

NATURAL LAW AND THE

RIGHT OF RESISTANCE

THE THEORY OF NATURAL LAW IN RELATION  
TO THE RIGHT OF INDIVIDUAL AND COLLECTIVE  
RESISTANCE AGAINST UNJUST GOVERNMENT

By

WILLIAM JOHN SPRING, B.A.

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AUTHOR: William John Spring, B.A. (University of Leicester)

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SCOPE AND CONTENTS: The theory of natural law is analysed in relation to the concept of a right to resistance. A Western liberal tradition is posited as identified with Cicero and the Stoics, Aquinas, and Locke. The Lockean doctrine of resistance is particularly noted in connection with the American Revolution. This doctrine is argued as deficient in its failure to emphasise non-violent resistance. The central argument of this paper is therefore that, according to the theory of natural law, resistance to government should initially be expressed in terms of non-violent resistance. Certain objections to this argument are also considered.

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## INTRODUCTION

In 166 B.C. an incident occurred in Modin, a town on the road between Jaffa and Jerusalem. This incident provoked an insurrection in Palestine that resulted in the establishment, for a temporary period, of a Jewish national state. Antiochus Epiphanes IV, the Seleucid ruler of Syria and of Palestine, had been pursuing a policy designed to destroy the religious traditions of the Jewish people. A government officer was sent to Modin on a visit connected with the execution of this policy. The Jews in Modin were enjoined to sacrifice on a pagan altar. When the first stepped forward to sacrifice, Mattathais, a Jewish priest, killed the government officer and the reprobate Jew, and pulled down the altar. This act of violence signalled the beginning of the Maccabean insurrection. The revolt initiated by Mattathais was continued, after the death of Mattathais, by one of his sons, Judas Maccabeus.

The reason for having resurrected this ancient conflict is simply to illustrate the nature of the problem with which I am concerned. I would submit that Mattathais, in his action, was confronted with a twofold dilemma. I would argue that this dilemma, in some form or other, has constantly confronted those who would resist political authority.

The first element in this dilemma concerns the legitimacy of any form of resistance to political authority. Oriental despotisms have become equated with an unthinking submission to the dictates of the ruler and any form of resistance in such a situation was bound to provoke fury. The question had, in the case of Mattathais, been rendered acute by virtue of his position.

Although he was of a priestly family, the actual guardian of the Jewish faith was the High Priest and the Sanhedrin who met in Jerusalem. Mattathais had acted on his own responsibility.

The second element in this dilemma concerns Mattathais' recourse to violence. Even if one assumes that it is legitimate, in certain situations, to resist authority, the question still remains concerning the form such resistance should take. One could possibly argue that any resistance should be limited to non-violent methods. This was in effect how certain Jews, who had also objected to Antiochus' policy, had perceived the situation. One could refer for example, to the case of Eleazar, a respected elder of the people. He refused to eat swine's flesh, and was tortured as a result:

Therefore, by manfully giving up my life now, I will show myself worthy of my old age and leave to the young a noble example of how to die a good death willingly and nobly for the revered and holy laws.<sup>1</sup>

His noble example was followed by others, such as the seven brothers, who, together with their mother, perished in a similar manner.<sup>2</sup>

Mattathais had to choose between violent and non-violent resistance. He justified his resort to violence on the grounds of necessity: "If we all do as our brethren have done, and do not fight against the Gentiles for our lives and ordinances, they will soon destroy us off from the earth"<sup>3</sup>. In consequence

<sup>1</sup> 2 Macc. 6: 27, 28.

<sup>2</sup> There are certain doubts as to the historical accuracy of II Maccabees. These incidents referred to may be legendary accretions. This does not alter the fact of the Jewish dilemma between the use of violent or non-violent methods of protest.

<sup>3</sup> 1 Macc. 2: 40. Mattathias made this statement with particular reference to the Jewish practice of refusing to fight on the Sabbath. In consequence, Antiochus Euphianes chose the Sabbath to massacre a particular group of Jews who had fled into the desert. Mattathais resolved to fight on the Sabbath in order to escape their fate. I have taken this verse out of its context, as, in my opinion, it gives the reason for Mattathias' recourse to violence.

of this initial act of justification, the Maccabees felt at liberty to pursue violent means of resistance. Judas Maccabeus became renowned for his guerilla tactics:

Completely without warning, he would set fire to towns and villages. He captured strategic positions and put to flight not a few of the enemy. He found the nights most advantageous for such attacks.<sup>4</sup>

In short, I have argued that the dilemma confronting the Maccabees was both that of legitimising the very concept of resistance to authority, and legitimising the violent form of resistance that they had adopted. I would submit that this problem is essentially similar to that confronting revolutionaries in every age - namely, the problem of justifying revolutionary action. In this paper I will seek to resolve this problem by recourse to the concept of natural law. In my opinion, the theory of natural law provides a particular philosophy applicable to a revolutionary situation.<sup>5</sup>

I have illustrated the problem of this paper by reference to the Maccabean Revolt for two reasons. I am concerned to demonstrate that the problem under discussion is fundamental to the study of political philosophy. It would appear to be implicit

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<sup>4</sup>

2 Macc. 8: 6, 7.

<sup>5</sup> In this paper, I am concerned with the issue of a right to resistance, as expressed primarily in revolutionary action. Revolution is simply resistance carried to its ultimate extension. Resistance implies an attempt to frustrate the directives of governments. In revolution the actual source of these directives, namely the government itself, is displaced. Revolution does not necessarily imply bloodshed, e.g. the Glorious Revolution of 1688. It does imply, however, a basic change in government.



in any analysis of resistance to authority<sup>6</sup> in any age. It is significant that

in the period of the religious wars in the sixteenth and seventeenth centuries, the legitimacy of Mattathias' conduct was vigorously debated. His hallowed precedent was held to justify subjects who oppose the authorities in questions of faith.<sup>7</sup>

There is a certain continuity in the history of political ideas. Further, in analysing the Maccabean Revolt, one can note the type of situation that compelled the formulation of a distinct 'right to resistance'.

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<sup>6</sup> I am cognizant of the academic debate about the meaning of 'authority'. In this paper I will simply use the word "authority" to represent any form of governing power within a state, whether legitimate or not.

<sup>7</sup> E. Bickerman. The Maccabees, pp. 16-17.

## CHAPTER ONE

In this section, I will seek to clarify the most salient concept of this paper, namely, that of natural law. In the following chapter, I will discuss the relation between natural law and the right of resistance. In connection with the concept of natural law, one should note the comments of B. F. Wright, who states:

although natural law is one of the oldest and most frequently used political concepts, it is also one of the most difficult of analysis or definition. A definition satisfactory to one of its exponents, by no means satisfies another, and an analysis of its meaning for one period in the history of political thought, fails to explain its significance in another.<sup>1</sup>

Consequently, in order to define the term, one must note the evolution of the theory of natural law. I will not attempt, within the constraints of this paper, to summarise the historical development of the concept. Any such treatment would at best be highly inadequate. Yet, in seeking to demonstrate possible usages of the term, one must note certain historical factors, which have determined the meaning of the term at various periods. I will distinguish between three different formulations of the concept, namely, the Ciceronian-Stoic, the Thomist, and the 'Secular'.

### 1. The Ciceronian-Stoic Formulation

John Cogley argues that the statement of natural law, presented by Marcus Tullius Cicero, remains the essential classic definition of the concept.<sup>2</sup>

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<sup>1</sup> B. F. Wright, American Interpretations of Natural Law, p. 3.

<sup>2</sup> John Cogley, Natural Law and Human Society, p. 14.

There is in fact a true law - namely, right reason - which is in accordance with nature, applies to all men, and is unchangeable and eternal. By its commands this law summons men to the performance of their duties; by its prohibitions it restrains from doing wrong. Its commands and prohibitions always influence good men but are without effect on the bad. To invalidate this law by human legislation is never morally right, nor is it permissible ever to restrict its operation and to annul it wholly is impossible. Neither the Senate nor the people can absolve us from our obligation to obey this law ... It will not lay down one rule at Rome and another at Athens, nor will it be one rule today and another tomorrow. But there will be one law, eternal and unchangeable ... and there will be, as it were, one common master and ruler of men, namely, God, who is the author of this law ... The man who will not obey it will abandon his better self, and in denying the true nature of a man will thereby suffer the severest of penalties though he has escaped all the other consequences which men call punishment.<sup>3</sup>

In order to appreciate the significance of the above statement in the evolution of the concept of natural law, I will indicate the intellectual context in which this formulation of natural law was presented. I will first indicate the origins of Cicero's thought on natural law and, in addition, indicate some of its possible effects.

Cicero's true importance in the history of political thought lies in the fact that he gave to the Stoic doctrine of natural law a statement in which it was universally known throughout Western Europe.<sup>4</sup>

Cicero's concept of natural law, then, was largely derived from the Greek philosophical school of Stoicism. Owing to the influence of Chrysippus, Stoicism became, by the last quarter of the third century B.C., the most prominent of the Athenian schools. It was particularly through the means of the Scipionic circle, in the second century B.C., that Rome was introduced to Stoic thought. The Scipionic Circle was centred upon Scipio Aemilianus.

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<sup>3</sup> Cicero, De Republica, III, XXII, 33.

<sup>4</sup> G. H. Sabine, A History of Political Theory, p. 162

This group of aristocratic Romans, in turn, influenced Cicero. One should note that Cicero, in formulating a natural law doctrine, was rendering explicit a thought that was largely implicit in Stoicism.

The Stoics always believed in an all-pervading Logos, or reason, which governed the universe. They conceived this Logos to be material, and identified it with the rarefied form of a kind of divine Fire, which in a more or less debased form existed in all things ... The rational soul, the specifically human part of man, his reason was a fragment of the universal Logos. It was akin to it and thus able to understand the divine purpose and to conform to it.<sup>5</sup>

It was this thought that was presented, in a more elaborate form, in the Ciceronian statement on natural law. Therefore, in dealing with Cicero, one should seek to link his formulation of natural law with that of Stoicism.

Sabine<sup>6</sup> states that the Ciceronian statement had effects upon both the thought of the Roman lawyers, and the theology of the Christian Church. Cicero's influence upon the Roman lawyers, would seem to be marked. To cite Sabine again "the political philosophy which is embedded in this body of legal writing is a repetition and elaboration of Cicero".<sup>7</sup> During the second and third centuries A.D. Roman jurisprudence flourished. The writings of the jurists of that period were excerpted and compiled into the Digest (or Pandects), which the Emperor Justinian published in 533 A.D. The influence of the Ciceronian statement of

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<sup>5</sup> Marcus Aurelius, The Meditations, trans. G.M.A. Grube, translator's introduction, p. xi.

