

THE NATURE OF LAW

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The stock of natural law has risen in recent years. It is partly due to growing dissatisfaction with the elucidations offered by the legal positivists, and partly because sceptical arguments have lost their edge. In the heyday of logical positivism it was easy to say "I don't understand what you mean by 'right'" and break off discussion without more ado; but, as the bounds of unintelligibility increased and came to encompass almost the whole of human knowledge, an inability to understand became not so much a boast as a confession. Many people may still be unclear about the metaphysical foundations of the moral sciences; but we are disinclined to doubt that they are serious disciplines, or to think that they need to be, or even could be, reconstructed without any moral element. Moreover, the events of this century have begun to penetrate the academic consciousness. Having witnessed the terrible tyrannies of the Nazis, the Communists and the Third World, we find it difficult to divorce our thinking about law from our thinking about morals. Although 'duty' is still an unfashionable word, people are constantly talking about the rights that are being denied them and the wrongs being inflicted on them. And these rights claimed and wrongs resented are grounded not on some existing legal enactment or a one-time social contract, but on the nature of man and the nature of the state, and are therefore, although very different from their mediaeval articulation, arguments of natural law.

The positivist analysis of law was simple but wrong. Laws were construed as the edicts of an external authority enforced by sanctions. There is something attractive about this no-nonsense approach, but it fails to do justice to the phenomena, and, in particular, fails to give any account of three points of intersection between law and morality, namely the question of political obligation, the development of law for application in unclear cases

and the status of iniquitous laws. This failure is due to a neglect of the internal aspect of law. H. L. A. Hart shows in *The Concept of Law* that laws cannot be understood entirely from an external standpoint. At least for the officials who administer it, the internal aspect must be dominant. They look to the law for guidance not because they are anxious to avoid incurring penalties, but because the law is constitutive of their activity. In much the same way as chess-players must be guided by the rules of chess, or their activity becomes pointless, so legal officials must refer to the laws in undertaking their activities, if they are to have any significance. I want to go much further than Hart, and say that the same holds good, to a very large extent, for ordinary non-official members of the public too. The crucial characteristic of law is that it is to a very large extent internalised. If I accept that something is the law, then I accept also that, in the absence of weighty countervailing considerations, I ought to do it. In this laws resemble moral principles, social conventions and the laudable customs of institutions we are members of. Within this genus, laws and moral principles are differentiated from the others by being much more important, and laws are distinguished from moral principles in their being enforced on the recalcitrant by the threat of sanctions. This was the kernel of truth in the positivist analysis. But the specific difference had obscured the generic similarity. Laws differ from moral principles in that if a man is not convinced he ought to obey them, we do not leave him to act autonomously according to his own lights, but add external persuasions to ensure that, convinced or no, he does what the law lays down. Most people, however, obey the law not just because they are afraid that they will cop it, if they are caught breaking it, but because it is the law and they think they ought to keep it. Nor is this just an accident. Not only is it integral to the concept of law that some people should some of the time think themselves under an obligation to obey it, but it is a necessary condition of its efficacy that most people should do so most of the time. This internal aspect is thus the dominant one. The laws and *mores* of a society are what guide its members in their dealings with one another, without their normally having to have recourse to the law courts for adjudication or enforcement. Although in modern, highly sophisticated societies we do not know all the details of contemporary legislation, we have an outline knowledge of the rules relevant to our normal spheres of activity. It still makes sense to lay down the principle that "Ignorance of the law is no excuse", because we know in most of our transactions who is entitled to do what, and not only can settle almost all disputes out of court, but can nearly

