ists, who have so much that is good to offer, still lack and need a philosophy." This implies that it is philosophical justification which naturalists have failed to furnish for their views. But of course, and consonantly with these views, naturalists have characteristically understressed matters of presupposition and the like. For they have argued that no philosophy can get on without presuppositions of one sort or another, that its own presuppositions are minimal, and that if any of its presuppositions *should* prove dubious, naturalism is at all events committed to an unrelenting self-criticism and is on the alert for unlikely consequences. But this is precisely to insist that naturalistic criteria be used in the adjudication of philosophical issues and in the determination of philosophical doctrine—and hence to insist that naturalism settle in its own way the issues between naturalism and its rivals. This has led to charges of circularity or disingenuousness. But such criticisms leave the naturalist undismayed, since he insists that he uses no method in philosophy that his critics do not employ in life. But critics have proposed that issues in philosophy are different from issues in life or even in science, for that matter, and the continuity of method is exactly what is at issue. And here matters more or less stand, the chief divisions being not so much between naturalists and antinaturalists—the latter being chiefly those who have proposed limits to science on ontological grounds and in combat with whom the naturalist has always been most comfortable—but between competing views of what *philosophy* is. And here the critics of naturalism are not necessarily antinaturalistic in the comfortable sense of being unhappy with science, in proposing that there are nonnatural entities, etc., but rather in the sense of supposing philosophy has its own problems and techniques, to the neglect of which naturalism owes its own neglect at the hands of contemporary nonnaturalist philosophers.

Naturalism flourished in American universities and in the pages of American philosophical journals in the late 1930s and through the 1940s. In the following decade, chiefly in consequence of movements originating in England and on the Continent, the vacuum which the polarization of naturalist philosophizing created was increasingly filled with the sorts of philosophical inquiries that the naturalist typically viewed with distaste and suspicion as being remote from the issues of the specialized disciplines and the problems of men. Despite some notable efforts to bring naturalism forward in recent times as a respectable metaphysics and an adequate system of philosophy, the typical professional philosopher appears no longer to find the form in which these issues are presented especially challenging. The dominant contests in contemporary philosophy have been cast in other terms and are fought on seemingly different fields. On the other hand, to a great extent many of the fashionable problems are merely disguises for questions which could as easily, and perhaps even more directly, be represented as arising in connection with the claim of the continuity of scientific method. (See ETHICAL NATURALISM.)

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Some historians of naturalism trace the ancestry of the movement back to Aristotle and Spinoza. Still others regard it as but the coming to self-consciousness of the presuppositions inherent in the American temper. In any case, George Santayana's *The Life of Reason* appears to have exercised the dominating influence on the first generation of American naturalists, especially F. J. E. Woodbridge and Morris R. Cohen. Their writings, together with those of John Dewey, must constitute the primary obvious sources of the doctrine. For contributions by naturalists on various topics, see Yervant Krikorian, ed., *Naturalism and the Human Spirit* (New York, 1944). Interesting issues are raised in the following papers: John Dewey, Ernest Nagel, and Sidney Hook, "Are Naturalists Materialists?," in *Journal of Philosophy*, Vol. 42 (1945), 515–530; A. Edel, "Is Naturalism Arbitrary?," *ibid.*, Vol. 43 (1946), 141–152; R. W. Sellars, "Does Naturalism Need an Ontology?," *ibid.*, Vol. 41 (1944), 686–694; W. D. Oliver, "Can Naturalism Be Materialistic?," *ibid.*, Vol. 46 (1949), 608–615.

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NATURALISM IN ETHICS. See ETHICAL NATURALISM; ETHICAL OBJECTIVISM; ETHICS, PROBLEMS OF.

NATURALISTIC RECONSTRUCTIONS OF RELIGION. See RELIGION, NATURALISTIC RECONSTRUCTIONS OF.

