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LOCKE, NATURAL LAW, AND GOD

No embarrassment need be felt at calling attention once again to Locke's theory of natural law. The very bulk of the literature devoted to it over the last few years attests, after all, to the intensity of current interest in the subject.¹ It attests as well to the marked persistence of scholarly disagreement about it, and to the fact that Locke's theory despite "the keen interest evinced by scholars" continues to suffer "from violent and sometimes most learned and elaborate distortions."² Nowhere is this more evident than in recent discussion concerning his teaching on the precise relation of natural law to God. The question is an abstruse one, perhaps, but it is one with important ramifications in other sectors of his thinking, and one, moreover, which his contemporaries were not prone to dismiss as lacking in consequence.

Noting that Locke allowed "Moral Good and Evil to be such antecedently to all Human Laws" and seemed to ground them in the divine law, Thomas Burnet—one of his first critics—needed him by asking "what is the Reason or Ground of the Divine Law? Whether the Arbitrary Will of God, The good of Men, or the intrinsick Nature of the Things themselves?"³ Burnet was not alone in focussing on the issue. Among the Cambridge Platonists, Fowler, Rust, and Cudworth had all been vociferous in their attacks on those "modern [Calvinist] theologians" who taught

that there was nothing absolutely, intrinsically and naturally good and evil, just and unjust, antecedently to any positive command or prohibition of God; but that the arbitrary will and pleasure of God (that is, an omnipotent Being devoid of all essential and natural justice) by its commands and prohibitions, is the first and only rule and measure thereof.⁴

¹ See especially J. W. GOUGH, *JOHN LOCKE'S POLITICAL PHILOSOPHY* ch. 1 (Oxford, 1950, 1956); LEO STRAUSS, *NATURAL RIGHT AND HISTORY* ch. 5 (Chicago, 1953), and the essay, *Locke's Doctrine of Natural Law* in his *WHAT IS POLITICAL PHILOSOPHY? AND OTHER STUDIES* 197-220 (Free Press of Glencoe, Ill., 1959); W. VON LEYDEN, *JOHN LOCKE: ESSAYS ON THE LAW OF NATURE* (Oxford, 1954), and his article, *John Locke and Natural Law*, 31 *PHILOSOPHY* 23-35 (1956); John W. Yolton, *Locke on the Law of Nature*, 67 *THE PHILOSOPHICAL REVIEW* 477-498 (1958); Raghuvver Singh, *John Locke and the Theory of Natural Law*, 9 *POLITICAL STUDIES* 105-118 (1961); M. Seliger, *Locke's Natural Law and the Foundation of Politics*, 24 *JOURNAL OF THE HISTORY OF IDEAS* 337-354 (1963). Cf. Charles H. Monson, *Locke and His Interpreters*, 6 *POLITICAL STUDIES* 120-126 (1958) (criticizing Strauss); A. P. Brogan, *John Locke and Utilitarianism*, 69 *ETHICS* 90-91 (1959); JOHN WILD, *PLATO'S MODERN ENEMIES AND THE THEORY OF NATURAL LAW* 127-132 (Chicago, 1953); RAYMOND POLIN, *LA POLITIQUE MORALE DE JOHN LOCKE* 95-128 (Paris, 1960); RICHARD H. COX, *LOCKE ON WAR AND PEACE* 45-105 (Oxford, 1960); John T. Noonan, Jr., *The Protestant Philosophy of John Locke*, in *PHILOSOPHICAL STUDIES IN HONOR OF THE VERY REVEREND IGNATIUS SMITH, O.P.* 92-126 (ed. by J. K. Ryan, 1952).

² Raghuvver Singh, *John Locke and the Theory of Natural Law*, 9 *POLITICAL STUDIES* 105 (1961).

³ THOMAS BURNET, [FIRST] REMARKS UPON AN ESSAY CONCERNING HUMAN UNDERSTANDING, IN A LETTER ADDRESSED TO THE AUTHOR 6 (London, 1697).

⁴ RALPH CUDWORTH (d. 1688), *TREATISE CONCERNING IMMUTABLE MORALITY* bk. I, ch. 1, § 5, at 11 (New York, 1938); cf. EDWARD FOWLER (d. 1714), *THE PRINCIPLES AND PRACTICES OF CERTAIN MODERATE DIVINES OF THE CHURCH OF ENGLAND ABUSIVELY CALLED LATITUDINARIANS* 12-16 (London, 1671). For the views of George Rust (d. 1670), see J. TULLOCH, 2 *RATIONAL THEOLOGY AND CHRISTIAN PHILOSOPHY IN ENGLAND IN THE SEVENTEENTH CENTURY* 435-436 (London, 1872).

And Cudworth, at least,⁵ was well aware of the fact that the issue had bulked large in late-medieval scholastic theology. There, indeed, it had occasioned a significant split in natural law thinking, and perhaps the most succinct description of the contrasting scholastic positions thus engendered is to be found in what is probably the most frequently cited of Otto von Gierke's many lengthy footnotes. "The older view," he says,

which is more especially that of the Realists, explained the *Lex Naturalis* as an intellectual act independent of Will—as a mere *lex indicativa* in which God was not lawgiver but a teacher working by means of Reason—in short, as the dictate of Reason as to what is right, grounded in the Being of God but unalterable even by him. . . . The opposite position, proceeding from pure Nominalism, saw in the Law of Nature a mere divine Command, which was right and binding merely because God was the lawgiver.⁶

Clearly, then, for both seventeenth century thinkers and their medieval predecessors, an important question—one with reverberations in moral philosophy and with ontological and epistemological implications as well. And yet, until recently, little attention was devoted to Locke's own position on this matter.⁷ He himself discussed it at some length in his early *Essays on the Law of Nature*, and there can be little doubt that the recent discovery of these essays in the Lovelace Collection⁸ would itself have redirected attention to the issue had not Leo Strauss done so first. For it is to the credit of Strauss (who did not make use of the Lovelace material) to have placed in the forefront of discussion the whole problem of the relationship of Locke's theology with his theory of natural law.⁹ Unfortunately, his object in doing so was to show "that Locke deviated considerably from the traditional natural law teaching and followed the lead given by Hobbes,"¹⁰ to prove that, despite Locke's admittedly numerous references to natural law as a declaration of the will of God, his real purpose was to dissociate that law from God altogether and to treat it as a fundamentally human product, a series of "'conclusions, or theorems concerning what conduces to the conservation and defense' of man over against other men."¹¹ So that, in effect, those who (like Strauss himself) wish to avoid a crassly exoteric reading of Locke's works

⁵ See RALPH CUDWORTH, *TREATISE CONCERNING IMMUTABLE MORALITY* bk. I, ch. 1, § 5, at 11, where speaking of the voluntarist position, he says that

though the ancient fathers of the Christian Church were very abhorrent from this doctrine, . . . yet it crept up afterward in the scholastic age, Ockham being among the first that maintained . . . that there is no act evil but as it is prohibited by God, and which cannot be made good if it be commanded by God. And so on the other hand as to good. And herein . . . others quickly followed him.

⁶ OTTO GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE* 173, n. 256 (trans. and ed. by F. W. Maitland [Cambridge, 1900]). Gough, Singh, and W. von Leyden all draw their information concerning scholastic views from this lengthy note.

⁷ S. P. LAMPRECHT, *THE MORAL AND POLITICAL PHILOSOPHY OF JOHN LOCKE* (New York, 1918), is something of an exception—see 105-108.