<sup>6</sup> Sabine, op. cit., p. 163.

<sup>7</sup> Ibid., p. 167.

natural law is allegedly most marked in the classic divisions of Roman law, formulated during this period, namely, the distinction between ius civile, ius gentium, and the ius naturale. According to Sabine, ius civile connoted "the enactments or the customary law of a particular state, what would now be called positive municipal law"<sup>8</sup> Sabine argues that the distinction between the other two categories, ius gentium and ius naturale, is not as clear. He notes that Ulpian and later writers in the third century made the distinction. The distinction between ius gentium and ius naturale can be noted with particular reference to slavery. According to ius naturale, all men are born free. Slavery, however, is permitted according to ius gentium, which, for the sake of convenience, can be regarded as a concept similar to that of international law.

The thesis that there is a progressive evolution in the theory of natural law theory from Cicero to the period of the Roman lawyers has been challenged, notably by A. P. d'Entrèves. Entrèves<sup>10</sup> has argued that the concept of ius naturale was essentially different from the concept of natural law enunciated by Cicero. Furthermore d'Entrèves argues that the category of ius naturale is not the most important contribution of the Roman lawyers to a theory of natural law. According to d'Entrèves, the most significant point to note is the actual demand of the Roman

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<sup>8</sup> Ibid., p. 168.

<sup>9</sup> Ibid., p. 169

<sup>10</sup> A. P. d'Entrèves, Natural Law, p.30

lawyers, that "law should correspond to nature, equity, and justice".<sup>11</sup> D'Entrèves argues that it is this demand, rather than their actual definitions, which is particularly significant.

## 2. The Thomist Formulation

Supposing the world to be governed by divine Providence ... it is clear that the whole community of the universe is governed by divine reason. This rational guidance of created things on the part of God we can call the Eternal Law. (Now) since all things which are subject to divine Providence are measured and regulated by the Eternal Law ... it is clear that all things participate to some degree in the Eternal Law, in so far that they derived from it certain inclinations to those actions and aims which are proper to them ... But rational creatures are subjects to divine Providence in a very special way: being themselves made participators in Providence itself, in that they control their own actions and the actions of others. So they have a certain share in the divine reason itself, deriving therefrom a natural inclination to such actions and ends as are fitting. This participation in the Eternal Law, by rational creatures, is called the Natural Law.<sup>12</sup>

Aquinas continues his statement by arguing that "natural reason by which we discern good from evil, and which is the natural law, ... (is) nothing else than the impression of the divine light in us."

It would appear from the above statements that there was very little development in "natural law" theory from the time of Cicero to the mediaeval period. One could point out to the fact that Saint Thomas Aquinas makes a distinction between the concepts of the eternal law and of the natural law. This is important, but, considered in isolation, it would not necessarily represent an outstanding development in the theory of natural law. One could argue that the essential development, associated with St. Thomas Aquinas, was his attempt to give some further content to the

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<sup>11</sup> Ibid., p. 31.

<sup>12</sup> Saint Thomas Aquinas, Summa Theologica, Ia, 2ae, quae. 91, art 1 and 2.

concept of natural law. The formulation of the axiom, "good is to be done and evil is to be avoided," is important. One could, in response, argue that Aquinas was, in fact, only rendering explicit a principle that Cicero implied, but because of its self-evident nature, did not actually make explicit. I would argue that from the statement cited above one does not detect any radical change in the essential concept of natural law, when compared with Cicero's formulation.

If there had been no fundamental change in the idea itself, there had been a fundamental change in the context in which the idea found expression. It is this change in the actual context which accounts for d'Entrèves' assertion that the mediaeval scholastic writers made a "thorough transformation"<sup>13</sup> in the theory. Of these mediaeval writers d'Entrèves considers Aquinas to be the most eminent representative.

The actual change in the context is derived from the Christian assertion that, in Christ, "the Logos was made flesh and dwelt among us." (John, ch. 1 v.1). Aquinas did not disagree with the Stoic concept of a divine reason. Christian theology asserted that there was, indeed, a divine reason, immanent in the universe. But this divine reason was, in Christian theology, revealed as being ultimately personal. The divine reason was identified with the person of Christ, who, as the writer to the Hebrews assents, "upholds all things by the word of His power". (Hebrews ch. 1 v. 1). One should note that Aquinas derived particular stimulus from the teachings of Saint Paul and Saint

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<sup>13</sup> A. P. d'Entrèves, op. cit., p.33.

Augustine. In the letter to the Roman Christians, Paul had written:

When Gentiles who have not the law do by nature what the law requires they are a law to themselves, even though they do not have the law. They show that what the law requires is written on their hearts. While their conscience also bears witness and their conflicting thoughts accuse or perhaps excuse them. (Romans 2, 14, 15).

These verses provided, as Paul Ramsey notes, "the bridge across which the entire arsenal of Stoic natural law theory crossed over into Christianity."<sup>14</sup> Saint Augustine further develops this connection. One can note that his most celebrated statement, "what are states without justice but robber bands enlarged?" obviously implies a belief in a governing moral order in the universe. Consequently, the statement of Saint Thomas Aquinas, concerning natural law, must be seen as the consummation of a particular trend within Christian theology.

The distinction between the Stoic and Christian understandings of natural law theory can be noted with reference to the personality of Marcus Aurelius, Emperor of Rome from 161 to 180 A.D. Marcus had elevated Stoicism to the status of an imperial creed. One would expect that Marcus would minimise the persecution of Christians within his Empire. To the surprise of many later authorities, however, including John Stuart Mill, Marcus continued the policy of persecuting the Christian Church. Marcus agreed with Cicero's teaching on the natural law. This is implicit in his work The Meditations:

All things are interwoven with one another and the bond which unites them is sacred, practically nothing is alien to anything else for all things are combined with one another and contribute to the order of the same universe.<sup>15</sup>

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<sup>14</sup> P. Ramsay, Nine Modern Moralists, p. 236

<sup>15</sup> Marcus Aurelius, op. cit., p. 62



Why, then, did Marcus Aurelius appear to act against natural law in tolerating the persecution of Christians? Furthermore, why did Marcus Aurelius not perceive certain affinities between the Christian and Stoic perceptions of the world? I would argue that the divergence between the Christian and Stoic perceptions of the moral order accounts for part of the reason. Within Stoicism there was a certain strain of fatalism, a view of the world that saw the human situation as a "closed system". Stoics would have agreed with Euripides that

Other life is a fountain sealed,  
And the depths below us are unrevealed,  
And we drift on legends forever.<sup>16</sup>

Christianity asserted that the world was essentially an "open system". Christians did not deny the mystery of existence, but they did claim some revelation into the mystery. It was that claim that Marcus Aurelius considered as either rank superstition or simple malice. In considering Marcus Aurelius one can understand some part of the alleged tension between "reason" and "revelation".

It was, therefore, the essentially different intellectual contexts of Stoicism and Christianity that account for the distinction between the Ciceronian and Thomist understandings

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<sup>16</sup>Cited by R. McL. Wilson, "Pagan Religion at the Coming of Christianity", in Peake's Commentary on the Bible, new edition, p. 712.

of natural law. If there was a distinction between the Stoic and Christian Weltanschauung, there was also a certain continuity, as suggested earlier. This continuity can be noted by the fact that the Emperor Marcus Aurelius' The Meditations has come to be highly esteemed by many Christians. Likewise therefore, there were continuities between the Stoic and Ciceronian concept of natural law and the Thomist formulation.

### 3. The Secular Formulation

This law of nature can be described as being the decree of the divine will discernible by the light of nature, and indicating what is and what is not in conformity with rational nature, and for this reason commanding or prohibiting ... Hence it is pretty clear that all the requisites of a law are found in natural law. For, in the first place, it is the decree of a superior will, wherein the formal cause of a law appears to consist ... Secondly, it lays down what is and what is not to be done, which is the proper function of a law. Thirdly, it binds men, for it contains in itself all that is requisite to create an obligation.<sup>17</sup>

The above statement has been cited as being representative of the "secular" school of natural law. That there is a secular interpretation of natural law theory is agreed upon by various authorities on the subject. Ernst Troeltsch, in a classic lecture delivered in October, 1922, states that "it was on the basis of this Christian system of natural law (i.e. the system associated with Aquinas) that

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<sup>17</sup> John Locke, Essays on the Law of Nature, trans. W. von Leyden, pp. 111-112.

there developed the modern and secular system of natural law."<sup>18</sup> A.P. d'Entrèves<sup>19</sup> argues that the theory of natural law presented by Grotius, and further developed by his successors, was a "secular" version of the concept. Neither Troeltsch nor d'Entrèves emphasise Locke's contribution. The reason for this, I would argue, is that both Troeltsch and d'Entrèves were concerned essentially with the continental secular law theorists. Both Troeltsch and d'Entrèves emphasise the continental tradition in this secular school of natural law thinking, a tradition represented in the writings of Grotius, Bodin, Vattel, Pufendorf, Althusius, and other thinkers. But there were also English exponents of this same secular school. I have cited Locke, as, in my opinion, he, (and not Hobbes), is the most articulate exponent of this English tradition. John Locke, in his formulation of natural law, was obviously influenced by the continental secularists, because

by the seventeenth and eighteenth centuries there had grown up, especially in Germany, a great school of Naturrecht which engaged in academic study of 'all forms of human society capable ... of being regulated by law' ... Two of the greatest writers of this school in the seventeenth century were Grotius and Pufendorf. Locke knew their work and commended it.<sup>20</sup>

Gough points out that Locke, in his formulation of the theory of natural law was influenced by English scholars, particularly

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<sup>18</sup> Ernst Troeltsch, Natural Law and World Politics, lecture printed in full as Appendix I of Natural Law and the Theory of Society, by Gierke, p. 207.

<sup>19</sup> A. P. d'Entrèves, op. cit. p. 52.

<sup>20</sup> Gough, Locke's Political Philosophy, p.2.

Richard Hooker.