always avoid even getting involved in a real dispute. Law is not simply something the sovereign tells his subjects to do, but is rather something that the subjects themselves work out in their daily lives. It is a social phenomenon, part of their way of life. This is why law was felt in the Middle Ages, and still often is today, to be not opposed to freedom but compatible with it. If law were merely the edict of an external authority enforced by sanctions, then every law would be, as Bentham supposed, a restriction on freedom, and freedom would be equated with the absence of law. But if law is internalised, then it will be felt not as a fetter on freedom but as knowledge of what to do, and the more laws there are the more I shall know what to do without having to be told. The internal aspect of law, which Hart sees as essential for officials, by extending to all of us members of society, confers on us all official status. By knowing the law, I am enabled to act, without needing any further instructions, as a full member of society. I am not a subject, but a free citizen, because I do not have to be told, but can act on my own. Thus law is felt not as fettering me, but as enfranchising me, providing me with the know-how needed for social life. It is not the whole of social life, which includes many customs and conventions which should not be dignified with the name of law, but it consists of those rules which we not only expect every member of society to be guided by, but insist that he shall conform to, even if he does not want to, even if we have to do violence to his conscience, and apply sanctions to secure compliance. The law is what, if need be, will be enforced. Hence the need, on occasion, for superior power, and thus the involvement of the sovereign or the state. The law thus differs from other social patterns of behaviour in that it has an external aspect too, in that it will be enforced on those who are otherwise recalcitrant; but it is nevertheless primarily regarded from an internal point of view. Hence its obligatoriness, and hence also its susceptibility to rational criticism. The question "Why should I obey the law?", to which the legal positivists had given short shrift, returns to the centre of the stage. And once we can ask that question as part of our analysis of the nature of law, we can demand answers to many other questions, which will have a pervasive bearing on not only the form of law but its content as well.

In general, although we can criticize, we should still obey. The point of a decision-procedure is to reach definite decisions, and if these, when arrived at, are not accepted, the whole exercise is vain. Nevertheless, the criticisms remain, and we can bring to bear our criticism of the authoritative exposition of the law on our obligation to accept it as authoritative. Our obedience is not a blind obedience.

Although we concede that decisions properly arrived at should be obeyed even though wrong, we do not thereby make the decision-procedure immune to criticism any more than individual decisions were. We need to examine the decision-procedure itself to see what function it is performing and to assure ourselves that it is performing it properly. Else we have no reason for deferring to it in spite of our criticisms of the actual results it has yielded. And therefore although in general we should still obey even when we have occasion to criticize, it is not necessarily or always or even invariably the case that we should. Once the question "Why should I obey the law?" is asked, it must be properly answered, not evaded. Often there are adequate answers, but in some cases there are not. In some cases there is no reason why I should obey what purports to be the law, either because of some defect in form or because of great iniquity in content. Natural law seeks to elucidate the conditions under which our normal obligation to obey the law breaks down. This is not the situation, familiar in our own age, where a man comes to the conclusion that he must for conscience' sake disobey some otherwise normal law — the pacifists, the CND demonstrators, the draft-protesters. In those cases it is a moral, not a legal, problem. There is some obligation, readily admitted, to obey the law; only, it is overridden by the superior dictates of morality. In the cases where arguments of natural law apply, however, there is no obligation whatever to obey the edicts of the temporal power, because they were not really laws at all. *Lex iniusta non est lex* Nobody had any obligation to obey the iniquitous edicts of the Nazis, because they lacked the characteristic features of law, and were vitiated by radical defects both of form and of content. The exact arguments vary from thinker to thinker and from context to context, but their upshot is clear: our obligation to obey the powers that be, although a general one, is not an absolute or universal one, and may under some conditions be modified or altogether invalidated.

