to face with one of Polanyi's original insights. For it asserts in the most insistent fashion the social (political) conditioning of the products of intellectual passions. "Articulate systems which foster and

satisfy an intellectual passion can survive only with the support of a society which respects the values affirmed by these passions . . . " ; but the society is likewise conditioned by these passions, for "a society has a cultural life only to the extent to which it acknowledges and fulfils the obligation to lend its support to the cultivation of these passions." (p. 203) And here is the heart of the matter: these are the "civic coefficients of our intellectual passions" (*ibid.*) and, more especially, the respect for truth which is at the heart of science. Pure conviviality is to be observed in animals as much as in men; "a solitary chimpanzee is not a chimpanzee," he says, citing Köhler. (p. 210) Although Aristotle is not mentioned, we are asked (not unreasonably) to return to Aristotle's presumption that "a solitary man is not a man"; he must be demigod or beast. Pure conviviality is "the cultivation of good fellowship" (*ibid.*), and Polanyi joins the numerous thinkers, from John Dewey to Alexander Rüstow, who have in recent years insisted upon the vital need for community. Rüstow especially has linked the growth of culture to the small community, while at the same time recognizing the role of conquest, of *Ueberlagerung,* in this process through the founding of greater dominions.[7] We are here facing one of the key points in the thought of neo-liberalism which is of growing importance as political and social thought turns to the task of transcending the totalitarian challenge.[8] This task is the deeper concern of Polanyi, who states the principal purpose of his book to be "to achieve a frame of mind in which I may hold firmly to what I believe to be true, even though I know that it might conceivably be false." (p. 214) Such a purpose calls for an explicit exploration of the domains of morality, custom, and law as parts of culture. (*ibid.*)

Moral judgments, while akin to intellectual valuations, encompass the whole person. Two kinds of culture must now be distinguished: Polanyi calls them individual culture and civic culture. They are necessary to each other and closely related; the cultural ideal involved is that of a "highly differentiated intellectual life pursued collectively." (p. 219) At this point is introduced the idea of a cultural elite which conducts this intellectual life. Science, humanities, arts, and religions are all the work of such elites, or "authoritative specialists." The individual culture of these specialists is supported and given scope by the civic culture of the community as a whole. Such civic culture presupposes three civic institutions: group loyalty, property, and power. It is not customary to speak of loyalty and power as institutions, surely, and we need not adopt such a perspective, in order to acknowledge that they are crucial for the maintenance of "civic culture." The author's characterization of a free or pluralistic society is more or less standard; that it centrally includes a belief in an autonomous process of coherent thought, is Polanyi's main concern. In a system of popular government, the administration of civic culture calls for the cultivation of "civic thought." Elitist propensities intrude themselves in a footnote in which it is (correctly) pointed out that "the function of authoritative individuals is generally recognized for the interpretation of the Constitution itself in Britain." (p. 222,

7. Alexander Rüstow, Ortsbestimmung der Gegenwart (3 vols., 1950-57), esp. vol. I.

8. Cf. my article *The Political Thought of Neo-liberalism,* 47 American Political Science Review 509 (1955).

n.1) It is, of course, likewise recognized in the United States, in that the Supreme Court interprets the Constitution. Polanyi's conception of authority is informed by his view of tradition and its acquisition through learning. "To learn by example is to submit to authority," for authority involves superior knowledge. "You follow your master because you trust his manner of doing things even when you cannot analyse and account in detail for its effectiveness." (p. 53) Such following is qualified, however, by a measure of dissent. "Every acceptance of authority is qualified by some measure of reaction to it . . . " (p. 208)[9] Unfortunately, he links it to coercion, in the conventional fashion, when considering authority in the political context. (p. 212) By doing so, he deprives authority of its distinctive role, which separates it from power.

"The shaping and dissemination of moral convictions should take place . . . under the guidance of intellectual leaders . . . " in an ideal free society, according to Polanyi, but he does not wish to enter into a description of "the institutional framework within which moral, legal and political opinions are thus continuously re-moulded in a free society . . . " (p. 222) From the standpoint of political theory, this institutional framework is, however, the proof of the pudding, and a failure to analyze it leaves a gaping hole. What Polanyi says about the results of this process may be summed up in the expression "moral progress" of civic thought "moved by its own passions and guided by its own standards." (p. 223) A free society accepts this thought, not because the citizens decide, but because "they are deemed competent to decide *rightly* . . . "[10] The lack of unanimity does not invalidate this view; not only is there disagreement in other spheres as well, but the lack of unanimity at the time action is taken is eventually superseded by a consensus of broad scope. Polanyi refers here to Dicey's well-known study (*Law and Public Opinion in England,* 1905), but in retrospect its argument would seem to apply only to a unique historical constellation.

These general comments on a liberal society are followed by brief remarks on naked power and power politics and by a critique of Marxism, leading toward a post-Marxian restatement of liberalism. In this analysis, problems such as legitimacy and the need for consent are touched upon, but merely to enunciate the author's opinion, not to defend what is on the whole a conventional position in the line of traditional liberalism. The reviewer finds little to quarrel over, little to exclaim about. Power is seen as corrupting, but necessary; morality as desirable but not ineluctable. "[C]ivic culture still remains dependent on force and material ends, and remains therefore suspect." (p. 226) The work of Meinecke on reason of state[11] is adduced as background for a critique of

9. Polanyi's conception of authority bears a close resemblance to one which sees authority as the capacity for reasoned elaboration; cf. my *Authority and Discretion* in NOMOS I (1958). The link of authority to superior knowledge is further developed by Polanyi at 374-79.

10. *Ibid.* Polanyi does not elaborate the problem here implied of a "belief in the common man," though his stress on belief seems to require it. Cf. my THE NEW BELIEF IN THE COMMON MAN (1942), *passim.* The possible conflict with a belief in intellectual elites is not explored or delimited.

11. This is the German title DIE IDEE DER STAATRÄSON IN DER NEUEREN GESCHICHTE (1924), which was rather unfortunately rendered as *Machiavellianism* in the English translation, 1957. Cf. for this also my CONSTITUTIONAL REASON OF STATE (1957).

Marxism as Machiavellian in light of Marxist epistemology. Since this is familiar ground, we pass over it and merely note that such a critique is only possible in the light of an understanding of the faith in the assumptions of a free society. We cannot cope with it if we insist on the faithlessness of the kind of outlook from which Marxism sprang. "Can a revulsion against the consequences of modern totalitarianism restore a set of beliefs, on the logical weakness of which the doctrines of totalitarianism itself were founded?" The answer is, obviously, no. "Can we face the fact that, no matter how liberal a free society may be, it is also profoundly conservative?" The answer must be yes. "For this is the fact. The recognition granted in a free society to the independent growth of science, art, and morality involves a dedication of society to the fostering of a specific tradition of thought, transmitted and cultivated by a particular group of authoritative specialists . . . " (p. 244) In the support of these authorities, "the protection of the same policemen and soldiers who guard the wealth of the landowners and capitalists" (p. 245) must be accepted. It is the institutional framework, the civic home of a free society. We must place some limitations on the claim of idealistic appeals. We must face an unpalatable truth which troubles our conscience: "an absolute moral renewal of society can be attempted only by an absolute power which must inevitably destroy the moral life of man." (*ibid.*)

Even at this point in the train of Polanyi's argument, advanced as it is with profound dialectic skill, his work would have been a major achievement. The parallel between the need of accepting the hypothetical nature of *all* thought, without letting it be destroyed by skepticism, and the acceptance of an imperfect social order, has been demonstrated with convincing force. However, in two more parts, on the justification of personal knowledge, and on knowing and being, Polanyi proceeds to elaborate his argument. Any attempt to delineate and evaluate these chapters with the same care as the preceding ones would unduly extend this critical examination. By looking back from the end, a more concise appraisal may prove adequate for present purposes. To some extent, these chapters are an elaboration of the author's *The Logic of Liberty* (1951); they are themselves most skillfully summarized in *The Study of Man* (1960). Indeed, the latter book may be considered a kind of prolegomena to the larger work. In conclusion, Polanyi returns to his main theme: "the emergent noosphere is wholly determined as that which we believe to be true and right . . . It defines a free society as a fellowship fostering truth and respecting the right." (p. 404) There is a desperate effort to transcend the naturalistic perspective without contradicting the phenomenal world of natural science. Primeval incandescent gases do not prefigure the works of the human mind; yet a "field" is said to have the "power" to bring into being "centres of first causes," and each such center is "an essentially new and autonomous prime mover." (p. 405) This seems rather dubious metaphysics, at best. He concludes by writing that

> We may envisage then a cosmic field which called forth all these centers by offering them a short-lived, limited, hazardous opportunity for making some progress of their own towards an unthinkable consummation. And that is also, I believe, how a Christian is placed when worshipping God.

This belief is hardly going to be shared by a good many Christians. Teilhard de Chardin is on safer ground, theologically, when he insists that he is dealing only with the phenomenal world.

How does Polanyi arrive at these final conclusions? I showed earlier that he acknowledges a "logic of affirmation" which makes us recognize belief as the source of all knowledge. (p. 266) Referring to St. Augustine's *Confessions* as an example of a "logically consistent exposition of fundamental beliefs," he avows to have made a "decision," namely, "to give deliberate expression to the beliefs" he finds himself holding. (p. 267) On the basis of this decision, Polanyi undertakes a "critique of doubt" which is meant as a refutation of Kant, but is actually a refutation of certain Neo-Kantians and of Descartes, whom he mentions only in passing. A detailed consideration of my disagreements with Polanyi would lead too far afield, and would not contribute to an appreciation of his nuclear position, with which I very much agree.[12] He insists that "all fundamental beliefs are irrefutable as well as unprovable" (p. 271); and so would Kant. Having spoken of the "practical faith in this Son of God" (which he even underscores), Kant stated that "this idea is completely existential in its own right" and that "we *ought* to conform to it"; and he adds:

> Did we have to prove in advance the possibility of man's conforming to this archetype, as is absolutely essential in the case of concepts of nature, if we are to avoid the danger of being deluded by empty notions, we should have to hesitate before allowing even to the moral law the authority of an unconditional and yet sufficiently determining ground of our will.[13]

The real divergence is *not* the recognition of the existentially binding commitment to faith, but the extension of this commitment to the "realm of nature" which Kant sought to exclude from it. Thus the radical dualism of Kant's two worlds, the phenomenal and the noumenal, is challenged by Polanyi, and his "critique of doubt" should have been directed against this dualism, or rather its absolutism, which Kant himself came to take back in the *Critique of Judgment*. Polanyi himself recognizes, of course, the value of doubt, if it is "reasonable" and points to its juristic equivalent, but rightly insists that only our beliefs warrant it. (pp. 274-77) It must stop short of "scepticism." "There exists . . . no valid heuristic maxim in natural science which would recommend either belief or doubt as a path to discovery." (p. 277) Both have played their part in scientific progress. At this point, Polanyi adduces the comparable situation in the law of evidence under which certain kinds of information are not admitted. He also mentions the presumption in favor of the accused that he is innocent. Such presumption tells the court what to believe at the start; it is an instance of a "much *stronger* will to believe." (p. 279) It is justified by the will to do justice. But the main subject of Polanyi's critique of doubt is religious

12. See my INEVITABLE PEACE (1948), and the *Introduction* to THE PHILOSOPHY OF KANT (1949), where my view of Kant's position as that of a "critical rationalism" is set forth. Polanyi's position is an extension, in my view, of Kant's critique of reason. Characteristically, Polanyi refers only to Kant's *Critique of Pure Reason,* but not to the *Critique of Judgment* and the *Critique of Practical Reason,* let alone to his *Religion within the Limits of Reason Alone,* wherein faith is asserted to be beyond the critique of reason.
13. THE PHILOSOPHY OF KANT, *supra* note 12, at 398.

doubt. Its impact has been tremendous, and it has been both salutary and destructive. "Today we should be grateful for the prolonged attacks made by rationalists on religion for forcing us to renew the grounds of the Christian faith." (p. 286) The entire discussion shows that the critique of doubt is the obverse, logically, of Polanyi's logic of affirmation and its antecedents. In a very interesting analysis of what gives a belief system stability, Polanyi develops the analogy between the circularity in the beliefs of the Azande described by Evans-Pritchard and the corresponding behavior of believers in our own naturalistic system. He writes that "science may deny, or at least cast aside as of no scientific interest, whole ranges of experience which to the unscientific mind appear both massive and vital" — an observation to which any beneficiary of osteopathy, employed contrary to the advice of scientific medicine, can bear witness. It is obvious, and Polanyi thinks it is laboring the obvious, to insist that "universal doubt," i.e., "the virgin mind, bearing the imprint of no authority," is not the model of intellectual integrity; it would result in a "state of imbecility." (p. 295) "[T]he advocacy of 'rational doubt' is merely the sceptic's way of advocating his own beliefs." But since the challenge of the totalitarians called this set of beliefs into doubt "it is absurd to oppose such [totalitarian] doctrines now on the ground of scepticism." (p. 298)

In short, we cannot escape commitment. "[T]he thought of truth implies a desire for it . . . " (p 308), and is therefore personal. The framework of commitment is one in which the personal and the universal require each other. Such commitment "enacts the paradox of dedication." (*ibid.*) It is like the judge finding the law which is supposed to exist though yet unknown. He is committed to this law. His is *"the freedom of the responsible person to act as he must."* Polanyi says that "The course of scientific discovery resembles the process of reaching a difficult judicial decision . . . In both cases a passionate search for a solution . . . narrows down discretion to zero and issues at the same time in an innovation claiming universal acceptance." (p. 309) This statement is hardly in keeping with more recent views on the nature of judicial decisions, and not only in the light of "realism." It is, on the contrary, now broadly appreciated that there exists an ineluctable residue of discretion which must be recognized in order not to be abused, and I should think that this mode of viewing the judicial process is quite in line with Polanyi's main thesis about the inescapable residue of faith involved in all attempts at rational decision making.[14] It is also involved in the view that "the science of today serves as a heuristic guide for its own further development." (p. 311) This statement one might paraphrase for the law as "the judicial decision (jurisprudence) of today serves as a heuristic guide to the judicial decision of tomorrow." Reality, thus, is both encompassed by our judgments, and transcends them, awaiting further efforts at being encompassed. But at every stage, it calls for commitment to the stage reached, passionate commitment, engaging the whole person. Truth, therefore, becomes "the rightness of an action" and thus "allows for any degree of personal participation in knowing what is being known." (p. 320) By such a conception, sciences and arts are linked by a gradual transition, as are the natural and

14. Cf. *inter alia* BENJAMIN CARDOZO, THE NATURE OF THE JUDICIAL PROCESS (1921), esp. pp. 161-62; 170-74.

the social and the humanistic sciences. In all of them, "commitment offers . . . legitimate grounds for the affirmation of personal convictions with universal intent." (p. 324; SM 42 ff.)

To know life is to understand an ascending scale of being. It ranges from the biology of the cell to the appreciation of human greatness. The brief recapitulation of the data which we find in such works as those of Chardin, Clark, Eiseley and Linton[15] need not detain us here. It leads up to the recognition of our "calling" as men who are to exercise responsible judgment with universal intent. (p. 379) Such calling dissolves if looked upon noncommittally. But "so long as we can form no idea of the way a material system may become a conscious, responsible person, it is an empty pretense to suggest that we have an explanation for the descent of man." (p. 390) Randomness seems involved in such emergence, but we do not know. The field concept is introduced to account for a teleological finality. The calling of man here hinted at is more fully stated in *The Study of Man* (ch. II), where it is seen as the problem of establishing "the existence of a human mind capable of making decisions of its own." (SM 43) Chardin transcended the problem by imputing to all phenomena the quality of being animate; Polanyi still speaks of an "inanimate universe." He therefore believes that we must reject the "professed basic assumptions of all scientific physiology." The tacit assumptions are quite different. They involve purpose. The study of learning confirms this conclusion. Animals appear "to have feelings similar to our own" (SM 58), but "man alone can command respect." As was shown earlier, "human thought grows only within language and since language can exist only in a society, all thought is rooted in society" (SM 60); and the responsibilities involved prove that "behaviorism . . . is totally impracticable." Particular manifestations of behavior are (a) meaningless, (b) largely unknown, and (c) to be comprehended only as *"pointers to the mind from which they originate."* (SM 65) This is said against the linguistic positivists, but applies to all positivist behaviorists.

With these conclusions firmly derived from existing knowledge established in the sciences of nature, it becomes possible to come to the understanding of history. "The study of man starts with an appreciation of man in the act of making responsible decisions." This appreciation flows from an understanding of man's natural calling. Polanyi flatly "denies any discontinuity between the study of nature and the study of man." This position is, as we noted, the *real* issue between our author and Kant, but it brings him close to the position of Hegel,[16] especially when he writes that "all knowledge rests on understanding" (not in the sense of *Verstand,* but of *Verstehen*). Nonetheless, Polanyi acknowledges, as Hegel did, that "historians must exercise a special kind of understanding." But "the characteristic features of historiography" call for "the continuation of a development broadly prefigured within the natural sciences." (SM 73) This view is adumbrated by sketching the choices made by animals: "the incipient

15. P. Teilhard de Chardin, The Phenomenon of Man (1959); W. E. LeGros Clark, The Antecedents of Man (1960); Loren Eiseley, The Immense Journey (1946); Ralph Linton, The Tree of Culture (1955).

16. SM 72 reads as if Polanyi sees himself as contradicting Hegel, as well as Vico and Herder and the Romantics. But Hegel shares his view and rejects the idea of a discontinuity.

transcendence of self-centered individuality by a personhood striving to achieve intellectual excellence," e.g., as shown in Napoleon's career. Basing his position on Pieter Geyl's well-known study, he concludes that "the writing of history is itself a process of history . . . " Contrary to appearances and established prejudices, the same holds of science. The well-worn distinction between the study of unique and recurrent events as the acid test of the contrast between natural science and history will not, as we saw, stand up to scrutiny. "Hence the peculiar position of dramatic history at the end of a row of sciences of increasing intimacy and delicate complexity, yet offset . . . by an exceptionally vigorous and subtle participation in its subject matter." (SM 85) "To contemplate a person as an ideal is to submit to his authority." For "we need reverence to perceive greatness." (SM 96) An appreciation of this distinctive form of existence, with its passions, its triumphs and its failures, springing from the soil of an intellectual heritage, bent on a search for truth and other excellence akin to truth, provides the spiritual foundation of a free society. No authority can teach us which heroes and masters to accept; by recognizing them, we accept our calling.

In these wise and sound conclusions culminates this remarkable endeavor to break the fetters of an intellectual tradition which has saddled us with totalitarianism. By demonstrating that into every act of knowing there enters a tacit and passionate contribution of the person knowing what is being known, Polanyi succeeds in liberating the modern mind from an ancient incubus for a new start into a world beyond Communism and Fascism. The two cultures of which C.P. Snow has written are here "suspended, preserved and superseded," and the "logic of liberty" vindicated. By inquiring into the nature of scientific knowledge, and showing its limitations, Polanyi has rescued what is best in critical philosophy by providing a Critique of Critical Reason.[17] The many who have suspected as much, laboring in the social sciences and the humanities in the historical perspective, owe much to this remarkable work. Natural law is not mentioned by Polanyi at all, but what he has done is to refute its critics and thereby aid its restatement on a new and more lasting basis.

CARL J. FRIEDRICH

17. Cf., for the logical problems this position raises, the study by Ch. Perelman and Olbrechts-Tytega, *Traité de l'Argumentation,* reviewed *infra,* p. 199.

THE LAW AND ITS COMPASS. By Lord Radcliffe. Evanston, Illinois: Northwestern University Press, 1960. Pp. ix, 99. $4.00.

This excellent little book contains three lectures delivered by Lord Radcliffe at Northwestern University in 1960. It was the author's purpose in these lectures to call attention to a certain way of looking at law that is characteristic of the modern period, and to contrast this with the quite different attitude that marked almost the entire course of Western history from antiquity until the nineteenth century. It is now very widely accepted that law has little or no concern with man's fundamental nature and ultimate destiny. On these matters, in Lord Radcliffe's phrase, it is thought that there should be "a permanent public dubiety." (p. 7) It is the law's business to develop "in response to the changing needs of society

without being particular as to the direction of its development or the ultimate purposes which those needs subserve." (pp. 3-4) This attitude is of course not peculiar to law, but reflects a general disintegration of the unity of human thought. Whether in law, economics, or physics, the tendency has been to permit, indeed to encourage, the pursuit of internal consistency and self-defined ends without particular concern over the upbuilding of a unified and harmonious view of man's nature and end. In these lectures Lord Radcliffe increases our understanding of this attitude, especially as it affects law, and brings us to reflect on the possible consequences that such a jurisprudence may entrain.

Only those unconcerned with the past and satisfied that the present carries with it self-evidently valid credentials can fail to be impressed by how recently this attitude toward law has come about and what an accumulated weight of authority stands against it. Only yesterday, historically speaking, both in England and the United States, judges and lawyers took it as axiomatic that the truths of religion and morality underlay in some fashion the provisions of positive law, and that the purpose of law, along with all human learning, was to contribute to the achievement of man's final end. "Christianity is part and parcel of the law of the land," and to maintain publicly that its teachings are defective is "a violation of the first principles of the law," said Chief Baron Kelly in the Court of the Exchequer as recently as 1867.[1] So little time ago as 1892, in the Supreme Court of the United States, Justice Brewer could say without apparent difficulty, in construing an act of Congress, that "this is a religious people," "a Christian nation."[2] General statements such as these received concrete application in cases striking down contractual provisions and dispositions of property thought contrary to sound morals or orthodox religious teaching. Of much greater significance, however, was the general shaping effect of religious belief on the character of the common law throughout its development.

Lord Radcliffe is particularly concerned to warn of dangers that inhere in a separation of law from religion and morals and in the neutrality of so important an institution as government on the question of man's final end. Surely he has reason for anxiety. On the one side, if law abdicates its claim to be founded on values beyond social utility, it must also forfeit the obedience that those higher values can command. The contribution of law to social cohesion may accordingly be reduced. On the other side, if no reference beyond social utility is recognized, by which the law itself can be judged, there may be too ready an obedience to law and an acceptance of arbitrary commands when fundamental justice calls for defiance. Paradoxically, by the same evolution of thought, law may be weakened in the exercise of its proper influence and strengthened in an arrogation of powers to which it is not entitled. There is the still more subtle danger, which the author points out, that official indifference to religion and morality will breed a growing indifference to these things in society at large. Whether or not this is the intended effect, it may well be the inescapable consequence of giving an agnostic form to what stands for all men as a model.

If the author is clear about the dangers he sees in the moral and religious

1. Cowan v. Milbourn, L.R. 2 Ex. 230, 234 (1867), cited by Lord Radcliffe at p. 21.
2. Church of the Holy Trinity v. United States, 143 U.S. 457, 465, 471 (1892).

neutrality of law, he is not nearly so clear in telling us what he thinks ought to be done to meet these dangers, and how today we ought to look upon the law and its task. Of course the problem is an extraordinarily difficult one, especially for those who place an equally high value on religious and moral principles and on freedom of opinion, so that statements that look first one way and then statements that look another are perhaps justified by the uncertainty of a proper solution. We are all groping our way in this matter. But I wonder if I am wrong in thinking that Lord Radcliffe is not quite so uncertain as he at times seems to be in these lectures; that the uncertainty is often not so much a reflection of his own views as a mode of expression he has chosen in order to communicate with his audience. Perhaps he is not to be criticized for this. Many of those to whom he speaks are so far educated in the very attitude whose validity he questions that too direct an expression of contrary views might meet with only incomprehension and hostility. Certainly this would be the case if traditional notions of natural law were forthrightly proposed as the solution. But the author's method does make for occasionally difficult reading, since one must move back and forth through the lectures in order to piece together an adequate picture of his views.

In his first lecture, Lord Radcliffe tells us that law must stand to men as embodying an order of living that commands the allegiance of the best part of themselves, and that it must have a standard of reference outside itself by which to assess its own results. But after considering in a general way the development of legal thought and our present position, he concludes, perhaps somewhat regretfully, that traditional notions of natural law cannot be used to satisfy this need. At least, "you cannot hope to get Natural Law in at the front door." (p. 33) Some of the reasons he gives why you cannot hope to get natural law in at the front door are not altogether convincing. What does it matter, for instance, that we have a "modern complex of numerous judges of co-ordinate jurisdiction with a structure of appellate courts above them"? (p. 33) Why does this increase the difficulty, if it is otherwise desirable, of orienting our jurisprudence along an axis of natural law? I cannot see why the framing of legal rules in the light of natural law is any more "individual a jurisdiction," appropriate only in the hands of a single judge, than the exercise of the judicial function within a less ultimate frame of reference. There is always the task, peculiarly that of the appellate court, of reducing inconsistencies and drawing a bold line of development out of a mass of confusing particulars. But this remains, no matter what the philosophical foundations of the system. Furthermore, the restricting effect of precedent does not necessarily militate against founding a jurisprudence on natural law. Rules that have over time secured an indisputable position in the legal order generally do serve needs that are rooted in human nature, or so one may think without being unduly naive. That ordinarily a court should not undo what has been decided after full and adequate consideration is itself a rule that serves these needs. Of course if absurd and unreasonable rules are entrenched and maintained behind an unyielding policy of *stare decisis,* there is to an extent a falling away from the ideal of natural law as a principle continuously and pervasively active throughout the legal system. But it is not American lawyers who must contend with this deficiency.

Well worthy of consideration, however, is Lord Radcliffe's suggestion that we may have no "viable means of bringing the conceptions of Natural Law to bear upon the administration of justice," no "practical way" by which positive law can be seen to observe and honor the connection. (pp. 24-25) At first I was uncertain of the author's meaning here, and supposed him to refer indirectly to the confining effect of precedent or to the absence of sources of indisputable authority on the natural law. But what I now think him to mean — and it is certainly an important point for those who see in general invocations of natural law the remedy for all our ills — is this: The justification for very many legal rules can be as easily made in terms of a limited, socially defined value as by reference to the fundamental nature and needs of man. In either case the rule adopted is likely to be the same, especially when there remains a large measure of agreement between those who refer to natural law and those who look for no warrant beyond the changing values of society. Sometimes, indeed, a natural law justification seems dragged in by the heels, an unnecessarily grandiose explanation for what is really a very ordinary problem of adjusting human relations. The perfectly understandable inclination is to justify a rule, whenever possible, in more modest and at least temporarily satisfactory terms. The cases in which reference to an ultimate standard is inescapable, because there can be no other explanation for the court's decision, are rare, although somewhat less so when courts have a constitutional mandate to scrutinize legislation in accordance with such standards as "due process of law" and "equal protection of the laws." These cases alone cannot keep alive a way of thinking about the whole mass of legal rules that tests their value by their tendency to satisfy man's fundamental needs and advance him toward his final end. Formerly, perhaps, such an idea was so firmly rooted and received such generous support from other branches of learning that it gave direction to the entire legal system without being specifically manifested in this or that rule. In a general sort of way it supported the whole structure and was drawn upon when appropriate by men imbued with the idea. It was not lost for want of continuous and concrete application. But now when a different attitude prevails and no connection between law and an ultimate point of reference is assumed, neither general notions of natural law nor occasional instances of its relevance may be adequate to revive or keep alive the idea. Some more specific and continuous connection with the ordinary material of legal thought is necessary.