⁸ For the history of the Lovelace Collection see W. VON LEYDEN, *JOHN LOCKE: ESSAYS ON THE LAW OF NATURE 1-10* (Oxford, 1954) [hereafter referred to as LEYDEN, *JOHN LOCKE: ESSAYS*].

⁹ See LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 202ff. (Chicago, 1953).

¹⁰ *Id.* at 221.

¹¹ *Id.* at 229 (quoting the words of Hobbes).

can only conclude that Locke "cannot have recognized any law of nature in the proper sense of the term."¹²

The complex arguments by which Strauss reaches this extraordinary conclusion have been subjected to justifiable criticism by John W. Yolton, who, quite rightly, balks at Strauss's application to Locke of his "theory of esotericism," and insists that, though Locke may conceivably have been confused, he meant more or less what he said and said more or less what he meant.¹³ Yolton asserts, among other things (p. 483), that "Locke was seeking to justify a system of morality by grounding the moral law in something objective. The law of nature is a decree of God, not of man's reason," and Locke's natural law teaching, it would seem, is not to be regarded as constituting a sharp break with the traditional.

All very well, but what would Yolton himself make of the position of John Wild, whose work he does not mention, but who can agree with him that for Locke the natural law is an expression of the divine will, while for this very reason denying (in company with Strauss) that the Lockean version is "natural law in either a classical or a Christian sense"? This traditional concept, Wild concludes, "is simply lacking in the thought of Locke."¹⁴ And what again would Yolton make of Singh's more recent assertion that Locke's "conception of natural law is continuous with the classical Stoic and Christian position represented by Cicero and St. Thomas and coming down to Richard Hooker," but that it is so (this time) precisely because Locke located the essence of natural law in the divine reason and *rejected* the notion that Wild ascribes to him—namely, that natural law "consists in a set of arbitrary decrees laid down by the Deity"?¹⁵

Singh, it is true, was not the first commentator to suggest that Locke's theory was not so completely voluntarist as has often been supposed. But none of his scholarly predecessors were as forthright as he in stressing Locke's rationalism on this point; all were much more impressed with the complexity of Locke's position; most were less concerned with the currently fashionable project of reading Locke out of "the classical and Christian natural law tradition" or of reinstating him within that tradition.¹⁶

¹² *Id.* at 220; cf. RICHARD H. COX, *LOCKE ON WAR AND PEACE* 88-89 (Oxford, 1960).

¹³ *Locke on the Law of Nature*, 67 *THE PHILOSOPHICAL REVIEW* 477ff. (1958). Yolton notes (478) that Strauss had not consulted the Lovelace Collection, did not have access to Locke's early *Essays on the Law of Nature*, and might not, therefore, "be expected to have as full a view of Locke's theory as we can now have." But a subsequent and close examination of those early essays does not seem to have shaken either Strauss's addiction to the "theory of esotericism" or his belief that Locke really intended "to follow the lead given by Hobbes and to replace the traditional natural law teaching by a moral teaching which is grounded on the desire or instinct for self-preservation." See his essay, *Locke's Doctrine of Natural Law*, in *WHAT IS POLITICAL PHILOSOPHY?* 197-220 (1959), esp. 204, 206, and 214-215 (the whole a veritable *tour de force* of learned obfuscation).

¹⁴ WILD, *PLATO'S MODERN ENEMIES AND THE THEORY OF NATURAL LAW* 131 (1953).

¹⁵ Singh, *op. cit. supra* note 2, at 111-112; cf. WILD, *op. cit. supra* note 14, at 131.

¹⁶ Thus LAMPRECHT, *op. cit. supra* note 7, at 105, stressed Locke's vacillation "between two theories of the relation of God's will to the moral law"; R. I. AARON, *JOHN LOCKE* 264-266 (Oxford, 1937), noted his inability to go the whole way on this point with either the medieval nominalists or realists; GOUGH, *op. cit. supra* note 1, at 4, seems to suggest that Locke sidestepped the whole issue, saying that he "would have regarded this ancient dispute as an unreal and rather trivial one"; LEYDEN, *JOHN LOCKE: ESSAYS* 56-58, in

Given, then, the persistence of such radical scholarly disagreement, it will be the purpose of this essay to attempt the twin tasks of reexamining Locke's precise position and of reassessing the natural law tradition in question. And it is our intention to suggest that these tasks are related ones precisely because inadequate conceptions of the nature of that "classical and Christian" tradition have served in the past to distort the meaning and significance of Locke's own statements. But, first, the texts.

I

By citing a series of extracts drawn "from almost all the major writings of Locke" Singh seeks to prove his case that Locke's conception of natural law does not deviate from that "realist-intellectualist" tradition which came down to him from Cicero and the Stoics via the thought of Aquinas, Hooker, and others.¹⁷ The goal is a reasonable one and the extracts are persuasive. But are we really expected to overlook the fact that an even more formidable array of extracts can be adduced from an equally impressive cross section of Locke's works and indicate, to the contrary, that his thinking on natural law was bluntly voluntarist?

As early as 1661, Locke wrote of virtue that "in its obligation it is the will of God, discovered by natural reason";¹⁸ it is the divine will alone which binds by its intrinsic force.¹⁹ Similar statements are broadcast throughout the works he wrote over the course of the next thirty years. One of the things required for "the knowledge of any and every law," he tells us, is "some will on the part of . . . [a] . . . superior power with respect to the things to be done by us."²⁰ And "the sovereign lawmaker who has set rules and bounds to the actions of men is God, their Maker." There are "certain rules, certain dictates which it is his will all men should conform their actions to" and "this will of his is sufficiently promulgated and made known to all mankind."²¹ Like divine positive law, natural law is binding because it is "the will of a supreme Godhead"; it is the will of an "omnipotent lawmaker, known to us by the light and principles of nature."²² Or again, "moral good and evil . . . is only the conformity or disagreement of our voluntary actions to some law, whereby good or evil is drawn on us, from the will and power of the lawmaker." It is by comparing them with the divine law that "men judge of the most considerable moral good or evil of their actions," and the divine law is "that law which God has set to the

the most careful analysis of all, argued that Locke had "second thoughts on his voluntarist theory of law" and that his doctrine contains intellectualist strands which "present difficulties within the framework of any voluntarist theory."

¹⁷ Singh, *op. cit. supra* note 2, at 112-113.

¹⁸ In his *Common-Place Book*, in LORD KING, 2 THE LIFE OF JOHN LOCKE 94 (new ed., London, 1830).

¹⁹ According to LEYDEN, JOHN LOCKE: ESSAYS 28, Locke reasons thus in his Latin Treatise: "*An Magistratus Civilis possit res adiaphoras in divini cultus ritus asiscere, eoque populo imponere?*" Similarly, in Essay VI, *id.*, at 186-187.

²⁰ Essay IV, in LEYDEN, JOHN LOCKE: ESSAYS 151.

²¹ John Locke, *Of Ethics in General*, in King, *op. cit. supra* note 18, at 133.