If law is internalised, we can reason about it from the inside. If it follows from 'This is the law' that you *ought* to do it, and not merely that you had better or else it would be the worse for you, you can ask 'Why should I?', and pursue the question back into the nature and status of the law in question. A claim is being made on your conscience, and therefore you are entitled to scrutinise the claim, and ask what is so special about a law that you ought to obey it. Because we are all obliged to obey the law, we are all justified in reasoning about it — as indeed we do. In the first place we reason about the application of the law in unclear cases, and ask the courts to reason out authoritative decisions in contested cases. In the

traditional formulation, courts are required to discover law rather than invent it. In recent years this formulation has come under attack, as presupposing a Platonist ontology, and it is well to put the matter less metaphysically. Clearly we could commission the courts not to waste time giving reasons for their decisions, but to hand down their decisions more expeditiously, with occasional notes about what their policy is going to be for the future. This is the natural practice of administrative tribunals, headmasters and College deans; and it is noteworthy that as the Supreme Court of the United States of America has taken over the functions of a legislature, it has showed signs of being more concerned to make rules for the future than to determine the law actually existing at the time. But in so far as this is done, law ceases to be the common property of all citizens and becomes, instead, merely the rulings of the government; and much of the recent resentment against the Supreme Court is due to an obscure sense that it was putting itself above the Constitution, instead of being under it, like everybody else, and concerned, like everybody else, only more authoritatively, to work out what it meant. Only if the interpretation of the law is guided by reason can we all join in, and regard it as a common possession and bond of unity between us all.

If law is to be reasoned about, it can be criticized while still being acknowledged. It is intelligible to say that a judge's decision is wrong in law, while still allowing that, since it was reached by the judge, it must be accepted as authoritative. Not so with the edicts of a tyrant. Those, if they are to be criticized at all, must be criticized from a standpoint outside the law. We may, of course, criticize the capricious orders of an autocrat as immoral, inhuman or inexpedient: but we cannot criticize them from within the framework of legal reasoning because they, unlike the judgements of a court, lay no claim to have been reasoned out, and so do not lay themselves open to any criticism on the grounds of having been reasoned out wrongly. The judge, to borrow an illuminating analogy of Hart's,¹ is like the scorer in a game of cricket: the scorer is the authority on the score — the score is what he says it is; but his activity is essentially one that other people can do also, although in an informal an unofficial way. It is always intelligible, therefore, to say that the scorer has made a mistake, and it is only on the assumption that the scorer can be, but usually is not, mistaken, that there is any point in having a scorer at all. There could be, as Hart points out, a different game, "Scorer's Discretion", in which the score is simply what the scorer is pleased to announce, and in which, therefore, it is logically impossible to say that the scorer has made a

mistake and got the score wrong. But it would be a very different game, and one in which nobody apart from the scorer could participate at all. Law, because it has an internal aspect, is a shared activity in which we all can participate, although not all on the same footing. And therefore, although the decisions and verdicts of judges and juries have an official status that cannot be gainsaid, they still can be criticized as being wrong in law or in fact.

We can now see the general terrain of the arguments and doctrines of natural law. They arise from our reasoning about the nature of law. Because men are what they are, they can live together only on certain conditions, among them that they govern their behaviour by law. Law must, therefore, have a certain rationale, which provides the basic reason why we ought to obey it, and which also can guide the courts in their administration of it and provide firm ground for criticism of them, and may, in extreme cases, invalidate the normal argument for our being under an obligation to obey it. These arguments seem to me to be of very great importance. They have, however, been largely ignored in our present age, largely because they have been couched in untenable forms, making exaggerated claims and ignoring the realities of legal life.

Traditional theories of natural law, having argued that there is a point of entry for reason in our concept of law, tend to claim that it is entirely a matter for reason, and that we could, if only we gave our minds to it, decipher the unwritten law engraved in our hearts, and know by the light of reason alone what the laws ought to be. In the Middle Ages the monarch was not required to make law, but only to enforce it. Provided he was just, he would know what ought, if necessary by means of the secular power, to be done; and to this day many believe that the only cause of dissension and strife is lack of good will, and that if only we all had good will we should be able all to agree about what ought to be done. So *simpliste* an approach can only bring the doctrines of natural law into widespread disrepute. A theory which can give no account at all of positive law or legislation, and no adequate account of political disagreement or controversy is not likely to command much support. Although we must first argue against the positivists who deny to reason any real *rôle* in the law, we must also see why reason alone cannot give adequate guidance either.