This connection, it appears in the second lecture, is "public policy." "Public policy" is the back door through which natural law may perhaps enter in. I say this with some uncertainty, because it is not altogether clear whether Lord Radcliffe conceives of public policy as a doctrine by which the courts invoke standards derived from human nature, or whether it is simply a means by which they draw upon values that have come to be regarded in the particular society as more or less permanent, without any claimed connection with a natural order. There is a good deal to suggest that he relies on the historical fact of the Western tradition, or perhaps even only the English tradition, and eschews any more absolute basis.

> The civilization of which English law is one form of expression has been built, with labor and sacrifice beyond record, upon the structure of certain beliefs as to the nature of man and his purpose in society. They may not be beliefs essential to the well-being of all societies. Others have been or may yet be reared upon other foundations and their members may nonetheless find wealth of spirit and material prosperity. But that is not, I think, for us. (p. 65)

And yet he speaks eloquently of the "essential dignity" and "inalienable requirements" of the individual. (pp. 57, 64)

Public policy when invoked as a distinct doctrine can be rather startling. One is struck by the boldness of the court in drawing upon its notions of fundamental values to suspend a rule ordinarily applicable and ordinarily wholly acceptable. There is a sudden change of direction justified by considerations distinct from those that enter into the ordinary rule. Thus a condition on a bequest that the grantee not marry is struck down because it offends a public policy in favor of marriage. Or a contract is refused enforcement because it tends to immoral conduct. It is precisely the startling quality of these cases that Lord Radcliffe counts on as an effective reminder, where general invocations of natural law would not be, that there are fundamental values against which all laws must be tested. He counts on the yeast of these cases to leaven the whole mass of the law.

Of course courts should be free to draw on fundamental values to set aside ordinarily applicable rules, rules that are themselves the products of judicial activity. As Baron Bramwell put it, "It is strange that there should be so much difficulty in making it understood that a thing may be unlawful, in the sense that the law will not aid it, and yet that the law will not immediately punish it."[3] American lawyers at any rate will have no difficulty with this idea. Courts have a creative role to play in establishing rules, whether of narrow or broad application, that advance the common good. The question is not whether the invocation of public policy to set aside ordinarily applicable rules is justified, but whether it will in fact achieve the effect desired of orienting the whole legal system according to certain beliefs about human nature and keep alive an awareness of the law's subservience to reality. When one considers the matter, there is really no more reason to think of a decision as based on fundamental beliefs about the nature of man — asserting "the inmost convictions of the law" (p. 40) — when it is rested on a distinct doctrine of public policy than when it involves the application of an ordinary and familiar rule of law. There is no more reason to think of a rule that strikes down a condition against marriage or a restraint on the alienation of property as grounded in fundamental values than a rule that compels a defendant to compensate for injuries negligently inflicted or to perform a promise upon which another has acted to his detriment. All such rules are pretty closely dependent on fundamental postulates; in all, the idea of public policy in its broad sense is very much alive. Public policy as a distinct doctrine is a very limited vehicle for demonstrating the law's relation to fundamental values. Its incidence is haphazard and episodic. Mostly it impinges on the law of contracts and property. Opportunities for its application are infrequent, and probably too infrequent to

3. Cowan v. Milbourn, L.R. 2 Ex. 230, 236 (1867).

have the desired leavening and orienting effect. True, cases invoking public policy have a dramatic quality that arrests the attention and expands one's vision of the role of the courts. But is this enough to achieve the desired effect? Is not the need for principles more generally pervasive and more continuously operative throughout the law? As the reader nears the end of the second lecture, the public policy about which Lord Radcliffe speaks does in fact seem less and less a specialized doctrine for the suspension of ordinary rules and more and more a body of general principles giving form and direction to the entire structure of the law.

In the third lecture natural law comes in at the front door after all.

> [Law] . . . is not strong enough in itself to be a philosophy in itself. It must still stand rooted in that great tradition of *humana civilitas* from which have grown the institutions of the Western liberal world. Cut it away from that tradition, no matter for how good a reason, and it will lose what sustains its life. (p. 93)

> To what then are we committed? We are asked to believe that man is by nature a rational and social being. We are asked to believe that the growth of each individual towards responsibility and the freedom to choose the best that he can discern is a purpose which must never be conditioned by or made subservient to other purposes. We are asked to believe that there is at all times and in all ways an ideal fitness of things which corresponds to these beliefs and that by ourselves and working with others we are bound to do what we can to see that this fitness prevails in human affairs. (p. 95)

The character and potentiality of human nature is the truth that must animate and guide the law. But there is here no sweeping mandate to fashion into law whatever seems conducive to human welfare. For tolerance as a positive virtue is given high place, and there is great sensitivity to the importance of individual freedom in the formulation and expression of beliefs. "[I]t is the development of individual responsibility in those who are thus confirmed in the right to make their own mistakes and to achieve their own victories" that is the prize. (p. 76)

The complete neutrality of law and government on the great issues of man's nature and end cannot be accepted. Anyone who reads the decisions of courts with an open mind knows that it is not accepted, even today. Such total indifference would detract significantly from the law's ability to command allegiance and weaken dangerously the impulses in society that raise man up. We cannot do altogether without the law's guidance and education in these matters. On the other hand, there are values in personal freedom and governmental abstention that can scarcely be overstated, and which have come only in relatively recent times to be adequately appreciated. The difficult task of the law today is to draw a line that gives satisfactory recognition to both these considerations. These are essentially the ideas that Lord Radcliffe has given us to reflect upon. He has done so in a calm and humane fashion, but with a firmness that leaves no doubt of his own deep concern. Those who share it can be directed to these lectures with profit.

JOHN H. MANSFIELD

PRINCIPLES, POLITICS, & FUNDAMENTAL LAW. By Herbert Wechsler. Cambridge: Harvard University Press, 1961. Pp. xvi, 171. $4.25.

Principles, Politics, & Fundamental Law is a collection of four essays by Professor Herbert Wechsler of the Columbia Law School, one of the most powerful legal thinkers of our day. The essays are entitled "Toward Neutral Principles of Constitutional Law," "The Political Safeguards of Federalism," "Mr. Justice Stone and the Constitution," and "The Issues of the Nuremberg Trial." The most interesting and controversial of the essays is the first, "Toward Neutral Principles of Constitutional Law." This essay was originally delivered as the 1959 Holmes Lecture at the Harvard Law School. It followed and took its theme from the Holmes Lecture of the previous year by Judge Learned Hand, now reprinted under the title, *The Bill of Rights,* and is another in the current series of scholarly critical analyses of the Supreme Court and its work.

Wechsler first takes up the much mooted question of the legitimacy of the exercise by the Supreme Court of the power of judicial review. Challenging Judge Hand's view that the power, although not expressly granted by the Constitution, was a valid interpolation, he finds an express duty of judicial review in the courts in the words of the Supremacy Clause and the Judiciary Article, Article III. As a theoretical question, the debate is interesting. There is much force and reason in both positions, each of which is perhaps stated somewhat too dogmatically, since we can only speculate today about the reason why the framers of the Constitution did not deal explicitly with the problem. Even though it assumed much greater importance after 1789, the question of the power of judicial review had arisen in the colonies and states prior to 1789 and cannot be regarded as having been unforeseeable. However, the question was answered by the courts very early in our history, and the constitutional power of judicial review, if not the manner and conditions of its exercise, seems well established today.

Wechsler regards the question as being of more than theoretical importance, however, since a judge's view of the legitimacy of the power may affect his exercise of it. Therefore he proceeds to state his view that the courts have no discretion to refuse to decide properly presented constitutional questions, save only those committed by the Constitution to another agency of government, the so-called "political questions."[1] Of course he notes the discretionary jurisdiction of the Supreme Court, but in his view this relates only to a litigant's right to obtain Supreme Court review of the decision of a lower court that does not have such discretionary jurisdiction. Wechsler's concept of the duty of the courts is a rigid one, and this rigidity is, for him, a source of strength. It gives the courts the ability to say that they cannot avoid a decision in a given case because they are constitutionally obligated to decide. Insofar as he seeks to base this view on precedent, it is stated somewhat too strongly. As Professor Bickel has pointed out, the "political question" cases cannot all be fitted neatly into the category

1. Anyone interested in what constitutes a "properly presented" constitutional question should study the material in HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM (1953), one of the finest combinations of legal textbook, reference work, and stimulator of thought in print today.

of questions committed to another agency of government.[2] Perhaps we would all do well to recognize that although there may be argument in individual cases, the discretionary traditions of equity jurisprudence also have a place in constitutional adjudication.[3]

In addition, the discretionary jurisdiction of the Supreme Court means more than just a denial of review to a litigant of the decision of a lower court. While it is the function of all courts to decide the particular litigation presented to them, all courts do more than that. Their decisions provide guides for conduct not merely for the litigants in the particular decided case but for all persons similarly situated. This is especially true with respect to decisions of the Supreme Court in constitutional matters because they possess a finality, even if subject to constitutional amendment or overruling at some future date, not usually accorded to decisions of the lower courts.[4] Thus the power of the Supreme Court to avoid decision, and the wise exercise of that power, assume a particular importance that is neglected, or perhaps even deprecated, by Wechsler.

It is this lack of appreciation that permits him to make the dogmatic statement that the grounds on which the Court dismissed the appeal in the miscegenation case, *Naim v. Naim,* were "wholly without basis in the law." (p. 47) In that case, the validity of Virginia's miscegenation statute was brought squarely into contention. The sparse record indicated that conceivably there was another ground on which the case could be decided. The Supreme Court remanded the case to gain additional facts bearing on this other issue. When the Virginia Supreme Court of Appeals stated that there was no procedure by which these facts could then be elicited, the Supreme Court dismissed the appeal as not having been properly presented.[5] This is a very difficult case, for the Supreme Court has no generalized discretionary power to refuse cases that come to it by way of appeal instead of by way of petition for writ of certiorari. We may assume that the Court would not have taken this extraordinary course of action had the main issue in the case not been the explosive issue of miscegenation. But the issue was miscegenation, and given the very troublesome nature of the problems faced by the Court in the aftermath of the *Segregation Cases,* was it not reasonable for the Court to decide (1) that the time was not propitious for decision of a misce-

2. Alexander Bickel, *Foreword: The Passive Virtues, The Supreme Court, 1960 Term,* 75 HARVARD LAW REVIEW 40, 47-51 (1961). Two other good commentaries on Mr. Wechsler's Holmes Lecture are Louis Henkin, *Some Reflections on Current Constitutional Controversy,* 109 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 637 (1961) and Louis Pollak, *Racial Discrimination and Judicial Integrity: A Reply to Professor Wechsler,* 108 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1 (1959).

3. See Colegrove v. Green, 328 U.S. 549 (1946). See also Anthony Lewis, *Legislative Apportionment and the Federal Courts,* 71 HARVARD LAW REVIEW 1057 (1958).

4. It is not amiss to point out that the Supreme Court's power of "finality" in this regard refers only to adjudications of constitutional power and does not and should not imply a judgment as to the wisdom of the challenged governmental activity. The tendency of the public to equate the constitutionality of such activity with its wisdom has been properly, but perhaps vainly, deplored. See Frankfurter, *John Marshall and the Judicial Function,* 69 HARVARD LAW REVIEW 217, 231-232 (1955). But see C. L. BLACK, THE PEOPLE AND THE COURT 56-86 (1960) and Bickel, *op. cit. supra* note 2, at 48-49.

5. 197 Va. 80, 87 S.E.2d 749, *appeal vacated,* 350 U.S. 891 (1955), *on remand,* 197 Va. 734, 90 S.E.2d 849, *appeal dismissed,* 350 U.S. 985 (1956).

genation case; (2) that if there was any possibility that the case could be decided on another ground, the possibility should be explored; (3) the failure of the appellant to present all the facts relevant to all the issues should not be permitted to force this important issue on the Court; and (4) that the appeal should therefore be dismissed as having been improperly presented? The Court did not articulate these reasons, but the history of the case as revealed in the brief orders of the Court indicates that this is a likely explanation. A difficult question indeed, and strong arguments may be made on both sides of the issue. But it seems to me to be much too harsh to state that the grounds for the Court's decision were "wholly without basis in the law." As a former government lawyer, Wechsler should be more charitable, because he should appreciate more than most that one of the most important functions of the Court is deciding what to decide, and that its more serious errors have been in deciding too much rather than too little.

The most important sections of Wechsler's essay are those that deal with the standards of judicial review and appraise their exercise. Meeting Judge Hand's conclusion that the Supreme Court cannot review a legislative choice without becoming a third legislative chamber, Wechsler disagrees, stating the difference between the legislative and the judicial function in the difference between "legislative freedom to appraise the gains and losses in projected measures and the kind of principled appraisal, in respect of values that can reasonably be asserted to have constitutional dimension, that alone is in the province of the courts . . . ." (p. 22) Further amplifying he states that "A principled decision, in the sense I have in mind, is one that rests on reasons with respect to all the issues in the case, reasons that in their generality and their neutrality transcend any immediate result that is involved." (p. 27)

If all that Wechsler is saying is that a decision of the Court should not depend on whether the particular party is a Communist, a Negro, a widow, an injured worker, or Jimmy Hoffa, and that a decision should be reasoned, then there will be few who disagree with this statement of general principles. And indeed the initial discussion does not seem to indicate that he means more than this. It is only when one proceeds to the part labeled "Some Appraisals of Review" that one perceives that his view of "neutral principles" and "principled decisions" has substantive connotations.

After pointing out some deficiencies of the Supreme Court relating to its method of decision, he then applies his standard of neutral principles to questions of substantive interpretation. He attacks the pre-1937 decisions of the Court dealing with the Commerce Clause, taxation, and "economic" due process, pointing to the poverty of the Court's reasoning in those cases. Granting that some of those opinions, especially the later ones, are, to use a euphemism, undistinguished, it seems most difficult to view the controversy in those cases as having anything to do with "neutral principles." The controversy spanned decades and dealt with very important questions of our national future. There were substantial groups of reasonable men on both sides of the controversy. Most scholarly opinion today supports Wechsler's view that the post-1937 decisions repudiating the earlier ones represent the most successful phase of modern constitutional development. But this hardly proves that application of Wechsler's neutral principles would

have dictated those results or would have dictated contrary results in the pre-1937 cases.

Wechsler next turns to the cases dealing with racial problems. He questions the result in the white primary cases, holding that the Texas Democratic Party could not exclude Negroes from its primary.[6] True, this is a difficult case for finding the required "state action," but for Wechsler the result cannot be defended on grounds of neutral principles because in his view,

> I should suppose that a denial of the franchise on religious grounds is certainly forbidden by the Constitution. Are religious parties, therefore, to be taken as proscribed? I should regard this result too as one plainly to be desired, but is there a constitutional analysis on which it can be validly decreed? Is it, indeed, not easier to project an analysis establishing that such a proscription would infringe rights protected by the first amendment? (p. 40)

Certainly it is a legitimate method of testing the reasoning of a particular decision to apply it to similar situations. But the situation posed by Wechsler raises so many different problems that this reviewer — who is troubled, as the Court was, by the case — has no difficulty in saying that Wechsler's hypothetical presents an entirely different situation. Racial constitutional problems are difficult enough without trying to decide them by analogy to religious constitutional problems.

Finally, Wechsler comes to the *School Segregation Cases.*[7] He approves the result on moral and social grounds, as he approves the result in the white primary cases, but he finds that result hard to defend on grounds of "neutral principles." There is not space to set forth his whole argument. He sees the issue not as a question of discrimination but as one of freedom of association. Once he sets the issue in those terms, he sees a conflict between the rights of those persons denied the right of association by segregation and the rights of those persons forced to associate because of integration. He then confesses himself unable to write an opinion, based on neutral principles, upholding the claim of the former.

This is a nice theoretical question. But the transfer of the issue from one of discrimination to one of freedom of association involves a giant step, which Wechsler takes with the following sentences:

> In the context of a charge that segregation *with equal facilities* is a denial of equality, is there not a point in *Plessy* in the statement that if "enforced separation stamps the colored race with a badge of inferiority" it is solely because its members choose "to put that construction upon it"? Does enforced separation of the sexes discriminate against females merely because it may be the females who resent it and it is imposed by judgments predominantly male? Is a prohibition against miscegenation a discrimination against the colored member of the couple who would like to marry? (p. 46)

As Mr. Justice Holmes stated in another context, "a page of history is worth a

6. Smith v. Allwright, 321 U.S. 649 (1944) and Terry v. Adams, 345 U.S. 461 (1953).
7. Brown v. Board of Education, 347 U.S. 483 (1954).

volume of logic."[8] One can make fine logical arguments that segregation of Negroes, at least with equal facilities, would not discriminate against them, but these arguments simply ignore the history of the Negro in this country. And to compare it to the separation of the sexes is the same type of strained analogy that Wechsler used in discussing the white primary cases.

When I finished the sections labeled "The Standards of Review" and "Some Appraisals of Review," I had the feeling that I had not been convinced that any of the so-called "neutral principles" were guides to decision. That decisions should not be *ad hoc,* that the procedure of the Supreme Court with respect to its method of decision can be improved, these are matters that do not touch the substance of decision. That decisions should be "principled" is an easy statement to agree to, but Wechsler does not show us how this is a guide to decision other than to offer us the general statement and his view of what follows therefrom in a few particular cases. If he means that any decision that is "principled" is, in terms of neutral principles, "rightly" decided even though there are reasonable arguments for a contrary decision (which might also have been reached in "principled" terms), then this is hardly a guide to decision. It is merely an argument for excellence in thinking and in opinion writing, something with which we may all fervently agree. If, on the other hand, he means that "principled" analysis would yield, at least in many of the important Supreme Court cases, only one "right" result, then I must enter my disagreement.[9] Most important cases that come to the Supreme Court involve hotly contested questions of principle on which reasonable arguments can be advanced for both sides. Each of us may in a given case believe that reason favors a particular result, but are any of us so bold as to believe that in each such case reason is so clear as to be obvious? At least the disagreement of others, all reasonable men, should be a caution.

Wechsler has picked a series of decisions as examples, presumably among the strongest he can find, of cases in which his guide of neutral principles seems to him to indicate that the Court was wrong, even though in many of the cases he favored the result on social or moral grounds. I find myself in disagreement with him on many of these examples; and even when I agree, I would find it hard to say that no reasonable man could disagree with me. Of course it is always easier to pick holes in another man's theory than to construct a theory of one's own. Actually I am tempted to state that if Wechsler cannot formulate a satisfactory general standard that will serve as a guide to decision, then it cannot be done. And in fact I believe this. The most we may hope for is for able judges who will approach the decision-making process in a judicial frame of mind. Of course different judges will differ about the scope of this duty. We cannot and should not expect anything else. But as long as they start

8. New York Trust Co. v. Eisner, 256 U.S. 345, 349 (1921).

9. Mr. Wechsler would doubtless be horrified by the suggestion that he is lending his powerful prestige to those who believe that law is a "brooding omnipresence in the sky," to borrow the expression used by Mr. Justice Holmes in Southern Pacific Co. v. Jensen, 244 U.S. 205, 222 (1917) (dissent) when he dismissed that notion. But if Wechsler means to imply the definition of "principled" suggested above, then perhaps he should consider further the implications of his "neutral principles."

from the premise and always remember that they are judges, performing a task that is far different from that of a legislator or a member of the executive, then we have the basic raw material for the performance by them of the task of judicial review. Anything more by way of guide to decision in a specific case cannot be expected.

The second essay, "The Political Safeguards of Federalism — The Role of the States in the Composition and Selection of the National Government," is a careful study of the methods by which the Legislature and the Executive of our National Government are elected, with particular reference to some of the proposals for "reform" that have been advanced in recent years. Wechsler points out the little realized shortcomings of some of these proposals and then analyzes the effect of the present method of selection. His emphasis on the great role played by the states and statist considerations is a valuable counterbalance to much of present-day thinking, which has concentrated on the growth of national power. This essay is exceedingly valuable for every student of American government and for anyone interested in the American political process.

The third essay, "Mr. Justice Stone and the Constitution," is a reprint of an essay that appeared shortly after the death of Chief Justice Stone in 1946 in an issue of the *Columbia Law Review* dedicated to his memory. It is a compilation of Stone's views on many constitutional subjects, but perhaps because of the occasion that called forth the essay, it does not attempt a critical evaluation of his work. This evaluation still remains to be made — by Wechsler, who knew Stone well and is highly qualified to subject the mass of his writing to critical analysis, or by someone else willing to undertake this difficult and interesting task.

The final essay, "The Issues of the Nuremberg Trial," is a thoughtful defense of the decision to prosecute the German war criminals and the procedure under which the trial was carried out. The reason for its inclusion in this volume is set forth in the Introduction.

> My purpose is not only to reiterate a defense of the trial and judgment that the passing years have not induced me to repent, despite the vogue that hindsight has accorded their disparagement. The more important point is that the prosecution yields a testing case of what the striving for legality entails. . . . I undertake to show how far, in the remote and unreal setting of the International Military Tribunal, neutrality and generality of principle emerged as the intrinsic qualities of law and prime constituents of a judicial action. The case has an important bearing, therefore, on the central thesis of "Toward Neutral Principles." It has a bearing also on the larger question of when law and legal method are appropriate and useful means for building foreign policy. Given the principles that we affirmed and acted upon at Nuremberg as *legal* principles, could our response to Korea, on the one hand, or to Suez on the other, really have been different than it was? (p. xii-xiii)

Once again, I would question the validity of the analogy as not being very relevant and as detracting from the force of his thesis. Actually I think the

answer to Wechsler is, "Yes, the response could have been different." Not that it necessarily should have been. But the legal principles affirmed at Nuremberg do not yield any sure response for me to Korea or Suez any more than they do for Laos, Cuba, or Berlin today.

Indeed my great wonder is why Wechsler sees such a great similarity between the legal principles motivating our response to Nuremberg and Suez and Korea while he does not see the same similarity between the Nuremberg Trial and the Eichmann Trial, which he has elsewhere deplored.[10] While there are important differences, it is nevertheless interesting to compare the strength of Wechsler's view on the Eichmann Trial with the strength of his view on the wisdom and justness of the Nuremberg Trial. Many of the objections he has to the Eichmann Trial are similar to objections raised against the Nuremberg Trial and disposed of by Wechsler: the vindictive aspect of the proceeding; the claim of universal jurisdiction over the war criminal coupled with the implied denial of equal justice in that it was and is considered unthinkable by the prosecuting countries to allow the same sanctions to be applied in connection with any war crimes that might have been committed by their own nationals; and finally, the possibility of trial in an international or even a German court, since the Nuremberg court can hardly be regarded as being an international court despite its name. It would have been instructive if Wechsler had added a few paragraphs dealing with these questions to bring his thinking up to date when he decided to reprint this essay. But we should be thankful that the original essay has been saved from obscurity by the decision to include it in this volume.

These four essays of Wechsler are open to many challenges, but like all of Wechsler's writings they are themselves challenges to thought. They should not be ignored.

ANDREW L. KAUFMAN

10. On a television program of the National Broadcasting Company, April 8, 1961, entitled "The Nation's Future," discussing the subject, "Does the Trial of Eichmann by Israel Serve the Cause of International Justice?" A transcript is available from the network.

THE LAW OF CHRIST. By Bernard Häring, C.SS.R. Translated from the German by Edwin C. Kaiser, C.PP.S. (from the fifth edition, 1959, of *Das Gesetz Christi**). Westminster, Md.: Newman Press, 1961. Pp. xxxi, 615. $8.50.

An original work like Bernard Häring's *The Law of Christ* always poses a problem for its contemporaries: How does its originality change our view of the past from which it came? The distinctive note of Father Häring's work is that a Christian ethics is a dialogue between God — Christ as God-Man — and man. Christian ethics is not a monologue concerned with man's self-perfection, nor with man's obedience to a remote God. What light does his work shed upon the history of ethics within our civilization? In the first part of this

* This work is published as Volume I of Häring's *General Moral Theology*. The succeeding volumes are in process of translation.

paper, I would like to make some comments from the point of view of contemporary philosophical ethics. In the second part, I will turn more directly to Christian ethics; and in the third, to Father Häring's study.

I. Contemporary Anglo-American Philosophical Ethics

The moral practice, like the political and legal practice, of the Anglo-American peoples has always been more mature than our theory. There are a great many things which we do, for which we have not an exportable theory of why we do them. There are a great many things which we do not do, although so far as our theory goes we might very well do them. In the past, the gap between what our philosophy asserted and our practice itself was often filled by religious training. We were respectful, orderly, law-abiding, partly at least because our religious training taught us to cherish an assumed order in social relationships and in human actions. Now our philosophies no longer find the order we once assumed in things; relationships, actions, and our own inner selves are no longer conceived by philosophy as they once were. On the other hand, the general agreement fostered by religion has broken down. Once accepted conventions are more frequently questioned in the mobility of modern society. Nevertheless, the order that remains in our practice has itself little justification in contemporary moral theory. To resolve moral questions, we would find philosophy of less help than common sense, convention, or sentiment.

The fact is that Hume anchored his ethics in sentiment and custom, Sumner his in convention, Westermarck his in a sophisticated kind of social relativism, the early Ayer his in noncognitive emotivism. Among the cognitivists, Ross's formal categories of prima facie duties read suspiciously (though not entirely) like a code book of English gentlemen at a certain time and place; G. E. Moore's intuitions have the same limitation. Pragmatism easily becomes an ethic of success. If one were to take the state of contemporary ethics with ruthless seriousness, one might do fairly well whatever one pleased and find somewhere a theory to justify it. "Form your conscience as you will, and act according to it." I do not see why the most absurd suggestions could not find support in one theory or another, and with enough logical adjustments be made watertight. Dikes hold back the tide of such absurd suggestions, however: the dikes of moral sentiment, convention, and common sense held over from the past. Here again the practice of the Anglo-American people is superior to our philosophy. But the relation between practice and philosophy can be reciprocal. The uncertainties of philosophers lead intelligent men into dubious practice; the pressures upon practice and the collapse of conventions leave philosophy based on practice or convention blind.