Locke's statement is not radically<sup>21</sup> different from that of Aquinas. What does change is the context in which Locke wrote, a context which was largely secular, when compared with Aquinas' era. Leo Strauss, in a review of Locke's essays notes that there are certain differences between Locke and Aquinas: "He (Locke) deviates from the tradition (of Thomism) by denying that the natural law is inscribed in the minds of men ... the only way of knowing the natural law is by ascending from the sensibly perceived things to God's power and wisdom ..."22. Yet, Strauss seems to think that this difference, and other divergences between Locke and Aquinas, do not constitute a radical break from Thomism. On many points, "Locke more or less follows the traditional natural law teaching and in particular that of Thomas Aquinas."<sup>23</sup>

On one central point both Locke and Aquinas would seem to be in agreement. Both are theists, believers in God, and

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<sup>21</sup> I am not denying that there are differences between the Thomist and Lockean formulations of the theory of natural law. I would assert, however, that there is a basic agreement between Aquinas and Locke on the central idea of the theory of natural law. Both assert that God had implanted in man a knowledge of the moral law. In this sense, their divergences are not radical. The real differences between Locke and Aquinas arise from the context in which they wrote. They use the same terms, e.g. God, but owing to the context in which they wrote differed on their interpretation of these terms.

<sup>22</sup> Leo Strauss, Vol. 52, no. 2 "Locke's Doctrine of Natural Law", The American Political Science Review, (June 1958) p. 490.

<sup>23</sup> Ibid., p. 490.

their theories thus retain a certain affinity. But, owing to the secular context in which Locke wrote, his concept of deity differed from that of Aquinas.

Entreves notes that

the doctrine of natural law which is set forth in the great treatises of the seventeenth and eighteenth centuries - from Pufendorf's De Jure Naturae et Gentium (1672) to Burlamaqui's Principes du Droit Naturel (1747) and Vattel's Droit des Gens ou Principes de la Loi Naturelle (1758) - has nothing to do with theology. It is a purely rational construction, though it does not refuse to pay homage to some remote notion of God.<sup>24</sup>

Entreves does not mention Locke, but the point that he makes is applicable, in my view, to Locke's formulation of natural law theory.

The rejection of any vital notion of God from the concept of natural law was derived from an uncritical trust in, and elevation of, reason. This process took more bizarre forms on the Continent, culminating in the construction of an idol to Reason in the Champ de Mars during the Revolution. Locke would have been disturbed to think that his philosophy could have contributed, in any small way, to this debacle. But it did. When Locke's philosophy was transmitted to the Continent by Voltaire, the rationalistic elements within that philosophy were exaggerated. Voltaire's ideas "differed from Locke's only slightly in a more complete denial of revelation."<sup>25</sup>

Locke, like Aquinas, believed that it was possible to construct a synthesis of faith and reason. Yet in Locke's synthesis the rationalistic elements were heightened. "Locke's Deity, in a word is that of the contemporary reconcilers in science and religion, such as Glanvil or Boyle ... a Deity

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<sup>24</sup> A. P. d'Entreves, op. cit., p. 52

<sup>25</sup> G. H. Sabine., op. cit., p. 562

to be approached by demonstration.<sup>26</sup> In short, Locke's deity was set within the context of a mechanistic universe.

Aquinas' synthesis was far less certain. The God of Aquinas still threatened to break out of any system in which He was enclosed. The age in which Aquinas formulated his 'system' recognised God as sovereign. Man might be given insight into His ways, but that insight was totally dependent upon God's revelation. In fact, God might choose to act contrary to man's understanding of His activities. The Thomist synthesis was criticised by the movement known as Fideism, associated with Ockham. This theological school emphasised the sovereign, inscrutable ways of God.

Who hath known the mind of the Lord, Or who hath been his counsellor?<sup>27</sup>

Aquinas' claim to have reconciled faith and reason was judged by this school as a misguided attempt to compress the unfathomable into the span of man's reason. Even Thomas understood that God was sovereign and could act apart from man's understanding of His ways. Towards the end of his life Aquinas stated "all that I have written seems to me like so much straw compared with what I have seen and with what has been revealed to me."<sup>28</sup>

One could argue that, compared with Locke, Aquinas possessed less confidence in the veracity of his own judgements about God's activity. Locke's synthesis did not have to contend with the spirit expressed in Fideism. Locke, in reconciling faith and

<sup>26</sup> Basil Willey, The Seventeenth Century Background, p. 279.

<sup>27</sup> Romans 11: 33,4. Paul is referring to two Old Testament scriptures, Isaiah 40: 13 and Job 15: 8.

<sup>28</sup> Comment by Aquinas referred to by Copleston, Aquinas, p. 10. No further reference.

reason, was more confident, and possibly less humble, than Aquinas. Therefore, the rationalism implicit in Aquinas becomes explicit in Locke. "In Locke there is a feeling of confidence in the rationality of the universe, in the virtuousness of man ... and in the deliverances of enlightened common sense; while underneath are the everlasting arms".<sup>26</sup>

I have emphasised the secularist character of Locke's interpretation of natural law, and have understood Locke as being representative of the secularist school. Locke was not a secularist because he did not worship God. Locke was a devout Christian. But the actual effect of Locke's thinking was to minimise the sovereignty of God, and maximise the role of reason. In this, he was representative of the secularist school of natural law.

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In this chapter I have indicated three distinct usages of the term "natural law", the Ciceronian-Stoic, the Thomist, and the Secular. I have argued that the essential differences between these various interpretations of natural law theory derive from the context in which they were posited. The actual formulations of the theory do contain some basic similarities.

Having emphasised the differences between these various usages of the term, I will now deal with the continuity in natural law theory. It would seem that there is a common denominator, linking the various interpretations, despite the radical differences in the context.

C. S. Lewis makes an impressive argument for a basic continuity in the theory of natural law. Instead of using the

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<sup>29</sup> Willey, op. cit. p. 268.

term "natural law", however, he uses an oriental term, possibly to emphasise the universal character of the theory:

This conception, in all its forms, Platonic, Aristotelian, Stoic, Christian, and Oriental alike, I shall henceforth refer to for brevity simply as 'the Tao'. Some of the accounts of it .. will seem perhaps to many of you quaint or even magical. But what is common to them all is something we cannot neglect. It is the doctrine of objective value, the belief that certain attitudes are really true.<sup>30</sup>

This "doctrine of objective value" is, in the concept of natural law, applied to moral thinking. Therefore, the basic linkage between various formulations of this theory lies in the belief that there are certain moral values that are universal in their application.

In my opinion, the basic moral principle of the theory of natural law can be summed up in Dr. Albert Schweitzer's memorable phrase 'reverence for life'. Most societies agree in placing a particular value upon the life of the individual. There is, for instance, a universal proscription of murder. C. S. Lewis, in his Appendix to The Abolition of Man<sup>31</sup>, provides an impressive array of quotations, from various sources, to prove this point. There is, however, a more positive sense in which the theory of natural law emphasises the value of life. Man is not simply to be protected against those who would prey on his weakness. He is also to be respected, for, despite his weaknesses, man has a fundamental dignity. Immanuel Kant concisely expresses this positive view of man in his formulation of the categorical imperative. Man should never be treated as a means, but always as an end. I am not arguing that the categorical imperative is uniform with the theory of natural law. In formulating the

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<sup>30</sup> C. S. Lewis, The Abolition of Man, p. 11

<sup>31</sup> See Appendix I of this paper.



categorical imperative Kant may not have been thinking in terms of the theory of natural law. But he does prescribe a particular attitude to humanity that is in accord with the ethical principles of the theory.

CHAPTER TWO

In this chapter I will deal with the first element, or aspect, of the central problem of this paper. I will argue that the concept of resistance to government can be justified through recourse to the theory of natural law. In my opinion, Cicero, St. Thomas Aquinas, and John Locke, all stand in a particular relation to each other. All are representative of the natural law tradition in western political thought. But, in addition, each writer has some significant interest in the relation between natural law and the right of resistance. Despite very considerable differences, these various writers could agree on the following statement, viz. that resistance to government can be justified if the government consistently imposes demands contrary to the natural law. Cicero, Aquinas, and Locke are in agreement in asserting this relation between natural law and the right of resistance. Their divergences arise in seeking to determine the precise nature of the relation.

Cicero approved of Brutus' and Cassius' attempt on the life of Julius Caesar. In reference to this assassination Cicero stated.

Their action was superhumanly noble in itself, and is set before us for our imitation; all the more conspicuously, because heaven itself is scarcely immense enough to hold the glory which this deed has made theirs. The consciousness of a noble achievement was reward enough; yet no one, I believe, should spurn that further reward which they have also won - immortality.<sup>1</sup>

The reason for Cicero's approving the assassination of Julius Caesar was related to Cicero's particular concept of natural law. Cicero venerated the republican institution of

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<sup>1</sup> The Second Philippic against Antony, cited Cicero. Selected Works, p. 151, trans. M. Grant.

Rome, as being a reflection of the eternal law. To Cicero, any subverting of these institutions was an assault upon eternal verities, and was to be resisted. Cicero suspected Caesar of designing the destruction of republican Rome. Cicero was determined on resistance. In this he perceived his actions as being in accord with the demands of the natural law.

In his outlook Cicero was influenced by Athenian political thought. Athens had distinguished between arbitrary and constitutional government. "In the Republican city states the tyrant was a usurper ... Among the earliest monuments erected in Athens to the honour of mortal men were those set up to commemorate the first instance of an attempt to slay a tyrant."<sup>2</sup> The criteria determining arbitrary or tyrannical government were twofold. The tyrant was originally simply a usurper, i.e., one who had come to power through unconstitutional means. A more substantive definition of tyranny was advanced by Plato and Aristotle. These philosophers defined tyranny by reference to the alleged immoral character of the tyrant's rule. The tyrant was the ruler who violated certain universal canons of ethics and reason. Implicit in this understanding of tyranny was the concept of natural law. The tyrant in Athens was to be resisted on the grounds that his rule violated the natural law. Cicero rendered explicit the relation between natural law and the right of resistance. This relation was implicit in previous Greek thought.

One should note, however, that the concept of natural law in classical thought did not necessarily imply a right to resistance. Entrèves argues that the Roman lawyers possessed

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<sup>2</sup> O. Jaszi and J. D. Lewis, Against The Tyrant, p. 3.

<sup>3</sup> A. P. d'Entrèves, Natural Law, p. 30.

their own distinct understanding of natural law. This understanding of natural law did not necessarily imply a right to resistance. One may conclude that Cicero's particular understanding of the relation between natural law and the right of resistance was not universally accepted in the Roman world.