These are three different reasons why we need positive law. The first depends ultimately on the fact of freedom. I am free to make up my intention. I cannot know what you are going to do, unless you choose to avow it or to circumscribe your action by some convention. I cannot predict your action simply from the circumstances of the situation, nor you mine. Therefore if we are to

concert our actions, as often we want to, we must agree to be guided by some extraneous convention — the conductor's beat, the rule of the road. Since we are free, we cannot know from the course of nature what we, one another, are going to do; but since we need one another's cooperation, we must know, and therefore need to establish conventions, and these conventions could be different. When in Rome we must do as the Romans do, but there are other places in which they do things differently, and not necessarily better or worse. It is not part of the law of nature that one should drive on the right-hand side of the road or the left : but it is natural that there should be a convention and that we should abide by it. The choice of conventions is itself arbitrary, and needs some positive enactment or recognition, which could have been otherwise and cannot be deduced from reason alone. Stoic doctrines of natural law are therefore misconceived. I cannot read off my duties from my station in the universe, as my station is itself indeterminate, depending on the choices of other men, themselves undetermined. My position is essentially a social position depending on the positive choices of myself and others. Hence the possibility, and also the need, of positive law.

The second argument is also an argument of freedom. It is based not on the fact of freedom, but a feeling for freedom, and establishes not so much the necessity of positive law as its desirability. It reflects in our understanding of communal life the deep Christian insight about individuals, to which we shall have to return later, that each man needs to be spontaneous and authentic, if he is to be really himself, and not merely rule-governed. At the end of the eighteenth century, in reaction against the rationalism of the Enlightenment, it was recognised that nations and peoples also had an individuality of their own, which found expression in, among other things, their laws, and that these national individualities were valuable, and ought to be cherished. Scots law is different from English law. Not only may it be none the worse for that — a point established by the first argument — but it is a positive merit, contributing a further thread to the web of Scottish identity. Although there are advantages in a uniform *Code Napoléon* or Whitehall-drafted Statute Law, these are usually purchased at too high a price of impersonality and alienation. The diversity of peoples ought to be reflected in a diversity of laws, in order that we may all feel at home in our own laws; the anomalies of devolution are a small price to pay for our all being able collectively to do our own thing.

The third argument is an argument from imperfection, an imperfection in the human understanding, and perhaps also in the

concept of justice. We are not all Solomons. We find it difficult to decide where the right lies. Often there seems to be right on both sides. Often what should be accounted right depends on the legitimate expectations of the parties, and these in turn depend on the conventions current among them. Justice, at least in the understanding of ordinary fallible men, is not sufficiently finely grained to discriminate between all cases, and needs, if it is to be applied by ordinary men, to be filled out by rules of thumb and accepted standards. In mediaeval theory, it was only a failure of human understanding, and it was felt that in principle justice operated in a plenum of possible cases, giving an exact division among them. I find it a very attractive theory, but have never succeeded in stating it in satisfactory form, and have some doubts now whether it is true. It is not clear to me that even God would have to be able to decide absolutely every case. Although we may lay ourselves open to God's judgement, Jesus did not reveal Himself as keen on judging. Judgement, although essential, is not central to the Christian conception of God. It may therefore be the case that not only are human beings inadequate judges, but justice itself is indeterminate. Not all cases admit of a definitive decision which is just, but in some a decision either way involves injustice, and in others both sides lack merit.