The poverty of contemporary ethics was nowhere clearer than in the discussions concerning the Nuremburg trials after World War II. Officers under Hitler (and Hitler himself) may have done what the mores of their social group, legally constituted authorities, and their own personal emotions dictated. (Hitler put his own trust in his intuitions and inner imperative.) Now on most contemporary ethical theories it is very difficult to say just *why* these men were

ethically wrong, although according to the moral sentiments and conventions of the non-Axis world they certainly were. And it is on this ground, that of human sentiment, that the criminals were so declared. But *their* sentiments were different. Hence, in effect we did not declare them guilty, but deviant.

But what is the norm from which deviant action deviates? The norm chosen by the leaders of the victors? By the powerful? Take the question a step further. Do the leaders choose a norm by consulting the sentiments of the majority of their people? (In the mood of a moment? or over a period of time?) On the other hand, if the leaders consult an educated, cultured elect, they run into the philosophical uncertainties of which we spoke: men who *themselves* turn to convention or sentiment or intuition to justify their moral decisions. That is to say, no intellectual basis is available for ethical decision. Insofar as Western morality is still coherent, it derives from an inherited and now intellectually indefensible sentiment and convention.

The one nearly universally accepted moral principle available in the West is that of the dignity of the individual. But there is, correspondingly, an uneasy silence about pushing the matter further on: to ask why has the individual an inviolable dignity? For if one wanted to be perfectly cynical, one would point out that man is nothing special in the universe, that morality is of no "higher" value than biology, that we know nothing about man's "meaning," and that, in fact, there is no final reason why man is any more inviolable than any other chemical organism, or animal. It is clear that a large portion of the human race does not value individual human life, or individual conscience. It is not at all clear why the other half does.

The dilemma of contemporary moral philosophy in the West is that it is living by intuitions, imperatives, conventions, and sentiments which it has derived from a past whose intellectual groundwork it has rejected (and does not understand); and it has supplied no intellectual groundwork in replacement. On the contrary, almost everything about contemporary moral philosophy in England and America makes that replacement very unlikely. Emphasis upon the analysis of the language of a civilization long cut off from its intellectual roots can at best result in teaching us how sick we are. Emphasis upon positivistic problems, of which we have sure measurement, excludes meditation upon human destiny, of which no man and apparently nothing in the world is the measure. The really interesting questions are why intellectual activity is not simply absurd, why living mildly in peace with one another is not radically disharmonious with a cruel and ruthless world process, and why it is considered enlightenment to follow what are only prevailing opinions of a time. Underneath the placid surface of Anglo-American philosophy there lurk the questions of the absurd. The sense of law and order in Anglo-American society, the police force and the pressures of social conformity, settle our moral disputes and prevent the ruptures in sentiment and convention which would reveal to us in practice the chaos which already thrives in our intellectual vision. To the juvenile delinquent who is not ill but says calmly, "Why not? It is only a rat race, isn't it?" there is no intellectually defensible answer in current contemporary moral philosophy.

II. An Integral Moral Vision

In the nineteenth century, religious writers like Dostoievsky argued against the positivists that cutting the roots of belief in God would be cutting the roots of moral practice. These writers overlooked two factors. One is that in order to live well men do not need a thorough-going intellectual justification; they can begin with faith in man and do quite well. The other is that men do not, after all, live by logical positivism or — to be more general — by philosophy. In the main, men live by convention and sentiment and their own partial insights. The intellectual denial of God in the nineteenth and twentieth centuries has not led, among university professors for example, to wanton immorality. Certain areas of moral conscience — professional dedication, personal dignity, international brotherhood — have been developed to a high degree. And a certain moral sense for what is done and what is not done, and for what an ideal man is (David Riesman's "autonomous man," for example), is still very strong. In spite of the fact that many intellectuals believe there is no God, no hierarchy of values discoverable in man's nature, no special role discoverable for man in the universe, no way even of understanding the universe except in relation to our own tiny, shifting point of view, there remains, nevertheless, a certain faith in man and in fraternity. It is a faith which has no metaphysical view of the whole universe to back it up; moreover, it flies in the face of what can be discovered by scientific method. It is a faith which, as can be seen in Bertrand Russell's "A Free Man's Worship" or Walter Kaufmann's *The Faith of a Heretic,* has no intellectual grounding for its ultimate terms.

The faith of modern man in man, finally, seems to spring positively from a certain hubris, and negatively from a distaste for conceptions of God. The positive and negative motives are interrelated. A conception of God hovers behind Western ethics, even when God is no longer central to ethics; and that God is usually conceived as a threat to man's dignity. Behind Kant lies a severe Deity, himself, it seems, subject to a law outside himself; behind the early utilitarians seems to lie the remote God of the Deists, content to let men work out their calculus of pleasure and pain; behind Roderick Firth's Ideal Observer lies God as a seeing eye, dispassionate, impartial, abstract. More generally, God is conceived as some sort of "extra," outside the system, called upon as rewarder and punisher to redress the malfunctionings of the system. Modern thinkers seem to understand the matter thus: Whereas men seek human perfection, human dignity, or human happiness, God offers an extra "salvation." Whereas men seek a rational morality which man can measure, God's morality is uncontrollable: and mistakes in the conception of God or of what God wants wreak disaster in human living. To say that "x is right" means "x is approved of by God" opens the way to corruption; for don't men imagine God and what God approves of according to their own inclinations? "As a man is, so he judges." And too many men try to force their own ideas, as God's ideas, upon others.

Now the curious irony is that it is the effort to base morality on man alone that has resulted in a growing sense of the irrationality and absurdity that lurks

around man. It has also resulted in a *faith* in man, the value of intellectual inquiry, and morality itself, a faith which has no intellectual justification. (*Why* lead the examined life, why establish universities, why do this instead of that, if in a final view the universe and man's destiny are, or may be, unintelligible? Why favor intelligence?) Nevertheless, men have been led to believe that Christianity prospers only at the expense of man, that God's rewards and punishments degrade morality, that conformity to the supernatural demands crushing of the natural, passivity instead of activity, docility instead of intelligence, magic instead of critique. Positively their hubris, and negatively their distaste for the God they see, lead them to adopt the stance of Prometheus: to prefer chains, on barren rocks, in the night, to submission to an unjust God.

The misconception of the relations between nature and grace leads to alienation between man and God. If communication breaks down, men attempt monologue. But only *dialogue* explains ethics completely. For ancient peoples the whole universe was personal; God was closer to them than they to themselves; morality was a relation to Him. When *they* spoke about God as rewarder or punisher, they didn't think of the deistic god outside the universe scrutinizing and adjusting scales. Their notion even of rewarder and punisher was of one immediate and present, though other and incorruptible.

It is true that Aquinas distinguished the natural from the supernatural, in a way destroying earlier simplicity. But we must be very clear as to what he did. He did not make two realms where before there was only one. He did not reify an abstract distinction. There is only one world, a world in which there is much irrationality and sin, a world in which there is much goodness and grace. In Christian terms, there is not now and there never was a world of nature. Man and his morality are simply not understandable within a closed system of "pure nature," for there is no such thing. (From what is called theologically the "preternatural" state of the first humans, there was an immediate transition to the world "after the fall.") Pure nature is only an abstraction. For Aquinas, at least for the later Aquinas, pure nature is like a line on a graph, a "what might have been" (but is not).[1] The Thomistic formula *gratia supponit naturam* cannot be translated "grace builds on nature," for there is no solid entity, nature, upon which to build. It does grave harm to imagine two solid blocks, grace and nature, one on top of the other; or two discrete territories, one adjacent to the other. It does great harm to reify what is designated by these two terms. If we do, grace becomes a magic force beyond intelligence or critique; and nature becomes a solid, inviolable domain, resistant and jealous. We then imagine that after we use our intelligence and will, then a magic force does something "extra"; and that, at a certain point, it becomes virtuous to stop thinking or willing. But the psychological sicknesses that can lurk at precisely that point are indication that such bifurcation between nature

1. Cf., e.g., the growth in Aquinas's thought from his treatment in II SENT., Q. 1, a. 2 to his treatment in DE VERITATE Q. 24, a. 12 of the question, "Whether a man without grace can avoid sinning?" In the earlier treatment, thinking that the abstraction, natural man, was the object of this question, he answered Yes. In the later treatment, much more concrete, he answered No. Cf. Novak, *St. Thomas in Motion,* THE DOWNSIDE REVIEW (Autumn, 1960).

and grace is mistaken at its beginning. The religious person who insists upon intuitions, imperatives, mysterious happenings, areas of no more questioning or no more willing, is ordinarily — and justly — looked upon as ill. But wherever in Western religious life this imagination of two separate realms of nature and grace has taken root, even the well sometimes take early refuge in "God's will" or "Providence" as a means of avoiding intelligent inquiry into intelligible secondary causes. And the nonbelievers try to base morality on man alone.

To *imagine* grace as a physical "push" or "pull," or as a "lump of shining matter," or as a "motor," or even as an "energy," results in many dilemmas (the opposition between grace and free will, for example) whose root is simply a poorly chosen image; or, more exactly, in the use of *images* at all. If one takes grace rather as knowing and loving — as activities — then one sees more clearly how grace is "sharing in Christ's life" (precisely, his knowing and loving) and at the same time my own. The traditional *inspiratio voluntatis* and *illuminatio mentis* are precisely such activity.

The conception of grace as activity accounts for sanctifying grace, actual and habitual; for *gratia sanans* and *gratia elevans.* It is also useful for such usages as "grace of state" (i.e., knowing and loving in *this* task) and "the grace of a beautiful day . . . or of a certain trial" (i.e., as stimuli toward new knowing and loving). Finally, it seems very useful for removing the "magic" from notions of *ex opere operato* in sacramental grace. For it is the unity of the intention of the minister (knowing and loving in at least this minimal sense) with Christ's power-giving intention that constitutes the sacraments, *whatever* the further dispositions of the minister. (And when these further dispositions are active knowing and loving on his part, then the *ex opere operante* conditions are also filled, and his activity is drawn up into Christ's.)

Every nonevil human knowing and loving is an actual grace, either disposing for or intensifying one's share in Christ's knowing and loving; and even sin is turned to grace. Everything leads to God; or, misused, distracts from him. We live under that one economy, and it alone.

In this one economy, as Bernanos says, "Everything is grace." Everything speaks of God, or is a distraction from him. There is not one realm of the sacred, one of the profane: everything has its sacred aspect, and its profane. There is not one realm of grace, one of nature: everything has its concrete relation to our redemption, and an abstract aspect in which it is merely neutral. Sunlight on trees, a heavy rain, our studies, a boring job, sickness at home, or health, a kind word or an insult, an insight or a perduring problem, a lesson from experience or another failure, a friendship or an enmity — everything is a relation to God. But it is not for that reason magic or mystique, not hidden voices or romantic insights. Each thing is simply a new stimulus for our intelligence and will; we can react to its full possibilities or not.

"Full possibilities" is the key phrase. If we understand all that goes into each event, we are capable of an integral moral vision. The contemporary philosophical view makes no pretense of understanding all aspects of an event; it does not even understand its own faith in man. To the scientific understanding of events in which contemporary philosophy shares, the Christian adds meta-

physical understanding, and also Christian faith. It is important to see that these latter two methods, which are brought to bear upon each event, are nonscientific but not antiscientific; different, but not contrary; cannot in principle conflict with science, but may at a given historical moment conflict. Metaphysical understanding is extrapolation from the fact that men sometimes understand and that some things are understandable to the view that all that is is understandable; that, although men do not understand everything, everything is understandable. In this view, intellectual pursuit and intelligent morality make sense. Christian faith is an understanding of man's destiny, through a revelation made by God to a concrete historical people, a revelation made in dialogue with this people, culminating in the incarnation of the Son of God, and preserved in his Church. The scientific view of an event teaches us the immediate and crucial factors involved; the metaphysical view relates the event to a world order, in which both intelligibility and unintelligibility enter, according to the laws — it seems — of emergent probability;[2] the Christian view relates the event to a personal God known by his own entry into human history.

When we are able to understand the full scientific account of an event, the relation of the event to world order, and the personal significance of the event in terms of our own destiny, we understand the "full possibilities" of the event. We have an integral moral vision. It is to be noted that there is but one event, and one integral moral vision. To *oppose* one way of looking on the event to another, or to make one *depend* upon another, is to miss the point that the one concrete event is simply too rich to be exhausted by any one of them, and needs all of them if it is to be fully understood.

III. Häring's Contribution

Not to have opposed faith to reason, not to have pitted a law-giving God against docile man, not to have confounded the view of faith (in theology) with the view of metaphysics or science; to have seen the uniqueness of the view of faith, and to have seen that, nevertheless, it is one and the same concrete event which science, metaphysics, and faith regard — these are the contribution of Häring's study. The Christian vision of man and his actions is an integral one; Häring has presented the wholeness. Through and through the Christian vision is intelligible: scientific data yield a scientific account, metaphysical data a metaphysical, and data of faith a theological. In a certain sense, Häring's book is not original. That all these relationships should work out so has long been believed by theologians. But Häring has from his first page assumed the position that the view of faith is not a view of "extra" entities, after scientific and metaphysical entities have been treated; faith is not icing on a heavy cake, nor adornment on a brutal fact. Faith is another perspective on the one whole reality, this one concrete economy in which we live. It is not

2. Cf. Bernard Lonergan, Insight: A Study of Human Understanding 121-180 (Philosophical Library, 1957). Much of the present essay owes its inspiration to Lonergan's writing and teaching.

the only perspective; for total understanding, the others are needed. But one same whole reality is under view.

For previous writers of manuals on moral theology — e.g., Noldin, Prümmer, Regatillo, and Zalba — a more or less deductive metaphysics, together with an inductive consideration of individual cases, formed the two main blades of moral inquiry. The structural backbone of their effort, dictating the pattern for the blades to follow, is a combination of what they call natural law and the systematization of natural and ecclesiastical law in canon law. To be sure, discussions always open and close with the adducing of the relevant texts from Scripture, and with exhortations to attend also to the positive side of Christian living, not only to the legal side. Some of these manuals are even systematized on the exposition of the exigencies of the Christian virtues, in an effort to combat an excessive legalism. But the abstract specter of "the natural man" haunts even these latter texts, and involves them in the effort of fashioning a sort of procrustean bed, to which the man who would be good must "measure up." The result is that even emphasis upon the virtues goes for nought, because the system is still an abstraction and hence a prey to various kinds of legalism. It is not sufficiently noted that Anglo-Saxon conceptions of law, arising from the concrete rather than descending from a universal principle, have not much influenced the thinking of such theological writers. (On the question of Church and State, the two divergent approaches to law make crucial differences; similarly elsewhere.) Furthermore, the student of these texts wants to know, Where did these abstractions come from? Why is law so little like life?

For Häring, morality is a dialogue between man and God, in every event and every action.

> For the Christian, religion is infinitely more than any sentiment. It is more than any need or experience, even more than "saving one's soul," striving for "happiness." It is fellowship with the living God. . . . Not even the glory and majesty of God give us religion. We come to the heart of religion only at the point of encounter between the word of God and the response of man. (p. 35)

Responsibility — *response* — becomes the key word in Häring's ethics.

God the transcendent and the infinitely removed is the God to whom man responds; but it is through the Son of God and in Him that the world was created; and this Son became man. Man's likeness to God, through the Son, becomes in turn the key to response. But man who must respond is body-and-spirit; individual, person, and member of a community; committed to history and to terrestrial tasks; and called to a life of worship. Built upon a full view of what man is, Häring's ethic is on good ground for teaching the imitation of Christ. Christ was fully man, fully incarnated. Christ's way of life was not to deny his humanity, nor its limits, nor its exposure to darkness and to unintelligibility (sin, suffering, death). Man was created through and in Christ's image (as the eternal Logos); and Christ's historic life accepts that human created nature in all its dimensions. To imitate Christ, man too must accept his nature in all its dimensions and with all its limitations. (Ivan Karamazov could accept

either God or his creation, but not both.) It is only a perversion of Christian ethics to deny a part of man's nature: to slight, for example, his body, his relations to his community, or on the other hand his unique and inviolable person, or his engagement in history. The struggle in Christian ethics is not between body and soul, or between terrestrial concerns and heavenly concerns, or even between impersonal law and personal inclinations. It is between exploiting the full possibilities of events, in imitation of Christ, and limiting one's view and energies to less. Freedom is the ability to respond fully to an event, in all its dimensions; and its abuse is to settle for less. Sin is a consciously chosen failure to realize the full possibilities of a situation.

For Häring, the natural law concepts of responsibility, freedom, the whole man, person and community, and the like, at first glance seem to be transmuted by the onrush of the law of Christ. But a clear historical sense reveals something extraordinary. In giving these natural law concepts flesh and blood, as it were, through the person of Christ, Häring has made natural law theory more like the concrete natural law of Aquinas than it has been for centuries. The abstractness and legalism are gone, as it is time they be; for Latin scholasticism never seems to have grasped the concreteness of Aquinas's revolution. Thus, Häring sees responsibility not as obligation towards an abstract proposition, but as response to a Person. But this Person does not speak with a mysterious inner voice, or merely through a system of law. One must attend with respect to *every* aspect of reality to hear this Person: the concrete event, one's own personality, future effects, pleasure and pain, the codified prudence of law, advice, prayer, etc. For God speaks in everything. Häring treats these elements separately, giving due weight to each in their effect upon concrete decision and judgment. In similar fashion, Häring's treatment of other natural law concepts returns us to full, concrete modes of thinking in approaching metaphysics; beneath the personalizing influence of Christ, natural law ethics here discovers its own best nonlegalistic, nonabstract self. This influence is fitting compensation for the artificiality sometimes imported into natural law ethic by well-meaning but impersonalist Christians.

Häring's system could be outlined, in terms of the "two questions of ethics" which contemporary moral philosophers are fond of distinguishing, in the following fashion. In answer to the first question, *What is right?* Häring could answer: " 'x is right' means 'x is what Christ would approve.' " In answer to the second question, *What actions are right?* Häring could answer: "Those acts are right which Christ would do, in the given situation." Such a response has philosophical precedents. In recent literature, Roderick Firth's Ideal Observer theory employs a similar analysis.[3] In the *philosophia perennis,* Aristotle's man of practical wisdom fills a similar role — but much more concretely and humanly, it must be remarked, than Firth's disincarnate, hypothetical observer. Furthermore, the sources to which one can go to find out what Christ would have approved, or would do, are many: not only the explicit words of the Gospels, but also the living figure of Christ — the *sensus Christi* — one can grasp there; not

3. *Ethical Absolutism and the Ideal Observer,* 12 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH 317-345 (1952).

only a long tradition of meditation and explanation, but also the advice of a living Church; not only sense of the Christian community in which one lives, but also the resources of personal meditation and insight. It may be noted that Christ, as God, is omniscient about all facts relevant to the situation; and hence those who would imitate him must be as diligent as possible in learning about all aspects of the events in which they find themselves: the scientific not least. Wherever they close their eyes, stilling the desire for full understanding, there they fall off from the imitation of Christ.

> The principle, the norm, the center, and the goal of Christian Moral Theology is Christ. The law of the Christian is Christ Himself in Person. He alone is our Lord, our Savior. In Him we have life and therefore also the law of our life. Christian life may not be viewed solely from the standpoint of formal enactment of law and not even primarily from the standpoint of the imperative of the divine will. We must always view it from the point of the divine bounty. . . In Christ, the Father has given us everything. (p. vii)

Häring's treatment is sometimes too ecclesiastical, too smug or apologetic in reference to Catholics, too simplistic and brief with non-Catholic thinkers. But the larger movement of his thought is by no means ungenerous. It may be hoped that his work soon becomes the standard Christian moral text. It is a solid step toward that Christian humanism, that relation between nature and grace, which the Renaissance fumbled for and missed.

MICHAEL NOVAK

THE CONCEPT OF LAW. By H. L. A. Hart. Oxford: Oxford University Press, 1961. Pp. viii, 263. 21s.

At the center of this significant contribution to jurisprudence is the contention that a proper analysis of law begins with a consideration of the viewpoint of the community whose law it is. It is only from this "internal" standpoint that the functions of law may be understood. Thus viewed, law may be broken into two elements: primary rules and secondary rules. Primary rules are standards of behavior for a society: they impose obligations which are "accepted" by a substantial part of the community as binding apart from sanctions. If they existed alone, they would be largely indistinguishable from morals. Secondary rules supply the obvious deficiencies that attend a set of primary rules alone. Secondary rules perform three main roles, distinct from each other and from the creation of obligations. One kind of secondary rule, "the rule of recognition," identifies the primary rules so that they are marked off from morals, etiquette, or private wish. Thus, in England the rule of recognition prescribes that statutes enacted by the Queen in Parliament are law, decisions of courts are law, duly enacted municipal ordinances are law. A second group of secondary rules provides for change in primary obligations. These rules include both those which permit the making of new public laws and those, such as the law of contracts or wills, which give private parties the right to create or alter primary obligations.

A third branch of secondary rules deals with the tribunals to determine the violations of primary rules and with the application of sanctions for their breach.

The author comments on this model: "If we stand back and consider the structure which has resulted from the combination of primary rules of obligation and the secondary rules of recognition, change, and adjudication, it is plain that we have here not only the heart of a legal system, but a most powerful tool for the analysis of much that has puzzled both the jurist and the political theorist." (p. 95) This combination of primary and secondary rules is the "key to the science of jurisprudence." (p. 79)

The author's exultation is justly founded, in large measure, on the advance he has made from the sterile pattern of analysis of law in terms of force with which Austin is so much associated. For Austin the law consisted in commands to which sanctions are annexed,[1] or, as Hart bluntly puts it, in "orders backed by threats," "the gunman situation writ large."[2] This simple description, Hart notes, fails to account for the whole class of laws identified by him under the head "rules of change."

Is the essence of Austin saved in the more sophisticated model of Kelsen? Hart next inquires. Kelsen, in an analysis not without influence on Hart, has contended that "command" is at most metaphorical when used to refer to law. He has gone on to find that law consists in "impersonal and anonymous commands," called norms, which stipulate sanctions. "It is the task of legal science," Kelsen has stated, "to represent the law of the community . . . in the form of statements to the effect that 'if such conditions are fulfilled, then such and such a sanction will follow.' "[3] Thus the law of contracts is analyzed as follows: "If two parties make a contract, and if one party does not fulfill the contract, and if the other party brings an action against the first party in the competent court, then the court shall order a sanction against the first party."[4] As Hart notes, by greater elaboration of the antecedent or "if" clauses, all his secondary rules could be restated in the form of conditional directions to officials to apply sanctions.

To this "formidable" recasting of Austin, Hart rightly brings a fundamental objection: the theory distorts the way law actually functions. Hart's inclusion of sanctions among the secondary rules means that he does not reject Kelsen's statement that "coercion is an essential element of law."[5] But neither does he admit that coercion is the typical function of law. Public prosecution or private litigation resulting in official application of sanctions is an ancillary device invoked when the law has failed to function in its primary purpose of creating standards. It is a mistake to think of law only from the viewpoint of the bad man who seeks to avoid punishment. A better understanding of the law can be had by looking at it as "a puzzled man" or "an ignorant man" trying to channel his activities. The principal function of law is observed socially not in the infliction of penalties but

1. JOHN AUSTIN, 1 LECTURES ON JURISPRUDENCE 182 (1869).
2. The "gunman" metaphor was used by Hart to criticize Austin in *Positivism and the Separation of Law and Morals*, 71 HARVARD LAW REVIEW 593, 603 (1958), an article in which a number of ideas in THE CONCEPT OF LAW were first adumbrated.
3. HANS KELSEN, GENERAL THEORY OF LAW AND STATE 45 (trans. A. Wedberg, 1949).
4. *Id.* at 53.
5. *Id.* at 25.

"in the diverse ways in which the law is used to control, to guide, and to plan life out of court." (p. 39)

Hart's analysis offers an equally effective critique of such formulae of Legal Realism as "law is what the courts will do" or "law is what courts do."[6] These formulations fail to account for Hart's secondary rules. Even excluding these rules from the scope of law, these theories fail because they confuse prediction with the community's acceptance of rules which makes prediction possible. In a particular game, Hart observes, the score is what the scorer says it is or what he will record. But in scoring, the scorer applies a rule independent of his will. An ordinary game is not a game of "scorer's discretion," of arbitrary calls; and if a player remarks that he has won a point, this observation is not merely a prediction of what the scorer will do, but an assessment of the applicability of the rule from the viewpoint of one who accepts the rule. Similarly, in a case, "the adherence of the judge is required to maintain the standards, but the judge does not make them" (p. 142) — a statement reminiscent of the nineteenth century assertion that a judge only finds the law, but qualified in Hart's book by his insistence on the creative role of the judge in the penumbra of uncertainty and novelty which attend the application of any definite statutes.[7] Even here the judge refers to standards marked out by the community. A statement that a particular result will occur in a case is not only a prediction of the judge's behavior, but a reference to a rule accepted apart from this behavior. (pp. 143-144)

Hart's criticisms are penetrating, vigorous, and convincing.[8] But a book offering "the key to the science of jurisprudence" provokes as many questions as it offers answers. Does Hart seriously share the belief of Austin, whose phrase he thus adopts, that there is a science of jurisprudence? It would seem probable that he does, particularly as he speculates as to why there is such debate as to the subject matter of this science in comparison with the generally undisputed subjects of medicine or chemistry. (p. 1)

Hart's book has the "scientific" purpose of advancing "legal theory by providing an improved analysis of the distinctive structure of a municipal legal system and a better understanding of the resemblances and differences between law, coercion and morality, as types of social phenomena." (p. 17) But is this modest purpose of analysis feasible without examination of the larger purposes to which the legal structure is believed to be directed?

Other sciences may be more easily circumscribed. Their subject matter is defined by the Baconian purpose for which they are normally pursued: the prediction

6. See Holmes, *The Path of the Law,* in COLLECTED LEGAL PAPERS 173 (1920), and compare LLEWELLYN, THE BRAMBLE BUSH 9 (2nd ed., 1951).

7. Hart has not yet met head-on Fuller's contentions that no statutes are interpreted word by word and that even the simplest statutory phrase for the "clearest cases" requires a decision as to the purpose of the statute. See Fuller, *Positivism and Fidelity to Law — A Reply to Professor Hart,* 71 HARVARD LAW REVIEW 630, 661-667 (1958).