Aquinas also recognised this classical distinction between arbitrary and constitutional government. He allowed that, in certain situations, resistance to tyrannical government could be justified.<sup>4</sup>

Man is bound to obey secular rulers to the extent that the order of justice requires. For this reason, if such rulers have no just title to power, but have usurped it, or if they command things to be done which are unjust, their subjects are not obliged to obey them, except in certain special cases, when it is a matter of avoiding scandal or some particular danger.<sup>5</sup>

In certain situations, he allowed the resistance to take the form of revolution.

The overthrowing of such a (tyrannical) government is not strictly sedition, except perhaps in the case that it is accompanied by such disorder that the community suffer greater harm from the consequent disturbances than it would from a continuance of the former rule.<sup>6</sup>

Aquinas advocated a right to revolution, deriving this right from his theory of natural law. But he recognised that in some

<sup>4</sup> One can detect a certain utilitarian emphasis in Aquinas, in that he argued that, on certain occasions, resistance to arbitrary rule, even though justified, would, nevertheless mitigate against the good of the community. But this emphasis was not contrary to his emphasis on justice. Aquinas stood within the Augustinian tradition emphasising the need for "concordia" within a community. An arbitrary ruler disrupted this concordia, which was identified with justice. Aquinas argued that unwise rebellion would only disrupt the concordia of a society even more than would have been the case had it suffered the arbitrary rule for a period.

<sup>5</sup> St. Thomas Aquinas, Summa Theol., 2a2e, 104, 6: cited A. P. d'Entrèves, Natural Law: an Introduction to Legal Philosophy, p.43.

<sup>6</sup> St. Thomas Aquinas, Summa Theol., au.42, Art 2. cited A.P. d'Entrèves, Aquinas : Selected Political Writings, p. 161.

instances the removal of the tyrant, even though legitimate, could only exasperate the situation, and make way for another tyrant. Aquinas would have agreed with George Orwell, who in Animal Farm, emphasised the corrupting influences of power.

Aquinas was reacting against a tendency in Christianity to over-emphasise the duty of obedience. Paul had warned the Roman Christians that "there is no power but of God: the powers that be are ordained of God. Whosoever resisteth the power resisteth the ordinance of God." (Romans 13:1) Peter, likewise, had enjoined the believers "submit yourselves to every ordinance of man for the Lord's sake" (Peter 2:13). There was also another tendency within Christianity, emphasising the need, on occasion, for disobedience. "We must obey God rather than man" (Acts 5:29). But this right of resistance emphatically did not involve any right to revolution. Augustine represents the central tradition of the Christian Church following the apostolic age. He emphasised the duty of obedience.

Augustine, like every other Christian writer, took for granted the duty of refusing to obey any command of a ruler which was directly contrary to the word of God. Yet the dominant influence in Augustine's writings was in the direction of the divine right of kings and the absolute duty of obedience.<sup>7</sup> Aquinas, in asserting a right of revolution, was breaking away from the apostolic and Augustinian position. The scriptural teaching on the question of violence seemed clear. "Beloved, avenge not yourselves but leave it to the wrath of God". (Romans 12:19). Aquinas had to reconcile this demand with the concept of a right to depose a tyrant. He did so through distinguishing between acts committed by public capacity and acts committed by

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<sup>7</sup> O. Jaszi and J. D. Lewis, op. cit., p. 13.

a private citizen.

Should private persons attempt on their own private presumption to kill rulers even though tyrants, this would be dangerous for the multitude as well as for their rulers ... It seems that to proceed against the cruelty of tyrants is an action to be undertaken, not through the private presumption of a few but rather by public authority.

Aquinas asserted that the individual Christian could not stretch forth his hand against the Lord's anointed. But the citizen could depose a tyrant, through acting by public authority.

The effect of Aquinas' teaching can be noted in at least two areas. Aquinas had an immediate effect upon religious and political thought. Calvin found in Aquinas' teaching a basis for his own concept of resistance. Calvin agreed with Aquinas in emphasising the duty of obedience. But he also conceived a situation in which certain 'inferior magistrates' could take the sword against the tyranny of the 'senior magistrate'. Implicit in both Aquinas' and Calvin's thought in respect to the right of resistance was the concept of rôle. Acts committed in one rôle, e.g. in that of a private individual, were distinct from acts committed in one's public capacity. Furthermore, Aquinas served as a link between the classical conception of a right to resistance, as expressed by Cicero, and the more modern secular formulation of this right, as expressed by John Locke<sup>9</sup>

John Locke had possessed a strong belief in the right of resistance. His Second Treatise on Civil Government was concerned with "the analysis of the basic principles of constitutional government and the defence of the community's right to revolution"<sup>10</sup>. I would argue that in this Locke stands in the Thomist tradition.

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<sup>8</sup> St. Thomas Aquinas, On Kingship, Art.48: p. 27. English trans. by G. B. Phelan, and I. TH. Eschmann.

<sup>9</sup> G. H. Sabine, A History of Political Thought, p. 367.

<sup>10</sup> O. Jaszi and J. D. Lewis, op. cit., p. 102.

In the previous chapter I noted that Leo Strauss argues that, in many points, Locke is in substantial agreement with Aquinas. I would assert that this agreement can be noted with reference to Aquinas' and Locke's view concerning revolution. Both Aquinas and Locke assert that the citizen has the right to rebel, when faced with the demands of an unconstitutional, and tyrannical government. Both writers accept the existence of this basic right. They do diverge, however, on the question of whether this right should be applied in particular situations or not. Aquinas circumscribes the situations in which this right could be profitably applied to the overall good of the community. He argues, in effect, that it is sometimes better to temporarily abdicate one's rights. Locke is less conservative than Aquinas and insists on the exercise of the legitimate right to resist. There is no radical disagreement between Aquinas and Locke, but there is a difference of emphasis. The reason for this difference is that Locke moved in a different context and was subject to different influences.

Locke was influenced by continental writers, such as the writer of Vindiciae contra tyrannos, published in 1579. This work was "one of the landmarks of revolutionary literature".<sup>11</sup> The title itself suggests a different spirit from that of St. Thomas Aquinas. Aquinas had allowed the right to revolution in certain, prescribed situations. But the writer of Vindiciae contra tyrannos emphasised and popularised the concept of a right to revolution. This work was representative of a considerable body of continental protestant literature of the period.

Locke was also influenced by the emerging secularism of

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<sup>11</sup> Ibid., p. 377.

his own age. For practical purposes God was becoming an anomaly. In Aquinas, political theory is still subordinated to the sovereign majesty of the mediaeval God. The right of resistance was delimited by this perception of the world.

Should no human aid whatsoever against a tyrant be forthcoming, resort must be had to God, the King of all, who is a helper in due time in tribulation. For it lies in his power to turn the cruel heart of the tyrant to mildness.<sup>12</sup>

The effect of these two streams of influence can be noted in Locke's emphasis on the right of resistance. The Reformation had emphasised the right of revolution. The emerging rationalism of the sixteenth and seventeenth centuries had created a secular Weltanschauung. Consequently, Locke's defence of the right to revolution sounds more strident, more man-centred, than that found in Aquinas.

Whoever uses force without right ... puts himself into a state of war with those whom he so uses it, and in that state all former ties are cancelled, all other rights cease, and everyone has a right to defend himself and resist the aggressor.<sup>13</sup>

This emphasis on the individual's responsibility to defend his individual rights is incompatible with the Thomist emphasis on the sovereignty of God. According to Aquinas, God may lead individual Christians to act in their public capacity against a tyrant. If so, any such action must be considered with due gravity, inspired not by egotistical motives, but by a desire to set the public above the private good. In Locke the emphasis is not upon the public good but upon the private inviolable rights of the individual. Locke assumed that the rights of the individual and the good of society would not conflict.

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<sup>12</sup> St. Thomas Aquinas, On Kingship, Art. 48.

<sup>13</sup> John Locke, Second Treatise of Government, Article 232.



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Locke assisted in a radical revision of the concepts of natural law and the right of resistance. He placed the right of revolution within a context of a theory of natural rights. He argued that these natural rights were derived from the natural law. In this Locke represents the general trend of developments in the theory of natural law during this period. G. H. Haines has remarked how, following the Reformation

Instead of natural law or rules of superior validity ius naturale was translated into a theory of natural rights - qualities inherent in man which it was the duty of the state to protect.<sup>16</sup>

It should be noted that Locke was resting his theory on a logical fallacy. There is no necessary relation between the concept of natural law and that of the theory of natural rights. Natural law posits the existence of certain universal moral values, discerned by the human reason. "But even if some moral values are admitted to be self-evident, it is far from obvious they must take the form of innate individual rights".<sup>15</sup> Locke makes an invalid transference from a theory of natural law to a theory of natural rights. This has certain consequences for Locke's formulation of a right to resistance. Locke assumes the right to resistance to be a natural right. But natural rights do not necessarily derive from natural law. Locke's particular concept of a natural right to revolution does not derive necessarily from the theory of natural law. Locke, nevertheless, perceived that the right of resistance was derived from the theory of natural law. In the history of political ideas it is this perception that is significant.

This European tradition of the theory of natural law was communicated to North America owing to the particular political and religious constitutions of the New England colonies. The American colonies were component parts of the British Empire.

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<sup>15</sup> G. H. Sabine, op. cit., p. 530

<sup>16</sup> O. Jaszi and J. D. Lewis, op. cit., p. 104

Britain transmitted to the colonies certain European political ideas:

The fathers of the American Revolution were the direct heirs of the Monarchs, and of Sidney, Milton, and Locke. A belief in the illegitimacy of tyrannical government and a conviction of the justice of violent action against such a regime were familiar principles to which the American revolutionaries naturally appealed in their fight against English domination.<sup>16</sup>

The English writers, pre-eminently John Locke, were the most influential because the American colonists were English. John Locke, "Who made the whole internal world his own"<sup>17</sup>, was highly esteemed in England. Similarly, Locke was respected in the colonies. Furthermore, Locke's analysis of the rôle and function of government seemed particularly applicable to the American frontier situation. The American colonists agreed with Locke in their desire to see minimal government. Consequently, one can note certain affinities between Locke's conception of the natural law, as a "bundle of individual rights that stem from individual self-interest,"<sup>18</sup> and the concept of the natural law advanced by American leaders, particularly Thomas Jefferson.