NATURAL LAW. Phrases like *ius naturale, diritto naturale, droit naturel, Naturrecht,* and "natural law" have been used over the centuries to designate a remarkably persistent doctrine concerning the moral basis of law. However, it would be wrong to assume either that whenever these phrases are used, they designate this doctrine or that the doctrine itself has endured without variants or modifications. Accordingly, a minimal characterization of the doctrine of natural law would seem called for.

CHARACTERISTICS OF NATURAL-LAW DOCTRINE

There is a view, attributed with differing degrees of reliability to certain Sophists and to Hobbes, that in any society the criterion of justice is provided by what the laws decree and that to ask of these laws whether they are just or unjust is an absurdity. "No Law can be Unjust," Hobbes asserted (*Leviathan*, Ch. 30). It is obviously a necessary condition of any natural-law doctrine that this view should be rejected. But does this suffice, or are there certain further propositions that must be entertained, over and above the claim that enacted or "positive" law is a suitable object of moral evaluation, before we have a doctrine that can reasonably be called one of natural law? Historically, at any rate, it would seem that there are.

Natural law as a legal code. First, it seems an intrinsic part of the doctrine (as the word "law" in its title is there to suggest) that the criterion by reference to which positive

laws are to be judged should itself possess some of the characteristics of a legal code. In particular, it should exhibit some complexity or be capable of formulation as a comparatively extended set of rules or precepts, against which existing codes can then be matched item by item. Thus, a doctrine that the content of justice could not be expressed in anything more specific than one or two general adages would scarcely be one of natural law. Again, the criterion of justice must, like a system of law, be internally coherent; the rules that constitute it must exhibit consistency. To a natural-law theorist it would be unacceptable, for instance, that the content of justice should be expressed in a series of maxims each of which had some a priori obligatoriness but which might issue in conflicting judgments as to the moral validity of a given law.

The interpretation of "nature." Second, the ideal or ethical law, which is contrasted with positive law and provides the norm in terms of which it is evaluated, is regarded by natural-law theorists (and this is what the word "natural" is there to indicate) as grounded in something wider or more general or more enduring than the mere practical needs of men, whether these be expressed in custom or in convention and agreement. It is grounded in "nature," and the various interpretations that have been placed on this word have generated the principal transformations through which natural-law theory has passed. And here it is pertinent to observe that the two aspects of the theory—the logical aspect, "What is justice?," and the epistemological aspect, "How do we discover what justice demands?"—move close together.

Physical laws and laws of conduct. The simplest and oldest account of the "naturalness" of justice is to be found in a conception of the universe which originated with the Stoics Zeno and Chrysippus but is also to be found in thinkers as late as Montesquieu and Blackstone. The whole universe, on this view, is governed by laws which exhibit rationality. Inanimate things and brutes invariably obey these laws, the first out of necessity, the second out of instinct. Man, however, has the capacity of choice and is therefore able at will either to obey or to disobey the laws of nature. Nevertheless, owing to the character of these laws, it is only insofar as he obeys them that he acts in accord with his reason. "Follow nature" is therefore, on this view, the principle both of nonhuman behavior and of human morality; and in this last category justice is included. The laws which apply to man and which he can and should obey are not identical in content with those which apply to, for example, planets or bees and which they cannot but obey. Nevertheless, since the universe is a rational whole, governed by a unitary principle of reason, the analogies between the laws of nonhuman behavior and those of human morality are very strong and readily penetrated by the rational faculty with which man has been endowed.

Critics of this simple variant of natural-law doctrine (for example, John Stuart Mill, T. H. Huxley, and Vilfredo Pareto) have usually relied on pointing out an alleged confusion, which they claim is inherent in it, between two senses of "law"—law as the formulation of regularities in nature and law as the norms or rules to which voluntary behavior ought to conform. To infer the laws that men ideally ought to obey from the laws that animals visibly do obey or to think that the former can be based on the latter is (the argument runs) to fall victim to a simple ambiguity.