8. The last chapter of the book is an especially effective critique of the Austinian notion of sovereignty in international law. While this notion has caused much harm in international affairs (see F.S.C. NORTHROP, PHILOSOPHICAL ANTHROPOLOGY AND PRACTICAL POLITICS 179-180 [1960]), it is increasingly under attack by general theorists, e.g., CHARLES DE VISSCHER, THEORY AND REALITY IN PUBLIC INTERNATIONAL LAW 93 (trans. Corbett, 1957), and specialists, e.g., B. A. WORTLEY, EXPROPRIATION IN PUBLIC INTERNATIONAL LAW 13.

and control of the properties of a particular kind of physical matter. It would appear that a similar ambition to achieve prediction and control "like a science" may have animated such Austinian offshoots as Legal Realism. But it would not seem that this narrow goal was Hart's. If science is not meant in its normal sense, perhaps all that is intended by Hart is "an analysis free of personal commitment." Yet, as Polanyi has so vigorously shown,[9] even practitioners of the stricter kind of science bring value commitments to their work. In the looser sciences such as sociology some of the best authorities have made plain that not only do personal value judgments necessarily guide the sociologist, but that the most conscientious course with such value judgments is to hold them consciously and state them explicitly.[10] In the "science of jurisprudence," a looser science still, can one undertake any analysis without a moral purpose, without evaluation of the uses of law, without commitments as to what law should be? Is not analysis clarified, if these purposes, values, and commitments are explicitly recorded?

The question of purpose is central to the discussion Hart undertakes of the intersecting points of law and morals. Morals influence statutory law; they may, though they need not, guide a judge making case law; law may be criticized from a moral point of view. Beyond these points of contact, which he says almost any school of "legal positivism" would admit,[11] Hart notes a further substantial overlapping of law and morals; for a society to be viable, for a legal order to exist, there is what the author considers a limited moral structure built into the law:

1. The law must have at least what is here denominated "legal justice," that is, law must be applied impartially to like cases; it must be intelligible, within the capacity of most subjects to execute, and generally not retroactive.
2. The law must provide some restriction on the free use of violence.
3. The law must protect property and secure promises. (pp. 189-195, 202)

These minimum requirements for the content of law are based on undisputed, universally existent facts as to men and their environment. The requirements could change if man's nature as we know it changes. Given this nature and the present environment, these elements constitute what the author calls "the core of good sense" in the natural law position.

I shall come back to the derivation of these requirements and shall focus now only on Hart's explicit refusal to incorporate another moral element into his notion of law: the requirement that a law be just. His contention is that though a law must be applied impartially to like cases, a community may determine what are "like cases" in a way that seriously discriminates against a class or race or group. Such unfair legislation will be one example of unjust but existing law. This position, it is clear, may make sense if the purpose of Hart's analysis is to describe a model of law which may be indifferently applied without normative implication to every society which has existed — a purpose not without its usefulness. It is obvious, for example, that a large number of legal orders — Greek,

9. See Carl Friedrich, Book Review of Polanyi, *Personal Knowledge, supra,* p. 132.
10. E.g., GUNNAR MYRDAL, AN AMERICAN DILEMMA 1043-1046, 1063 (1944); ROBERT S. LYND, KNOWLEDGE FOR WHAT? 200-201 (1939).
11. A point well developed in Thomas Broden, *The Straw Man of Legal Positivism,* 34 NOTRE DAME LAWYER 530 (1959).

Roman, early American — have enforced slavery by laws which would be considered unjust.[12] If analysis of the law of such societies is to be made, it appears pointless to deny the character "law" to the unjust statutes imposing or regulating servitude.

Even here, however, contemplating a "purely descriptive" model, there must be some doubt as to whether there would not be a gain in analytic insight if just and unjust laws were distinguished. The way laws function socially is for Hart the ultimate test of the validity of his distinctions. Following his protest against distortion of the social functioning of law by easy cataloguing, might one not feel that lumping under a single heading of "primary rules" all obligations, however accepted by their subjects, was itself a fundamental distortion? Is it not likely that the way law functions for slaves is substantially enough different from its functioning for even the bad free men of a community to warrant a distinction between law set for free men and law set for slaves? In short, if "social function" is the refutation of Austin and of Kelsen, social function also suggests that a basic differentiation should be made in theory between laws which are regarded by their subjects as directed to a moral human end (even if the subject is a bad man who will not obey or a dissident who believes the law unwise) and laws regarded by their subjects as iniquitous and inconsistent with human nature. The distinction, based on the social functioning of law, might be drawn at the point where the subjective view of those bound by the law was that it was inhuman. It might be marked more boldly by one more confident of his values at the point where in fact, regardless of the subject's views, the law was inconsistent with human nature and so worked at cross-purposes with the basic tendencies of man. At either point the distinction would reflect a change in the operation of the law as real as, say, the difference between rules of change and rules of adjudication.

A theoretical distinction between just and unjust law is, it should be noted, all that the traditional exponents of natural law theory have sought.[13] The issue is not, as Hart appears to conceive it to be, the banishment of "unjust laws" from the consideration of the "science of jurisprudence" to become the unhappy objects of "some other science." (p. 205) The fundamental distinction suggested is much like a distinction which might be drawn by a person studying the varieties of love. Such a student might apply the term to the love of God, to the love of neighbor, to marital love, to romantic love, to the love of a parent for a child. He might then say, recognizing a common thread in the function of love in this variety, that these constituted species of "true love." He might at the same time hesitate to include within the meaning of love the vast variety of perversions which characteristically bear some resemblances to his true species, but which

12. Such classic philosophical defenses of slavery that some men are naturally slaves (ARISTOTLE, POLITICS I:2) or that some men will benefit from the guidance of a wise master (THOMAS AQUINAS, SUMMA THEOLOGICA II-II, Q. 57, art. 3, ad 2) do not seem to have much relation to the laws instituting and maintaining slavery in any given society.

13. For example, Thomas Aquinas still treats of "unjust laws" in his "Treatise on Law" while saying a man is "not bound to obey [such] law, provided he avoid giving scandal or inflicting a more grievous hurt." SUMMA THEOLOGICA I-II, Q. 96, art. 4, ad 3. He also speaks of a tyrannical law as "not a law, absolutely speaking, but rather a perversion of law." "It has the nature of a law" because it is "an ordinance made by a superior to his subjects." *Ibid.*, Q. 92, art. 1, ad 4.

might function in a markedly different fashion. A student of love might enrich his comprehension of his subject by an exploration of these perversions and the reasons for their deformity, but he would not be prevented from this exploration because he had chosen to distinguish between love, false and true. Law, too, may be distinguished as good and bad without limiting its analysis.

If there are serious reasons to question the suppression of difference between just and unjust law when what is at stake is a model for analysis of dead societies, the doubt becomes more acute when one treats of living social orders. Here a jurisprudent may wish to analyze with the purpose of guiding the community creatively. Is it helpful to his purpose to deny him a radical distinction between just laws and laws which will, so he says, function to the damage or destruction of the community? Does not the evident answer to this query suggest that Hart's "key" is not useful in this area of jurisprudential activity? Can the province of jurisprudence be thus limited?

Leaving the task of description, Hart has argued further that his rejection of justice as an essential element of law also stands on practical grounds: (1) There is no evidence that men will resist unjust laws more often because they believe "an unjust law is no law"; and (2) such a belief would obscure the dilemma of the kind that confronted the postwar German courts of not punishing an evil act, legal under Nazi law, or punishing it retroactively.

As to the first point, Radbruch's testimony stands against it, as does a common sense appraisal of what must have been the effect of German positivism on German judges and lawyers.[14] The evidence is, indeed, far from complete; certainly none is adduced by Hart. As to the second point, the German courts can be considered to have been in no greater dilemma than were the Allied military tribunals punishing crimes "against peace and humanity" which were defined by no statute at the time of their accomplishment. Both sets of courts had to leave evil acts unpunished or apply retroactive law. The heart of their problem was: Can criminal law ever be retroactively applied? If there is any moral justification for such application, does it not rest on the contention that any ordinary human being performing acts for which he is later held criminally accountable should have realized at the time of the acts that they were seriously immoral or "unnatural"? If this justification does not hold, then it would seem wrong to invoke a sanction retroactively. If it does hold, I cannot see that the existence of an evil statute commanding or permitting the action in any material way affects the resolution of the problem. If a person is held accountable for his evil act, he must equally be held able to see the evil of the statute. The existence of the statute makes the problem more acute only if one believes that law, whether good or bad, has some moral weight of its own. This proposition does not seem to me

14. See Fuller, *op. cit. supra* note 7, at 656-659. Compare THE JUSTICE CASE, III TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS (1951), especially testimony of Defense Witness Professor Jahrreiss, p. 257, 277, 282. Note in particular such examples of belief in the magic power of a statute to convert wrong into right as the case of Curt Rothenberger, president of the district court of appeals at Hamburg, 1935-1942, who opposed denying Jews the right to proceed *in forma pauperis* while "a direct legal basis is missing," and at the same time urgently recommended issuance of a legal directive to achieve this denial. (*Ibid.*, pp. 1111-1113)

one Hart is prepared to defend, although it is a proposition which is perhaps implied by Hart's view of the value of the law being faithful to itself. The significance of law thus giving itself a value, apart from other human ends, may now be considered.

This question of the value and end of law is linked to what was noted earlier as another basic question for Hart, the source for the minimum moral content he finds in law. What is his basis for this moral injection into the legal order? He approaches this question with a classic English distaste for speculation of a metaphysical sort and an understandable desire to reach the plain practical truths on which all sensible men would agree. He reminds us that the natural law, as historically conceived, depends on "a theocratic view" which "few could accept today," and he offers to disentangle the natural law not only from its theological antecedents, but from any complex metaphysics. (pp. 183-187) He starts with one premise, that "we" are committed to survival, and he founds his minimal natural law, set out above, as a statement of what, given the nature of man and his environment, is necessary for survival. (pp. 188-189)

"Survival," it will be seen, is made a simple and absolute value in this account. Yet survival has not this simple and undifferentiated character. Whose survival is meant — the individual's or a society's? If individual survival is intended, then it is obvious that no society we are famliar with has made survival its governing value or incorporated the requirement of survival of individuals into its basic laws. Not only has a large part of the law of most civilized societies been directed to the conditions and ways in which its young men may be sacrificed in war, but the ordinary laws of domestic society normally are cast on the assumption that individual lives are not our highest value. The whole of automobile tort law rests on the foundation that while one has a primary obligation to drive carefully, one does not have a primary obligation not to use a car; compensation for lives taken is preferred to banning of vehicles which assure the existence of other values more highly prized by the society.

If, then, the notion of individual survival is rejected as a utopian basis on which to account for existing legal orders, the notion we are left with of "survival of a society" involves a number of questions, some of which are far from being academic at the present moment. Does a society survive if only a tenth of its people and none of its educational institutions survive? Is bare survival of some people ever the goal of a society even in its bleakest choices, let alone in the complex functioning of its law? When one speaks of survival of a society, is not what is meant the cultural content of that society — the ideals of the Third Reich or the "American way of life" or English civilization? Once these cultural values are brought into the meaning of survival, the requirements of law to insure the survival of a particular culture are seen as many more and as much more varied than Hart suggests. There is no existing law in which the requirements of survival, abstractly taken, form a minimum vital content of the law, and the use of this abstract notion to form a model of law must result in a serious disfiguration of realities.

Once one embarks on an enumeration of the minimum moral ingredients of law, is one not led, perhaps inexorably, to an enumeration of what one believes

to be the maximum requirement of justice? "Survival" won't do the job. Other more complex notions, recognizing more human needs, reflecting a richer range of human capacities, are devised. Where does one stop, as one finds that, in fact, different societies have recognized some but not all such needs, have encouraged certain human tendencies and perverted others? Is there any ideal model which will fit all cases, as Hart appears to have assumed with his starting point of survival? It would seem possible that in the search for a general type, one would be led back to the rejected model of just law, which measures law in terms of justice and injustice. This model, with this distinction, is still serviceable for descriptive analysis and may, as has been suggested above, more faithfully reflect social function. Its development, of course, demands a metaphysics, a teleology, and possibly a theology.

Yet if survival does not mean individual or social survival, could not a gloss on "survival" in Hart's context amend the phrase to "survival of the legal order"? In this way, the moral requirements of law would spring from a categorical imperative that the legal order preserve itself. In Hart's universe the fidelity of law is to itself. What is commanded as necessary is what is necessary to keep a legal order in being, just as in a game there are minimum moral requirements to keep the game in existence. In any game, the rules must be intelligible, not retroactive, within the player's capacities, and impartially applied; the free use of violence must be restricted; scores, like property rights, may be changed only in accordance with the rules; and promises or declarations of various sorts must usually be honored. These requirements are a minimum if the game is to be played at all.

Hart's analysis applies perfectly to games and their rules.[15] This application of it does not involve any of the many complications created by considering the purposes of society in relation to the notion of law. In a game the purpose is to play the game. The players have the option of playing. If they choose to play, they must conform to the rules designed to insure the game's existence.

But is this snug fit of Hart's theory to the workings of games a strength or a weakness? The static character of purpose in games marks a fundamental differ-

15. Games not only have the same moral minima as Hart's model of law. They may also be analyzed in terms of his primary and secondary rules. Take football for example:

1. Rule of recognition: The official rule book contains all the rules of the game.
2. Rule of adjudication: The officials are empowered to determine all infractions of rules, to decide all disputes, and to impose penalties.
3. Primary rules: Certain members of the team in possession of the ball may carry it forward and will score points if the ball is carried over the opposing team's goal line. Under certain circumstances the ball may be thrown forward instead of carried, etc. The team with the ball may not hold the other team with their hands, etc.
4. Rules of change: By taking the ball under certain circumstances or by preventing the team with the ball carrying it forward ten yards in four downs, the defending team may gain possession of the ball and the right to score.

The English tradition of analogy between games and law, much favored by Hart, is at least as old as Hobbes: "It is in the Laws of a Common-wealth, as in the Laws of Gaming; whatsoever the Gamesters all agree on, is Injustice to none of them." LEVIATHAN 252 (Cambridge Classics ed., 1904) A more modern parallel is Wittgenstein's insight into language as a game. See Helen Hervey, *The Problem of the Model Language-Game in Wittgenstein's Later Philosophy*, 36 PHILOSOPHY 333 (1961).

ence between games and law. The other great difference, of course, is that there is no choice as to participation in the world of law. The conscripted participants in this world affect the purposes of the rules, just as the rules interact on them and change their purposes and personalities in a way no game ordinarily does. The participants' values are inextricably enmeshed not only with the operation of the rules, but with what the rules shall be. The static and abstract model of rules whose end is to perpetuate themselves does not exist in any actual social situation. Hart's model is Monopoly writ large. It is not an analysis of law in a live society.

JOHN T. NOONAN, JR.

GENERALIZATION IN ETHICS: An Essay in the Logic of Ethics, with the Rudiments of a System of Moral Philosophy. By Marcus George Singer. New York: Alfred A. Knopf, 1961. Pp. xvii, 351. $6.00.

It could be persuasively argued that contemporary thought — at least at its supposedly more sophisticated levels — has been infected by a radical schizophrenia. It has for some time been the dominant fashion in intellectual circles to accept without question or qualm the knowledge function and the truth value of certain approved methods of inquiry, and to dismiss as merely "speculative" or "subjective" or "emotive" or "relative" the claims of any discipline that cannot establish its results by these methods. The accepted models of rationality are those of logico-mathematical deduction and controlled empirical verification. When these criteria are applied with a proper mixture of zeal, bigotry, and naivete, they issue in a sharp bifurcation: mathematics and the "descriptive" or "natural" sciences are held in high repute; while other areas of investigation, and especially such "normative" inquiries as have to do with the questions of morals, esthetics, and politics, are denied intellectual respectability on the ground that they are vitiated by the intrusion of "arbitrary," "personal," and "variable" factors.

The present book is an attempt to rectify this situation insofar as it pertains to moral theory. This is hardly a novel undertaking; many have chafed under these invidious distinctions and have resisted the restrictions that they place upon inquiry. But the majority of such efforts have been largely critical and methodological in their bearing: they have consisted of arguments against this manner of treatment, attacks on the "most favored discipline" doctrine, and forewarnings of the irrationalism that such a bifurcation threatens and almost solicits. But they have not been outstandingly rich or rigorous in their attempts to justify the claims of the "normative" sciences to be rational disciplines. It is the great merit of Mr. Singer's book that it is devoted exactly, and exclusively, to this task: it embodies a conscious commitment to establish the rationality of moral theory, and to this end it eschews all other considerations and paths of inquiry, however inviting they may be.

Because of this special and explicit commitment, the book has, in one sense, an extremely limited scope. It altogether ignores many subjects and problems whose treatment is necessary to a complete system of moral philosophy, and which

we are accustomed to finding discussed in most books dealing with ethics. It is concerned only with moral theory, and not with the broader field of general value theory; it contains no examination of the actual institutions or practices of societies, past or present; it has nothing to say on the moral issues that arise in politics, economics, law, family relations, or other fields of human behavior; it offers no catalogue of virtues and vices, no analysis of the interplay of conduct and character, no delineation of happiness or the good life. These omissions represent neither an oversight nor a dismissal of such matters as beneath philosophic notice. They issue from the author's determination to conduct a rigorous and detailed argument of the thesis that moral theory is just as rational, in both its foundations and its developments, as is any other body of theory. Singer's aim, in his own terms, is "to solve the problem of the justification of moral principles"; that is, "to establish a rational basis for distinguishing between right and wrong, and thus to lay the groundwork for a rational and normative system of ethics." (p. vii)

In arguing the case for this thesis, the book combines a great care for detail, a nice sense of what is relevant or irrelevant, and a recognition of the limits that confront all rational undertakings. Indeed, to this reviewer at least, it often appears that the book is overargued: that there are unnecessary repetitions; that points are needlessly rephrased; that distinctions are pursued too relentlessly; that counterarguments are treated with a seriousness they do not merit. And the concrete examples sometimes suffer through unsuccessful attempts at humor or ridicule. But these are rather minor matters, though they do interrupt the argument and shadow its lucidity. They can be excused, furthermore, by the facts that this is "an essay in the logic of ethics" and that this is the only technique that will be respected by many of those whom Singer is anxious to convince. At all events, the book easily rises above these lesser faults: it is a forceful and persuasive presentation, constituting a solid contribution to moral philosophy.

The argument of the book is so closely focused and so painstakingly reasoned that it is difficult to summarize. The only recourse it leaves the reviewer is to try to isolate the principles upon which it rests, the major steps through which they are developed, and the more specific concepts in which they issue.

It is the author's central thesis that the foundation of all moral reasoning is what he calls "the generalization principle," which he states in this form: "*what is right (or wrong) for one person must be right (or wrong) for any similar person in similar circumstances.*" (p. 5) Far from claiming any originality for this principle, Singer insists that it is actually the foundation stone, explicitly or implicitly, of virtually all moral doctrines. It has been traditionally known under such terms as the principle of fairness or justice or impartiality or equity or universalization; and it figures with particular prominence in such influential and apparently diverse ethical systems as those of Kant and the Utilitarians.

The importance of the generalization principle lies in the fact that it is crucial to the generalization argument, which is technically stated in this form: "If everyone were to do x, the consequences would be disastrous (or undesirable); therefore no one ought to do x." (p. 61) More colloquial renderings of this argument are found in such familiar rhetorical questions as "What would happen if everyone did that?" or "How would you like it if everyone did that?" Singer

maintains that the generalization argument is "the fundamental principle of morality." (p. viii) And the whole of his book is devoted to two tasks: first, that of establishing its status as the basic, rational, and legitimate foundation of moral theory; and, second, that of elucidating its reach and its limitations, and of tracing the way in which it is rendered more concrete and thus applicable to actual moral problems. We can consider these tasks in reverse order.

It is immediately evident that the generalization argument cannot be applied mechanically and without further qualification; if it is, it soon leads to absurdities (as exemplified in the well-known remark of Morris Cohen's that "humanity would probably perish from cold if everyone produced food, and would certainly starve if everyone made clothes or built houses"). Consequently, as Singer emphasizes, "the basic problem about the generalization argument is to determine the conditions under which it is valid." (p. 61) This problem is faced forthrightly, and a solution to it is offered by eliciting other principles that are necessary to a correct employment of the generalization argument. There are five such principles that are assigned important supporting and limiting roles.

We can first notice two negative conditions. (1) Where the argument can be *inverted,* it is not valid: these are cases in which the consequences of *no one's* acting in a certain way would be just as undesirable as those of *everyone's* acting in this way. (2) Where the argument is *reiterable,* it is not valid: these are cases in which the action posited in the antecedent is specified in such an arbitrary way that it can be repeated indefinitely. (If everyone took his vacation from August 1 to August 15, the consequences would be disastrous; hence, no one ought to take his vacation at that time.)

We now come to three positive principles. (3) The *principle of consequences* states that "If the consequences of A's doing x would be undesirable, then A ought not to do x." Singer insists that this is a necessary and self-evident moral principle, in the double sense that "its denial involves self-contradiction" and that it is a "presupposition or precondition of moral reasoning." (p. 64) When we universalize this principle, we obtain a further proposition: "If the consequences of everyone's doing x would be undesirable, then not everyone ought to do x." If we then combine this latter proposition with the generalization principle — "if not everyone ought to do x, then no one ought to do x" — we can deduce the generalization argument: "If the consequences of everyone's doing x would be undesirable, then no one ought to do x." Obviously, then, the principle of consequences is just as fundamental and important in Singer's doctrine as is the generalization principle, and there will be more to say later regarding its claim to be a necessary moral postulate. For the moment, it need only be indicated that the principle as here employed is highly formal and abstract: it does not define the meaning, or indicate the content, of the term "undesirable"; nor does it indicate any operations by which consequences are to be identified, weighed, and balanced. Rather, its acceptance, along with the generalization principle, constitutes the moral conscience: it is this latter, fortified by theoretical and practical wisdom, which then makes moral decisions. Two further principles function chiefly to circumscribe the range of the generalization argument. (4) The *principle of restricted universality* limits the reach of the argument to "similar persons in similar circumstances" and so protects it against abuses and

absurdities. Finally, (5) the *principle of justification* clears the way for exceptions by indicating how it can legitimately be shown that the argument does not reach some particular person in some particular case: this can only be done on the basis of class characteristics, not personal ones.

Even if we accept that the generalization argument, as here elaborated and qualified, is the logical foundation of moral theory, it is still obvious that we do not often appeal directly to this principle in the processes of either moral education or decision. Rather, our habits have been formed and our lives are ordered by a horde of more specific norms and criteria. Singer is fully aware of this, and the next major step in his argument is the derivation and classification of the types of rules that translate this argument into terms that are more concrete and so more readily applicable to the moral situations and problems with which life confronts us. The hypothesis advanced here is that of a process through which the generalization argument is fractured into modes of expression that become progressively more specific in their content, more limited in their range, and more hypothetical in their demands. The procedure adopted is that of identifying the principal stages in this process.

At the highest level of abstraction are moral principles, which hold in all circumstances, allow of no exceptions, and are always relevant to any moral situation whatsoever. Beneath these, in order, occur moral laws and moral rules, with the last being further divided into the three subclasses of fundamental rules, local rules, and neutral norms. The discussions of these various types of moral directives and imperatives are often illuminating; this is perhaps especially true in a series of chapters in which the author compares and contrasts his position with the moral doctrines of Kant and the Utilitarians. But one also has the feeling that the classificatory apparatus is too artificial and impedes the analysis rather more than it helps it. Yet behind these abstractions we are given a clear picture of an infinitely subtle and fluid process through which a categorical moral principle is adjusted, with fine shades of tolerance and appropriateness, to the complexities of life and the vagaries of human nature.

Virtually the whole of this book consists in the development and application of the generalization argument: this is declared to be the matrix from which further moral laws and rules are derived, and the ultimate criterion to which moral judgments must be referred. In short, it is the touchstone of moral imperatives, motives, and decisions. This argument itself depends upon two basic factors: the principle of consequences, which states that "If the consequences of A's doing x would be undesirable, then A ought not to do x"; and the principle of generalization, which states that "If not everyone ought to do x, then no one ought to do x." But what of these fundamental principles themselves? How are they established and justified?

In dealing with this point, Singer takes his point of departure from the position, "now pretty generally accepted by professional philosophers," that "ultimate ethical principles must be arbitrary" for the reason that "sooner or later, we must come to at least one ethical premise which is not deduced but baldly asserted. Here we must be a-rational; neither rational nor irrational, for here there is no room even for reason to go wrong." (p. 301—quoting Brian Medlin in the *Australasian Journal of Philosophy*, vol. xxxv, p. 111) His method of

dealing with this problem is to deny the alternatives of "deduced" or "baldly asserted"; that is, he rejects the claim that deduction is the only rational technique, leaving no refuge save arbitrariness.

The treatment of this issue is admirably candid and direct. But the argument backward to the foundations of these principles is not as complete or consecutive as one might wish — especially in contrast to the developments drawn from them — so that one hesitates to say too positively what Singer's position is, lest there be misinterpretation. But if I read him correctly, the gist of his solution to this problem lies in the simple empirical assertion that the principles of consequences and generalization are in fact accepted by men as stating valid claims upon them. That is, these principles embody the common moral sense of mankind: to be a man is to recognize the force of these categoricals. It is impossible to give a person moral reasons for being moral: though you can give him prudential (and probably theological) reasons; and you can, of course, give him moral reasons for acting in one way rather than another. People in general simply are moral, in the sense that they acknowledge the legitimacy of moral obligations and rules even though they also violate these. So you cannot prove to a man that he ought to be moral. You start from the fact that he is moral (just as you start from the facts that he is moved by rational and empirical considerations); then you can seek to lay bare the fundamental contents of this moral sense and to develop on this basis an adequate code of morals. The real test of Singer's doctrine will therefore reside in its fruitfulness in clarifying and correcting actual bodies of moral rules, and in pointing the way to the discovery of more adequate ones. If it merely serves to confirm the obvious, to give us better reasons for believing and acting as we now do in the sphere of morality, it will at best — but also at least — have furnished us with a weapon against skepticism. But this would be a lesser accomplishment than one has a right to expect from a principle that pretends to be so basic and so sweeping. Like any proposal regarding ultimates, the proof of this one must lie in its consequences rather than its antecedents. To settle this question, the outcome of its further employment must be awaited.

If one asks "Why should I be moral?" or "Why ought I to do what I ought to do?" or "Why should I be sensitive to the needs and desires of others?" — there is no moral answer to be given him. One can only insist that men do in fact recognize the claims of morality, of obligation, of their fellows. They acknowledge in conscience, even when they reject in conduct, the principles of generalization and of consequences. If this seems unsatisfactory, one can only point out that the adherents of logical deduction and empirical verification are in the same boat. For if men ask "Why should I accept the conclusions of logical arguments as valid?" or "Why should I accept the results of empirical verification as facts?" — there is again no answer save the compellingness of these procedures themselves. The valid, the true, and the moral are equally ultimate. So there seems no reason to accept the first two as "rational" while rejecting the last as "arbitrary." To have argued as persuasively as Singer has for this conclusion is a definite accomplishment.