The particular religious constitutions of the New England colonies provided an additional reason why the theory of natural law proved so acceptable in America as a basis for resistance to Britain. New England had been originally settled as a theocracy. The New England Puritans rejoiced that they had been emancipated from the chains of Roman Catholic theology. John Webster, speaking of the scholastic movement, stated

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<sup>17</sup> Thomson's 'Seasons', cited by B. Willey, The Seventeenth Century Background, p. 264. No further reference given.

<sup>18</sup> H. A. Rommen, The Natural Law, p. 89.

What is it else but a confused Chaos of needless, frivolous fruitless, trivial, vain, curious, impertinent, knotty, ungodly, irreligious, thorny, and hel-batch't disputes, altercations, doubts, questions and endless janglings, multiplied and spawned forth even to monstrosity and nauseousness?<sup>19</sup>

It would seem that Webster was protesting too much. For the Puritans were influenced by the scholastic movement. Miller<sup>20</sup> notes how that New England ministers were aware of some debt to the scholastic movement. This debt was concealed from their congregations by their continual criticism from the pulpit of scholastic theology.

The Puritans argued that God could be recognised through 'the light of nature'. This doctrine of natural law possessed two distinct elements. God could be known through the human reason perceiving the external creation. "Every creature in heaven and earth is a loud preacher of this truth".<sup>21</sup> God could also be recognised by the human reason contemplating certain universal moral principles evident through the operation of the conscience. "And 'tho Man's Apostacy hath greatly beclouded his Reason ... yet those principles are rooted in him and cannot be totally obliterated."<sup>22</sup> Consequently, the Puritan concept of natural law involved a belief in the existence of certain universal moral principles. All men were able to comprehend these principles in varying degrees. In this, they stand in the tradition of Aquinas. Both Aquinas and the Puritans believed in a transcendent deity that had revealed certain truths to men's conscience.

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<sup>19</sup> John Webster, cited by Miller, The New England Mind: the Seventeenth Century, p. 100. No further reference given.

<sup>20</sup> Ibid., p. 100.

<sup>21</sup> Puritan sermon, cited ibid., p. 210. No further reference.

<sup>22</sup> Puritan sermon, cited ibid., p. 210-11. No further reference.

Not all the North American colonies were founded by Puritans, and in some colonies this Puritan emphasis on natural law was absent, as B. F. Wright has noted:

In the colonies to the south of New England one finds less devotion to the theory of natural law during these opening years of the struggle (The Revolution). Some of the writers, to be sure, show scarcely less enthusiasm for the inherent natural rights of man than Otis or the Adamses, but others avoid the concept and prefer to rely upon a more conservative argumentative weapon. It is only after the passage of the Coercion Acts in 1774 that the doctrine is whole-heartedly accepted outside of the colonies in which the clergy had for generations been thundering their interpretation of its teachings from their pulpits.<sup>23</sup>

Thus in comparing the New England situation with that of the other colonies one can assess the particular impact of this fusion of Aquinas' and Locke's concepts of natural law. Modes of thought received from the Puritans were given new content in New England by the American defenders of the Revolution. As Barker has noted, "When Samuel Adams and James Otis became the modern disciples of Vattel, they were also recovering and reviving an old inheritance of their own soil."<sup>24</sup>

This connection with the European tradition provided the necessary condition enabling the American revolutionaries to formulate their particular theories of natural law. Had Americans been unacquainted with the theory of natural law, the theory could not have been applied. But this factor does not account for the emergence of this theory during the Revolutionary and pre-Revolutionary period. Why did American intellectuals, such as Jefferson, rely upon this theory in order to defend their position? I would argue that there were certain exigencies in the American situation, during the period under discussion, that

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<sup>23</sup> B. F. Wright, American Interpretations of Natural Law, p. 75.

<sup>24</sup> Sir Ernest Barker, Traditions of Civility, p. 322.

virtually compelled the Americans to appeal to the theory of natural law.

Sir Ernest Barker, in the essay Natural Law and the American Revolution, states that there were three different grounds to which the American lawyers appealed in challenging the British Parliament from 1764 onwards. The first ground was that of their own colonial constitutions, as expressed in their charters. The second ground was that of the British constitution. The third and final ground to which the Americans appealed was that of "ideal or natural rights, proper to any and every constitution which conformed to Natural Law".<sup>25</sup> Barker argues that claims based on the first and second criteria can be judged invalid. He demonstrates that in appealing to the theory of natural law, the Americans were seeking to circumvent objections that could otherwise be advanced against their position.

As to the appeal based on original colonial charters, Barker<sup>26</sup> notes reasons why the claim was invalid. All the colonies did not possess charters, nor were those which did exist necessarily in agreement with each other. In addition, Barker emphasises that the charters were originally given not to colonies but to business companies. It could be argued that the colonies were liable to the rule of ultra vires, if they exceeded their authority. The second ground to which the colonists had appealed involved their interpretation of the principles of the English constitutions. Barker<sup>27</sup> argues that the colonies were appealing to fiction. The colonies claimed that the English

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<sup>25</sup> Ibid., p. 285.

<sup>26</sup> Ibid., p. 287

<sup>27</sup> Ibid., p. 301

constitution gave the individual freeborn Englishman certain rights. But Englishmen in England did not have the rights that the colonies asserted. Birmingham, Manchester, and Sheffield, for example, were not represented in the English Parliament. Yet, Parliament still reserved the right to tax these cities. The Americans also argued that the British Parliament was subject to certain restrictions in sovereignty in relation to the colonies. Barker states that

To live in the logic of the present during the years 1774-1775 was to live under the authority of a King-in-Parliament, who was sovereign not only for the realm but also for the dominions beyond the seas.<sup>28</sup>

The second ground of appeal must be judged as invalid. The Americans were compelled to avoid these counter-arguments simply by shifting their ground to that of a higher, or natural, law.

The American Declaration of Independence, adopted on July 4, 1776, expressed the particular character of the American appeal to natural rights. After appealing to the "Laws of Nature and of Nature's God", the framers of the Declaration continue:

We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. - That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. - That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organising its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The framers of the Declaration were of a conservative disposition. The Declaration continues:

Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly, all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are

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<sup>28</sup> Ibid., p. 306.

accustomed. But, when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future Security.

The American Revolution contributed to the further development of the distinctive European tradition in political thought, analysed in the previous chapters. Following the Revolution, the theory of natural rights became effective in inspiring other revolutionary movements. The American Revolution directly influenced the French Revolution. During the Revolutionary War France was engaged on the side of the Americans. As Cobban notes, "alliance with the Americans not merely exposed French society to democratic and republican ideas, but made them fashionable and respectable."<sup>1</sup> Cobban refers to the Marquis de La Fayette, and the Comte de Segur.. Both were involved in the Revolutionary War, and were impressed with the American example. The Comte de Segur wrote, "I was far from being the only one whose heart palpitated at the sound of the growing awakening of liberty seeking to shake off the yoke of arbitrary power".<sup>2</sup> La Fayette later rose to prominence in the French revolutionary movement. The American Revolution provided a paradigm example, a model, to which the French revolutionaries could refer. When the French National Assembly convened in 1789, one of its first acts was to assert the existence of certain "natural, inalienable, and sacred Rights of Man."<sup>3</sup> The influence of the American doctrine of natural rights is pronounced, and, while the French Revolution

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<sup>1</sup> A. Cobban, A History of Modern France, I, 119.

<sup>2</sup> Cited ibid., p. 119

<sup>3</sup> Declaration des Droits de l'Homme et du Citoyen, adopted by French National Assembly on 26th August, 1789. For text see A. P. d'Entreves, Natural Law, p. 48.



received its inspiration from many different sources, it can be analysed in terms of the effect of the American Revolution upon French opinion.

The effect of the two revolutions was cumulative. Following the French Revolution, there was an outpouring of nationalist and liberal sentiment. Rude notes how, by 1815, revolutionary movements had developed in many areas, so that "there was hardly a country west of Russia and Turkey, and north of the Pyrenees, whose society and political institutions had not been profoundly affected."<sup>4</sup> This surge of revolutionary activity was stayed in 1815, only to break out again in the revolutionary years of 1820, 1830, and 1848. The slogans of the American and French Revolutions, particularly the appeal to natural rights, became part of the intellectual currency of Europe. I would argue that the theory of natural rights influenced these various revolutionary movements, both directly and indirectly.

Revolutionary movements in the nineteenth and twentieth centuries have combined both liberal and nationalist elements, and one can detect a tension between individualist and corporate elements within these movements. The emphasis on individualism resulted in a concern for individual rights and liberties, while the emphasis on the corporate whole resulted in the exaltation and elevation of the collective entity, the nation. In both respects, one can note the influence of the theory of natural rights.

There is a direct relation between the theory of natural rights, and the revolutionaries' stress on individual freedom.

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<sup>4</sup> G. Rude, Revolutionary Europe, p. 180

In order to demonstrate this relation, I refer to Tom Paine's booklet The Rights of Man, published 1791.

Tom Paine's book played an active part both in the American and the French Revolution and had defended the former revolution through his Common Sense. His influence upon the French Revolution was not as pronounced as it had been in the American Revolution. Nevertheless, his Rights of Man "immediately gained recognition in the English speaking world as the ablest and most effective defence of the revolutionary position".<sup>5</sup> Paine argues that the individual has certain basic natural rights.

Natural rights are those which always appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also those rights of acting as an individual for his own comfort and happiness, which are not injurious to the rights of others - Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some natural rights pre-existing in the individual, but to which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.<sup>6</sup>

Paine's booklet was representative of a large body of literature that helped diffuse the theory of natural rights among the peoples of Europe.<sup>7</sup>

Yet the emphasis on nationalism was at variance with the emphasis on individual rights. This tension becomes explicit in considering Mazzini's position:

<sup>5</sup> F. M. Watkins, The Age of Ideology - Political Thought 1750 to the Present, p. 20

<sup>6</sup> Thomas Paine, Complete Works, p. 264.

<sup>7</sup> For example, one should note Shelley's Declaration of Rights (1812). See L. L. Snyder, ed., Fifty Major Documents of the Nineteenth Century, p. 25.