²² Essay VI, in LEYDEN, JOHN LOCKE: ESSAYS 189 and 187.

actions of men whether promulgated to them by the light of nature, or the voice of revelation."²³ For God's will is expressed by either "the Law of Nature or Revelation";²⁴ and "Reason" is "the voice of God" in man, teaching him when it is that his actions are in accord with "the Will of his Maker."²⁵ It is only when the "just measures of right and wrong" are recognized for what they are, namely, "the precepts of a law; of the highest law, the law of nature" that their obligation can be "thoroughly known and allowed."²⁶ For it is to "the Law of Nature, i.e., to the Will of God" that men's actions must be conformable.²⁷ And so on.²⁸

On this showing Locke's thinking would appear to be impregnated with an unquestionably voluntarist conception of natural law. But, as Strauss has done well to remind us,²⁹ doctrinal questions are not to be decided by any manipulation of textual statistics. No matter how many voluntaristic statements we can adduce, there still remain those stubbornly "intellectualist" texts which Singh cites and which he regards as expressing Locke's controlling doctrine.³⁰ These texts indicate that the natural law is to be identified with the right reason of man, by which is meant "certain definite principles of action from which spring all virtues and whatever is necessary for the proper moulding of morals." There is, indeed, a "harmony" between natural law and man's rational nature, and the law commands or prohibits precisely because it indicates "what is and what is not in conformity with rational nature."³¹ The texts would seem to indicate also that this intimate link between law and reason is one which spans the gulf between the realms of nature and supernature, that it is as relevant to the inner activity of God as it is to the experience of man. In what is perhaps his most crucial statement, Locke tells us that natural law "does not depend on an unstable and changeable will, but on the eternal order of things. For . . . certain essential features of things are immutable, and . . . certain duties arise out of necessity and cannot be other than they are."³² Hence we should not be surprised to find him writing elsewhere that "the Obligations of that Eternal Law [i.e., 'the Laws of God and Nature'] . . . are so great . . . that Omnipotency itself can be tyed by them"; or, more sweepingly, that, possessed as he is of "infinite wisdom

²³ *ESSAY CONCERNING HUMAN UNDERSTANDING*, II, xxviii, §§ 5 and 8 (Alexander Campbell Fraser ed. [Oxford, 1894], I, 474-475).

²⁴ *FIRST TREATISE OF GOVERNMENT* § 166, ed. PETER LASLETT, JOHN LOCKE: TWO TREATISES OF GOVERNMENT (Cambridge, 1960), 279-280.

²⁵ *FIRST TREATISE* § 86, ed. LASLETT, 223.

²⁶ *THE REASONABLENESS OF CHRISTIANITY*, in 7 *THE WORKS OF JOHN LOCKE* 144 (10th ed., London, 1801).

²⁷ *SECOND TREATISE OF GOVERNMENT*, § 135, ed. LASLETT, 376.

²⁸ Cf., e.g., *Essays I and V*, in LEYDEN, JOHN LOCKE: *ESSAYS* 111 and 173; *ESSAY CONCERNING HUMAN UNDERSTANDING*, I, ii, §§ 6, 12, and 18, ed. Fraser, I, 69-70, 76, and 83.

²⁹ Leo Strauss, *Locke's Doctrine of Natural Law*, in *WHAT IS POLITICAL PHILOSOPHY?* 210 (1959).

³⁰ Singh, *op. cit. supra* note 2, at 111-112.

³¹ *Essays I and VII*, in LEYDEN, JOHN LOCKE: *ESSAYS* 111 and 199; cf. *Essay IV*, 149.

³² *Essay VII*, in LEYDEN, JOHN LOCKE: *ESSAYS* 199. This whole essay is of central importance for the problem at hand. Cf. *ESSAY CONCERNING HUMAN UNDERSTANDING*, "Epistle to Reader," ed. Fraser, I, 18, where Locke speaks of "the eternal and unalterable nature of right and wrong."

and goodness," "God himself *cannot* choose what is not good; the freedom of the Almighty hinders not his being determined by what is best."³³ Or again (in a text which Singh does not cite but which is very much to the point) that "no one precept or rule" of that "eternal law of right which is holy, just and good"—and which he equates with the law of reason—

is abrogated or repealed; nor indeed can be, whilst God is an holy, just and righteous God, and man a rational creature. The duties of that law, arising from the constitution of his very nature are of eternal obligation; nor can it be taken away or dispensed with, without changing the nature of things, overturning the measures of right and wrong, and thereby introducing and authorizing irregularity, confusion, and disorder in the world.³⁴

What, then, is to be done? Are Locke's apparently conflicting statements to be arranged hierarchically, and precedence over some to be given to others? And if so, which are to be chosen as the preferred ones? And for what reason? Or must the search for coherence be abandoned and a forthright verdict of inconsistency brought in? Neither of these alternatives is very attractive, and it is fortunate that the choice presented is a false one. Inconsistency there may well be, but such a verdict is not to be returned until a more exhaustive examination of the texts has been made. The simple listing of statements, voluntarist and intellectualist—however obvious a procedure—may have served to obscure the issue. For it tends to conceal an important distinction which must clearly be perceived if Locke's position is not to be misrepresented.

The distinction in question is that between the provisions of natural law regarded, respectively, with a view to their content and with a view to their binding force. Locke may not be wholly consistent in the various remarks he makes about the extent to which natural law is rationally apprehensible. In some, no doubt, he is more sanguine than in others.³⁵ But no matter what the extent of his optimism he is quite constant in his identification of the major obstacle to a proper comprehension of that law. It is, he tells us, the inability of perhaps the majority of thinkers and teachers unenlightened by revelation to perceive in the moral norms they discover the mandates of an omnipotent creator, of a God who, precisely because we owe to Him our very existence and everything that we are, has power both to give us laws and to punish us for their infraction.³⁶ For "even if God and the soul's immortality are not moral propositions and laws of nature, nevertheless they must be necessarily presupposed if natural law is to exist. For there is no law without a lawmaker, and law is to no purpose without punishment."³⁷ Among the ancients, no doubt, there were not lacking "just measures of right and wrong," perceived by the light of reason

³³ SECOND TREATISE, § 195, ed. Laslett, 413-414; ESSAY CONCERNING HUMAN UNDERSTANDING, II, xxi, 50, ed. Fraser, I, 347.

³⁴ THE REASONABLENESS OF CHRISTIANITY, *op. cit. supra* note 26, at 112.

³⁵ Compare, for instance, Essay IV, in LEYDEN, JOHN LOCKE: ESSAYS 146-159, or ESSAY CONCERNING HUMAN UNDERSTANDING, I, ii, 6, ed. Fraser, I, 69-70, with THE REASONABLENESS OF CHRISTIANITY, *op. cit. supra* note 26, at 141ff.

³⁶ See Essay VI, in LEYDEN, JOHN LOCKE: ESSAYS 181-183.

³⁷ Essay V, *id.* at 173; cf. ESSAY CONCERNING HUMAN UNDERSTANDING, I, ii, 12, ed. Fraser, I, 76.

and "looked on as bonds of society." But can we say "that their obligation was thoroughly known and allowed," and were they truly "received as precepts . . . of the highest law, the law of nature"?³⁸ After all, how could they be? For it is not reason that can "give us laws, since it is only a faculty of our mind and part of us." It is rather "the decree of a superior will, wherein the formal cause of a law appears to consist."³⁹ So that what is really needed "to establish morality . . . upon its proper basis, and such foundations as may carry an obligation with them," is first to "prove a law, which always supposes a law-maker: one that has a superiority and right to ordain, and also a power to reward and punish according to the tenor of the law established by him." And "this sovereign lawmaker who has set rules and bounds to the actions of men is God, their Maker."⁴⁰

Now Singh is well aware of the distinction assumed in these statements, but he denies that the role which they ascribe to the divine will indicates any deviation in Locke's natural law thinking from the "realist-intellectualist" tradition. Locke's position, he claims, was similar to that of the Thomists, who, as Gierke put it, "(on the one hand) derived the content of the Law of Nature from the Reason that is immanent in the Being of God and is directly determined by that *Natura Rerum* which is comprised in God Himself, but (on the other hand) traced the binding force of law to God's will."⁴¹ In this, however, Singh, like Gierke before him, is mistaken; and even if he were not, there would still remain outstanding the problem (which he does not face) of those clearly voluntarist statements of Locke's which seem to refer, not to the source of the obligation or sanctions of natural law, but to its very content.⁴² In the pages which follow, then, we shall examine in turn the tradition of natural law thinking in the centuries immediately prior to the seventeenth, and then Locke's own teaching relating to the content of natural law.