IREDELL JENKINS

WE HOLD THESE TRUTHS. By John Courtney Murray, S.J. New York: Sheed and Ward, 1960. Pp. xiv, 336. $5.00.

In the introductory chapter of this book, American pluralist society is described as "a pattern of interacting conspiracies," chiefly Protestant, Catholic, Jewish, and secularist. (This illustrates one of Father Murray's favorite rhetorical devices: arresting readers with a shocking word and then luring them into thought with a classic definition.) "Conspiracy" means concord, a "breathing together." The problem of American religious pluralism is "somehow to make the four great conspiracies among us conspire into one conspiracy that will be American society — civil, just, free, peaceful, one." For the solution of this problem, Murray's expectations are modest: "We cannot hope to make American society the perfect conspiracy based on a unanimous consensus. But we could . . . limit the warfare, and we could enlarge the dialogue." (pp. 22-23)

To promote this end, the author presents his collection of occasional papers as "Catholic Reflections on the American Proposition" — the proposition to which, in Lincoln's phrase, our nation was dedicated. The principal theme is that "We hold these truths" — that American Roman Catholics accept the truths of the Founding Fathers because these truths are rooted in the classical tradition of natural law. The secondary theme is that American Catholics accept the First Amendment prescription for church-state relations for practical reasons, given the condition of religious pluralism. I shall begin with this secondary theme, offering my comment from a viewpoint outside the Roman Catholic Church.

Murray makes emphatically clear that Catholics accept the religion clauses of the First Amendment as "articles of peace" — prudent arrangements for a pluralist society — but not as matters of religious or political principle. The phrase "articles of peace" is credited to Dr. Johnson, who used it in explaining how some Anglicans "accept" the Thirty-Nine Articles without believing in them. (p. 48) Murray seems to realize that such Catholic acceptance of the First Amendment is not likely to relieve anxiety within the non-Catholic "conspiracies"; he assures readers that "articles of peace" have a high status, that "social peace, assured by equal justice in dealing with possibly conflicting groups, is the highest integrating element of the common good." (p. 58)

This repudiation of any basis in principle for the First Amendment will surprise readers familiar with Murray's more technical studies of religious liberty. These studies have made him the outstanding American proponent of a Catholic theory of freedom of religion, a theory based upon the distinction between the functions of Church and state. Let me quote from two of these studies:

> . . . the protection of the religious unity of society, by suppression of error and dissent, *is not among the political functions of government.* Religious unity is indeed a value for society, and for this reason the state protects the full freedom of the Church to achieve and maintain it. But this is the Church's mission, and in it secular government has no direct share. Nor may it be used as an instrument to this end. . .[1]

1. John Courtney Murray, *Governmental Repression of Heresy,* THE CATHOLIC THEO-

> . . . in the democratic concept of civil liberty, the idea of *religious liberty* has the same amplitude as the idea of *civil liberty* itself. As it declares the civic equality of all citizens before the law, so it likewise declares *the civic equality of all churches* . . . before the law. As it recognizes equal liberty for the public expression of any political idea, even though it be contrary to the common civic beliefs, so it recognizes equal liberty for the public expression of any religious ideas, again even though it be contrary to common religious beliefs.[2]

I find it puzzling that Murray should have omitted these reassuring ideas from a volume offered for general circulation and designed as a contribution to interfaith dialogue. To be sure, the First Amendment forbids not only laws "prohibiting the free exercise" of religion, but also laws "respecting an establishment of religion." One can understand Murray's insisting that the latter clause has no basis in principle, that it reflects only an American "prejudice" (using the term Edmund Burke applied to church establishment in England, meaning a concrete judgment of value, not an abstract judgment of truth). (pp. 46-47) But in asserting that American Catholics share this prejudice, would it not have been well to suggest that among them, as well as in the other conspiracies, religious liberty is "believed in" as a matter of principle? There are indeed Roman Catholic scholars who have assigned it a basis in religious principle.[3]

This omission is the more serious because in Murray's present exposition of the theory of the "two powers" he develops the proposition that man finds his freedom not individually but in the freedom of the Church. (ch. 9) This conception of freedom is particularly likely to arouse the fears of non-Catholics if isolated from the principle that the force of the state should not be used to keep people from seeking and exercising their freedom outside the freedom of the Church. If Murray had included a discussion of this principle, he might have found more readers outside the Catholic conspiracy willing to approach with an open mind his excellent chapter on aid to parochial schools. (ch. 6)

As already suggested, the doctrine of natural law is central to the book's principal thesis. A religiously pluralist society can be "civil," i.e., "a community locked together in rational argument," only if it has a generally accepted public philosophy, a public consensus. (pp. 6 *et seq.*) The thesis is that Catholics can share an American consensus based on principles expressed by the Founding Fathers, because these principles are grounded in the classical doctrine of natural law. Murray of course does not confuse this doctrine with the "law of nature" developed by philosophers of the Enlightenment; his final chapter elaborates the differences. He recognizes the influence of Locke on the Founding Fathers, but supports his thesis on the ground that the partial truth which gives Locke's writings their persuasiveness is the truth of the classical doctrine. Murray recog-

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LOGICAL SOCIETY OF AMERICA, PROCEEDINGS OF THE THIRD ANNUAL MEETING 26, 90 (1948). (Emphasis added)

2. Murray, *Contemporary Orientations of Catholic Thought on Church and State in the Light of History,* 10 THEOLOGICAL STUDIES 177, 227 (1949). (Emphasis added)

3. See quotations in A. F. CARRILLO DE ALBORNOZ, ROMAN CATHOLICISM AND RELIGIOUS LIBERTY ch. II (Geneva, 1959).

nizes also that some currents of American thought reject all natural law theories. His point is that Catholics adhere to the basic American truths even if many non-Catholics have lost their hold on them.

This book should bring some of these natural law skeptics to consider natural law as a live option. One persuasive paragraph shows that the core of the doctrine is implied by anyone who is seriously protesting an unjust statute. His protest implies

> that there is an idea of justice; that this idea is transcendent to the actually expressed will of the legislator; that it is rooted somehow in the nature of things; that he really *knows* this idea; that it is not made by his judgment but is the measure of his judgment; that this idea is of the kind that ought to be realized in law and action; that its violation is injury, which his mind rejects as unreason. . . (p. 328)

The final proposition — "that this unreason is an offense not only against his own intelligence but against God, Who commands justice and forbids injustice" — is also probably implied if the protester believes in the existence of God.

The book should help to dispel some of the popular misconceptions of the Catholic doctrine. Many will probably be surprised to read that "the nature of man is an historical nature," susceptible of change (p. 113), that according to St. Thomas it is because of the "mutability of human nature," as well as the diversity of conditions, that "the same things are not always and everywhere good and just." (p. 114)

Some may possibly be surprised to find it emphasized that the task of elaborating natural law in relation to more complex human relations and institutions is not primarily for the Church, but for "the wise and honest" (George Washington's phrase), and that the task requires taking into account the findings of scientific disciplines. (p. 111) In medieval terms it is a function not of the *sacerdotium* but of the *studium*. "The *sapientes* of whom St. Thomas speaks made their residence in the University. . ." (pp. 121-122) Sometimes, of course, the formal support of the Church is added, as in the case of the usury problem, where the Second Lateran Council threatened usurers with denial of Christian burial. (p. 122) But even where the Church has declared an absolute natural law prohibition, this does not mean that civil penalties should necessarily be imposed. Here again, some readers may be surprised to find a Catholic speaking out against the Connecticut statute which forbids the use of contraceptives. (p. 157)

Murray deals gaily with Protestant moralists whom he calls "ambiguists" (all but naming Reinhold Niebuhr):

> . . . in the ambiguist descriptions, the factual situation always appears as a "predicament," full of "ironies," sown with "dilemmas," to be stated only in "paradox," and to be dealt with only at one's "hazard," because in the situation "creative and destructive possibilities" are inextricably mixed, and therefore policy and action of whatever kind can only be "morally ambiguous." (p. 283)

Though thoroughly enjoying this discussion, I question Fr. Murray's apparent

rejection of the notion that Christian moral theory based upon the nature of man might usefully recognize man as an "amalgam of virtue and corruption." The state's positive law is necessary partly because of man's sin, and insights into the nature of sin have something to contribute to the criticism of positive law. In Hooker's Anglican account of natural law, he declares that "Laws . . . are never framed as they should be, unless presuming the will of man to be inwardly obstinate, rebellious, and averse from all obedience unto the sacred laws of his nature; in a word, unless presuming man to be in regard of his depraved mind little better than a wild beast."[4] One need not accept so sweeping a principle, but in natural law discussion of legal institutions for economic organization, for example, one surely should not ignore fallen man's disposition to greed, sloth, and envy.

WILBER G. KATZ

4. RICHARD HOOKER, 1 OF THE LAWS OF ECCLESIASTICAL POLITY 188 (Everyman ed., 1954).

THE ASCENT OF LIFE. A PHILOSOPHICAL STUDY OF THE THEORY OF EVOLUTION. By T. A. Goudge. Toronto: University of Toronto Press, 1961. Pp. 236. $4.95.

Professor Goudge has given us a cogent and carefully argued study of contemporary evolutionary theory. Since this is an area which provokes both great and diverse expectations, the author has wisely provided an extensive introductory chapter to explain his intentions — and it is well worth reading for its own sake. Goudge's open-mindedness and balance should assure a sympathetic approach from his readers.

If a book with the title *Ascent of Life* had appeared before World War I, one would expect it to be either science or philosophy (or perhaps a mixture of both) in the sense in which both of those disciplines deal with what I will content myself with calling the "structure" of the world. The philosophy of evolution and evolutionary philosophy were likely to be considered the same thing; and that sort of thing, depending on one's taste in words, was just as likely to be called metaphysics. However, the history of ideas, it seems, has its own peculiar laws of evolution — indeed it rivals the biological process in the complexity of factors which bring about a succession of dominant problems and the rise and fall of significant theories. Often enough, participants in violent controversies are exhausted long before the subject matter is; in place of "extinction" we find "oblivion," and the discussion of evolution has been in such an oblivion. This is not to say that there have not been important biological studies going on all the time; nor even that the idea did not appear in discussions of philosophy, sociology — and theology. But it has not been really "popular."

There seem to be two factors which were operative (though not exclusively) in the fall of "evolutionary theory" from popularity. First, biology came under the shadow of its fast-growing sibling, physics. And there is more at stake than

simple prestige in holding the top place among the sciences; the very "method of science" comes to be identified with the method of the ruling science. The second factor was the breaking of the dominance of idealism as a philosophical system. Again, it is not just that "idealism" became unpopular; in this instance, the idea of "world-views" or "metaphysical systems" came into disrepute.

Fortunately, oblivion is as fickle as fame. Of course, Goudge's book is not an effort to re-establish idealism, nor even to refurbish system-building — although he is not afraid to use the word "metaphysics." The subtitle indicates the change: this is a book in the philosophy of science; and nowadays, at least, we are far from identifying that with "scientific philosophy." The author frankly disclaims an expert knowledge of biology (a warning which goes double for the reviewer). And he points out that he has followed the interpretation of individual biologists at crucial points, although he is well aware of the dangers of such a course. In an area where divergent views are so warmly held, where lack of incontrovertible "evidence" is not always bolstered even by the "consensus of experts," the author has laid himself open to serious charges. Such charges are sure to come from other quarters; I would only say that there is more than courage involved in his effort. The idea that one must wait for the "empirical scientist" to lay out the "facts" has ceased to be a practical ideal even within science itself. Actually, Goudge's suggestive analysis should be a stimulus to scientists as well as philosophers.

Indeed, too much of the present analysis of scientific method is based on the model of physics, and the most "broad-minded" efforts to allow biology a scientific status have often worked more to the woe than weal of our understanding of biology — such is the result of false kindness in so many areas. While this book makes no claim to be a definitive study of evolution, much less of the methods of biology in general, its careful analysis of various forms of "explanation" in evolutionary theory could well serve to open up further discussion of biological methods. Much of this is still work to be done.

Still, the notion of "philosophy of science" does not quite capture Goudge's approach. The book divides roughly into two parts. The first three chapters present the background and development of contemporary scientific theory on evolution. These chapters are aptly described as "philosophy of science"; they contain a careful analysis of terminology, models, methods and types of explanation used in evolutionary theory. Goudge's reading is wide and his critical comments are cogent. There are objections to be made from both a scientific and a philosophical perspective, but none of them are such as to detract from the value of Goudge's presentations, and they might seem out of place in this journal.

Chapter Four, which could still be grouped with the first three, takes up the "evolutionary account of man" and, along with the sixth chapter ("Is Evolution Finished?"), seems to me to relate in its approach to the large fifth chapter: "Has Evolutionary Theory Metaphysical Implications?" It is encouraging that Goudge would be willing to apply his cautious and careful method to such a question, and I hope I can explain my disappointment in the results without seeming to carp. For it is just the qualities of caution and

care which induce the author to cut the topic down to manageable size. I am not exactly sure what his principle of selection was, although he seems to have had a special reason for taking up just the problems he does. Of course, Goudge cannot be blamed for not selecting what I was interested in, and there are hints that he will write again in this field, extending his analysis beyond its present limits.

At any rate, Goudge elects to bypass three issues: the relation of consciousness and evolution (p. 210), the relation of ethics and evolution (p. 148), and the question of the presence of "design" in evolution. (p. 192) These omissions, although both honorable and justified, tend to take the edge off Goudge's discussion of cosmic (in contrast to biological) evolution, direction and purpose in evolution, and the knowledge of evolution. It is not that the author's points are vitiated by his self-imposed restrictions; they could form (and perhaps do form for him) a propaedeutic to the study of these other questions. However, I found my sympathy with his having taken up manageable questions mixed with a certain discomfort at not having the broader context of the discussion fixed. It could well be that a reader less preoccupied than I am with context would not be thus disturbed.

Under the circumstances, I can be excused, I hope, for bringing up a few issues which are incidental to the main line of Goudge's presentation but which seem to me to deserve some consideration. None of these are in areas where we have ready-made answers at hand — and in this sense I am not proposing them as lacunae in Goudge's present account — but it does seem legitimate to suggest the complexity of the factors which press in upon the well-kept borders of Goudge's study.

1) Goudge insists that man is a product of natural processes. (p. 151) Despite some apparently strong language, the position seems ambiguous to me. In saying that man "in no way transcends" the evolutionary process (p. 207) and that he is "wholly within the system of organic nature" (p. 208), Goudge is explicitly rejecting a Kantian interpretation. (p. 207) It is not clear to me how far Goudge's anti-Kantianism is supposed to carry him, and it is not at all clear how biological evolutionary theory proves or demonstrates the point. Unfortunately, the pressures of his plan have forced Goudge to leave out his criticism of the Kantian theory (p. 207), which might have indicated more definitely his own position. If I am tempted to think that I am not wholly within the system of organic nature, it is not at all because I think the biologist has botched his job. It seems possible that biology operates at a level of abstractness which would allow a complete biological explanation of man not to be a complete explanation of man. Is "man" really the same sort of thing for the biologist and the poet? Need it be a terrible rent in the fabric of our knowledge if he is not? Perhaps Heisenberg's remarks about the sciences being able to explain only what they can describe might be relevant here.[1]

While it is encouraging that the biologist has recognized that man's evolution is more "cultural" than "bio-physical" (p. 207), one cannot but wonder whether

1. Cf. Werner Heisenberg, Physics and Philosophy 167 ff. (New York, 1958).

cultural evolution is not different in kind from bio-physical. If cultural evolution is a natural process, some of the concern at being wholly within the system of organic nature will be relieved — the system of organic nature having broadened so.

2) It seems inaccurate to me to say that the phrase "the first *Homo Sapiens*" "no more applies to a particular individual than do the expressions 'the average man' or 'the first proper fraction.'" The continuity involved in the latter notion is a suggestive analogy, as can be, in a different way, the "constructive" element of the former. But, so far as I can tell, such is not the whole of the case with the evolutionary theory of group development. If I am not sure, for example, who was the first person in the room, because a group may have come in together, it is possible for me to change my question and ask about the first group. I could thus attain a definiteness not possible in the group of fractions — and of course not at all similar to any discussion of "the average man."

3) The area of final causality needs as much work as does that of causality in general; and Goudge can hardly be blamed for not attempting this gargantuan task in the present work. However, the suggestion that explanations involving purpose serve only a heuristic function in biology seems unsatisfactory. (p. 205) (I am unhappy with "as if" theories in general.) There is the further implication that one calls upon final causes only where other explanations fail. (p. 199) But the problem comes up as to how you could convince someone that his explanations are inadequate; quite clearly, if one's criterion for adequacy of an explanation is derived from nonteleological grounds, explanations by final causality will always be inadequate — and useful only until a "better" account is found. Even in the area of human activity, where Goudge does allow for purposeful behavior, I can imagine someone consistently refusing to avail himself of any analysis involving purpose. I suppose we would say that such a person has little chance of understanding human activity, but I do not know exactly how one could prove to *him* that his view was inadequate.

Goudge spends some time in presenting and discussing a model to show how the evolutionary process can produce "improbabilities." (pp. 111-12) I shall not reproduce it here, though I recommend highly Goudge's enlightening account. I would only point out that the model includes as a part a person who does some purposeful selecting; and I am unable to feel the force of the model when this purposeful element is removed.

4) Goudge argues (p. 203) that it is improper to call a nonteleological evolution "blind." His reason is the good one that a privative term begs the question of what "ought to be present." However, he extends this by saying that we should not call the process of evolution either purposeful *or* purposeless. Since there are processes that are purposeful (human activity), I see no objection to calling processes that are not purposeful (if indeed they are not) "purposeless."

There is also the peculiarity that the product of a nonpurposeful process should engage in purposeful activity. But the discussion of this can hardly be carried through without bringing up the issue of "consciousness" which Goudge wishes, at present, to avoid.

5) The brief statement that the notion of an "unchangeable 'human nature'"

has produced a failure in Western culture to see "that what [man] is not yet may be more important than what he is" (p. 210) represents an evident breach of Goudge's usual caution. "Western culture" is a phenomenon of some size, but I would venture to say that it would not take too much study to show that the above statement was an oversimplification. There is a sense in which it seems to me that the analysis of man, from classical to contemporary times, is somewhat remarkable in having always presented a notion of man as more important than he has yet become. One suspects — if one is touchy about that sort of thing — that Goudge has in mind some idea of "natural law" or, at least, an "Aristotelian" conception of natures. But the relation of an Aristotelian analysis of natures to contemporary scientific investigation is somewhat complex. Only the most naive Aristotelian would identify most of the biological classifications of genera, etc., with natures. As a result, the notion of "unchangeable natures" may not be affected so severely by biological theory as is sometimes imagined. It is true that neither Aristotle nor Plato thought that "natures" changed, but this did not prevent either of them from characterizing the physical world as that which changes. In short, the contrast of the fluidity of contemporary theory with the static notion of classical thought seems to me a misleading oversimplification.

As for man, the striking thing about him is that, from the beginning of his own records to the present day, there has been nothing about his development that would vitiate the use of "unchanging nature" in describing him. (Accidental changes can be of considerable importance, of course.) Should, some eons from now, an organism quite different in kind develop, and should we (or they) describe that organism as "man," then there will be nothing for it but to say that man then will have a different nature. But the possibility of such a change has little effect on the analyses and judgments of man's current activities. That is to say, there is little effect *unless* one can say now what sort of development man *should* be working towards. Here, again, it will not be possible to follow Goudge's point until he takes up the issues of ethics and consciousness in relation to evolution.

6) Goudge also steps out from his guarded analyses to make a plea for "rational control" to replace "superstition." (pp. 210-11, *inter alia*) It would be unfortunate to see here an act of irreverence, for this plea is an appeal for sanity and responsibility. Goudge sees quite clearly that the fact that man does have some control over his development leads on to the difficult question of what man wants to make of himself. (p. 205) But the question arises: how (by what method, through what sort of study) does man determine his ends? If, as Goudge proposes, man's evolution is more cultural than bio-physical, then the biologist and physicist should likely play a subordinate role in the determination both of the ends man seeks and of the methods he should employ in realizing them. A similar *ad hominem* argument can be based on the conclusion than man (and his "reason") is an immature evolutionary phenomenon. (p. 147)

The point I wish to make is that there are overtones of a "scientism" in Goudge's appeal. But our cultural evolution has not been a "scientific" achievement; whatever one's taste, one must admit a variety of factors: art, religion,

politics, literature, and just plain everyday living. The need to understand all of these is strong enough to risk a trace of "irrationalism." When the question before us is to determine the future course of civilization, it will not do to form our goals upon anything less than the total human experience.

There can be no doubt that Goudge has put his finger on one of the most important problems facing our contemporary society. If I criticize him for what I take to be unfinished analyses, it is not because I object in principle either to his book or to his method. We have no chance of approaching a solution to these problems until we ask the questions. And what we do achieve will always rest upon just the sort of painstaking study which Goudge has supplied.

JOHN BOLER

LIFE, DEATH AND THE LAW. By Norman St. John-Stevas. Bloomington, Ind.: Indiana University Press, 1961. Pp. 375. $5.95.

Life, Death and the Law was begun under the auspices of the Yale Law School and completed, thanks to the farsightedness of the Fund for the Republic, which in turn elected the author to a fellowship. The purpose of the book is to explore the relation between law and morality in present-day Anglo-American pluralistic society. More particularly, its purpose is to investigate whether, and to what extent, Anglo-American law, particularly criminal law, should support and give penal sanction to traditional Judeo-Christian moral standards. Law reflects the moral consensus of society. In an earlier day, the moral consensus was, theoretically at least, a Judeo-Christian one. But now we live in a pluralistic society. There is still a moral consensus against such violent antisocial conduct as murder and rape, but agreement is diminishing. Today we find deep cleavages not only between Christian and secularist but between Christian and Christian. Consider the debates over such questions as: Should the sale and distribution of contraceptives be restricted by law? Ought the state to foster sterilization policies? What should be the attitude of the law to artificial insemination? Should homosexual acts taking place in private between consenting adults be subject to the criminal law? Should euthanasia be countenanced by the law? Ought suicide and attempted suicide be treated as criminal offences?

In his first chapter, St. John-Stevas gives a 37-page historical summary of the relation between law and morality. The inquiry is confined principally to England and the United States where Judeo-Christian moral values, liberal democracy, and a shared tradition of the common law provide the necessary common ground. At the same time, the differences of American and English history, of temperaments and ethnic and religious composition, with their consequent variations in approach to moral and legal problems, make comparison possible and enlightening. Emphasis is laid on Christian moral ideals because these are the values still generally adhered to within both societies.

The author points out, that apart from certain theorists (e.g., the positivists), Western tradition regards law and morality as interconnected, although there is disagreement as to the nature and degree of the connection. These disputes

spring from a basic disagreement on the nature of man and of the state. On the one hand there is the Aristotelian philosophy, that man is a social being and that the state is a natural institution. Catholic Christianity supports this view, holding that the state should foster the full development of man by the promotion of virtue. On the other hand there is the Augustinian philosophy that the state is a necessary evil, required only because of the fall of man and needed only in order to suppress vice. Protestant and Liberal state theories tend to rely on this tradition.

In tracing the main trends of these opposing philosophies, the author summarizes Catholic natural law thinking from Thomas Aquinas through John Courtney Murray and Jacques Maritain. Protestant thought, with its rejection of the natural law, is traced from Martin Luther and John Calvin through Karl Barth, Reinhold and Richard Niebuhr, and Joseph Fletcher. Although Catholics are often unable to resist the temptation to engage in polemics over the natural law, St. John-Stevas maintains a posture of sweet reasonableness. He is scrupulously fair in making as strong a case as he can for all views. If he does reach conclusions, they are not forced by authoritarian pronouncements from above but based rather on the facts supported by reason. The author has not written a "Catholic" book. He has preferred to use an inductive approach, presenting all views that compete for recognition in our society. He wants the reader to be well informed, not converted.

The author notes that divergencies in the philosophy of man and the state are very much with us today, and that it is becoming increasingly more difficult in our pluralistic society to solve social problems. As one who is genuinely interested in advancing towards more realistic solutions, he undertakes particular studies of the difficulties in six life-and-death areas — birth control, artificial insemination, sterilization, homosexuality, suicide, and euthanasia. After giving us a historico-moral perspective in each area, he sets forth the present state of the law, marshals the pertinent theological, juridical, sociological, medical and scientific data, and suggests guidelines for a solution.

In the chapter on suicide, for example, the author cites the present-day rate of suicide. Next he traces the history of suicide in English law: "Blackstone recorded that burial [of the suicide] was in the highway, not in the churchyard, and that a stake was driven through the body." Although suicide is still under a stigma in England, there is evidence of a more sympathetic attitude towards the deceased. The author points out that since the eighteenth century, coroners have avoided embarrassing refusals of the Anglican burial service by reporting that the suicide took his own life while the natural balance of his mind was disturbed. "This verdict . . . is frequently brought in on very slender evidence." (p. 239) Next the United States law is reviewed. In most states, neither suicide nor attempted suicide is a crime. But the author concludes that if suicide and attempted suicide are not crimes, then aiding and abetting suicide should not be either, "but the majority of States have shrunk from following the point to its logical conclusion."

These legal summaries are followed by a historical study of the formation of the traditional Western moral reaction towards suicide — that suicide is contrary

to nature, a wrong against society, a violation of the fifth (sixth) commandment, and a usurpation of God's prerogative over life. But the author does not leave us here. He explores the causes of suicide, outlining the arguments of two schools that have offered divergent theories — the sociologists following Durkheim and the psychoanalysts based on Freud. The results of these scientific investigations challenge the factual basis on which traditional Christian theology and law has been based — that (except for insanity) suicide is a perverse act of the will and a deliberate usurpation of God's sovereignty over life. The author concludes that the fruits of sociological and medical research are still limited, but the question is seriously raised as to whether the law (which reflects the traditional Christian attitude) should remain in force. Research has shown that criminal law is irrelevant to the solution of the problem of suicide, because there is no evidence that the law acts as a deterrent. Would the elimination of the law then amount to a condonation of suicide and a victory for the forces of secular individualism which oppose the traditional Christian view? "Change in the law would in no way be a condonation of the individualistic claim that man has the right to dispose of his own life, but the recognition that while suicide is an antisocial act, the criminal law is not the best means of dealing with it. If necessary, a repealing statute could include a declaration to this effect." (p. 257) The author then goes on to the more important question of how the law should deal with attempted suicides and how society can best assure these troubled persons of psychiatric help.