Your country is the land where your parents sleep, where is spoken that language in which the chosen of your heart, blushing, whispered the first word of love; it is the home that God has given you, that by striving to perfect yourselves therein, you may prepare to ascend to Him. It is your name, your glory, your sign among the people. Give to it your thoughts, your counsels, your blood.<sup>8</sup>

Corresponding to the glorification of the nation was a denigration of the theory of individual rights. Mazzini admitted that "the doctrine which makes individual rights for its starting-point has played, especially in the last sixty years, an important part, highly beneficial to humanity."<sup>9</sup> Yet Mazzini realised that the theory of individual rights was essentially egocentric, and, in a sense, opposed to the principles of nationalism:

The doctrine of individual rights ... is terrified at the idea of government. Its supporters regard government as a necessary inconvenience; to which they submit, on condition of giving it as little power as possible. In their theory, government reduced nearly to the function of a police constable, deprived of every initiative, has no mission but to prevent. It is there to repress crime and violence; to secure for every individual the exercise of his rights against any brutal attack of his neighbours - nothing more ... Here is, properly speaking no society, nothing but an aggregation of individuals, bound over to keep the peace, but for the rest following their own individual objects; laissez faire, laissez passer, is the formula of the school.<sup>10</sup>

It would appear that the theory of natural rights is virtually excluded from the brand of revolutionary nationalism identified with Mazzini. This is the case, to some extent, if we conceive the theory of natural rights purely as a theory of

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<sup>8</sup> Address given on the death of the Bandiera brothers, July 25, 1848, text in Selected Writings: Mazzini, p. 111. ed., N. Gangulee.

<sup>9</sup> Thoughts upon Democracy in Europe, (1847), p. 160

<sup>10</sup> Ibid. p. 160

individual rights. I would assert, however, that the theory of natural rights, originally applied to the individual, can also be applied to the collective entity, the nation. In this one can note the indirect influence of the theory of natural rights upon particular revolutionary movements. Once one admits that the nation is an entity, possessing a corporate personality, one can then impute to this personality certain natural rights. For if individual personalities are allowed certain rights, why, one might ask, should not the same be true of corporate personalities? Rousseau argued that the nation was such a corporate entity. "As long as several men in assembly regard themselves as a single body, they have only a single will, which is concerned with their common preservation and well being."<sup>11</sup> It was on this philosophic position, established by Rousseau, that Mazzini was able to develop his own style of nationalism.

In the twentieth century one can note the influence of the theory of natural rights. In reference to the theory of individual rights I will note the United Nations Declaration of Human Rights, (1948). In the Preamble to the Declaration, the framers state

whereas the peoples of the United Nations have in the charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women ... the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations.<sup>12</sup>

The United National Declaration can be viewed as a contemporary specimen example of the demand for individual rights, as in the text of the Declaration it is individual rights that are

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11 J. J. Rousseau, The Social Contract, p. 85 (trans. G.D.H. Cole)

12 For text, see Keesing's Contemporary Archives (For 1948) p.9699. Certain articles noted in Appendix I.

emphasised.<sup>13</sup>

In order to appreciate the application of the theory of natural rights to the collective entity, the nation, I refer to the Declaration of the Provisional Government of the Irish Republic issued in 1916 during the Easter Rising:

We declare the right of the people of Ireland to the ownership of Ireland, and to the unfettered control of Irish destinies, to be sovereign and indefeasible. The long usurpation of that right by a foreign people has not extinguished that right nor can it ever be extinguished except by the destruction of the Irish people ... Standing on that fundamental right and again asserting it in arms in the face of the world, we hereby proclaim the Irish Republic as a Sovereign Independent State, and we pledge our lives and the lives of our comrades-in-arms to the cause of its freedom, of its welfare, and of its exaltation among the nations.<sup>14</sup>

The argument I have presented has an immediate application to the issue of a right to resistance. For revolutionary nationalists of the nineteenth and twentieth centuries have tended to justify their resistance on two grounds. They have initially appealed to the traditional right of resistance, as articulated, for example, in the United Nations Declaration of Human Rights. In the Articles of the Declaration the right of

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<sup>13</sup> In the twentieth century there has been a renewed emphasis on the rights and dignity of the individual, which has found expression in such declarations as that of 1948. The reasons for this are complex. The contribution of outstanding humanitarians and philanthropists of the nineteenth and twentieth centuries, e.g. Lord Shaftesbury, Albert Schweitzer, is one such factor. Another factor may be that the internal social changes within states during the twentieth century have led to a dispersion throughout the community of moral standards previously associated with a particular class. One could argue that the aristocratic class, in England at least, has always had some concept of individual dignity. In this connection one could again point to the contribution of Lord Shaftesbury and others of his social class. As Britain has become a 'mass society' these particular standards have become recognised throughout the community. I would argue, however, that the main reason for this renewed stress in individual rights and liberties is that the alternative position, i.e., the glorification of the nation, has become discredited, particularly in view of the events in Nazi Germany.

<sup>14</sup> W. C. Langsam, Documents and Readings in the History of Europe since 1918, p. 347.

resistance is not recognised as a distinct right. In the Preamble, however, the right of resistance is recognised, at least by implication. The framers state that "it is essential, if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights be protected by the rule of law." They have also justified their resistance on the ground of their nationalism, claiming that the nation has the right to have its nationalist aspirations respected by the government. I have argued, in effect, that this claim to a national right of resistance is explicable if one initially posits the nation as a corporate personality, and then imputes certain rights to it, rights normally granted to individual personalities.<sup>15</sup>

From the above considerations I would argue with Sir Ernest Barker that "we who live in Europe too readily see 1789 as the year in which it was said 'Behold, I will make all things new'. A wider view will show that the year of change was 1776 ..."<sup>16</sup> The American Revolution can be viewed as the first major war of colonial liberation, and one could claim that we are still experiencing the effects of this Revolution. For in the American Revolution one can note both the emphasis on the

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<sup>15</sup> I would emphasise that I am not arguing/<sup>that</sup> nationalism originated in the theory of natural law or that of natural rights. I am arguing that a particular indirect application of the theory of natural rights justifies resistance to authority based on nationalism.

<sup>16</sup> Sir Ernest Barker, Traditions of Civility, p. 317. One could question, however, the whole concept of 'decisive moments' in history. Professors Godechot and Palmer argue that the French and American Revolutions are simply "phases" of a more general "democratic" revolution in the west. (For a discussion of their position, see G. Rude, Revolutionary Europe, p. 180. Note also literature cited.)

theory of individual rights, and the emphasis upon the collective right of the new nation, the United States of America. Since the American Revolution, these particular aspects of its ideology and practice have been communicated to other parts of the world. This combination in varying degrees of liberalism with nationalism has proved influential in shaking the established institutions of our own day. Revolutionaries can look to the American Revolution, and to the theory of natural rights, for inspiration, both when they demand a recognition of individual rights, and when they demand the right for their country to enjoy 'a place in the sun.' I noted in the previous chapter how Locke derived his theory of natural rights from his "secular" theory of natural law. In assessing the influence of the theory of natural rights in relation to the issue of resistance, one is also noting the influence of the theory of natural law.

As the theory of natural rights has been popularised, it has become progressively detached from its origins. The Marxist-Leninist, for example, has a particular theory of natural rights. But he would not necessarily accept that this concept was derived from the bourgeois notion of natural law. Jacques Maritain states how at a meeting of the French National Commission of UNESCO, in which the Rights of Man were being discussed, someone questioned how it was possible that certain proponents of opposing ideologies could agree on certain basic rights. Representatives of these ideologies replied, "we agree on these rights providing we are not asked why".<sup>1</sup>

In view of this development, one can legitimately re-assess the concept of a natural right<sup>2</sup> to resistance in terms of the theory of natural law. I would argue that the theory of natural rights, as at present accepted in relation to the issue of resistance, is incompatible with the theory of natural law. This is ironic in view of my earlier argument that the theory of natural rights was derived from that of natural law.

In Chapter 1 it was argued that the central moral principle of the theory of natural law is "reverence for life". I would argue that the concept of a natural right to armed resistance militates against this central principle. Once one has admitted the legitimacy of armed force to depose a tyrant, one becomes

<sup>1</sup> J. Maritain, Man and the State, p. 77.

<sup>2</sup> One could criticise the whole theory of natural rights. In this case the concept of a natural right to resistance is also challenged. J.D. Mabbott writes, "six months scrutiny of a correspondence column revealed a natural right to a living wage, a right to work, a right to trial by jury, a right to buy cigarettes after 8 p.m., a right to camp in a caravan by the roadside, and a right to walk on the grouse moors of Scotland during the close season." J.D. Mabbott, The State and The Citizen, p. 58.



involved in a certain moral contradiction. There is no guarantee that the revolutionary set will not debase human dignity even further. I would refer to three contemporary examples of revolution in order to illustrate this point.

Franz Fanon notes that the ideals of the Algerian revolution were violated by some of its supporters.

Because we want a democratic and a renovated Algeria, because we believe one cannot rise and liberate oneself in one area and sink in another, we condemn, with pain in our hearts, those brothers who have flung themselves into revolutionary action with the almost physiological brutality that centuries of oppression give rise to and feed.<sup>3</sup>

But Fanon admits that "it is not easy to conduct, with a minimum of errors, the struggle of a people, sorely tried by a hundred and thirty years of domination, against an enemy as determined and ferocious as the French".<sup>4</sup>

The same basic principle can be illustrated with reference to the Nigerian crisis. Dame Margery Perham broadcasting on the B.B.C. stated

"On 22nd January, 1966 I came to Broadcasting House to speak about the assassination of the Prime Minister of Nigeria, of the Premiers of the Northern and Eastern Regions and of many officers of the army. I spoke almost at a moment's notice under the deep sense of shock which those murders had evoked. I remember that while I was in the studio working on my script I saw on the television screen the Ibo officer who had just murdered the Premier of the Northern Region, whom I had known. The officer was still holding his gun and proud of what he had done. I felt a sense of horror caused by something even deeper than the immediate tragedy. I seemed, as in a flash, to see a vista of the great and terrible consequences which might result from these murders with their perpetrators honestly believing they would open the way to a new and better political life. They were wrong. The blood of political assassination seldom, if ever, nourishes healthy political growth."<sup>5</sup>

In the case of Nigeria, as in the case of Algeria, one can argue that armed revolution is ineffective in attaining particular

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<sup>3</sup> Franz Fanon, A Dying Colonialism, p. 25.

<sup>4</sup> Ibid., p. 25.