II

It was Sir Ernest Barker who spoke of "the theory of natural law" as being "allied to theology for many centuries, adopted by the Catholic Church, and

³⁸ THE REASONABLENESS OF CHRISTIANITY, in 7 WORKS 144; cf. *Of Ethics in General*, in KING, 2 LIFE 124ff.

³⁹ Essay I, in LEYDEN, JOHN LOCKE: ESSAYS 111-113.

⁴⁰ *Of Ethics in General*, in KING, 2 LIFE 133.

⁴¹ Singh, *op. cit. supra* note 2, at 112-113; GIERKE, *op. cit. supra* note 6, at 172, n. 256. Singh, however, does not seem to be altogether clear on the point at issue here. Gierke is concerned with the source of obligation in natural law, not with the sanctions behind it. Singh, on the other hand, blurs the line dividing these two questions and can speak (112) of "Locke's insistence on divine reward and punishment as being *necessary to make natural law morally obligatory and binding*." (Italics supplied) This is somewhat to misrepresent Locke for he did not always assimilate obligation to motivation even though he attributes them both to the activity of the divine will (cf. Essay VII, in LEYDEN, JOHN LOCKE: ESSAYS 215). Hence Singh clouds the issue when he subsumes it under the related problem of Locke's hedonism and dismisses it (113) with the conclusion that "the hedonistic motivation to morality . . . does not destroy the objective status of natural law in Locke's theory." In any case, why should the linking of natural law with the divine will impair its "objectivity"? Cf. John W. Yolton, *Locke on the Law of Nature*, 67 THE PHILOSOPHICAL REVIEW 483 and 491-492 (1958).

⁴² These statements are discussed below.

forming part of the general teaching of the schoolmen and the canonists," and as being the expression of "a tradition of human civility" running from the Stoics to the French Revolution.⁴³ In this he was merely reiterating a position once widespread among historians of political thought. More recently, attention has come to focus on alleged discontinuities between the "classical and Christian" conception of natural law on the one hand, and the "modern" conception on the other—as, indeed, the very disagreement about Locke's own natural law thinking with which we are concerned so well illustrates.

It is necessary to insist, however, that this very preoccupation with the discontinuities between medieval and modern views has served also to project a spurious unity upon the disparate natural law theories current in the Middle Ages. For if it is improper to speak of any single natural law theory as spanning the centuries from the Hellenistic era to the Victorian, no more is it proper to speak of *the* classical and Christian and still less of *the* medieval natural law theory. Even if we ignore the differences between the views expressed by Stoic and Patristic writers, or between Patristic and juristic, or juristic and scholastic, and limit ourselves to the scholastic alone, the picture is by no means a simple one. Those who talk so blithely about "the classical and Scholastic Tradition of Natural Law," or "the classical Stoic and Christian tradition," or "the grand Natural Law tradition of Cicero and the Schoolmen," or "the law of nature in classical and Christian sense," or even "the natural right tradition" with which Locke allegedly broke—all of these do so, it may be suggested, because they tend to assume that belief in the existence of a natural law necessarily presupposes a prior commitment to some form of ontological Realism or "essentialism."⁴⁴

Now, if this assumption is a philosophical rather than a historical one, a good case can be made for it. And such a case is made, in fact, by Wild, who is, therefore, quite willing to conclude that Locke lacks a true concept of natural law even though he persists in using the term to describe what Wild dismisses as "a distorted version of what is often referred to as *Divine positive law*."⁴⁵ If the assumption, however, is a historical one it is indefensible—and doubly unfortunate, indeed, in that it can lead one to conclude without further examination that the late-medieval nominalists (and seventeenth century successors like Hobbes) could not possibly have been natural law thinkers. Unhappily, it has been usual to draw this conclusion,⁴⁶ and in this respect Gierke stands out as one of the very few historians of political thought to perceive that the fourteenth

⁴³ In his *TRADITIONS OF CIVILITY* 313 (Cambridge, 1948); cited in A. P. d'ENTRÈVES, *NATURAL LAW: AN INTRODUCTION TO LEGAL PHILOSOPHY* 8-9 (London, 1951).

⁴⁴ In order of citation: PETER J. STANLIS, *EDMUND BURKE AND THE NATURAL LAW* xiii (cf. 13) (Ann Arbor, 1958); Singh, *op. cit. supra* note 2, at 112; Russell Kirk, *Foreword to STANLIS, EDMUND BURKE* viii; WILD, *op. cit. supra* note 14, at 131; LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 166 (1953).

⁴⁵ WILD, *op. cit. supra* note 14, at 131.

⁴⁶ See H. A. Rommen, *The Natural Law of the Renaissance Period*, UNIVERSITY OF NOTRE DAME NATURAL LAW PROCEEDINGS 94-95. (Notre Dame, 1949); PERRY MILLER, *THE NEW ENGLAND MIND* 157-158 (New York, 1939); R. I. AARON, JOHN LOCKE 267-268 (Oxford, 1937); Donald J. Greene, *Samuel Johnson and "Natural Law,"* 2 *THE JOURNAL OF BRITISH STUDIES* 74 (1963); David Granfield, *The Scholastic Dispute on Justice: Aquinas versus Ockham*, in *NOMOS VI: JUSTICE* 240-242 (ed. by Friedrich and Chapman, New York, 1963).

and fifteenth century nominalists continued to adhere to a doctrine of natural law even though their philosophical position necessitated the abandonment of the version propounded by their realist predecessors. It is important to be clear on this matter. Contrary to widespread belief, there were in the later Middle Ages not one, but two main traditions of natural law thinking, and both of these traditions persisted in sixteenth and seventeenth century thought. What, briefly, was the nature of each of these traditions?⁴⁷

Here, unfortunately, Gierke lets us down. Misled, it would seem, by Suarez (from whom, rather than from any independent examination of the texts, he seems to have drawn his analysis of scholastic positions on this issue),⁴⁸ he ascribes to Aquinas and the Thomists the belief that the binding force of natural law, if not its content, is to be traced to the divine will. But Aquinas's rationalism was much more thoroughgoing than that. He speaks of law in general as "something pertaining to reason" (*aliquid rationis*).⁴⁹ He speaks again of an "eternal law" which is "the idea of the divine wisdom, moving all things to their due end,"⁵⁰ for this "has the nature of law." What he calls the "natural law" is simply the "participation in the Eternal Law by rational creatures"—natural, because, unlike other creatures, rational beings "are subject to divine Providence in a more excellent way"; they have "a certain share in the divine reason itself from which they derive a natural inclination to such actions and ends as are fitting."⁵¹ Nowhere does he suggest that the obligation of natural law is to be derived from the divine will—indeed, it was not Aquinas himself but Suarez, his interpreter, who, three centuries later installed an externally imposed obligation at the heart of law.⁵² And when he did so, though he claimed to be following Aquinas, Suarez revealed the extent to which his own thinking had been molded by the voluntarism of his nominalist predecessors.