As is evident from the above sketch, perhaps the most remarkable thing about this study is the ambitious breadth of the research. The reader is impressed with the clarity and succinctness of the summary of the state of the question. Although the author is a lawyer, his interest extends far beyond the strictly legal. He shows himself able to furnish us with the pertinent findings in the fields of history, law, theology, science, psychology, psychiatry, medicine, and sociology. In handling legal matters his presentation is not written with the thoroughness of a law review note or article, nor does he exhibit the depth of insight of the legal philosopher. His historical summaries tend to be rather sweeping, and in theology he is quick to draw conclusions. No doubt specialists in the fields would want to argue with him on certain points. But given the broad objective he sets himself, it is doubtful if the study could have been made with any greater skill in the short space of 278 pages. To be overcritical is like asking a man to paint the world and then to express dissatisfaction when he produces a good map. Detail had to be sacrificed. There had to be some oversimplification. But the great virtue of this work is that it searches out the various disciplines, cousins to the law, and invites them like long-lost relations to a big family party. This achievement is especially important in a day when specialization tends to keep the various disciplines isolated from one another. The author brings about a happy reunion, and it is clear that these cousins have important things to say to one another.

We can say then that this book is not so much an attempt to settle problems as to provide background and guidelines to assist men of good will in the approach to legislative solutions of problems that have a moral origin. To aid the serious student, the author has included 59 pages of appendices with the texts of perti-

nent laws, committee reports, and official recommendations. An extensive bibliography, index, and table of cases is also provided.

In his first chapter, the author writes: "In democratic pluralist societies, social policies with moral implications are not laid down by *fiat* from above, but are evolved gradually through the rational reflections of free men. Government . . . is government by discussion." (p. 43) St. John-Stevas has furnished us with a brilliant vade mecum for future discussions that should lead to better understanding, better laws, and better government.

CHARLES PALMS

GRUNDSATZFRAGEN DES ÖFFENTLICHEN LEBENS (BASES FOR SOCIAL LIVING: A Critical Bibliography embracing Law, Society, Economics and Politics). By Arthur Utz. Freiburg i. B.: Herder, 1960. Vol. I. Pp. 446. DM. 36.80.

With the tremendous production of more or less scholarly works in the field of the social sciences, many of them of a highly specialized character or dealing with a limited sector of social life, the need for bibliographies is overwhelming. It is to a degree filled by bibliographies mostly produced by professional librarians. Such bibliographies, especially if some expert advice and help is available, are usually quite comprehensive. Yet they often lack any criteria — unless it be the names of well-known and established authorities in their respective fields — as to the value of a particular book or essay to scholars who work principally in the field of the fundamental problems of the social sciences, in ethics, law, sociology, economics, and politics. Nevertheless, these very scholars need a vital connection with the work of special empirical research. Moreover, many persons in public life would gain if they could familiarize themselves with fundamental problems and the specialized research that relates to them; but this can only be done with the help of a selective bibliography and reviews by which an inquirer is saved a long and frustrating search in comprehensive bibliographies.

To meet this need is the purpose of this excellent bibliography by Professor A. F. Utz of the University of Fribourg, Switzerland. It contains in Part A an alphabetical list of about 1500 books and articles published between 1956 into 1959, in German, English, French, Italian, and Spanish, 500 of which are reviewed in Part B. This is a systematic bibliography, according to what the author calls *"Normendenken"* (the norms of social ethics), which he elaborated in his *Social Ethics* (1956). An example of this approach is the reference in the Preface to "integral treatment" of the political order:

> The positive political sciences are prepared to consider any powerful group which exists in a state as a political phenomenon — they would even say that labour-unions or any other "pressure-group" could become the sole possessors of political power. However, from the philosophic or normative point of view, these types of activity — as long as they have not been integrated into the political equilibrium — can only be considered as phenomena of the "political question," just as, in the domain of the social, one considers any imbalance as pertaining to the "social question." (p. 10)

Upon this normative basis the bibliography is divided into five main sections: (1) Principles of Social Doctrine; (2) Philosophy of Law; (3) The Social Order; (4) The Economic Order; (5) The Political Order. Each is again subdivided into classes and subclasses. Thus, for example, Professor Legaz y Lacambra's "Political Obligation and Natural Law," in Volume 2 of this FORUM, is noted as an article and as referring to II 2. 4. 1, that is, Philosophy of law (general); and to V 3. 4. 1, that is, Political philosophy (general); and to V 5. 2. 1, that is, Civil rights and liberties, duties (general). These highly refined subdivisions of the bibliography will be of great help to the user.

The selective bibliography tries to overcome the dangerous dichotomy which always threatens between the philosopher-theorist or moralist and the "scientific" specialist, who gathers more or less systematically heaps of factual data, often classified without well-founded basic criteria. The latter should give a kind of raw material to the first, and it is from the first that the fact hunters should get the principles for their more or less systematic fact hunting. This reviewer was recently told by certain fact gatherers that they had accumulated a tremendous amount of facts or data but found the whole endeavor rather meaningless because they had not asked the "right" questions. Possibly they would have been able to ask them if they had cooperated more with the philosopher-theorists.

At the end of each main section a short summary in four languages appears, indicating the recent general tendencies in the field. The reviews are all by the author with the advice of Professor Willy Büchi, Dr. Humbert-Thomas Conus, and Countess Dr. Brigitta von Galen. The bibliographical research has been supported by the Swiss National Fund for Science and Research.

Since the author invites criticism and suggestion I want first to mention the following gaps in his American sources for articles: most American law reviews, *Theological Studies,* and *Social Research.*

It may be that space — a problem in all selective bibliographies — is the reason that objectively important works are not mentioned in this bibliography, but are found, e.g., in the bibliography of Political Sciences of the Munich *Hochschule für Pol. Wissenschaften.* Bracher's *Die Auflösung der Weimarer Republik,* an extremely instructive book, is not in this bibliography; neither are Kluber's *Christliche Sociallehre III;* Alfred von Martin's *Soziologie;* Heinrich Giesen's *Der mündige Christ;* Alois Dempf's *Kritik der historischen Vernunft.* Nor are Fijalkowski's important critique of C. Schmitt, *Die Wendung zum Führerstaat;* Arnold Ehrhardt's *Politische Metaphysik von Solon bis Augustin;* Peter Stanlis's *Edmund Burke and the Natural Law;* Giorgio del Vecchio's *Natural Law and European Unity;* F. S. C. Northrop's *The Complexity of Legal and Ethical Experience.* All these books (with the exception of the last one, which appeared in 1959) are within the time limits of Utz's bibliography and fulfill the criteria of the author as much as many other books which are found in the bibliography.

In a selective bibliography such things are, naturally, to be expected; other reviewers probably would point out the omission of their preferred authors. So this is not meant as a substantive criticism. The books and articles reviewed fall generally under Utz's criteria, and the reviews themselves are objective in con-

tent and fair in evaluation. We may look forward to the following volumes as most valuable tools in research and scholarship.

H. A. ROMMEN

NATURORDNUNG IN GESELLSCHAFT, STAAT, WIRTSCHAFT. Edited by Joseph Höffner, Alfred Verdross, and Francisco Vito. Innsbruck: Tyrolia, 1961. Pp. 731. 280s.

This *Festschrift*[1] dedicated to Johannes Messner contains fifty-four contributions from theologians, moralists, legal and political philosophers, economists, and jurists. It is an apt recognition of a scholar whose interests are catholic and whose books, some translated into several languages, have established him as an internationally recognized authority, perhaps mainly in the field of social ethics and natural law. From 1929 with a study on "Social Economy and Social Ethics" to the monumental *Social Ethics-Natural Law in the Modern World* in 1949, to his *Kulturethik mit Grundlegung durch Prinzipienethik und Persönlichkeitsethik* in 1954, Messner has increased in influence from year to year. Following his maxim that "as all sciences so also must ethics start with experiential facts (*Erfahrungstatsachen*)," he has in his most recent book, *Funktionar* (1961), treated of the change from the nineteenth century oligarchical democracy to egalitarian democracy to pluralist democracy, and has shown that pluralist democracy — the competition for political power by parties, pressure groups, and mass organizations centered around socio-economic and other interests — may be essentially a mode of the moralization of power.

The *Festschrift* consists of five parts. The first part is on Messner and his work. Here Joseph Höffner, one of the editors, points out that Messner uses the sociological-historical *Betrachtungsweise* (method) and the inductive-ontological demonstration to show (with broad use of the results of the empirical social sciences) that natural law is the "human order of existence" (*menschliche Existenzordnung*); human nature, that is, "man," must be seen not as an abstract "individual," but as born into the primary society, the family, which again is part of an ever-widening circle of diverse societies. The biographical sketch by Alfred Klose tells us that Messner's editorship of *Das Neue Reich* and of the *Monatschrift für Kultur und Politik* came to an end in 1938. Messner had been the friend of Dollfuss and had published a biography of him in 1934, although his book in 1936 on the "Vocational Group Order" of the Dollfuss constitution was rather critical. With the fall of Dollfuss, Messner had to flee first to Switzerland, then to England, where he found a new home in the Birmingham Oratory founded by Cardinal Newman. The fruit of years of intense study in Birmingham was his *Naturrecht*. In 1949 Messner returned to the University of Vienna, but he still spends half the year in Birmingham.

Part II, *Foundations: Nature and Super-Nature,* is a series of essays of interest

1. The book is not technically a *Festschrift,* which traditionally contains research articles, often of considerable length, and the editors never use the term. The book is rather "a homage" by friends. It will be convenient, however, to refer to it as a *Festschrift* in a loose sense.

to the natural law jurist. Part III is concerned with more sociological themes under the heading: *Society: Family-Subsidiarity-Property.* Part IV, *State-Church, Law-Constitution-International Community,* is of much direct interest to the natural law jurist. Part V, *Economics: Theory-Ethics-Politics,* has extremely interesting contributions to socio-economic theory and policy, but only T. Nojiri's "The Theory of General Economic Policy and Natural Law," A. Mahr's "Economic and Ethical Behaviour," and Vito's "The Ethical Foundations of Economics and Aid to Undeveloped Nations" would interest the jurist directly. A comprehensive bibliography of Messner's publications, information on the contributors, and good indexes of names and subject matters are of great help to the reader.

When fifty-four contributors are asked for essays, but only some 660 printed pages are available, it is clear the contributions have to be comparatively short. Thus of the articles of interest to the jurist the shortest covers seven pages, the longest eighteen pages, and the average ten to twelve pages. The usual comment on *Festschrifts* as to the variable quality of the contributions is not inappropriate. The reviewer assumes therefore the privilege of commenting on a few contributions he found to be of special interest to jurists.

The first is an extremely interesting article by Professor Albert Mitterer (well known for his study of the influence of the "world image" of St. Thomas on his views in ethics and law and the corrections of these views made necessary by progress in biology and related sciences). Mitterer points out here that man's dominion over the world especially in creative culture is viewed today much differently from the way St. Thomas saw it. Therefore the *Naturrechtsfindung* today has to be done differently. The over-all "world image" and the view of certain values have changed, and thus the view and the consciousness of natural law corresponding to an earlier evolutionary stage have changed. Uncritical acceptance of Thomistic views leads necessarily to mistakes. (pp. 46-47)

Professor Erik Wolf gives a profound *rechtstheologische* interpretation of St. Mark 12, 13-18 (tribute to Caesar), and comes to the conclusion that the demands of the human order are derived from the divine order, and not the reverse. The human order lives already "between the times" derived from the divine order and moving towards it. True *politia Christiana* is not a historical order-model; neither a social-conservative nor a social-revolutionary pattern can make a Christian state real. The divine order is never simply identifiable with the political order; the latter is founded on the first, but does not represent it.

Professor Jakob Hommes, whose philosophical books on Hegel, existentialism, and Marxism are well known, gives us in "Natural Law, Person, Matter," a condensation of the last chapter of his book (to be published soon), *Das dialectische Wesen des Naturrechts.* The "problematical" character of the natural law rests in the separation of the personal realm and its theoretical basis, the separation of an objective, *naturrechtliche,* and theistic metaphysics from the world of natural science and technology. To unite these worlds, the metaphysical-personal and the scientific-technological, is the fundamental problem if natural law is to survive. (p. 72)

Anton-Hermann Chroust presents some short reflections on natural law which

are rich in content and always interesting. His justified criticism of some adepts of the natural law is similar to that of Messner, as the latter's methodically careful distinctions in his *opus magnum* show.

The Catholic theologian, Bernhard Schöpf, in "Natural Law in Moral Theology" defends Messner's view that the New Testament revelation does not make additional demands on human society but only adds supernatural motivations and makes clearer already valid rules. What is new in the New Testament is the new and wholly different relationship of God and man. Here a gap opens between Catholic and quite a few Protestant theologians. The original Protestant adoption of *natura destructa* in contrast to *natura vulnerata* made natural theology and natural law impossible, or at least very difficult. But this tradition did not remain uniform. For example, John Wise based his *Vindication of the Government of New England Churches* on the natural law doctrine of Pufendorf. The recent rise of dialectical theology, or "theology of crisis," initiated by Karl Barth, has again strengthened the view that Protestants cannot accept natural law. To anyone interested in this problem, Albert Auer's essay in this volume, "Protestant Understanding of Law and Natural Law," will be of great help. He distinguishes three groups: First, those who adhere more or less strictly to Karl Barth's theology, for whom law is exclusively of supernatural origin, i.e., law has its source in revelation, and ethico-legal norms are truths of faith. With them are those who follow Johannes Heckel (*lex caritatis*) and Erik Wolf (*Recht des Nachsten*). Second, those who stress the doctrine of the order of creation, like H. D. Wendland, E. Brunner, U. Scheuner. Third, those like Hermann Weinkauf, Hans Reiner, C. H. Dodd, and W. Schulze, who affirm that the old natural law problems are revived in contemporary Protestantism. F. Karrenberg's contribution, "State and Society in Protestantism," offers thoughts both challenging and complementary to Auer's.

Professor Alfred Verdross discusses human dignity in the occidental philosophy of law, from Plato to the Universal Declaration of Human Rights of the United Nations. The dignity of the human person is "anterior" to all social order; therefore, it demands the fulfillment of five general demands: (1) each social order must grant the person a space or realm in which he may act and work as a free and responsible agent; (2) the law must protect and secure this realm; (3) the authority must be limited; (4) the observance of these limitations must be put under control; (5) the duty of obedience to authority is not absolute, but subordinate to the dignity of the human person.

An interesting commentary by Hans Peters is rather critical of German judges who cannot escape from their "positivistic" training. He states as an example of the problem that the right of free choice of vocation was in 1954 interpreted as enabling a public savings bank to establish a branch, and he asks if this has any relation to the idea of human rights or the protection of free development of the human person.

Professor Utz discusses the Philosophy of Law as a *Soll-Wissenschaft* (normative science); he defines the "juridical as inter-human relations in as far as they are subject to an obligatory regulation." He shows that jurisprudence and legal sociology and theory are sciences of being, and he discusses the juridical

as object of norm-sciences according to Kantianism, value-philosophy, and universal norm-recognition.

Another article concerned with the problem of the ultrapositive law is by the late Professor Hans Nawiasky, who fears that some constitutional jurists do not sharply enough distinguish ethics and (juridical) law as two different norm-systems which must never be confused; as a consequence of the lack of sharp distinctions, the "new view" (initiated by the late Joseph Wintrich, President of the Federal Constitutional Court of Germany, a dedicated natural law jurist) joins the two systems of norms so closely that ethics dominates law.

A contribution by a young scholar, H. Schambeck, "Ideas and Theories of Natural Law, a Methodological Enquiry," is a very thoughtful study and comes to the conclusion that natural law is not so much "reason law" as "essence law" and has little to do with Stammler's "just law." He sees in this the common understanding of Messner, Verdross, von der Heydte, Rommen, and many others.

In a short but interesting article Professor Akira Mizunomi of the University of Kyushu, Japan, discusses "Natural Law and the Essence of the State." He discusses mostly the German thinkers of the last sixty years, such as Ratzel (the founder of geopolitics), Cumplowica, Franz Oppenheimer, Marx and Engels, who identify the constitutive and integrating form of the State with its "matter," or in other words, with power or with the biological or racial element. He contrasts the "spiritualizing" thinkers, such as Dabin, Rommen, and especially Messner, who see in man's rational nature and ethical aspirations the constitutive form of the State. Kelsen and Jellinek he considers as trying to amalgamate both fundamental views. He points out that the "spiritualizing" thinkers are, of course, all committed to the natural law. Another young Japanese scholar, Professor Sugano, of the University of Tokyo, gives a short, but clear, report on "Natural Law Freedom in the New Constitution of Japan and the Ethical Consciousness of the Japanese People."

The contribution of a Belgian scholar, Florent Peeters, on natural law and the right to *Heimat* (that untranslatable term for a nation that lived in many states, in language islands, in eastern and southeastern Europe) is an interesting case of the "growing" natural law. Compulsory transfers of families from their old *Heimat* into their national territory has been practiced by all the totalitarian nations. The author sees in these transfers clear violations of natural law and contends that the *Heimatrecht* is, like private property, a natural right.

Professor Würtenberger discusses natural law and capital punishment in an essay which will be of great interest to criminologists. He criticizes certain theological and ethical views which do not give enough weight to the democratic and humanitarian spirit of our constitutions and to the complexity of the "guilt" of the criminal personality in the present situation. Since natural law is also the critical and limiting norm for positive law, theologians and moralists ought to cooperate in this problem with the jurist and criminologist.

Of the many contributions in the field of economics, Professor Taketoshi Nojiri's "Economic Policy and Natural Law" shows that any realistic economic theory must apply certain principles of natural law and that some theorists of

the order-thinking in economics actually do so. Among the latter he discusses the theories of Walter Euken, of the Sombart disciple H. Ritschl, and of Theodore Putz.

The reviewer must claim indulgence for his choices. The book itself, with its broad surveys of problems and applications of natural law, is a well-deserved homage to a great scholar and teacher.

H. A. ROMMEN

LA NOUVELLE RHETORIQUE — TRAITÉ DE L'ARGUMENTATION. 2 vols. By Ch. Perelman and L. Olbrechts-Tytega. Paris: Presses Universitaires de France, 1958. Pp. 734. 2400 frs.

In this treatise, the authors are deliberately reviving an ancient tradition of European letters and philosophy, started by the Sophists and given first systematic philosophic form by Aristotle, but flourishing into the nineteenth century: the academic cultivation of rhetoric. They rightly point out at the beginning that such an enterprise "constitutes a rupture with the conception of reason and reasoning initiated by Descartes." (p. 1) The logical approach of Descartes, *"l'ideal cartesien,"* is at home only in the kinds of proof which Aristotle called analytical. But, our authors ask, is this the only domain in which reason is competent? Is it true that those fields in which neither sense experience nor logical deduction can provide an answer to a problem must be abandoned to irrational factors, to the instincts, to violence? (p. 3) Questioning such dualisms as Kant's of reason and faith or Bergson's of intuition and reason, they advance the counterproposition that all of these doctrines involve a false approach to reasoning: *"c'est là une limitation indue et parfaitement injustifiée du domaine où intervient notre faculté de raisonner et de prouver."* It is the problem of what constitutes evidence that is at the heart of their own approach. It seeks to explore the discursive techniques which enable one to secure the assent to propositions on evidence that is less than logical or scientific in the definitive sense. Assent is variable in intensity. Why should one limit oneself to a particular degree of intensity? Why should one identify evidence and truth?

The authors rightly point to the enormous development of propaganda. It has always seemed to the reviewer that Aristotle's *Rhetoric* is still the best that has been written on this subject: the art of persuading and of convincing, the technique of discussion and deliberation. Assent *(adhèsion)* to an argument always involves the problem of the audience; all arguments are addressed to somebody. It is therefore from an analysis of the audience that the authors start.[1] Their discussion of the audience contains much that is shrewd common sense about matters essentially psychological, and there are some few references to recent psychological writings, notably Wertheimer, Bruner, Hovland, Lumsdaine, and Sheffield; but the essential cast of the argument is philosophical. Distinctions such as that between the universal and the special or particular audience, the select *(élite)* audience and self-reflection *(delibération avec soi-*

1. Professor Eric Wolf of Freiburg has recently put us all in his debt by a detailed critical study of Aristotle's *Rhetoric*. It was evidently not yet available to our authors.

même) are convincingly delineated. They draw, e.g., a distinction between persuading and convincing, suggesting that the former is typically addressed to a special audience, the latter to a universal one. Valuable references back to Aristotle, Cicero, and Quintilian help to put their notions in perspective, and the very general significance of the kind of rhetoric which Aristotle called "epideictic" (declamatory, displayful) in scholarly discourse is convincingly argued. Indeed, one of the fascinating aspects of this study is the extent to which its own argumentation serves to illustrate what it argues about argumentation.

There follow some sections in which the authors are concerned with "education and propaganda" and the related issues of argument and discussion as a substitute for violence and of the personal commitment *(engagement)* involved in all arguments. Especially what the authors have to say on the latter bears some interesting relation to Michael Polanyi's theories about science and scholarship discussed elsewhere in this issue of the FORUM. In a sense the entire treatise is the other side of the medal "struck" by Polanyi; for if Polanyi is right that there is personal commitment in all scientific demonstration even when most abstract, then the logic of persuasion which our authors are exploring becomes a vital part of all scholarly and scientific communication — the radical distinction between demonstration and argumentation is replaced by a relative one.

But can we therefore say that all education is propaganda, as the authors are inclined to do? The argument turns upon their notion of education as the *"porte parole des valeurs reconnues"* which assimilates the educator to the speaker who delivers a declamatory discourse. (pp. 68-69) Such a conception of education is inadequate, especially where "freedom of thought" is part of the value system. We cannot say as they do that the educator is simply *"chargé d'inculquer les valeurs d'une société déterminée"* nor that *"l'éducateur doit procéder par affirmation, sans s'engager dans une controverse où l'on défendrait librement le pour et le contre."* Surely an argument of considerable cogency may be advanced for precisely the opposite view,[2] and since we surely cannot exclude this outlook as one possible one, since it is and has been in fact held and has shaped education, education needs to be more broadly defined as seeking to mold and develop a human being, inspired by an ideal of what a human being should be like. All propaganda, on the other hand, is as our authors recognize, action-related, and even declamatory rhetoric may well be part of a propaganda campaign.

It is obviously impossible to explore the rich contents of this treatise on argumentation in comparable detail throughout. Suffice it to indicate its general content and to add a few more footnotes of doubt and qualification. The two other parts are concerned with the "starting point" and the "techniques" of argumentation. The first chapter of Part II deals with the *accord* (consensus) on the premises of any argument or discussion, the acknowledged facts, truths, values, etc., capped by a very interesting discussion of the *argumentum ad*

2. See, e.g., the chapter on "Independence of Thought and Propaganda" in my THE NEW BELIEF IN THE COMMON MAN (1941); also the sketch of rival educational philosophies in Ch. IX.

hominem and the *petitio principii.* (pp. 148ff.) The former is taken to be different from the *argumentum ad personam,* but their frequent confusion is noted. Similarly, what is usually considered a *petitio principii* is declared to be devoid of sense from a logical viewpoint, and it is asserted that it is an error in rhetoric, rather than in logic. (p. 151) It involves the use of the *argumentum ad hominem* when and where it does not apply. The other two chapters deal with the choice of such "givens" and their presentation.

In the third part, dealing with the techniques, the quasi-logical forms of argumentation — Aristotle's enthymemes, or incomplete syllogisms — including such important topics as ridiculing, the rule of justice and probabilities constitute the first chapter. The second contains the arguments based on the structure of reality, and includes such crucial matters as causation and the argument from authority. The third chapter this reviewer found especially stimulating: arguing from cases and from analogy forms so large a part of "proving" anything in law and politics that these sections may be considered of especial value to the student in these fields. In the final two chapters two further important features of argumentation are explored: the *"dissociation des notions"* culminating in a presentation of rhetoric as process, and the *"interaction des arguments,"* which includes the discussion of fullness *(ampleur)* and its dangers, familiar in the English-American saying: "One good argument is enough."

While this reviewer finds himself in considerable agreement with the discussion of authority as it reinforces his own view of authority as the presumed capacity for reasoned elaboration, the discussion does not quite reach the decisive conclusion. This seems in part due to a tendency to confuse authority with credibility. (p. 417) But it is certainly good to read that many of the attacks on authority as such are actually efforts to substitute one authority for another. (p. 412) Here, too, we find a point of contact with Polanyi.

In the discussion of analogy, a new term, *phore* (not in Larousse), is proposed to refer to those matters which support what is claimed primarily, the theme or central argument. In Goethe's remark that to read a page of Kant is like entering a well-lighted room, the entering of the well-lighted room would be the *phore.* The strength of the analogy often is derived from valuations implicit in the *phore.* The discussion of the effects and the use of analogies is enriched by many examples drawn from literature; and this use of literary examples constitutes in fact one of the real charms of this brilliant study. Proust and Alice in Wonderland, Sterne, Shakespeare, and Corneille, as well as dozens of others, contribute their bits to this highly instructive exploration of the many ways in which human beings succeed in securing the adherence and assent of their fellow men by arguments which carry conviction of varying intensity. At the same time, there is excellent documentation in terms of ancient and modern scholarly writing in the fields touched upon; philosophers, psychologists, sociologists and other social scientists, ancient and modern, attest to the authors' broad and impressive humanist learning.

In their conclusion, the authors undertake to indicate their philosophical standpoint. Having rejected the entire logical and epistemological tradition since Descartes, they state that they are combatting the various philosophical

dichotomies, in their several absolutist garbs: reason versus imagination, science versus opinion, universal objectivity versus incommunicable subjectivity, and so forth. They do not believe in such definitive and immutable "revelations"; all immediate and absolute givens, whether sensations, rational evidences, or mystic intuitions, they would eliminate as such from philosophy. (pp. 676-77) While recognizing their importance *for* argumentation, they would consider them all as equally *subject* to discussion and argument, and therefore would insist upon the philosophical importance of studying how such arguments are carried on. Rejecting the radical distinction between value judgments and judgments of reality as *"une tentative désesperée"* (a position with which this reviewer agrees heartily), they point out that any language is the language of a community, which implies the adherence *(adhésion)* to certain *"prises de position."* Such taking of positions involves a precedent argumentation, and hence its theory and practice constitute an essential correlative of critical rationalism.