<sup>5</sup> B.B.C. Broadcast Talk, (Third Programme), printed in The Listener, Vol. 80, no. 2060, p. 353. 19th September, 1968.

moral ends. I am not arguing that armed revolution never pays any moral dividends. Often human dignity is elevated by revolution. But it would seem that equally frequently human dignity is debased by the same process.

Finally, I would refer to the Black Power movement in the United States of America. The American negro leader, the late Malcolm X, has stated

"I believe that there are some white people who might be sincere. But I think they should prove it. And you can't prove it by singing with me. You can't prove it by being non-violent. No, you can prove it by recognising the law of justice. And the law is "as ye sow, so shall ye reap." The law of justice is "he who kills by the sword shall be killed by the sword". This is justice. Now, if you are with us, all I say is, make the same kind of contribution with us in our struggle for freedom that all white people have always made when they were struggling for their own freedom. You were struggling for your freedom in the Revolutionary War. Your own Patrick Henry said "liberty or death", and George Washington got the cannons out, and all the rest of them that you taught me to worship as my heroes, they were fighters, they were warriors."<sup>6</sup>

Malcolm X continues

But now, when the time comes for our freedom, you want to reach back in the bag, and grab somebody who's non-violent and peaceful and forgiving and long-suffering. I don't go for that - no. I say that a black man has the right to do whatever is necessary to get his freedom that other human beings have done to get their freedom.

However one may legitimately question whether the violent tactics adopted by the negro militants in the American situation do contribute towards the liberation of the American negro.

The American example is particularly useful in clarifying the central argument of this paper, as it has developed. For Malcolm X is not perverting the Lockean doctrine of resistance, but he is simply carrying it to its logical extension. Malcolm X

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<sup>6</sup> Speech by Malcolm X, delivered in Cleveland, Ohio, 1963; see "Ballots or Bullets" First Amendment Records, Philadelphia.

legitimately appeals to the example of the American Revolution in order to support his argument, for the American Revolution was, in part, a consequence of the Lockean doctrine being applied to an actual political situation. In contemplating the blight of communal violence that has attacked American society, it should be noted that such a development is in accord with at least some of the ideals of the American Revolution.

I have demonstrated, therefore, the moral absurdity of the Lockean doctrine. For what could be more at odds with the theory of natural law than the spectacle of communities within a nation arming against one another? If we take Locke's doctrine of resistance seriously, we are bound to end up in a Hobbesian state of nature, in which every man's hand is against his neighbour.

It seems that we have reached an impasse, a dilemma relating to the original problem of this paper. For the events in Germany from 1933 to 1945 would seem to indicate the immorality of unqualified obedience to the state.<sup>7</sup> The Nuremberg Trials demonstrated the need to resist authority:

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<sup>7</sup> The Nazi regime was the consequence of a particular trend in German thought, that had emphasised the duty of obedience and exalted the role of the state. The tendency can be noted in the Romantic Movement of the nineteenth century, ironically, in part a reaction against the breakdown of community life during revolution. Treitschke wrote "And how ruthlessly has harsh experience destroyed all those mad ideas which hid themselves behind the great name of Liberty." The ideas of freedom which prevailed during the French Revolution ... were fulfilled ... and what was the end of it all? The most disgusting despotism Europe ever saw." German thought was caught between Scylla and Charybdis.

(Heinrich von Treitschke, "Freedom", revised version 1862, reprinted in Eugene C. Black, The Posture of Europe 1815 - 1940. Readings in European Intellectual History, p. 204).

Obedience to orders not obviously unlawful is the duty of every member of the armed forces ... the law cannot in conditions of war discipline be expected to weigh scrupulously the legal merits of the orders received ... However, subject to these qualifications, the question is governed by the major principle that members of the armed forces are bound to obey legal orders only and they cannot therefore escape liability if in obedience to a command they commit acts which both violate unchallenged rules of warfare and outrage the general sentiments of humanity.<sup>8</sup>

In the aftermath of war German intellectuals have been seeking for some viable doctrine of resistance. In this connection I refer to the study group Europäische Publikation,<sup>9</sup> composed of jurists, officers, theologians and professors, formed in consequence of the Remer trial of 1952.<sup>10</sup> One aim of this group was to study the theoretical problem of a right to resistance. In view of the German case, it seems, therefore, that one should stress the Lockean doctrine of resistance. But the argument of this paper has been that the European revolutionary tradition, particularly as identified with Locke, is open to criticism on moral grounds. To accept inhuman orders from a tyrannical government is admittedly wrong. But how does one set about changing the government through armed revolution, without perverting, in the process, the moral ends of the revolution?

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<sup>8</sup> The Belsen Trial. War Crimes Trials, Vol. II, (H.M.S.O. 1949), p. 631/2.

<sup>9</sup> For a discussion of this group, as well as for a wider treatment of the question of resistance, see Guenter Lewy, "Resistance to Tyranny, Treason, Right, or Duty", Western Political Quarterly, Sept. 1960, pp. 581-596.

<sup>10</sup> Otto Ernst Remer, second Chairman of the Socialist Reich Party publicly denounced the July 1944 conspirators. Remer was set on trial for having insulted the resisters of 20th July, and having slandered their memory. He was found guilty and sentenced to three months imprisonment.

Dr. Jawaharlal Nehru, in a letter to Joan V. Bondurant, has concisely expressed the point that I am seeking to emphasise in my criticism of Locke:

We see conflict all round us in the world. That is perhaps not surprising. But what is surprising is that the methods adopted to end that conflict have almost always failed miserably and produced greater conflict and more difficult problems. In spite of this patent fact we pursue the old methods blindly and do not even learn from our own experiences.<sup>11</sup>

Thus the argument of this paper has raised the question of the dichotomy between means and ends. I have indicated that I agree with the end of revolutionary action, when directed against arbitrary or tyrannical rule. As Aquinas has written, "to be subject to a tyrant is the same thing as to lie prostrate beneath a raging beast".<sup>12</sup> It is necessary that the moral order be preserved against governments that would seek to break it. Often an act of resistance will lead to revolution. One can judge, therefore, the end of revolutionary activity to be compatible, in certain situations, with the demands of the moral law. I have questioned whether the means, namely, violent actions, are also in accord with the moral law. It would seem that on some occasions at least violent means militate against the achievement of moral ends.

There is at least one possible resolution of this dichotomy. To quote from Nehru's letter again:

Gandhi was never tired of talking about means and ends and of laying stress on the importance of the means. That is the essential difference, I think, between his approach and the normal approach which thinks in terms of ends only, and because the means are forgotten the ends escape one. It is not realised that the ends must inevitably come out of the means and are

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<sup>11</sup> J. V. Bondurant, Conquest of Violence: The Gandhian Philosophy of Conflict, p. xviii.

<sup>12</sup> St. Thomas Aquinas, On Kingship, art. 29.

governed by those means<sup>13</sup>... Gandhi pointed another way and, what is more, lived it and showed achievement. That surely should at least make us try to understand what this new way was and how far it is possible for us to shape our thoughts and actions in accordance with it.

I would argue with Nehru that Gandhi's doctrine of Satayagraha<sup>14</sup> may resolve this dichotomy between means and ends. This Gandhian doctrine entails the concept of non-violent resistance. In analysing this Gandhian doctrine, I am seeking to introduce some consistency into my argument. If one judges the end of revolutionary action in terms of the theory of natural law, one must judge the means in terms of the same criteria. It is this lack of consistency that is responsible for a certain amount of confusion in Western liberal thought.

In my opinion, the theory of natural law dictates that non-violent means should always be used in the first resort in order to effect social or political change. Should these non-violent means prove inadequate to the task, then an entirely new situation develops where violence may be acceptable, both on practical and moral grounds. But one can argue that, in a sense, non-violent means of resistance to tyranny are more in accord with the theory of natural law than violent means. This is but the corollary of my argument as outlined in the previous chapter. If the use of violent means leads to moral confusion, then the only other alternative open involves non-violent resistance.

I am arguing, therefore, that according to the theory of

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<sup>13</sup> J. V. Bondurant, op. cit., p. xviii.

<sup>14</sup> 'Satayagraha' translates as 'holding firm to the truth'.

natural law non-violence should be always the 'first-strike' weapon against tyranny. In the eventuality of this first-strike failing to be effective, then force may possibly be justified. But Gandhi was convinced that non-violent means of resistance would be successful - if not in every conceivable case, then at least in the cases Gandhi was concerned with.

"Given a just cause, capacity for endless suffering, and avoidance of violence, victory is a certainty"<sup>15</sup> Whether violent resistance as such is immoral does not arise, except as a largely hypothetical question. Gandhi believed that:

Where there is only a choice between cowardice and violence I would advise violence. Thus when my eldest son asked me what he should have done, had he been present when I was almost fatally assaulted in 1908, whether he should have run away and seen me killed or whether he should have used his physical force ... I told him it was his duty to defend me even by using violence.<sup>16</sup>

But Gandhi's central position was that in most cases, certainly in the case of the struggle against British rule in India, "non-violence is infinitely superior to violence, forgiveness is more manly than punishment".<sup>17</sup> Gandhi adopted this position because of his belief in a higher law possessing universal validity.<sup>18</sup> Gandhi claimed that cognizance of this higher law would direct one both to the end, i.e., revolution against British rule, and to the choice of means, i.e., non-violence.

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<sup>15</sup> M. K. Gandhi, Excerpt from Young India (27.4.21), in Non-Violent Resistance: Satyagraha, p. 12.

<sup>16</sup> Ibid., p. 132. Excerpt, Young India 11.8.20. In the same article Gandhi states: "I would rather have India resort to arms in order to defend her honour than that she should in a cowardly manner become or remain a helpless victim to her own dishonour".

<sup>17</sup> Ibid., p. 133.

<sup>18</sup> J. V. Bondurant argues that Gandhi did in some respects have a relativistic view of morals (J. V. Bondurant, op. cit., p. 17). I think this unnecessarily complicates his position.