Although natural-law doctrine in the form under consideration has undoubtedly gained adherents from a confusion between prescriptive and descriptive laws, it can avoid that confusion if certain other propositions are accepted. For instance, it might be held that the universe is the work of a supreme ruler, whose will we ought always to obey insofar as we can discern it. His will, however, is not transparent, but since the universe is his creation, it would be only reasonable (some would say mandatory) to assume that the phenomena he has placed in it evince his will in their behavior. Accordingly, if we want guidance about what we should do, we cannot do better than to look to what they do. Here the distinction between the two kinds of law is fully respected, and the inference from the one to the other is warranted only by the metaphysical premise that both kinds are, and are known to be, expressions of a divine or supernatural will. Thus, coherence is restored to the doctrine, although only at the price of further assumptions and greater complexity.

There is, however, another difficulty in the doctrine as stated, and the various other formulations the doctrine has received might be regarded as so many attempts to circumvent this difficulty. The difficulty concerns how we are to select those aspects of natural behavior or those laws of nature (in the descriptive sense) which can legitimately serve as guides to moral behavior. For it is idle to pretend that we can extract a uniform message from nature. Are we, for instance, to model ourselves upon the peaceful habits of sheep or upon the internecine conflicts of ants? Is the egalitarianism of the beaver or the hierarchical life of the bee the proper exemplar for human society? Should we imitate the widespread polygamy of the animal kingdom, or is there some higher regularity of which this is no more than a misleading instance? In the light of these and similar questions, it becomes impossible to regard the maxim "Follow nature" as a substantive guide to conduct. Moreover, although these discrepancies in nature considerably reduce the value of natural-law doctrine from an epistemological point of view, the damage they do to it as a logical theory would seem fatal, for the nature in terms of which the norms of justice are defined turns out to be internally inconsistent.

One's nature and one's end. Accordingly, for natural-law doctrine to be viable, we need a criterion for distinguishing within nature (where this is equated with the whole range of natural phenomena) those aspects to which we can, and those aspects to which we cannot, attach normative significance. Even in Stoic thought we find some reference to an ideal nature, but the most sustained effort in the history of Western thought to make a discrimination of this kind derives ultimately from the teaching of Aristotle. It involves a further appeal to or invocation of nature, in a more limited and specific sense—the sense, that is, in which every kind of thing or species has its own nature or end and its characteristic excellence is realized in performing whatever conduces to this end. It was the achievement of St. Thomas Aquinas that he managed, within a certain framework of thought, to solve what might be called the "selectivity" problem of natural-law theory by grafting on to the Stoic principle of "Follow nature" the Aristotelian

concept of nature as a teleological system. The general principles of the law of nature are, St. Thomas argued, known equally to all through their use of reason, though with the derivative principles, which are exercises in practical not speculative reason, the same consensus cannot be expected.

If the Stoic version of natural-law doctrine is open to criticism on grounds of its implicit metaphysical assumptions, this would seem to be even truer of the Thomist version. That phenomena are divided into natural kinds, that each natural kind is distinguished by the possession of an essence, that the essence stipulates an end, that virtue and goodness are necessarily linked with the fulfillment of these ends—these are some of the assumptions behind St. Thomas' *lex naturae*. And none of them are, in an evident way, part of common-sense belief. Nevertheless, the remarkable persistence of a teleological mode of thinking can be accounted for only by the fact that it does in many respects accord with the ways in which we think and speak about the world. We talk of the natural functions or the proper development of man, of the needs that it is right to satisfy, or of how certain privations stunt or damage the personality.

Nature and reason. It was characteristic of much post-Reformation thought to abandon a teleological metaphysic, and in the juristic writings of Hugo Grotius, Samuel von Pufendorf, and Jean-Jacques Burlamaqui natural-law theory was correspondingly reformulated. The nature or essence of man was now identified *tout court* with the possession of reason, and natural law was held to be whatever is found acceptable by *recta ratio* or *sana ratio*. At this stage the logical and epistemological aspects of the theory come totally together—natural law was what reason discovers, and natural law was discovered by reason. But difficulties remained (as they did in the general philosophy of the age) over how to interpret "reason," which was sometimes equated with intuition, sometimes with the cool observation of nature, sometimes with the decisions of the law of noncontradiction. In this respect it is instructive to compare the different arguments employed by Grotius and Pufendorf in their treatment of, for example, the obligations that attend speech or the rights of testamentary capacity.