Clearly, the position developed by our two authors is one of great significance to all those concerned with law and politics, in their philosophical dimension. Resuscitating the great tradition of Western rhetoric is most opportune at this time, when the West finds itself more and more profoundly challenged by a multiplicity of audiences which a purely technical and manipulative approach in terms of propaganda is incapable of coping with. Incidentally, the work is, unlike many European books, provided with an adequate index of subjects, as well as names, and a comprehensive bibliography. One can only hope that it will not be long before an English translation is undertaken, since there exists no equivalent work in our tongue.

CARL J. FRIEDRICH

LOCKE ON WAR AND PEACE. By Richard H. Cox. Oxford University Press, 1960. Pp. xx, 220. $5.60.

Locke on War and Peace professes to be a new interpretation of John Locke's political theory, but the basic thesis around which it is constructed is not original with Cox. It has already been put forward by Leo Strauss in a number of works of interpretation of the history of political theory. In *Natural Right and History* (Chicago, 1953) and in other writings Strauss has attempted a reassessment of the history of "natural rights" in terms of a fundamental division in the history of Western political thought between the "classical" natural law theory of the Stoics and scholastics, and the "modern theory of Hobbes, Locke, and the French Revolution." There is no doubt on which side Strauss's sympathies lie, but there is a good deal of question about the validity of this kind of division of the history of ideas into "good guys" and "bad guys."

The exaggerations to which such a system is prone were glaringly obvious in a book, *Edmund Burke and the Natural Law,* written by one of his students, Peter Stanlis, which I reviewed in this journal three years ago.[1] Strauss had supplied a useful corrective to some interpretations of Burke as a proto-utilitarian by point-

1. 4 NATURAL LAW FORUM 166-174 (1959).

ing out how much his theory had been influenced by Cicero's natural law theory.[2] Stanlis, however, took the Strauss viewpoint and developed it into a polemic against the "natural rights" theorists, including both Hobbes and Locke, whom he regarded as in some way responsible for "Jacobin types of popular collectivism," "impersonal leviathan states," and "the sophisters, economists, and calculators of our century."[3] Against them he proposed the revival of the classical natural law theory of Cicero, St. Thomas, and Edmund Burke.

Why the effort to laud Burke and denigrate Locke? There are overtones of contemporary ideological controversy in all of this, for it is no secret that the revived school of conservative theorists in America, as well as a number of religious writers, is attempting to develop the more orthodox and conservative Burke into a patron saint for Americans to replace the liberal and free-thinking Locke. One way of doing this, in addition to identifying Burke with the great political heritage of the West, is to discredit Locke by associating his doctrine with collectivism (as does Willmoore Kendall's study, *John Locke and the Doctrine of Majority Rule,* first published in 1941, and recently reissued in a paperback edition[4]) and with Hobbesian doctrines of absolutism which are utterly repugnant to American political thinking.

More recently, Strauss has continued his war on Locke. When the publication of the Lovelace collection of Locke's *Essays on the Law of Nature* seemed to align Locke with the traditional theorists of natural law, Strauss attempted to use them to support his view that Locke's theory was actually Hobbesianism in disguise. However, a number of recent articles have utilized the *Essays* effectively to point up the inadequacies and misstatements in the Strauss interpretation.[5]

The method which Strauss uses in determining the *real* meaning of a writer such as Locke, as opposed to what has been taken for his intention by previous commentators, is one which he describes in his book, *Persecution and the Art of Writing* (Glencoe, Ill., 1952). Strauss argues that philosophers who are devoted to truth but also concerned about the possible revolutionary or subversive effect of their teachings upon the accepted opinions of their society, are wont to write in a kind of academic double talk which disguises their real intention from all but "careful and well-trained readers." This has the good effect of transmitting their message, while avoiding persecution of the writer or upset of traditional mores of the society. However, with Strauss's method of careful analysis of the text, it is claimed, the real views of the philosopher can be discerned, and in the case of Locke it reveals that he was fundamentally in agreement with Hobbes.

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2. A more judicious and convincing treatment of this theme is contained in CHARLES PARKIN, THE MORAL BASIS OF BURKE'S POLITICAL THOUGHT (1956).
3. PETER J. STANLIS, EDMUND BURKE AND THE NATURAL LAW 247-49 (Ann Arbor, 1958).
4. Urbana: University of Illinois Press, 1960.
5. JOHN LOCKE, ESSAYS ON THE LAW OF NATURE, trans. & ed. by W. von Leyden (Oxford, 1954), is discussed by Strauss in "Locke's Doctrine of Natural Law," chapter 8 of WHAT IS POLITICAL PHILOSOPHY? (Glencoe, Ill., 1959). His views are strongly criticized in Charles H. Monson, Jr., *Locke and His Interpreters,* 6 POLITICAL STUDIES 120-133 (1958); John W. Yolton, *Locke on the Law of Nature,* 67 THE PHILOSOPHICAL REVIEW 477-498 (1958); and Raghuveer Singh, *John Locke and the Theory of Natural Law,* 9 POLITICAL STUDIES 105-118 (1961).

It is necessary to discuss Strauss's point of view and method at the outset of this review, because Cox's book was very heavily influenced by him. While he does not indulge in the kind of ideological name-calling of Stanlis on Burke, he utilizes the Strauss methodology to prove a modified version of the same point, i.e., that Locke and Hobbes were in basic agreement. This dependence is clearest in the sections of the first chapter, entitled "The Cautious Mr. Locke," "The Problem of Persecution," and "On the Interpretation of Locke's Treatises"; but the Locke-Hobbes equation continues to control the direction of the analysis throughout the book.

Cox is writing not merely about Locke's view of war and peace, in the sense of his theory as to the relations which exist or ought to exist between states. In fact, only a single chapter, rather late in the book, is concerned with international law and relations. He is writing about Locke's theory of the state of nature, and of natural law, in relation to the theories which went before it — essentially the same subject as that discussed by Strauss in many of his writings. Cox's argument can be briefly summarized: Because of fear of persecution, Locke wrote his *Second Treatise* so as to make it appear that he was strongly influenced by Richard Hooker's *Laws of Ecclesiastical Polity,* when in fact the principal influence upon his theory, which he made every effort to conceal, was that of Thomas Hobbes. (ch. 1) Locke's state of nature is not in opposition to the state of war, as Locke says at the outset of the *Second Treatise,* but, as becomes clear later in the work, is synonymous with it, a state of "want, rapine and force." (p. 104) Locke's natural law reduces itself ultimately to the law of self-preservation and "bears practically no resemblance, except in name, to what was meant by his contemporaries, and certainly can in no way be reconciled with what his seeming authority, Richard Hooker, meant by the natural law." (pp. 88-89) In international relations, Locke, like Hobbes, broke with the traditional theory of international law, represented by Hooker and Grotius, and asserted that states live in a competitive state of nature, seeking "practically unlimited power." (p. 178) Despite Locke's statement that the law of nature wills peace, it is war that is man's natural state; and "peace, therefore, is unnatural and derivative." (p. 187) In order to arrive at an assessment of the validity of the Cox-Strauss interpretation, the argument for each of these propositions will be examined and criticized.

Because of fear of persecution, Locke wrote his Second Treatise so as to make it appear that he was strongly influenced by Hooker, when, in fact, the principal influence upon his theory, which he made every effort to conceal, was that of Thomas Hobbes. To take the last point first, Cox asserts that Locke knew much more of Hobbes than he was willing to admit. He cites two quotations from letters by Locke to those who had criticized him for reproducing Hobbes's argument. In each he denied knowing that his argument appeared in the *Leviathan,* and Cox calls these "curious statements to come from a man of Locke's deserved reputation for learning." (p. 3) Yet, in the first case the argument concerned the immortality of the soul, on which the position of Hobbes is not at all clear;[6] and the second involved the charge that Locke in making faith in Jesus

6 See the discussion in HOBBES, LEVIATHAN, Part IV, ch. xliv (especially pp. 404-411 in the Blackwell edition).

Christ the essential doctrine of Christianity was repeating Hobbes's definition — hardly a central point to the *Leviathan*.[7] That Locke should not have been aware of the exact nature of the opinions of Hobbes on these points does not prove that he was systematically concealing all evidence of Hobbes's influence, nor does the fact that, as Cox notes, he had a copy of the *Leviathan* as early as 1681 prove that he was familiar with every point in it.

In the case of Hooker, Cox asserts that there is a "pattern of contradictions" in Locke's use of quotations from *The Laws of Ecclesiastical Polity* and that he makes "misleading additions" to them. In dealing with this criticism, it might be wise to use the method which Cox recommends for an understanding of the real meaning of Locke, i.e., to refer to the original context of Locke's quotations from Hooker. On page 41, Cox states that "a comparison of the original with Locke's use of it shows not only that Hooker never uses the expression 'state of nature' but also that Hooker refers, in the passage quoted, to something different from Locke's pre-political state." If we check with Hooker we find that, although he does not use the term "state of nature," he describes a situation similar to that state when he asserts that "the laws which have been hitherto mentioned do bind men absolutely even as they are men, although they have never any settled fellowship, never any solemn agreement amongst themselves what to do or not to do."[8] Locke's addition, by way of explanation, of the words "such as attend men in the state of nature" to a quotation from *Laws*, I, x, 4, is also described as misleading by Cox.[9] Yet the passage quoted from Hooker is a discussion of the situation in "those times wherein there were no civil societies,"[10] a difference of terminology but not of substance.

There *are* differences between Hooker's state "wherein there were no civil societies" and Locke's state of nature, but Hooker's theory contains Locke's two key conceptions, that of a prepolitical state and that of a movement into organized society by "composition and agreement."[11] The terms "contract" and "state of nature" may have been derived from Hobbes, but their content was derived from Hooker.

Even Locke's view of the condition of men in the prepolitical state, of which Cox makes so much in order to prove his similarity to Hobbes, is foreshadowed in Hooker. When Cox tries to prove that *Locke's state of nature is a state of "want, rapine and force,"* he amasses a large number of references to the "anarchy" and "inconveniences" which exist in the state of nature, due to the ignorance and partiality of men before they had established a "common judge" of disputes among them. But the following words are from Hooker, not Hobbes:

> when families were multiplied and increased upon earth, after separation each providing for itself, envy, strife, contention, and violence must grow amongst them. . . . Men always knew that when force and injury was offered they might be defenders of themselves . . . that no man might in reason take

7. Locke's answer to this point was: "This, whether it be the doctrine of the *Leviathan*, I know not. This appears to me out of the New Testament." 7 WORKS 420 (London, 1821).
8. RICHARD HOOKER, OF THE LAWS OF ECCLESIASTICAL POLITY, Book I, ch. x, para. 1, in 1 WORKS 184 (Oxford, 1865).
9. COX, LOCKE ON WAR AND PEACE 41, referring to LOCKE, SECOND TREATISE ch. vii, no. 91.
10. HOOKER, *op. cit. supra* note 8, at 186 (I, x, 3).
11. *Id.* at 186-7 (I, x, 4).

> upon him to determine his own right, and according to his own determination proceed in maintenance thereof inasmuch as every man is towards himself and them whom he greatly affecteth partial and therefore that strifes and troubles would be endless except they gave their common consent all to be ordered by some whom they should agree upon. . . .[12]

Cox is right, as the above quotation implies, in noting that for Hooker man has left the prepolitical state and he cannot return to it. This is a major difference between his theory and that of Locke, for whom the possibility of return to a pregovernmental state through revolution is an important element of his theory. This is worth discussing, but it should not blind us to the very real dependence of Locke upon Hooker for some of his most important concepts.

This dependence is clearest, and the Strauss-Cox interpretation is most in error, in the case of Locke's theory of natural law. It is simply not true that Locke's natural law *"bears practically no resemblance, except in name, to what was meant by his contemporaries, and certainly can in no way be reconciled with what his seeming authority, Richard Hooker, meant by the natural law."* One would expect that after all the controversy about the *Essays on the Law of Nature,* Cox would take a more moderate position and recognize the continuities in Locke's theory with the classical, Stoic, and Christian tradition coming to him through Richard Hooker. Instead, he exaggerates Locke's references to the ignorance of man in the state of nature and his desire for self-preservation, in order to make him sound as much as possible like Hobbes. As the quotation from Hooker above indicates, the traditional natural law theory had not denied that, in practice, men often are ignorant of, or misinterpret, the natural law.[13] This was one of Aquinas's principal reasons for the necessity of divine revelation — to give men greater certainty as to the precepts of the moral law.[14] Moreover, self-preservation was regarded by the traditional theorists as one of the primary precepts of the natural law. As Aquinas puts it,

> . . . Every substance seeks its own preservation according to its own nature. Corresponding to this inclination, the natural law contains all that makes for the preservation of human life, and all that is opposed to its dissolution.[15]

Thus the natural *law* of self-preservation is derived by Aquinas from a natural *desire* in man to preserve himself. This desire has a purpose, because the universe and everything in it were created by a purposive God. Given this frame of reference in traditional theory, Locke's allusions to man's desire for self-preservation do not necessarily make him into a Hobbesian.

What does distinguish Hobbes's law of self-preservation from what had gone before is that it is unlimited by any moral obligation. When Cox tries (p. 84) to argue that Locke is a Hobbesian, he quotes from Chapter IX, no. 128, of the *Second Treatise,* Locke's assertion that in the state of nature man has the power

12. *Id.* at 186-7 (I, x, 3-4).
13. Cf. Hooker again: "If then it be here demanded by what means it should come to pass (the greatest part of the Law moral being so easy for all men to know) that so many thousands of men notwithstanding have been ignorant even of principal moral duties, not imagining the breach of them to be sin. . ." *Id.* at 180 (I, viii, 11).
14. THOMAS AQUINAS, SUMMA THEOLOGIAE Ia, IIae, Q. 91, a. 4.
15. *Id.* at Ia, IIae, Q. 94, a. 2, as trans. by J. G. Dawson in A. P. D'ENTRÈVES (ed.), AQUINAS: SELECTED POLITICAL WRITINGS 123 (Oxford, 1954).

to do "whatsoever he thinks fit for the preservation of himself"; but he omits Locke's crucial qualification, immediately following — *"within the limits of the law of nature."* (It is indeed best, as Cox observes, pp. 36, 37, to "go to the original" "to reveal the true meaning of the author.") As in the case of Hooker and the traditional theory, the moral force of an objective natural law, inbuilt in nature, obliges man at all times, whether in the state of nature or out of it (although, for Locke, the judgment of the application of that law may be surrendered to a legislative majority by the social contract).

That a moral law obliges man in the state of nature is important for a proper assessment of the thesis that *in international relations, Locke like Hobbes broke with the tradition of international law as represented by Hooker and Grotius.* As proof that Locke is a Hobbesian in international relations, Cox argues (1) that Locke believes that states live in a competitive state of nature, and (2) that he never refers to the *ius gentium* (law of nations) but only to the law of nature, between states. But it is essential to note what kind of state of nature and natural law Locke is writing about. The Hobbesian states are unlimited by anything but the "natural" law of their own preservation, whereas Locke says explicitly that princes "owe subjection to the laws of God and nature. No body, no power, can exempt them from the obligations of that eternal law."[16] Cox grudgingly admits (pp. 146, 164) that Locke has a theory of the just war, that he sets limits on the rights of conquerors, and even that he believes that governments have a general duty to preserve the rest of mankind. However, he argues that, since governments are judges in their own cases in international relations, they will always opt for their own self-preservation and aggrandizement. Yet as Cox's own admissions indicate, there is still a fundamental difference between the two conceptions of international morality. On the one hand, Hobbes believes that states should strive for their own self-preservation unrestrained by any higher law; and on the other, Locke holds that states should observe the precepts of the natural law in their relations with one another, although in the absence of a common judge they are likely to have divergent views of the interpretation of that law.

The argument that Locke, like Hobbes, ceases to make Grotius's distinction between the *ius gentium,* considered as positive international law, and the *ius naturae,* which governs relations among nations, is irrelevant to the central point; but it is used, along with the discussion of the state of nature, to bracket together with Hobbes other writers on international law and on natural law, such as Pufendorf and Wolff (p. 146), who are clearly opposed to the Hobbesian conception.[17] This illustrates again the fallacy of the argument that because a writer speaks of nations as in a state of nature with regard to one another, or does not accept the *ius gentium* as a separate category of law, he is therefore a Hobbesian in his approach to international law and relations.

16. JOHN LOCKE, SECOND TREATISE ch. xvi, no. 195.

17. ARTHUR NUSSBAUM, in A CONCISE HISTORY OF THE LAW OF NATIONS (New York, 1947), which Cox cites with approval (p. 212, note U) as recognizing the change between Grotius and Hobbes, notes that, while the above writers utilized the concept of the state of nature in their theories, for Pufendorf the natural law "is not a complex of essentially biological urges. It is the old moralist natural law of the scholastics and even more of Grotius" (p. 116), and "Wolff's state of nature is diametrically opposite to Hobbes's. It is moralistic in the scholastic fashion." (p. 149)

For states in their international relations as for individuals in the state of nature, Locke believes that there are frequent disagreements and conflict. Does this make *war man's natural state and "peace therefore unnatural and derivative"?* As many writers have pointed out, it depends on what you mean by the word "natural."[18] If man's natural state is taken to mean that which prevails most of the time, Locke could be said to hold that disagreement and conflict are natural conditions of man. If it means the state which he is morally obliged to strive for, and ideally could attain, peace, in Locke's thinking, is natural for man. In fact, man is part angel and part beast, and Locke recognizes both aspects, as have most religious and moral philosophers. Hobbes, however, exaggerated one side of the human condition, and this was both his originality and his weakness. Locke was influenced by Hobbes's concept of the state of nature as an analytical tool; but for its specific character and for the law which governed it, he drew on Hooker.

The fundamental error of the Straussian approach to the history of political ideas is exposed by Cox on pages 68 and 69 when he divides political philosophy into two types: classical "utopianism" as represented by the theories of Plato and Aristotle; and "modern political realism, as first articulated by Machiavelli," and "tacitly" followed by Locke. Now this is, I submit, a false dichotomy and a simplistic typology for the wide variety of schools and individual theories which go to make up the history of Western political thought. It is because political philosophers are so varied in their responses to the recurring questions of the legitimate exercise of the political power that the study of the history of political thought is such a fascinating subject. If they could all be crammed into Professor Strauss's categories, it would be a much less interesting field. As it is, even bizarre interpretations such as his are useful in compelling us to analyze more closely and understand more thoroughly the complex doctrines and relationships of the great masters of political thought. Since new political movements are wont to search for precedents in the past, this process of continuous re-evaluation is a never-ending one. In this respect, *Locke on War and Peace* and the school it represents have made a useful contribution in stimulating renewed study of the philosopher who of all political theorists was the most influential upon American political ideas and institutions.

PAUL E. SIGMUND, JR.

18. Cf., for example, the list of the various possible meanings in DAVID G. RITCHIE, NATURAL RIGHTS 71-77 (London, 1894), and in BENJAMIN F. WRIGHT, JR., AMERICAN INTERPRETATIONS OF NATURAL LAW 327-345 (Cambridge, Mass., 1931).

PERMANENCE DU DROIT NATUREL. By Philippe Delhaye. Louvain: Nauwelaerts, 1961. Pp. 156.

The first part of Delhaye's work gives a sketch of natural law doctrines all the way from Antigone and Plato to and through Suarez, Melancthon, Vitoria, Hobbes, and Grotius. The author is somewhat apologetic for making this hasty summary, which of course is far short of a historical work based on much careful study, such as that by Rommen or the specialized work by Lottin. He need

not be apologetic for beginning with a synopsis: positive data are always relevant so far as they go. The least they do is to afford orientation. Yet there is a certain lifelessness about this part of Delhaye's study. It is as if he was told he ought to get up the data, and he dutifully does so. The reader does not get the impression that Delhaye himself saw a great light in the recited facts.

The overriding interest of the author is theological. He does care about what Aristotle and Cicero took the natural law to be, and what was the "nature" to which they referred. But St. Augustine and St. Thomas mean far more to him, and Melancthon's refusal to go with the Thomist doctrine that all things naturally love God more than they love themselves seems to be definitive against Melancthon rather than a point for further inquiry. (pp. 99-100) The chief assumptions are two: that a natural law teaching, nicely tidied up, makes a good case for moral philosophy as commonly taught by Catholics, and that natural law, so far from needing any defense, simply stands impregnable.

The second part of the work is more vital and more of a challenge, and contains important insights which would bear development. One is that justice and temperance, so basic for the moral life, are most inadequately dealt with in the Bible; in regard to them, Revelation has given only very general (*vastes*) directives. (p. 119) Another insight is that although human nature is given and is once for all "made," it is also as Sartre says, all the time being perfected and achieved, and this development occurs, not in a vacuum, but according to the various ways it is weighted by historical climates and vicissitudes. (pp. 133-134) Third, the author recognizes the important place of intuition in the moral life.

The difficulties one has with the work as a whole must be mentioned. First, the author tends to raise good questions and then drop them. He notes Mercier's statement that human nature is its own law, but merely remarks that Mercier was a great man; the interesting problem is left hanging. Second, natural law is seen as existing, with God as its foundation. It would seem to be more realistic to have begun with "things," and eventually perhaps to have arrived at natural law and even God as foundation of it. Third, the author is not simply silent, though remarkably reticent, on the subject of the moral judgment, which might well seem near the center of things when he is dealing with intuitions in morals. Lastly, the "permanence" of natural law never was more impressive than it is today, a fact which the author does not mention.

LEO R. WARD

JEAN-PAUL SARTRE. THE EXISTENTIALIST ETHIC. By Norman N. Greene. Ann Arbor: The University of Michigan Press, 1960. Pp. 213. $3.95.

In 1956 Jean-Paul Sartre told this reviewer that he had not yet written his views on ethics and that it would take him ten more years to do so. His silence has not prevented several commentators in the United States and abroad from doing it for him. The irony of the situation is, thus, that Sartre could at present consult his commentators in order to find out what his view would be on ethics, if it ever came into definite shape. By this I do not imply that writ-

ing and comments on existentialist morality are all wrong. There are indeed some excellent pages among the publications on that particular topic, but the least that can be said is that their work as a global achievement is not complete, and it is not complete because it is premature.

In order to remedy this lack of documentation, Dr. Greene has done three things: (1) From Sartre's previous publications, including the novels, plays, and philosophical works, especially from *Being and Nothingness,* he has deduced his moral principles; (2) he has compared these conclusions with what he considers to be three major trends of thought today — Catholicism, Marxism, and Liberalism; and (3) he has made a careful analysis of Sartre's articles on Marxism published in *Temps Modernes,* and later on in *Situations.* Greene has done these three things skillfully. One regrets from the start, however, that he did not remain in close touch with the original texts. All through the book he has kept himself "detached" from Sartre's writings and has condensed Sartre's views with very few references and quotations. The initiated reader will "add" the necessary footnotes by himself, but the one who is ignorant of Sartre's work may well wish that in a book with scholarly ambitions he were given more abundant occasion to check the original. The book has neither an index nor a bibliography.

Greene's contribution, as I see it, lies in the second part of the book. The first chapters summarize Sartre's life, give a condensed view of *Being and Nothingness,* and speculate on *The Human Condition,* all ground which has been covered before. The reading becomes more stimulating with Chapter IV, where the author discusses "Freedom as an Ethics." Greene has written some very sound pages on that topic and shows that here we hold a cardinal point of a Sartrean morality. I agree with much of what he says and believe with him that Sartre "means well" and deduces with utmost honesty some of his ethical and political positions. I believe also, however, contrary to Greene, that the transition from Sartre's speculative philosophy, as contained in *Being and Nothingness,* to a clear and systematic ethics is much more difficult than Greene seems to imply. The latter writes at the opening of Chapter IV: "The passage from an ontological description of human reality to an ethical theory can be risky." (p. 44) Nothing could be more true, especially when *Being and Nothingness* results in the tragic ending in which it actually does. But nowhere does Greene imply what a formidable task awaits the French philosopher. It has apparently been easier for his commentator to make that transition than for Sartre himself, who actually finds the task very hard.

Several pages of Greene's book are devoted to a comparison between Sartre's ethics and Catholic morality. Some of their content would surprise a French reader. Greene takes it for granted that Catholicism means Thomism, and vice versa. To my knowledge, an average of six out of every ten professors of philosophy in France are Catholics, but not one in six is a Thomist. Greene seems to be ignorant of this situation. That the local conditions in the United States are conducive to such misrepresentation, this reviewer will gladly accept, but Sartre is French and does not have American Thomists in mind. In connection with the same topic, I read with surprise that "Sartre's position on the Catholic moral law has much in common with that of modern positivists."

(p. 88) No one would deny that the Sartrean notion of value implies a relativistic trend, yet his "empiricism" (?) is of a totally different brand from that which was defended by Hume or his descendants. In fact a close study of Sartre may reveal that, notwithstanding wide divergencies, he is closer to certain Catholic positions in ethics than he is to those of the positivists. I can assure the author of this book that Sartre is deeply concerned with the positivists, but not as his friends. To identify Sartre's approach with "empirical" methods (see also p. 98) is definitely an oversimplification of the phenomenological and Hegelian methods which are his.

Greene is at his best in the last chapters, where he attempts to analyze Sartre's position *vs.* Marx. He has done the best he could with the material at his disposal, and here I have admired the political scientist who knows both Marx and Sartre the "fellow traveler." Unfortunately the book was written before the publication of Sartre's new book, *Critique de la Raison Dialectique* (Paris, 1960), in which Sartre delimits more clearly his own position in relation to Marxism. From a study of Sartre's new publication, it appears that the French philosopher is more than ever a Marxist — more so than Greene seems to imply on page 142 — *yet* more explicitly still than in the articles of *Temps Modernes* he wants to protect what he calls *l'humain,* and by this one ought to understand the individual intervention of the free man in history. History is a dialectic in terms of economics and of production, but it is a dialectic handled by man. This combination of Marxism and existentialism may seem paradoxical, but Sartre manipulates the complex situation with consummate art. Many will disagree with his conclusions but at the same time admire his brilliancy. Even though his practical and everyday-political interventions may be unrealistic and offer little in sound solutions, he no doubt remains France's greatest writer and philosopher, and very much — as Paul Ricoeur puts it, *le Victor Hugo de son siècle* — head and shoulders above all others. Greene deserves credit for having helped us to understand Sartre's complex brand of genius.

WILFRID DESAN

CHRISTIAN ETHICS AND THE DILEMMAS OF FOREIGN POLICY. By Kenneth W. Thompson. Durham, N.C.: Duke University Press, 1959. Pp. viii, 148. $3.50.