Whether the inadequacy lies solely in the human understanding, or whether there is also some measure of indeterminacy in the concept of justice itself, the result is the same : justice by itself is an incomplete guide to decision-making, and needs to be eked out by other principles. In particular, in as much as we think of justice as being rational, we shall be committed to some rule of precedents. If in a particular case a just decision has been arrived at, then any similar case should be decided similarly. Thus in the natural course of events a system of law develops in which the application of general principles of justice is specified by particular precedents. Sometimes, with the benefit of hindsight, we may recognise that a case was wrongly decided, with the result that many subsequent decisions were bound to be wrongly decided too, and we may even resort to legislation to nullify the effect of a bad precedent : but for the most part we have to deal with decisions which are not obviously wrong, but not necessarily right, and therefore with a system which is in accord with general principles of justice, but which could have been otherwise without contravening them. And therefore, again, we are faced with the phenomenon of positive law. If a man dies intestate, it stands to reason that his estate should go to his next of kin. But whether it should all go to his widow, or half to his widow and half

to his children, or a third to his widow, a third to his children, and a third to his parents, brothers and sisters, is a question to which reason unaided by custom, convention or precedent, returns no definite answer. But a definite answer is needed : and different definite answers are developed by different systems of positive law.

Once we recognize the legitimacy, so to speak, of positive law, our view of natural law must change too. We shall no longer be able to see them as on a level with each other, and potential rivals. Positive law is not a copy, more or less imperfect, of natural law with which it should be compared, and criticized if it fails to conform sufficiently closely to it : and, correspondingly, natural law is not a complete legal system in itself, coordinate with the systems of positive law we are familiar with, only ideal and written in men's hearts rather than in the statute book. Instead, we should see positive law as a *specification*, not a copy, of general maxims, and natural law, conversely, not as a fully worked out legal system, but as a set of critical principles which any reasonable man should adopt in thinking about the law. We can argue in general terms for rather vague principles — the right to life, the right to liberty, the need to provide for family and social life, the provision of means for resolving disputes — but those can be spelled out and satisfied in a number of different ways. The civil liberty of an Englishman is given definition by *Habeas Corpus* and laws concerning bail and remand. Other laws might well be better. We cannot say that English Law exemplifies natural law, and that French Law does not. But we can denounce the *lettres cachet* of the *Ancien Régime*, or the system of arbitrary arrest and imprisonment in contemporary Russia, as being contrary to natural law. Natural law lays down vague or negative requirements which can be satisfied, in many different ways by different legal systems. As between different legal systems natural law will often be unable to adjudicate. Natural law has no need to be a complete system, required to give an answer to any and every question that may arise, like a system of positive law. It only seeks to elucidate the nature of law, and to formulate criteria for determining whether particular laws or particular legal systems are fulfilling their *raison d'être* or not. Often the answer will be an unequivocal Yes, and then it will be a further question, into which the advocate of natural law need not, and may not be able, to enter, whether the law or laws under question are the best that could be had : other laws may promote prosperity better, be more conducive to the encouragement of religion or learning, or more congruous with democratic principle, and we may therefore seek to amend them. But if they are unamended, we cannot deny their status as laws. They

may be less good than they might be, but they do not fall so far short of the essential qualifications that we doubt whether they are really laws at all. We have to be careful what we say. The mediaeval maxim *lex iniusta non est lex* is too strong : a law may be open to criticism, not merely as being inexpedient or undesirable but as being in some way unfair, and yet not be so radically defective as to vitiate its validity. Nevertheless, the maxim is making an important point : a putative law can be invalid not only on the score of some defect in form but on account of viciousness of content. We deny to the edicts of Hitler, Stalin or Amin the status of law, not just because we dislike them, or regard those regimes as less estimable than ours, but because various essential criteria are not satisfied. After the war the German Courts were faced with a number of edicts of the Nazi regime which were defective by the ordinary standards of jurisprudence, and decided that those were not law "because they were contrary to the sound conscience and sense of justice of all decent human beings", in spite of the fact that they had been enacted by the legally constituted authorities of the German State as it was then. It was not enough that they had been formally enacted : various other substantive criteria needed to be satisfied too, in much the same way as it is not enough simply to call something a knife or a car, and unless certain conditions are satisfied, we would not allow that it was really a knife or a car at all. Although we can have bad laws, just as we can have bad knives and bad cars, and it is important to be able to say of an existing law that it is a bad law, nevertheless just as a sufficiently bad knife is not a knife at all, so a sufficiently bad law is not a law at all. Although it was an exaggeration to say *lex iniusta non est lex*, since we well may wish to stigmatize an existing law as unjust notwithstanding its undoubted validity, yet we can still say *lex iniustissima non est lex*.