For the purpose of simplicity, the year 1277 may be taken as the point of departure of this voluntarist tradition. In that year, the Bishop of Paris, by condemning over two hundred true or alleged Aristotelian positions, gave forceful expression to the fear, already widespread among theologians, that the meta-

⁴⁷ The analysis which follows is dependent largely on the more complete discussion of these questions in Francis Oakley, *Medieval Theories of Natural Law: William of Ockham and the Significance of the Voluntarist Tradition*, 6 NATURAL LAW FORUM 65-83 (1961), and *Christian Theology and the Newtonian Science: The Rise of the Concept of the Laws of Nature*, 30 CHURCH HISTORY 433-457 (1961).

⁴⁸ Compare GIERKE, *POLITICAL THEORIES OF THE MIDDLE AGE 172-173*, n. 256, with Francisco Suarez, *De Legibus ac Deo Legislatore* lib. II, cap. 6, in 1 THE CLASSICS OF INTERNATIONAL LAW: SELECTIONS FROM THREE WORKS OF FRANCISCO SUAREZ S.J. 119-129 (James Scott Brown ed., Oxford, 1944) (English translation in II, 187-208).

⁴⁹ THOMAS AQUINAS, *SUMMA THEOLOGIAE* 1a 2ae, qu. 90, art. 1. (Hereafter cited as ST)

⁵⁰ ST 1a 2ae, qu. 93, art. 1, *Resp.*

⁵¹ ST 1a 2ae, qu. 91, art. 2, *Resp.*

⁵² Aquinas specifically rejected the idea that law emanates from the will of the lawmaker—see ST 1a 2ae, qu. 90, art. 1 *ad tertium*. In order to claim the Thomistic mantle, Suarez was driven to an extremely tendentious manipulation of Aquinas's statements. See, for example, what he makes (DE LEGIBUS lib. I, cap. 12, § 3, ed. Brown, I, 64) of the unambiguously rationalist definition given in ST 1a 2ae, qu. 90, art. 4. For an analysis of Suarez's legal philosophy see T. E. DAVITT, *THE NATURE OF LAW* 86-108 (St. Louis, 1951), and for a useful brief discussion, ARMAND A. MAURER, *MEDIEVAL PHILOSOPHY* 367-371 (New York, 1962).

physical necessitarianism of Aristotle and his Moslem commentators was "blasphemously" invading "the Cardinal Praerogative of Divinity, Omnipotence" and "chaining up his [God's] armes in the adamantine fetters of Destiny."⁵³ The words quoted, however, are not those of a medieval scholastic, but were written by Walter Charleton (d. 1707), one of Locke's own colleagues in the Royal Society. They can be paralleled, moreover, by similar statements made by other of his scientific friends (notably Robert Boyle), and, contrary to common preconceptions about the seventeenth century, they reflect the persistence into Locke's own lifetime of the old theological suspicion that adherence to the "peripatetic" philosophy was incompatible with the Christian doctrine of the freedom and omnipotence of God.⁵⁴

It was William of Ockham in the fourteenth century who had reflected this suspicion most clearly. The doctrine of the divine omnipotence dominated his theology and cast long shadows across his natural philosophy, his epistemology, and his ethics. In this last realm, it led him to draw the conclusions that Cudworth was to attack so vigorously three centuries later. "Evil," he said, "is nothing other than the doing of something opposite to that which one is obliged to do."⁵⁵ All vices—robbery, adultery, hate of God even—could be transformed into virtues "if they were to agree with the divine precept just as now, *de facto*, their opposites agree with the divine precept";⁵⁶ for the omnipotent God "is obliged to the causing of no act."⁵⁷

This is not to say, however, that Ockham conceived of God as a wholly capricious being, or of the moral laws which He imposes on men as merely arbitrary decrees. Had he done so, there would have been no room at all for a concept of natural law in his thinking. He drew, instead, a crucial distinction concerning the modes of the divine activity. It is true, he tells us, that God of His absolute power (*potentia absoluta*) can do anything that does not involve a contradiction, and is no more bound by the moral code, therefore, than He is by the natural order which we, as Christians, know He can transcend by means of miracles. But of His ordained power (*potentia ordinata*), He condescends in the natural order to operate by means of secondary causes, in the order of salvation to fulfill the promises revealed to us in Holy Writ, and in the moral order to work within the framework of that natural law to which right reason is our infallible guide.⁵⁸ Within the bounds of the established moral order the mandates

⁵³ WALTER CHARLETON, *THE DARKNESS OF ATHEISM DISPELLED BY THE LIGHT OF NATURE: A PHYSICO-THEOLOGICAL TREATISE* ch. 10, § 1, at 329 (London, 1652).

⁵⁴ See, e.g., *A Free Inquiry into the Vulgarly Received Notion of Nature*, in 5 *THE WORKS OF THE HONOURABLE ROBERT BOYLE* 163-164, 191-192 (ed. by Thomas Birch, London, 1772).

⁵⁵ WILLIAM OF OCKHAM, *SUPER QUATUOR LIBROS SENTENTIARUM*, II, qu. 5 H (Lyons: Jean Trechsel, 1495). (Hereafter cited as *SENT.*)

⁵⁶ *SENT.*, II, qu. 19 O.

⁵⁷ *SENT.*, II, qu. 19 P.

⁵⁸ For this distinction see Ockham, *Opus Nonaginta Dierum* cap. 95, in 2 *GUILLELMI DE OCKHAM OPERA POLITICA* 718ff. (H.S. Offer ed., Manchester, 1963); cf. *Tractatus contra Benedictum* lib. III, cap. 3, in 3 *OPERA POLITICA* 230-234 (Manchester, 1956), and *QUODLIBETA SEPTEM UNA CUM TRACTATU DE SACRAMENTO ALTARIS quodl. VI*, qu. 1 (Strasbourg, Jordanus de Quedlinburg, 1491).

of natural law are absolute and immutable,⁵⁹ and it is this established order which Ockham has in mind when he says that "no act is perfectly virtuous unless the will through that act wishes that which is dictated by right reason because it is dictated by right reason."⁶⁰ But he also reminds us that there is nothing ultimate about right reason, for it is "by the very fact that the divine will wishes it that right reason dictates what is to be willed."⁶¹ And we are not allowed to forget that the dictates of natural law, the infallibility of right reason, the very fact that it is virtuous to act in accordance with right reason—all amount to nothing more than inscrutable manifestations of the divine omnipotence.

This stream of natural law thinking, with its careful retention of traditional rationalist formulae within a fundamentally voluntarist channel, was, along with the theological distinction which made such a compromise possible, to have an unbroken history at least to the end of the seventeenth century.⁶² Of Locke's intimates, Robert Boyle was the most thoroughly immersed in it, but Boyle's preoccupation was with the laws of physical nature, and it is to the Cambridge Platonist, Nathaniel Culverwel, and perhaps also to Suarez that Locke seems, at least in part, to have been indebted for his own legal voluntarism.⁶³ For (Singh to the contrary) when Locke traces the binding force of natural law to the mandates of the divine will, he is breaking—and breaking decisively—with what may properly be called the "Realist" conception of natural law but which is so often referred to as "the classical and Christian tradition." On this point, there is no room for doubt. The real question is this: was the break a more thoroughgoing one? Did Locke go further, and, like Ockham before him—or, indeed, like Calvin and so many of the Puritan theologians of his own century—view the content of natural law, too, as contingent on the divine will? It is to this question that we must now turn.