Dr. Thompson is a thoroughly trained political scientist who has taught in this field at the University of Chicago and at Northwestern University. He is also deeply concerned with philosophical questions about the foundations of political theory and especially with Christian ethics. In this book, which is based upon lectures given at Duke University under the auspices of the Lilly Endowment Research Program, he examines the many difficulties which stand in the way of any direct applications of Christian ethics to the operations of the modern nation-state. He studies the views of statesmen like Bismarck and Churchill, historians like Herbert Butterfield and Geoffrey Barraclough, philosophers and theologians like Schweitzer and Reinhold Niebuhr, in a search for

authentic norms that may be realistically applied to political action. On the whole, he is disappointed in his quest. Philosophers and theologians who have dealt with the subject are insufficiently acquainted with the complexities of the actual facts, while those acquainted with the facts are indifferent to the normative questions he raises. At one point (p. 133), he complains with some justification that only a very few living philosophers have addressed themselves seriously to these issues.

Thompson accepts the general thesis of Niebuhr in his *Moral Man and Immoral Society,* and supports it by an impressive array of further evidence as well as by cogent argument. As a matter of fact, we do not apply the same moral standards to the state as to the individual person. An individual guilty of such crimes as willful and wholesale deceit, breach of contract, mass murder, and genocide would be regarded as a monster. But we are prepared to accept them if they are supported by *raisons d'etat.* As Thompson says, "the state being . . . a collectivity rather than an individual, is incapable of assuming the personal or subjective obligations that inhere in the concept of Christian justice." (p. 109) It is impelled by a mass egotism which makes it blind to any independent standard it cannot identify with its own urge to power. Hence as George F. Kennan has pointed out, "it is always guiltless in its own eyes," and "its justice, accordingly, remains — and must remain — less than Christian." (*ibid.*) The individual is open to appeals for sacrificial devotion, but as a citizen of the modern nation-state he finds himself swept along willy-nilly into the abyss of power politics. In this connection, the author's quotation (p. 117) of Romans 7 is very pertinent: "For I delight in the law of God after the inward man: But I see another law in my members, warring against the law of my mind, and bringing me into captivity to the law of sin which is in my members." This phase of Thompson's argument would have been helped by a disciplined analysis of the difference between personal and political life and action. But it is difficult to deny the facts to which he is referring.

The needs of one nation-state differ radically from those of another. Hence the author is rightly skeptical of that self-righteous moralism which so readily identifies a given national policy with the welfare of mankind. "The one institution most capable of speaking for the world is the United Nations" (p. 134), though the author's purely pragmatic defence of this organization as a place for the working out of effective compromises through "quiet diplomacy" lacks force as well as coherence. The author accepts the view that "the ends of the state must be subordinated to those of the human person" (p. 16), and speaks approvingly, though hesitantly, of the *Universal Declaration of Human Rights.* But he seems to be unaware of the connection between this declaration and the tradition of natural law philosophy in the West. Indeed, he dismisses this whole mode of thought, without any sustained analysis, as something "highly abstract . . . which, in any case, the contemporary Western World has largely abandoned." (p. 15)

While the author rejects disciplined philosophical analysis as a way of bridging the gap between religious ethics and international politics, he believes that the Christian perspective does have a general relevance to the world of ***Realpolitik,*** which he spells out in the form of a few general recommendations

at the end of his argument. (pp. 126 ff.) Thus he attributes to religion, first of all, a sense of the brotherhood of man which may serve to mitigate the ferocities of political conflict. Second, there is the Christian teaching of patience, and the willingness to face trials and tribulations, which will certainly be needed if we are ever to complete the difficult transition from national autonomy to anything like a world community. Finally, and most important of all, there is a sense of humility and a readiness for self-criticism which are elicited only by the recognition of transcendence.

It would be hard to reject the author's conclusion that these religious attitudes have in the past, to some degree, toned down the collective will to power, and that they should be more deeply and intensively cultivated in the future.

Thompson has given us a realistic account of the dangerous and frustrating complexities of world politics as practiced in our time. He has warned us effectively against oversimple and sentimental "Christian" solutions. But his failure to spell out his "Christian perspective" into more specific and coherent patterns leaves us facing the same gap as we faced before between hard, destructive forces on the one hand, and lofty, but seemingly inapplicable, moral attitudes on the other. Patience in the pursuit of an authentic and coherent purpose is, no doubt, very fine. But patience as a passive readiness to suffer the foreseeable consequences of evil purposes pursued by ourselves and others, without any counterplan, or even coherent opposition, is hardly a virtue. After all, we may not have much time.

JOHN WILD

OPEN VISTAS: PHILOSOPHICAL PERSPECTIVES OF MODERN SCIENCE. By Henry Margenau. New Haven: Yale University Press, 1961. Pp. x, 256. $7.50.

Professor Henry Margenau of Yale University is one of those rare individuals who combine professional competence in physics with scholarship and original speculation in the field of philosophy. In *Open Vistas* he has attempted to expound for the general reader the connection between contemporary physical science and the humanities. He is especially concerned with the "progressive dynamism" of scientific method and scientific truth and its significance for cosmology, ethics and religion.

The author begins with an analysis of scientific method and differentiates clearly between the conceptual constructs and the factual data or "protocols" of scientific thought. Theories are sets of constructs and must also satisfy the requirements of empirical verification. "Facts are not interesting or important ingredients of science unless they point to relations, unless they suggest ideas combined into what is called theory." (p. 29) In the human sphere, facts by themselves never carry ultimate convictions because it may be argued that correct concepts may in time engender superior facts. Science confers theoretic relatedness upon previously unorganized factual knowledge.

A major thesis of the author is that philosophy must take account of the ideological consequences of scientific knowledge. The technological effects of science are obvious; the philosophical significance of science is "obscure" or

latent but nevertheless more significant in the long run. No culture is stable unless these two aspects of the consequences of science are in balance. Our modern culture is in a state of imbalance because the technological consequences of our scientific theory are highly developed, but the obscure implications of science for the values of our culture and our view of life have hardly been developed and brought to consciousness. This book is a modest attempt in this general direction.

In comparing contemporary philosophy of science with that of the seventeenth and eighteenth centuries, Professor Margenau finds that the contemporary view is opposed not only to all a priori, necessary, or absolute truths of reason, but also to absolute certainty based on intuition of axiomatic truths. Instead, scientific truth is held to be subject to empirical verification and to change with time. The reason for this relativistic evaluation of scientific truth is the recognition that the ultimate postulates of science are hypothetical, tentative, and unproved; our scientific knowledge is at best probable, but never absolute and certain. So-called verification of scientific theory yields a high degree of probability, but the scientist cannot affirm the absolute truth of his postulates without committing the fallacy of affirming the consequent. Neither deductive nor inductive demonstration yields anything more than probability subject to correction. (p. 73)

This leads the author to the Kantian conclusion that scientific knowledge is ultimately grounded in faith, in the sense of voluntary, rational commitments to principles of which he can never be absolutely sure. Unlike the arrogant Positivists of the nineteenth century who pronounced definitive judgment on what was possible and impossible, natural and supernatural, the modern philosophical physicist is humble and prepared for surprises and even revolutions in his theoretical outlook. The scientist always refers to the data of experience for verification, but he also relies on metaphysical faith in the ideal convergence of the scientific adventure upon a unifying theory, upon laws and principles that are unique, categorical, and all-inclusive. (p. 75) One is startled to find the author presenting the reader with a creed which expresses what he terms "the new faith of science"; but a creed which professes, not any absolute truth, but, on the contrary, faith in the belief that "new principles of understanding are constantly created through the efforts of man." (p. 76)

The concept of probability enters not only into the evaluation of scientific knowledge but into metaphysical theory and cosmology. According to Margenau, modern quantum theory leads to the conclusion that laws are statements of probability regarding the mass behavior of particles or "onta." The thesis of determinism which asserts the universality of the causal relation throughout nature and human experience is no longer tenable; atomic particles are lawless and act by chance. The author speaks as if "the electron, itself, as an individual, *decides* what value of a physical observable it will exhibit in the act of measurement" (196), though he admits that "the meaning of decision in this context is not very clear." Randomness of action in the physical world of the atom does not in itself constitute genuine freedom; for that we require chance plus choice. Decision or choice is regarded "as an irreducible act, a component

of historical reality which stands aloof from physical lawfulness." (p. 201) Historical reality is said to differ radically from physical reality in that the former manifests indeterminacy as well as freedom, while physical reality is the domain of probabilistic, statistical law. (p. 201)

Thus Margenau is in basic agreement with Kant and modern existentialism in his acceptance of the fact of freedom as the unique characteristic of man. I find it difficult to see, however, just how indeterminism in atomic quantum physics makes the case for freedom in man any the stronger. As Cassirer pointed out in his *Determinism and Indeterminism in Modern Physics* (Yale, 1956) — for which Margenau wrote a preface — none of the classical philosophers, such as Plato, Spinoza, and Kant, denied the general causal principle and equated freedom with causelessness. For all of them freedom did not mean indeterminism, but rather a certain form of determinism. "Thus the question of free will cannot and must not be confused with the question of physical indeterminism." (p. 203) While Margenau agrees with Cassirer that indeterminism alone is not enough to establish human freedom, he believes and maintains that chance, together with choice, is necessary and sufficient.

The question remains, however, what is the relation between choice and quantum indeterminacy? Is choice unintelligible apart from metaphysical indeterminism? Is choice incompatible with classical physics? If one accepts the reality of mind as a new kind of causal agency having its autonomy and capable of setting up norms and rules for itself, then the answer to the latter question is in the negative. After all, quantum physics does not abandon natural law but merely reinterprets it in terms of probability theory. It is worth remembering that the first students of statistics, such as Quételet, and the positivist historians such as Buckle, applied statistical theory to demonstrate social historical laws comparable to those of physics. One may grant the individual his insignificant, random movements and still maintain that the course of his life is determined by the social facts of society and culture, as Durkheim and Tylor maintained. Historical determinism is as much a kind of fate incompatible with human freedom, whether it be conceived inductively or deductively, by a priori demonstration or by statistical trends. Unfortunately, Margenau does not stop to examine the nature of choice but assumes without argument that choice, along with microscopic chance, adds up to freedom.

In this work Margenau limits himself to a discussion of some of the implications of contemporary physics for philosophic theory and the humanities in general. While he recognizes that philosophy also influences scientific theory he does not examine this reverse trend. Had he done so he might conceivably have altered his diagnosis of the sickness of our Western culture. Perhaps our imbalance is due, not only to a failure to develop the obscure consequences of scientific physical theory, but also to the complementary tendency to draw hasty conclusions from scientific theory without reckoning with long-established philosophic arguments.

Open Vistas is an intelligent, readable book which should put the fear of the Lord into the minds and hearts of fact-minded scientists who neglect theory and the theoretical implications of science for philosophy. Philosophical readers

will benefit from its lucid surveys of scientific thought in the area of physical science but will be inclined to question some of the philosophical arguments. After all, though, the author's own theory is not final and absolute; and we may anticipate that, in time, as he comes to treat more philosophical problems, he may conclude that the more they appear to change the more they remain the same.

DAVID BIDNEY

STUDIES IN WORLD PUBLIC ORDER. By Myres S. McDougal and Associates. New Haven: Yale University Press, 1960. Pp. xx, 1058. $15.00.

In collaboration with eight associates, Myres S. McDougal, Sterling Professor of Law at Yale University, has produced a masterly work on world jurisprudence. In this volume he has brought together the efforts of many years of labor, carried on with dedicated singleness of purpose. He has accomplished what he has set out to do — to give greater meaning to law by locating it in the context of a policy whose goal is the dignity of man.

The student familar with the writings of Professor McDougal and his associates — William T. Burke, Florentino P. Feliciano, Asher Lans, Richard N. Gardner, Harold D. Lasswell, Gertrude C. K. Leighton, Leon Lipson, and Norbert A. Schlei —will not find this book strange to him, for much of it has been published at one time or other in article form. Read together, however, its twelve essays provide a deeper insight into McDougal's thinking and orientation. But the volume is more than a convenient source for better understanding of his philosophy. From it there emerges a unified concept of jurisprudence that could not have been gleaned from casual reading of its component essays as they appeared in legal journals over the past fifteen or twenty years.

These essays provide a policy-oriented jurisprudential context that is imaginative and useful as an approach to contemporary problems in world public order. It has been said often that progress in the natural sciences has so outdistanced developments in the social sciences that the latter cannot cope with the problem created by the ever-expanding gap between the two. McDougal's work represents an effort to bridge this gap by developing a comprehensive framework of inquiry which will permit full advantage to be taken of the knowledge and discipline found in all the social sciences.

McDougal's philosophy is simple to state. He is concerned with establishment of a universal order of human dignity. By human dignity he means a social process in which values are widely shared and in which private choice rather than coercion is "the predominant modality of power." By values he means such objects of human desire as power, respect, knowledge, skill, enlightenment, rectitude and affection. A society in which such values are shared is a free society. That society in turn is not restricted to these values, so long as the other goal values it pursues are not incompatible with them. McDougal insists that the attainment of each value reacts favorably on others. Thus, for example, sharing of power makes it easier to maintain sharing of respect and knowledge. When respect is shared, it is easier to share power and knowledge, and so on. Lest the

meaning of power be misunderstood, he defines it in terms of ability to participate in the making of important decisions. If such participation is general, there is democracy insofar as the power variable is concerned. By shared respect, he means that human beings are taken into consideration by all with whom they come in contact in spheres of life beyond the making of collective decisions. When knowledge is shared democracy works.

Social processes, according to McDougal, are explicable as interacting variables, all of which are in a relationship of ends and means. For example, distribution of respect affects the distribution of power and knowledge, distribution of knowledge affects the distribution of respect and power, and so on. These key variables are affected by the magnitudes of certain other variables, such as balance, regularity, realism, and character, which in themselves are important for the development of policies capable of achieving and maintaining that interrelationship among the key variables that we call democratic, i.e., power, respect, and knowledge. In McDougal's contemplation of a universal order of human dignity, he postulates this process in such a manner as to leave everyone free to justify it in terms of his preferred theological or philosophical tradition.

Part I of the book establishes the framework of inquiry. It consists of two chapters, the first identifying and appraising the diverse systems of public order, the second concentrating on legal education and policy. Both stress the need for legal training in the public interest and for making the law school a more powerful instrument for transmitting not only skills in legal technicality but "the additional skills that promise to mold the policy-makers capable of fulfilling the aims and realizing the opportunities of the years ahead." (p. 147)

The remainder of the book deals more immediately with problems in world public order, which McDougal defines as those features of the world social process that are protected by law. In Part II, he concentrates on strategies for a minimum order, that is, a public order based on the principle that force is reserved for support of processes of persuasion and agreement and is not used as an instrument of unauthorized change. He refers to it as minimum order because conformity of society is necessary. In the first essay, "The Impact of International Law upon National Law: A Policy-oriented Perspective," he seeks to make clear the common interest of peoples as members of the world community and nation-states and to outline their interrelationships and the constitutional framework within which they act. The emphasis is upon giving meaning to rules by considering them in light of community needs and aspirations. The succeeding essay is a study of community control of international coercion. Anyone interested in policy-oriented inquiry will find this effort particularly satisfying. It emphasizes that international law should not be regarded as a mere set of rules but as a process of authoritative decision in the world arena requiring a distinction between coercion as such and the process of authoritative decision by which regulation is sought.

Another essay, dealing generally with the rights of man in the world community, considers by way of example the scope of the foreign affairs power of the United States under the Constitution. The competence of the United States to participate in world social processes is examined in light of the pattern of

behavior of our legal society, which assumes that it is better to meet problems as they arise rather than have recourse to a framework within which they can be examined and analyzed, even though such a framework already exists in the United Nations Charter. The Charter, it is submitted, offers an opportunity for developing specific arrangements among nation-states to insure the rights of man in the world community.

Next in order McDougal has included in its entirety his lengthy essay on treaties and executive agreements as interchangeable instruments of national policy. This essay, of course, is so well known to the legal profession by now that it scarcely needs comment.

The next essay deals with strategies for minimum order and is entitled "The Veto and the Charter: an Interpretation for Survival." It is concerned with principles and procedures for the interpretation of international agreements such as the United Nations Charter. While its emphasis is on the problem the United Nations faced in 1950, i.e., voting in the Security Council, it goes beyond the limits of that discussion to recommend that every effort be made to establish "the closest possible approximation to the genuine shared expectations of the particular parties — with all contradictions, gaps, and ambiguities being resolved by reference to fundamental community policies." (p. xiv) In McDougal's judgment, the United Nations Charter affords the basis for deriving such expectations if and so long as its purpose is not frustrated by interpretation in a manner bearing no relationship to actual community objectives.

Part III of the book deals with strategies for management of shareable resources. It refers to such resources as the oceans, air space over the oceans, international rivers, polar areas and outer space, which admit of being shared and used by all of the world community. The essay entitled "The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security" presents the international law of the sea as a growing and living thing in constant process of adjustment in order to meet new demands by peoples throughout the world. At the same time it seeks to clarify the concept of security by concluding that the hydrogen bomb tests do not contravene the fundamental policy of the freedom of the seas but rather can be explained as an exercise of reasonable measures in order to insure security.

The essay on "Crisis in the Law of the Sea: Community Perspectives versus National Egoism" is intended as an introduction to a more comprehensive study. Among other things, it expresses concern over misconceptions of the process of decision by which controversies concerning the law of the sea have been resolved and recommends a systematic contextual analysis of the processes of use, claim, and decision by which the oceans are exploited and subjected to public order. It exhorts nation-states to continue to recognize the mutual restraint required by reciprocal interest.

The last essay in Part III, entitled "Perspectives for a Law of Outer Space," is anticipatory rather than immediate, since there are no existing community regulations on the subject. Here, also, the study suggests the extent to which resources of outer space may be shared. While it does not dismiss the notion of seeking international regulation of outer space, it sees in the past pattern of

behavior of our society the suggestion that the future law of space will most probably grow in the same manner as customary law has grown in the past, in an empirical, inductive way, gradually and with caution.

Part IV considers strategies for optimum order and suggests bases for promoting the greatest production and the widest possible sharing of human dignity values among the peoples of the world. The essay entitled "The Comparative Study of Law for Policy Purposes: Value Clarification as an Instrument of Democratic World Order" stresses the need for comparative study of law in a world that has shrunk in size and where boundaries of nation-states appear to have an element of artificiality because people throughout the world are demanding common values that do not stop at frontiers. It states as the principal objective of comparative inquiry clarification of the perspectives, conditions, and alternatives necessary for securing and enhancing basic democratic values in a peaceful world. It urges the need for a curriculum of comparative studies along policy-oriented lines with a view to developing a framework for effective cooperation among the peoples of the world. The remaining study considers the question of an international law of human dignity, which McDougal defines as "the processes of authoritative decision of a world public order in which values are shaped and shared more by persuasion than coercion, and which seeks to promote the greatest production and widest public sharing, without discriminations irrelevant to merit, of all values among all human beings." (p. 987)

JOHN J. CZYZAK

THE RUSSIAN REVOLUTION AND RELIGION: A COLLECTION OF DOCUMENTS CONCERNING THE SUPPRESSION OF RELIGION BY THE COMMUNISTS, 1917-1925. By Boleslaw Szczesniak. Notre Dame: University of Notre Dame Press, 1959. Pp. xx, 289. $6.75.

If one were permitted to make a quip concerning a very serious matter, one could say that there are more believers than churchgoers in the Soviet Union and more churchgoers than believers in the United States. The American ways of life encourage the participation in an organized religious community even if its religious tenets sometimes are so vague that an agnostic can join it. The Soviet regime is, by contrast, bound by its atheistic dogmas (the flat assertion of the nonexistence of God is a dogma which its adherents must accept on faith but cannot prove by rational arguments), and discourages by all the means at its disposal the external manifestations of religious beliefs. The Soviet citizen who wants to join the Party and thus the vanguard ranks of the society, or the citizen who simply intends to promote his career, has no choice but to avoid religious practices. This is especially true of the educated class, because a university diploma is the key to Soviet careers. But even a humble worker or peasant will avoid all sorts of unpleasantnesses by not being seen at a church. However, no one has as yet invented a device to scrutinize the innermost of human mind. Religion stubbornly refuses to die out after forty-four years of existence of the Soviet regime; the Party hopes have been constantly frustrated. The frequent press admonitions addressed to both old and young that they

should avoid the pitfalls of religion, and the appeals by the Party and the Komsomol to their members that they should never relax their vigilance, prove that religion is alive not only among old women, as some Western commentators believe, but also among the young people. The unanswerable question is, what is the proportion of believers in the total population? Neither an outsider nor Khrushchev would be able to provide the answer.

History has known many persecutions of one religion by another, but Russia is the first place where a political regime has declared an open war on all religions. The experiment is tragic but it might prove in the end that the human longing for a supernatural source of strength cannot be eradicated. Any scholarly contribution to the knowledge of this problem is praiseworthy, because the problem itself is of paramount importance.

Professor Boleslaw Szczesniak has succeeded in throwing documentary light on the opening stage of the Communist struggle against religion. This stage, 1917-1925, is all-important; and the reader who has become familiar with it will be able to follow, with full understanding, the information on the current episodes in the same struggle. The great lines of the Communist policy were then drawn. The early Bolshevik policy was continued by successive Party leaders in the Soviet Union and also served as a model for similar policies in Eastern Europe.

Szczesniak has concentrated his attention on Christian churches and in particular on the Russian Greek Orthodox Church — which had been the predominant Church prior to the October Revolution — and the Roman Catholic Church. He adduces, however, also several documents relating to other Christian denominations and to the Moslems. The problem has never been identical for all religious communities. The Russian Greek Orthodox Church was in 1917 and remains today the main enemy of the Communists, because it was traditionally the Church of the Russians and of most of the Ukrainians and Byelorussians, i.e., of the great majority of the population. The Roman Catholic Church, although it had its numerous congregations in old Russia, mainly among the non-Russians such as Poles and Lithuanians, confronted the Party with a different problem. The Party, which intends to control completely the life of the citizens, cannot be reconciled with any organization having strong external ties. Unlike the Greek Orthodox Church (at least before its recent association with the World Council of Churches) the Roman Catholic Church is an integral part of a world-wide community. The present Soviet policy of "suffering" the existence of the Greek Orthodox Church insofar as mere religious worship is concerned stands in contrast with its irreconcilable hostility to the Roman Catholic Church and, for somewhat comparable reasons, to the Zionist movement, which is altogether forbidden. The Moslem problem is still different, because it is a part of the Central-Asian nationality problem; the Communist struggle against Islam is motivated not only by atheism but also by the desire to stifle national consciousness in Central Asia.

Among the most important of the documents in this book are those concerning the Bolshevik decisions forbidding churches to teach religion to minors, and assigning to the State the duty of inculcating atheism by all the means at its disposal. This policy has remained the main feature of the Party line. The

last word has not as yet been said by the Party. The Party postwar documents indicate that it realizes the futility of an outright persecution; the post-Stalinist system of a growing network of boarding schools is intended to provide the answer. The children enrolled at those schools are cut off from parental influence insofar as possible and fully delivered to atheistic indoctrination by State teachers. This network is bound to expand but at a rather slow pace, because the cost of operating a boarding school is obviously much higher than that of a day school. Once this network of boarding schools becomes universal, the battle for young minds will be fully joined.

It is hardly comforting to see in these documents how the Western world reacted to the information concerning the ruthless persecution of believers in Russia. A similar rather mild reaction to the Nazi extermination of Jews occurred during the last war. The suffering that is not seen with one's own eyes apparently does not affect one very profoundly.

The author should be not only warmly thanked for his immense labor and his judicious selection, but should be asked to continue his very useful venture. This volume should become the first in a series which should span the whole history of Soviet struggle against religion.

W. W. KULSKI

THE JUDICIAL DECISION. By Richard A. Wasserstrom. Palo Alto, Calif.: Stanford University Press, 1961. Pp. 197. $5.00.

This monograph is by an author who combines training in philosophy and in law, and his work shows the confluence of these disciplines. While this combination may not be unusual on the European continent, where training in law often has a humanistic setting, it is much less common than it should be in our country, where legal education is almost exclusively oriented toward bar examinations and professionalism. Perhaps for this reason much of the work done in American jurisprudence and legal methodology has perforce been done by thinkers in the profession rather than in the schools — by men like Justices Holmes, Brandeis, and Cardozo, Judge Thurman Arnold, Felix S. Cohen, Huntington Cairns, and others whose philosophical insights were often provoked or enriched by their practical experience on the bench, at the bar, or in administrative positions.

The author, assistant professor of philosophy and law at Stanford University, is concerned in this book with the problem of how courts within the Anglo-American system ought to decide cases. The book is not so much an empirical study as a consideration of the adjudicatory procedure by way of precedent, by way of equity, and by way of what he calls a two-level procedure, which is intended to embody both precedent and considerations of justice directed toward the legal rule rather than toward the specific decision.

The author's exposition is not always as clear and plain as one would like it to be, especially when one wishes lawyers and judges to benefit from a book on judicial decision making. The book would have been improved by more frequent exposition and analysis in terms of actual court cases. As it is, the

book has an abstract quality that will make it less attractive and significant to those who need it most.

The heart of the book, at least to this reader, is Wasserstrom's concern with precedent. He examines many of the justifications that have been urged in support of a rule of strict precedent, such as certainty, reliance, equality of treatment, efficiency of courts, the application of "practical experience," restraint upon individual judges, and other such claims, all of which are found wanting. When not attacked, precedents are often followed; but when attacked in litigation, it is only seldom that one finds a clear, unambiguous instance of strict precedent — the following of a prior decision, not because the judge approves of it, but *only* because he feels himself bound by it.

A recent example (if not merely an instance of *res adjudicata*) was the position taken by Justice Brennan in the second *Uphaus* case (364 U. S. 388, 1960). Justice Brennan had dissented in the first *Uphaus* case (360 U. S. 72, 1959). When the second case came before the Supreme Court, the motion to dismiss was granted by five Justices; Chief Justice Warren, and Justices Douglas and Black, who had dissented in the first case, again dissented; but Justice Brennan, in a brief separate opinion, wrote that while he still believed that the majority had incorrectly decided the first contempt case against Uphaus, "that holding, while it stands, also sustains the order challenged on this appeal. Solely under compulsion of that decision, I think that the appeal must be dismissed. . . ."

The author, I am sure, feels that his book has resolved the paradox that "results from a desire to bring together in one legal system two seemingly incompatible ideas: the one, that rules of law once established ought not to be altered; the other, that the judiciary should not be inexorably 'engaged in forging fetters for their own feet.'" (p. 49) This is the same paradox asserted by Roscoe Pound: "The law must be stable and yet it cannot stand still." How this paradox is resolved is not clear; but the book does articulate the essential questions relating to *stare decisis* and gives them more body than they normally are assumed to have.

MILTON R. KONVITZ