Natural law arguments can give only some, and not all, the answers because they assume only some, and not all, the truths about human nature and human society. Men are more than merely sentient, and because they are something special, special considerations govern the activities of the state, beyond those merely of expediency or utility. But a complete view of the origins and destiny of man is not assumed. Different men have different views of human fulfilment, and different states may seek to realise different ideals of human life; but arguments of natural law are addressed to them all. Whether our ideal is the pursuit of happiness or the increase of the GNP, the advancement of knowledge or the observance of the Torah, still *pacta sunt servanda*, and punishment without trial is as odious to the Sanhedrin as to the Supreme Court, in ancient Athens as in

modern Moscow, in Rome as in Geneva. Not everything is assumed, in order that everyone may be argued with. Natural law arguments are thus submaximal and superminimal in their assumptions: superminimal, or they would have nothing to say; submaximal, or not all men might be reasonably required to pay them heed.

The range of assumptions made in natural law arguments is bounded by those implicit in the fundamental question "Why should I obey the law?". It is assumed that the person being addressed is rational, able and willing to listen to rational arguments. This view has been merely contested in our own times. Utilitarians implicitly and Professor B. F. Skinner explicitly see men as sentient beings, but are unwilling to go further, and therefore make a general sense of well-being the touchstone in deciding what a community should do. Others, likewise seeing no reason why men should not be treated merely as means, manipulate them for other ends, such as national aggrandisement or the furtherance of the dialectical process. Any such view of man undercuts all argumentation making it out to be nothing more than a form of effective propaganda, a form of mutual manipulation for aligning one another's motives. It is, however, a presupposition of natural law, as of all other, arguments that we are rational agents and do not merely respond to stimuli, but communicate information and insights by means of language, which each man understands internally rather than merely reacts to externally: and, having understood, can either accept or reject them, act on them or refuse to act on them. Arguments of natural law are not, however, concerned with the metaphysics of freedom and reason, but simply presuppose them to the extent that we can raise the question of political obligation, and will be guided by reasons in reaching an answer: we can ask "Why should I obey the law?", and having asked the question will wait for an answer, and be persuaded by it, if it is reasonable. To be reasonable, it must take into account that it is addressed to an individual who is conscious of himself as an individual and not merely as a part of an organic whole or cosmic process. This sets an upper bound for the assumptions that may be made or arguments that may be appealed to. I might be persuaded by St Ignatius to dedicate myself to the selfless service of Christ; but such an appeal would be pitched at a higher level than our common human rationality, and therefore would not be counted as a natural law argument, which is addressed to the unregenerate me, in which the old Adam is still alive and insisting on his rights. In this limited sense, there is a commitment to individualism, as opposed to total collectivism, and a recognition of self-interest, as opposed to total altruism. It does not follow that natural law arguments are

individualistic in the stronger sense of denying that communities are anything except collocations of individuals, or that no appeals to disinterested morality may be made. On the contrary, man is seen as being essentially a social animal, although not just a function of society. Arguments about the nature of society and the good of society can be adduced in developing doctrines of natural law, so long as they recognise that each man is a centre of value who is not to be entirely discounted in political argument, and whose interests therefore should not be lightly disregarded. It is neither necessary nor possible to produce prudential arguments always justifying political obedience or to prove that the path of public duty will always coincide with that of self-interest. Sometimes real sacrifices are called for. What is required of natural law reasoning is not that no adverse decision to any individual's interests shall ever be taken, but that the arguments on the other side shall always be considered and given due weight. In addressing our argument to the individual, we do not foreclose the possibility of arriving at an unfavourable decision, but only guarantee to keep open the field of argument, and to allow counter-arguments in favour of the individual into the arena with a fair hearing and a fair chance of success. Argument about practical affairs is always dialectical in structure, with some consideration on one side and some on the other. Natural law is characteristically concerned to insist that certain considerations be given due and effective weight; and the point of entry for such considerations is that we are addressing our arguments to every one and any one, each having his own point of view which can conflict with ours, and must not be merely ignored if he is to be included in the dialogue.