III

When Leyden discusses the matter, he depicts Locke as starting out in his two early tracts on the Civil Magistrate with a "purely voluntarist theory," as having had "second thoughts" about this in his *Essays on the Law of Nature* (probably under the influence of Culverwel), and as having moved towards a mediating position which is sometimes reflected in his later writings.⁶⁴ Pure voluntarist he certainly seems to have been when he asserted that the natural law and positive divine law

differ only in method of promulgation and in the way in which we know

⁵⁹ *Dialogus*, III, II, I, cap. 10, in MELCHIOR GOLDAST (ed.), *MONARCHIA S. ROMANI IMPERII*, II, 878, lines 27-31 (Frankfurt, 1614); cf. *Dialogus*, III, II, III, cap 6, *ibid.*, 932-933, lines 65ff.

⁶⁰ *SENT.*, III, qu. 12 CCC.

⁶¹ *SENT.*, I, dist. xli, qu. 1 K.

⁶² On this, see Francis Oakley, *Christian Theology and the Newtonian Science: The Rise of the Concept of the Laws of Nature*, 30 *CHURCH HISTORY* 443ff. (1961).

⁶³ For this matter see Leyden's valuable discussion, JOHN LOCKE: *ESSAYS* 39-43, 51-58.

⁶⁴ LEYDEN, JOHN LOCKE: *ESSAYS* 58, where he notes that Culverwel had "put forward a voluntarist theory of law tempered with the Platonic approach to ethics."

them: the former we know with certainty by the light of nature and from natural principles, the latter we apprehend by faith.

He did so, however, not only in his Latin treatise on the Civil Magistrate (1660-61), but also in his sixth essay on the law of nature (*ca.* 1663) from which, in fact, we are quoting.⁶⁵ And other voluntarist statements which seem, at least, to refer as much to the content of the law as to its obligating force are to be found in his later writings.⁶⁶

What, then, about the rationalist texts already cited, which Singh has made so much of and which Leyden regards as reflecting Locke's fear that voluntarism "introduced an element of arbitrariness into morality," or as revealing aspects of his thought which would "present difficulties within the framework of any voluntarist theory"?⁶⁷ It is here, precisely, that a firm grasp of the historical background is all-important. Of all those voluntarist theories which do not go so far as to obliterate the very possibility of a concept of natural law,⁶⁸ the Ockhamist is surely the most extreme. And yet Ockham, as we have seen, did not think of natural morality as a series of arbitrary decrees, nor did he deny the central part played by right reason in that natural morality. If we realize this, then there is surely no reason to regard Locke's stress on the role of reason in discovery of the natural law or on the "harmony" existing between that law and man's rational nature as necessarily involving any departure from the existing voluntarist tradition. Similarly no contrary conclusion can be drawn from his talk about the dependence of natural law upon "an eternal order of things" rather than upon an unstable will; for Ockham, too, had been able to speak of natural law as being absolute and immutable. He had meant, of course, immutable "in the present dispensation," i.e., *de potentia dei ordinata*—given no incursion by the absolute power of God. And on this point Locke is not as precise. He does share with the Ockhamists, however, the insistence that God can do anything that does not involve a formal contradiction,⁶⁹ and he is not averse to asserting in the course of philosophical argument hypotheses based

⁶⁵ Essay VI, in LEYDEN, JOHN LOCKE: ESSAYS 188-189. It might be argued that here Locke is concerned solely with the basis of obligation, but the assertion in question is not qualified in any way, and, in any case, it is paralleled by a similar statement earlier in the same essay (187) where he says that the divine will "can be known by the light of nature, in which case it is that law of nature which we are discussing; or it is revealed by God-inspired men or in some other manner, in which case it is the positive divine law." For Leyden's account of Locke's position in the Latin treatise, see *id.* at 28.

⁶⁶ Thus ESSAY CONCERNING HUMAN UNDERSTANDING, II, xxviii, §§ 5 and 8, and I, ii, § 18, ed. Fraser, I, 474-475, 83; FIRST TREATISE § 166, SECOND TREATISE § 135, ed. Laslett, 279-280, 375-376; cf. Essay IV, in LEYDEN, JOHN LOCKE: ESSAYS 157.

⁶⁷ LEYDEN, JOHN LOCKE: ESSAYS 56-57. For the texts in question, see *supra* pp. 96-97.

⁶⁸ As, for example, did the position of the Ash'arite thinkers in the Islamic world — the product of a theological reaction comparable to that which occurred in the Latin West during the closing decades of the thirteenth century. See L. Gardet and M. M. Anawati, *Introduction à la théologie musulmane*, 37 ÉTUDES DE PHILOSOPHIE MÉDIÉVALE 52-66 (Paris, 1948).

⁶⁹ It is important to note that this was the Ockhamist view. The third Earl of Shaftesbury assumed that the grounding in the divine will of the distinction between good and evil involves the further belief that "if each part of a Contradiction were affirm'd for Truth by the Supreme Power, they wou'd consequently become true." *An Inquiry concerning Virtue, or Merit* bk. I, pt. 3, § 2, in 2 CHARACTERISTICS OF MEN, MANNERS, OPINIONS, TIMES

solely upon this belief—a characteristically Ockhamist gambit.⁷⁰ Moreover, if the crucial distinction between the absolute and the ordained powers of God occurs explicitly in none of his writings, it does seem to be implicit in the language he uses in his seventh essay on the law of nature—in those very passages, indeed, on which Singh and Leyden lay so much stress and which, in any attempt to portray Locke as an exponent of the intellectualist or Realist approach, must serve as the crux of the argument. They deserve, therefore, close scrutiny.

Locke had said, we may recall, that natural law depends “on the eternal order of things.” Why? Because

it seems to me that certain essential features of things are immutable, and that certain duties arise out of necessity and cannot be other than they are.

Conclusively intellectualist, it would seem. But

this is not because nature or God (as I should say more correctly) *could not have created* man differently. Rather, the cause is that, *since man has been made such as he is*, equipped with reason and his other faculties and destined for this mode of life, there necessarily result from his inborn constitution some definite duties for him, which cannot be other than they are.⁷¹ [Italics supplied]

Or again, a little later, when he says that the duty arising from natural law

will never be abolished; for human beings cannot alter this law, because they are subject to it, and it is not the business of subjects to abrogate laws at their liking, and because God *certainly would not wish to do so*. For since, according to His infinite and eternal wisdom, He has made man such that these duties of his necessarily follow from his very nature, He surely *will not alter what has been made*, and create a new race of men, who would have another law and moral rule, seeing that natural law stands and falls together with the nature of man as it is at present.⁷² [Italics supplied]

Close attention should be paid to the words italicized. Locke clearly chose them with care. In every instance Leyden’s translation is precise. And what

50 (London, 1711). Similarly Singh, *op. cit. supra* note 2, at 112, seems to take Locke’s belief that God “can do nothing that is self-contradictory” as indicative of his adhesion to the “intellectualist” theory of natural law.

⁷⁰ See *Journal* for 9 July, 1676, Ms. Locke f. 1, pp. 313-314, printed in LEYDEN, JOHN LOCKE: ESSAYS 259; cf. *Remarks upon some of Mr. Norris’s Books* § 10, in 10 WORKS 252; and the discussion in ESSAY CONCERNING HUMAN UNDERSTANDING, II, xiii, §§ 21-23, ed. Fraser, I, 231-233.

⁷¹ Essay VII, in LEYDEN, JOHN LOCKE: ESSAYS 199.