The state of nature. With the attenuation of the metaphysic that accompanied natural-law theory, the theory at the same time annexed to itself another sense of "nature." For natural law became increasingly associated with the state of nature, which was talked of, possibly even thought of, as a prehistoric or presocietal phase of human development. Theorists may differ on whether natural law was observed in the state of nature or merely recognized and respected in the heart, but we find an association between the two firmly asserted by Hobbes and Locke.

Law common to many legal codes. There remains, however, one further sense in which the norms of justice have been held to be grounded in nature, distinguished from the preceding by its comparative freedom from metaphysical overtones. This sense is that in which "nature" is identified with the common element in a large variety of codes and conventions. Such would seem to have been the view of the earlier generation of Roman jurists whose pronouncements on the nature of law were collected in the *Digest* at the order of Emperor Justinian (A.D. 533).

The Roman legal system contained a remarkable body of law, the *ius gentium*, which was employed in those cases in which either one of the litigants was not a Roman citizen or both were resident aliens of different nationalities. Although Roman in character, the *ius gentium* lacked the formality and technicality of the Roman *ius civile* and shared some features with the systems of rules and laws belonging to the peoples whom the Roman Empire had absorbed. It was apparently the *ius gentium* that Gaius (c. A.D. 160) took for his model when he contrasted the laws that each people had given itself (*ius civile*) with a law of nations—a law practiced by all mankind and dictated to all men by natural reason. As one would expect, such a highly empirical account of natural law did not remain like this for long, and it drew to itself a philosophical theory. In Ulpian, a century later, the *ius naturale* is presented separately from the *ius gentium* so as to form, with the *ius civile*, a tripartite division of law, and was clothed in the grandiose terminology of Stoicism.

The status of positive laws. A third characteristic of natural-law theory is the status that it imputes to particular laws that fail to comply with the norms of justice. Such laws, although they satisfy all the acknowledged criteria of legal validity, are held not to be, properly speaking, laws at all. True, certain natural-law theorists have qualified this judgment. For instance, the later Scholastics Francisco Suárez and Cardinal Bellarmine maintained that whereas positive laws that run counter to prohibitive natural law are null and void, those which fall short of affirmative natural law are still obligatory although not binding in conscience. However, by and large it would seem to be intrinsic to the theory to hold that conformity to natural law is the criterion not merely of a just law but of law itself. In this respect there is a clear and perennial conflict between natural-law theory and (in, at any rate, one sense of that phrase) legal positivism where this is defined in terms of Austin's dictum "The existence of law is one thing; its merit or demerit another" (*The Province of Jurisprudence Determined*, 1832, Lecture V).

However, on one aspect of this conflict obscurity has been cast by those who write on "the relation between law and morals" (see, for example, the works of Roscoe Pound). For it may well be the case that in certain legal systems, such as that of the United States, such conformity to natural law is one of the criteria of legal validity acknowledged by the system. It is no part of legal positivism to deny that in such cases a putative law that runs counter to natural law is, in point of fact, no law at all; all that is denied is that its invalidity is directly due to its divergence from natural law. Or to put the matter the other way around, the claim of natural-law theory is not that a putative law that is discrepant with natural law but satisfies all the *other* legal criteria of validity is invalid, for that is universally accepted. The claim is that a putative law that is discrepant with natural law but satisfied *all* the legal criteria of validity is still invalid. And this is a more radical claim.