Natural law arguments tend to be negative and vague, but pervasive and widely felt. Their negative aspect and vague character distress lawyers, and make practical men feel that the whole business is too airy-fairy to have any definite content, but are inherent features. Instead of seeing it as an ideal system of law, we should see it as a set of critical principles — a sort of meta-law, so to speak — enabling us to argue about law, and occasionally reach definite conclusions, on the basis of a few, generally acceptable, principles. It occupies a somewhat equivocal position in Christian thought, partly on account of its assumptions about human nature, and, more profoundly, because of our equivocal attitude to law generally. Christians reject the purely naturalistic approach of many modern scientists, and believe that there is something rather special about man. The strongest upholders of the dignity and freedom, and therefore of the rights, of man are liberals in the protestant tradition,

who continue to echo the words of Kant, and so far as is humanly possible think his thoughts. Christians, however, are in general ambivalent in their attitude to man. They cannot take an entirely naturalistic attitude, and cannot regard human beings as merely pets or playthings: but they distrust the grandiloquent assertions of human worth, and know that if we fall down and worship man we shall find that he has feet of clay. Modern protestantism has been overwhelmingly aware of the total depravity of the human race, and the worthlessness of human nature unredeemed by grace. The decent godless people of the West are in worse case than the few holding fast to the faith in the concentration camps of the East, and therefore, it is felt, Christianity should regard as irrelevant all external institutions and laws. Catholic thinkers on the whole have been more sensitive to the importance of nature, not indeed as a substitute for grace but as providing a matrix within which the fruits of grace can grow, and perhaps as having some value in its own right. But nature still needs to be completed by grace, and the truths to which natural law arguments appeal not only are not the whole truth, but are not saving truth. Neither man nor society can live by the light of natural reason alone, and any adequate philosophy of man or society must be based on the knowledge vouchsafed to us in Jesus Christ.

Natural law occupies its equivocal position in Christian thought also because it seeks to internalise legal obligation and never entirely succeeds in doing so. Arguments of natural law are addressed to every reasonable man, and seek to explain the nature of law and show why we should obey it. In so far as they are successful, we come to see law not as an external necessity imposed on us on pain of punishment, but as the natural development of our own social nature. I no longer gripe at laws whose *rationale* I understand, and thus, as I come to understand the exigencies of social life, I cease to fret at the frustration of my own impulses for the sake of some social good. To this extent, therefore, I internalise the law and can live authentically in obedience to it. But natural law arguments cannot internalise the law entirely. The human condition does not permit it. We are not a society of perfectly rational agents, and our arrangements cannot all be given an acceptable *rationale* or adequately justified. Natural law arguments may lead us to look for an ideal set of laws, but all that they can give us are some vague desiderata which will only be partially realised, and some negative stipulations which rule out very imperfect arrangements but fall far short of securing perfection. Natural law arguments will not reconcile me to my lot. I shall still feel the laws of somewhat external and my situation as alien. At the very best, I shall see my self as one

autonomous rational agent among many others, likewise autonomous and rational, but essentially different. I can respect them, as being, like me, embodiments of reason, but shall not readily forgive them for being such imperfect embodiments of reason, unless I love them, and shall not love them unless I see them not merely as rational agents but as children of God. And this takes me beyond the limited assumptions on which arguments of natural law are based, and requires me to adopt a much more embracing view of the world and to take up a much less detached attitude to it.

NOTE

¹H.L.A. Hart, *The Concept of Law*, 135ff.