⁷² *Id.* at 201. We would interpret the passage from THE REASONABLENESS OF CHRISTIANITY, in 7 WORKS 112 (and quoted above, p. 97, as being of similar import, taking the expression “the constitution of his nature” to refer to the nature of man, not of God—as is the case here in Essay VII. Cf. Essay I, *id.* at 111, where he says: “It [the natural law] appears to me less correctly termed by some people the dictate of reason, since reason does not so much establish and pronounce this law of nature as search for it and discover it as a law enacted by a superior power and implanted in our hearts.” See FIRST TREATISE § 86, SECOND TREATISE §§ 8, 11, and 56, ed. Laslett, 223, 290, 292 and 323.

these words serve to emphasize is the element of divine choice. The natural law is what it is because man is what he is—at present. There is nothing ultimate about this human condition. Man is what he is because God chose to make him that way. If there is a harmony between natural law and man's rational nature, this in no way flows from the very fabric of things but rather from the divine mandate. No element of necessity is involved. God *will* not abrogate that law any more than He *will* change the nature of man. But to say this is not to say that He *could* not do so. For the divine will is supreme. God is omnipotent.

We have seen, of course, that, years later, in the *Second Treatise*, Locke will speak of "the Obligations of . . . Eternal Law" as being able to bind "Omnipotency itself," but it is important to note that he believes this to be so only in the case of "promises."⁷³ The background against which the statement is best understood is probably that of covenant theology, with its stress on the idea that God, of His infinite mercy, has freely but effectively bound Himself to fulfill the promises which He has made to men, the terms of which are revealed in the Scriptures. Again, as in the central text cited above, the drift of the argument is to the effect that God *will* not go back on His decree—rather than that He *cannot* do so. Again, no element of necessity is involved.⁷⁴ And if there remains, of the texts which Singh cites, one last stubborn statement of Locke's which certainly seems to imply that the divine will is indeed determined by the nature of things, it stands alone and unsupported, and its context provides no clue to its exact meaning.⁷⁵

IV

There are, then, strong grounds indeed for believing that the third Earl of Shaftesbury did not wholly misrepresent the views of his former tutor when he said that

according to Mr. Locke, . . . God indeed is a perfect free agent in his sense; that is, free to anything that is, however ill; for if he wills it, it will

⁷³ SECOND TREATISE § 195, ed. Laslett, 413-414; this is one of the statements cited by Singh and it is quoted *supra*, p. 96-97.

⁷⁴ Late-medieval nominalist theologians could use the word "necessity" when describing the way in which God was bound to fulfil the terms of His promise to man and to reward those who perform meritorious deeds. But these theologians distinguished between *necessitas absoluta* and *necessitas ex suppositione* (or *necessitas consequentiae*). The former is applicable to creation, but not to God, for He is omnipotent. The latter is conditional and indicates nothing more than that God, of His ordained power, has freely but firmly committed Himself to fulfil his own decrees. Thus Robert Holcot (d. 1349), speaking of God's commitment to give grace to those who do the best that is in them to do, can say: "*Necessitas coactionis nullo modo cadit in deo, necessitas vero infallibilitatis cadit in deo ex promisso suo et pacto sive lege statuta et haec non est necessitas absoluta sed necessitas consequentiae.* . . ." ROBERT HOLCOT, *SUPER LIBROS SAPIENTIAE* 145 B (Hagenau, 1494), cited in HEIKO A. OBERMAN, *THE HARVEST OF MEDIEVAL THEOLOGY* 168, n. 72 (Cambridge, Mass., 1963). For an understanding of the background to this see Oberman's full discussion of the distinction between the absolute and ordained powers of God (*id.* at 30ff). For the development of covenant or "federal" theology in the seventeenth century, see PERRY MILLER, *THE NEW ENGLAND MIND: THE SEVENTEENTH CENTURY* 365ff. (New York, 1939).

⁷⁵ ESSAY CONCERNING HUMAN UNDERSTANDING, II, xxi, § 50, ed. Fraser, I, 347. (Quoted above, p. 97).

be made good; virtue may be made vice, and vice virtue in its turn, if he pleases.⁷⁶

Of course, this is the radical, Ockhamist, position. But then, despite Leyden, the evidence of the early *Essays on the Law of Nature* does indicate that Locke's voluntarism goes beyond that of Suarez and Culverwel and approximates more closely to that Ockhamist extreme which, after all, was common coinage among Calvinist theologians in Locke's own day. In these early essays, God's will serves to account not only for the sanctions behind natural law, or for its binding force, but also, in the last analysis, for the very content of its prescriptions. And in Locke's other writings, there is no statement of comparable detail, clarity, or force to suggest that he later changed his mind.

It is still possible, however, to feel a certain dissatisfaction with this conclusion—and rightly so. After all, Burnet did ask Locke to clarify his position on this very point, and Locke declined to do so. Burnet said:

You seem to resolve all into the Will and Power of the Law-Maker: But has the Will of the Law-Maker no Rule to go by? And is not that which is a Rule to his Will, a Rule also to Ours, and indeed the Original Rule?⁷⁷

From Locke, however, he drew no firm reiteration of the voluntarist position but merely a testy evasion of the whole issue, and, when he returned to the charge, Locke took refuge in a contemptuous silence. Not very reassuring for anyone who has portrayed Locke as firmly committed to a voluntarist position (though no more reassuring, it should be added, for those who have depicted him as a thoroughgoing rationalist).

Moreover, Singh correctly links Locke's position on the issue in question with his discussion in the *Essay Concerning Human Understanding* of "real" and "nominal" essences. With the help of Lovejoy, Singh is able to make something of a Realist of Locke,⁷⁸ but the texts themselves tell a different story, and one much harder to follow.

⁷⁶ 1 CHARACTERISTICS OF MEN, MANNERS, OPINIONS, TIMES 346 (Basel, 1790); cited in LAMPRECHT, *op. cit. supra* note 7, at 106, n. 9. The 1790 edition of the CHARACTERISTICS has not been available to us and we have been unable to locate the reference in the 1711 edition.

⁷⁷ THOMAS BURNET, *op. cit. supra* note 3, at 6.

⁷⁸ Singh (*op. cit. supra* note 2, at 111) admits that "his ideas are not entirely free from ambiguities"; cf. ARTHUR O. LOVEJOY, THE GREAT CHAIN OF BEING 228-229 and 360, n. 2 (New York, 1960), where he goes so far as to say of Locke that "in his epistemology he was essentially a Platonist." Singh also refers to R. I. Aaron as one of those who reject the idea that Locke was a nominalist. True enough, but then, strictly speaking, no more were the Ockhamists "nominalists." (See ETIENNE GILSON, HISTORY OF CHRISTIAN PHILOSOPHY IN THE MIDDLE AGES 489ff. [New York, 1955]). And it is certainly not Aaron's contention that Locke was a "Realist" (see his JOHN LOCKE, 192-206). He points out (202) that Locke "explicitly rejects" the Platonic view and adds (203-204):

While, therefore, the *universals of natural philosophy* [i.e. as opposed to mathematics] are objective, in Locke's opinion, as permanent, fixed identities, whatever variations may occur in experience, they do not exist "without the mind," neither in the world of nature nor in an intellectual world of "substantial forms" independent of the mind. In other words, they are not apprehended as independent existences. They are framed by the mind.