It has been asserted by some critics, notably Hans Kelsen, that natural-law theory at this point becomes incon-

sistent. For a certain set of norms is first introduced as valid legal rules and then declared to be invalid. Now, certainly this criticism points to a genuine difficulty that does confront natural law here—namely, how the so-called laws whose invalidity it asserts are initially identified. Obviously, they cannot be identified as laws, nor, it seems, can they be identified as putative laws, for the criteria in terms of which they are putatively valid are themselves called in question. However, it seems possible that natural-law theory can accommodate itself to this criticism by an adjustment of terms.

On the other hand, it would be wrong to think of the conflict between natural-law theory and legal positivism as merely verbal, a dispute between a narrower definition of law that excludes unjust laws and a broader one that includes them. There are, as H. L. A. Hart (*The Concept of Law*, Ch. 9) has effectively demonstrated, substantive reasons for preferring one definition to the other. The narrower definition is likely to appeal to a society that has just emerged from an iniquitous regime and wishes neither to accept the laws of that regime nor to indulge in retrospective legislation. It avoids the dilemma by declaring the laws void—hence, the popularity of natural-law theory in post-Hitler Germany. But the narrower definition also has its dangers. It suggests that issues of justice are as readily decidable as those of legality. It totally denies the painful choices that sometimes have to be made, by magistrates as well as ordinary citizens, between an evil law and no law at all. And it has one important consequence which is the opposite of that intended—it makes any law once accepted as valid free of all further assessment.

CRITICISMS OF THE THEORY

Besides the internal difficulties that beset natural-law theory, there are two important criticisms to which it has been subjected.

Relativity of laws. It has been argued that natural-law theory cannot admit that the demands of justice may be relative to time and place so that what ought to be positive law in one society ought not to be in another. Kelsen thus contrasted the static character of natural-law theory with the dynamic character of positivism. Supporters of natural-law theory, however, often reject the supposition on which this imputation is based. In this century there has been a specific attempt by Rudolf Stammler to evolve a theory of "natural law with variable content." Even St. Thomas, in a passage (*Summa Theologica* II, 2, 57) which Pius XII commended to the attention of Catholic jurists in 1955, allowed that the secondary precepts of natural law might vary with the mutations of human nature, although it is arguable that the only sense in which he conceded human nature was mutable was that it could become depraved.

However, here, as with most disputes about relativism, the issue is unclear. Presumably, no absolutist would deny that circumstances may be relevant to judgments about justice, but, equally, no relativist would deny that what is just in one set of circumstances would be so if these circumstances were faithfully reproduced. So the only issue—and this is not a theoretical issue—is precisely what effect a particular change of circumstances would have on the morality of a specific action. Perhaps, however, it could be held that a natural-law theorist who admitted very freely that circumstances change the ethical character of actions had departed considerably from the original inspiration of the theory. The theory of "natural law with variable content" certainly seems to transgress the first requirement laid down above for a natural-law theory.

Law and morality. Second, it might be argued that a natural-law theory has a tendency to blur the distinction between the two questions "What ought men to do in society?" and "What actions ought to be enforced at law?" In other words, it blurs the issue traditionally (though confusingly) referred to as that of sin and crime. And it has this tendency because, presumably, it is never quite clear whether natural law is a criterion of just action or of just law.

Many natural-law theorists have given at least some recognition to this problem. For instance, St. Thomas argued that the law can pass judgment only on "external action," for only God is able "to judge the inner movements of the will" (*Summa Theologica* I, 2, 100). And in the writings of Christian Thomasius, and again in Kant's, the distinction between the inner character of morals and the external character of law or between imperfect and perfect duties was made a fundamental principle.

Even so, it might be argued that natural-law theory is misleading in that it takes as the starting point for a discussion of what the law ought to enforce a consideration of what men ought to do, even if it goes on to exempt from the sphere of legislation certain areas of morality as incongruent with the actual means of enforcement the law has at its disposal. To many it might seem apparent that the law has no right, let alone obligation, even of a prima-facie or attenuated kind, to enforce morality as such.

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