Locke's imprecision on this point is immediately relevant to our own problem. The differing medieval conceptions of natural law at which we have glanced were intimately connected with the different attitudes adopted by their advocates towards the traditional doctrine of the divine ideas. This doctrine had been hammered out from Platonic materials by generations of Neoplatonic and Christian thinkers. Plato himself had sought to vindicate philosophically the widespread Greek belief in the presence of intelligibility in the world by postulating eternally subsisting essences, "Forms," or "Ideas," and by arguing, at least in the *Timaeus*, that these Forms were the patterns or exemplars used by the Demiurge or Worldmaker when fashioning an intelligible universe out of pre-existent matter.⁷⁹ Despite disagreement about the compatibility of this doctrine with the Biblical account of creation, most Christian thinkers, especially after Augustine, used it in their discussions of creation. They argued that the presence of intelligibility in the world necessitated that the creative act must be an intelligent as well as a free one and must, therefore, presuppose in God some intellectual pattern or exemplar. Following Neoplatonic speculations, they denied the independent existence which Plato seemed to have ascribed to the Ideas, and went on to "locate" these Ideas in the divine mind as eternal objects of the divine contemplation and as the exemplars which God followed in His creation of the world.⁸⁰

Now it is clear that correlative with this doctrine of the divine ideas is a firmly Realist solution to the problem of universals. It is clear, too, that the doctrine is also linked intimately with an unambiguously rationalist conception of the essence of natural law. For if a man is to be regarded as created not by unintelligible divine fiat, but rather in accordance with God's idea of human nature, then so, too, must the natural law be regarded not simply as a decree of the divine will, but rather as a necessary emanation of the divine idea of human nature.

These correlations are evident even in the few texts which we have cited from Aquinas earlier, and Ockham's break with the Realist view of natural law is paralleled both by what is usually (if imprecisely) referred to as his "nominalism" in epistemology and by his outright rejection of the traditional doctrine of the divine ideas.⁸¹ But it would be vain, it seems, to look for a similar rigor of thought in Locke.⁸² Even if we ignore his discussion of "mixed modes,"

⁷⁹ PLATO, *TIMAEUS* §§ 27-37.

⁸⁰ For a discussion of the history of the theory during the Hellenistic and post-Hellenistic era, see Harry A. Wolfson, *Extradidactical and Intradidactical Interpretations of Platonic Ideas*, 22 *JOURNAL OF THE HISTORY OF IDEAS* 3-32 (1961).

⁸¹ He is willing to use traditional language but is careful to point out that since the world is a world of singular entities and universals have no extramental reality, the divine ideas can only be ideas of actual or possible singulars. For a discussion of Ockham's position see GEORGES DE LAGARDE, 5 *LA NAISSANCE DE L'ESPRIT LAIQUE AU DÉCLIN DU MOYEN AGE* 101-124 (Paris, 1946). For some general comments on the interrelation of these philosophical positions, see Francis Oakley, *Medieval Theories of Natural Law: William of Ockham and the Significance of the Voluntarist Tradition*, 6 *NATURAL LAW FORUM* 78-83 (1961).

⁸² See AARON, *op. cit. supra* note 46, at 190ff.; also LAMPRECHT, *op. cit. supra* note 7, which includes (49-74) a clear and concise analysis of Locke's theory of knowledge and its impact on his ethical thinking.

which has a clearly nominalist flavor,⁸³ and limit ourselves to what he has to say about the essences of substances, we can get no unambiguous picture. In the *Essay Concerning Human Understanding* he asserts that we can attain to a knowledge only of the "nominal essences" of substances, while at the same time he admits the existence of "real essences," which are inaccessible to human reason but which are certainly known by God and perhaps even by the angels.⁸⁴ Nor is any help to be sought from the works in which one might expect to find some resolution of these difficulties—namely, his *Examination of Malebranche's Opinion of Seeing All Things in God* and the related *Remarks Upon Some of Mr. Norris's Books*, works in which he is forced, of necessity, to direct his attention to Malebranche's discussion of the divine ideas. It is true that he is to be found admitting that God "Knows all things and their relations as they are,"⁸⁵ but he may also be found to say that "the immutability of essences lies in the same sounds, supposed to stand for the same ideas," or, again, that "whatever exists, whether in God or out of God, is singular"—both unambiguously nominalist *dicta*.⁸⁶ The real lesson to be learned from these works, it would seem, is that of Locke's overriding impatience with any discussion of the divine psychology, and, therefore, of the divine ideas. It seems to have been his instinctive belief that such discussions are, by their very nature, sterile—perhaps even blasphemous. It is only "those who would not be thought ignorant of anything," he says, who "to attain it make God like themselves; or else they could not talk as they do of 'the mind of God, and the ideas in the mind of God, exhibitive of all the whole possibility of being.'"⁸⁷

Disappointing, perhaps, but surely not wholly unexpected, given Locke's overriding preoccupation with the "original" of ideas, and given, too, his failure to confront adequately the urgent ontological questions attendant upon his epistemological concerns.⁸⁸ We have tried to show that Locke's explicit statements clearly reveal the drift of his natural law thinking to have been voluntarist. We have tried to show, too, that in his voluntarism he was heir to a distinct tradition of natural law thinking, one which is often ignored but which has, in fact, a continuous history stretching back at least to the thirteenth century. In doing so, however, we have also been forced to admit that this voluntarism of his occupies a somewhat isolated position in his thought, that it rests unsupported by a coherently developed natural theology, that it lacks many of the ontological underpinnings one might expect to find sustaining it.

Those with a predilection for tidy solutions to problems in the history of ideas

⁸³ *ESSAY CONCERNING HUMAN UNDERSTANDING*, III, v, ed. Fraser, II, 43-55; cf. LAMPRECHT, *op. cit. supra* note 7, at 52-53.

⁸⁴ *ESSAY CONCERNING HUMAN UNDERSTANDING*, III, vi, §§ 2-3, ed. Fraser, II, 57-58. Fraser notes (58, n. 1), with reference to the last assertion: "It is here implied that the 'real essences' incognisable at the side point of view of a finite intelligence, are fully known only at the Divine centre, or in Platonic language in the Divine Ideas."

⁸⁵ *Examination of Malebranche* § 52, in 9 WORKS 250 (italics supplied by Singh [*op. cit. supra* note 2, at 112] who quotes this text).

⁸⁶ *Remarks Upon Some of Mr. Norris's Books* §§ 20 and 21, in 10 WORKS 256-257.

⁸⁷ *Id.* at § 11, 253; cf. *Examination of Malebranche* § 52, in 9 WORKS 254-255.

⁸⁸ See LAMPRECHT, *op. cit. supra* note 7, at 53ff.

may cavil at such craven qualifications. But then Locke was not a tidy thinker. At the beginning of his article, Singh asserts that

Locke has suffered most at the hands of the historians of ideas who first classify individual thinkers according to fixed and almost exclusive categories of thought . . . and then try to interpret them not by what they actually said, but by what they ought to have said in view of their given philosophical label.⁸⁹

Perhaps he is right. But what then are we to make of his own determined efforts to fit Locke into "the great Rational-Natural tradition"? Would it not, in fact, have been wiser to admit that Locke is at the same time too incomplete and too Protean a philosopher to be cabined even within the generous confines of Professor Oakeshott's intriguing categories?⁹⁰

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⁸⁹ Singh, *op. cit. supra* note 2, at 105.

⁹⁰ The categories Singh uses (118) are the "traditions" mentioned by MICHAEL OAKESHOTT in the introduction to his edition, *THOMAS HOBBS: LEVIATHAN* xii (Oxford, 1946), and distinguished respectively by the "master conceptions" of "Reason and Nature" and of "Will and Artifice." For some remarks on these categories and the relation of natural law theories to them, see Oakley, *op. cit. supra* note 81, at 79ff.