In one sense Gandhi can be viewed as standing within the distinctive European tradition of political thought, as analysed in the preceding chapters.<sup>19</sup> Gandhi was an Oriental. But the occident influenced him, to some extent, in his political ideas. In the following passage one detects a Ciceronian vein of argument:

That we should obey laws whether good or bad is a new-fangled notion. There was no such thing in former days. The people disregarded those laws they did not like and suffered the penalties for their breach. It is contrary to our manhood if we obey laws repugnant to our conscience. Such breaching ... is opposed to religion and means slavery ... A man who has realised his manhood, who fears only God, will fear no one else. Man-made laws are not necessarily binding on him. Even the Government does not expect any such thing from us. They do not say: "You must do such and such a thing", but they say: "If you do not do it, we will punish you". We are sunk so low that we fancy that it is our duty and our religion to do what the law lays down. If we will only realise that it is unmanly to obey laws that are unjust, no man's tyranny will enslave us.<sup>20</sup>

Gandhi justified his choice of ends, i.e., resistance to, and ultimate overthrow of, arbitrary authority, on the grounds of natural law. But Gandhi also invoked the natural law in support of his particular choice of means:

I have found that life persists in the midst of destruction and, therefore, there must be a higher law than that of destruction. Only under that law would a well-ordered society be intelligible and life worth living. And if that is the law of life, we have to work it out in our daily life. Wherever there are jams, wherever you are confronted with an opponent, conquer him with love ... In India we have had an ocular demonstration of the operation of this law on the widest scale possible. I do not claim therefore that non-violence has necessarily penetrated the three hundred millions, but I do claim that it has penetrated deeper than any other message.<sup>21</sup>

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<sup>19</sup> I am not arguing that Gandhi was necessarily aware of a link between his teaching on the subject of resistance, and that of other exponents of the Western natural law tradition. Yet this does not prevent him from being considered in relation to this tradition.

<sup>20</sup> M. K. Gandhi, op. cit., p. 18. Excerpt from "Indian Home Rule or Hind Swaraj", chap. XVII.

<sup>21</sup> M. K. Gandhi, op. cit., p. 383. Excerpt from "The Nation's Voice", Part II, pp. 109-110.



The Gandhian concept of natural law is similar to that advanced by Reinhold Niebuhr. Paul Ramsey notes how Niebuhr posits a revised conception of the natural moral law. Niebuhr rejects the traditional view associated with the theory of natural law that

human nature conforms wholly to stable structures and nicely reposes within discoverable limits ... man's self-transcending freedom rises above the limits or even the vitalities of physical nature and above the patterns of reason or the uniquely individual organic structures discovered by romantic idealism. Man stands before possibilities for action which are not to be calculated in terms of the potentialities of a fixed essential nature of any sort.<sup>22</sup>

Ramsey states that on the basis of this particular perception of man Niebuhr is led to contend that

for such a free spirit as man love is the law of life ... love is the moral law for man whose nature is indicated in Niebuhr's writings; and his way of pointing us to this conclusion is by showing that the natural moral law elaborated in the philosophies of naturalism, rationalism, and so on fails and must fail to captivate and fulfil the special dimensions of man's nature. Among the ruins of these systems love still stands as the relationship in life which was meant for man and for which man was intended.<sup>23</sup>

Gandhi's conception of this higher law of love represents a particular formulation of the theory of natural law. One should note, in addition, that Gandhi derived considerable inspiration from Leo Tolstoy. I will quote part of a letter Count Tolstoy sent to Gandhi in order to clarify further Gandhi's particular concept of the moral law.<sup>24</sup> For it was the teaching of Tolstoy on this subject that Gandhi assimilated:

The longer I live, and especially now, when I vividly feel the nearness of death, I want to tell others what I feel so particularly clearly and what to my mind is of great importance, namely, that which is called "Passive Resistance", but which is reality nothing else than the teaching of love uncorrupted by false interpretations. That love, which is the striving for the union of human souls and the activity derived from it, is the highest and only law of human life; and in the

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<sup>22</sup> Paul Ramsey, Nine Modern Moralists, p. 113

<sup>23</sup> Paul Ramsey, op. cit., pp. 113, 114.

and in the depth of his soul every human being feels and knows this; he knows this until he is entangled by the false teachings of the world. This law was proclaimed by all - by the Indian as by the Chinese, Hebrew, Greek, and Roman sages of the world. I think this law was most clearly expressed by Christ, who plainly said, "In love alone is all the law and the prophets".<sup>25</sup>

Gandhi's concept of natural law was therefore a dynamic, positive conception. In his view the moral law did not merely proscribe certain acts for the individual; it also encouraged a particular attitude, an attitude of love. It was from this particular attitude that Gandhi derived both his obligation to resist oppression, and his determination to do so through the use of non-violent weapons. It is possible, therefore, to see a way out of the impasse, the nature of which I have indicated in the previous chapter. One does not need to comply meekly with the demands of an arbitrary regime. But neither does one need to go to the other extreme and indulge in an orgy of bloodletting in order to achieve objectives.

I would assert that the theory of natural law does

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One could legitimately question on logical grounds the particular position I have adopted in appealing to Tolstoy in order to clarify the thought of Gandhi. I am assuming, however, that in respect to the basic principle of non-violent resistance, both Tolstoy and Gandhi were in agreement, and, in addition, there is evidence that in this respect Tolstoy did influence Gandhi. I would not justify the method adopted on grounds of strict logic. Rather I would argue that quoting Tolstoy does make sense as a literary device. Obviously in many points the teaching of St. John the Divine is in agreement with the teaching of his Master. As there is no basic conflict between St. John and Jesus Christ in their teaching one can legitimately quote the words of Jesus in order to clarify the thought of John, on the ground that Christ articulates what John thought. On similar grounds I would justify this appeal to Tolstoy. Nowhere in Gandhi's writings have I found a passage as articulate in its justification of Sabayagraha, as that which I have noted in reference to Tolstoy. As both Tolstoy and Gandhi are in essential agreement on this subject I feel justified in quoting from Tolstoy. (For a discussion on the influence of Tolstoy upon Gandhi's thought see the same chapter of G. F. Andrews, Mahatma Gandhi's Political Ideas, as that in which Tolstoy's letter is reproduced).

<sup>25</sup> Letter reprinted in full in G. F. Andrews, Mahatma Gandhi's Ideas, p. 195

prescribe a "via media". Resistance can be justified providing, if at all possible, it is of a non-violent character. One can contemplate violence only after having honestly attempted non-violent action. In the previous chapters I argued for the existence of a particular tradition within Western political thought. In my opinion it is only through the introduction of the concept of non-violence that this tradition can possibly hope to be resuscitated as a consistent moral theory.

I have argued in favour of a particular principle as being in accord with the theory of natural law. This argument is open to objection on at least two grounds. One objection is concerned with the premises on which the argument is based, while another objection is concerned with certain difficulties of application in respect to this argument.

The theory of natural law is by no means universally accepted as valid. As I have based the central argument of this paper upon the theory of natural law criticism of the theory is significant. If the theory of natural law is fallacious it is possible that the argument presented is also fallacious.<sup>1</sup> One can also criticise this argument on the ground that it is difficult to apply the particular principle that I have suggested. Such difficulties of application do not necessarily provide a ground for objection, as one can argue in favour of a particular principle irrespective of any difficulties in application. If one adopts a particular utilitarian position, however, one can assert that a principle incapable of application is deficient, if not in terms of pure theory, at least in terms of its practicality.

In respect to the first ground of objection, I would argue that most revolutionary movements do derive stimulus from the

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<sup>1</sup>It is not necessarily the case that if one's premises are invalid, any argument deriving from such premises is also invalid. This is particularly the case with respect to the central argument of this paper. One can justify the principle of non-violent resistance, as the basic weapon to employ against tyranny, on a number of grounds, the theory of natural law being only one. Nevertheless if the theory of natural law is invalid I would be compelled to modify this basic argument in some areas, and for this reason I defend the theory as necessary to political discourse.

theory of natural law, whether they accept the theory or not.

Lenin, for example, wrote

In what sense do we repudiate ethics and morality? In the sense in which they were preached by the bourgeois who declared that ethics were God's commandments. We, of course, say that we do not believe in God, and that we know perfectly well that the clergy, the landlords, and the bourgeoisie spoke in the name of God in order to pursue their own exploiter's interests. Or instead of deducing these ethics from the commandments of God, they deduced them from idealistic or semi-idealistic phrases, which were always very similar to God's commandments.<sup>2</sup>

If Lenin repudiated the natural law, he did place another law in its place. I refer to a speech delivered by Plekhanov, a leading socialist theoretician, at the Unification Congress of 1903, at which Lenin was in attendance. In 1917 Lenin quoted these words as he ordered the Constituent Assembly to disperse:

The fundamental principle of democracy is this: salus populi, suprema lex. Translated into revolutionary language, that means the health of the revolution is the supreme law ... If the safety of the revolution should demand the temporary limitation of one or another of the democratic principles it would be a crime to hesitate.<sup>3</sup>

In the name of this higher law the Bolshevik Party in Russia resisted the demands of the positive law. When in power, the Party set itself above other established institutions as the bearer of revolution. The same principle can be observed in Nazism. Hitler rejected traditional morality. Yet, he too was forced to appeal to a higher law to justify his actions. Following 'the Night of the Long Knives' of June 30, 1934, Hitler stated

If anyone reproaches me and asks why I did not resort to the regular courts of Justice, all I can say is this: In this

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<sup>2</sup> V. I. Lenin "Collected Works", XVII, p.322, cited by David Shubb, Lenin, in Appendix.

<sup>3</sup> Speech by Plekhanov, cited by Bertram D. Wolfe, Three Who Made A Revolution, p. 270.

hour I was responsible for the fate of the German people, and thereby I became the supreme judge (oberster Gerichtster) of the German people.<sup>4</sup>

The revolutionary cannot reject the concept of natural law without its returning in some distorted shape<sup>5</sup> into his ideology.

From this one can argue the concept of natural law is a necessary concept within political discourse, quite irrespective of whether the concept is valid or not.

In respect to the problem of the application of the principle that I have outlined, I will indicate two areas in which there is particular difficulty. Firstly, I argued that violent resistance could only be adopted in the event of non-violent resistance having been tried - and found wanting. Yet how does one know, in any specific situation, whether to use violence or not? This is the problem facing the Civil Rights Movement in the United States today. Has non-violence failed? If so, is violent action justified? Michael Novak notes that

the wave of confidence in non-violent methods which crested over the nation under the leadership of Martin Luther King ... has suddenly been spent. Robert Kennedy's terrible end marked its exhaustion. The power of repression - and the will to repress - promise, moreover, to be even stronger in the future than they have already shown themselves.<sup>6</sup>

Michael Novak asks "What, then, shall we do?" Has the turning point been reached? One can escape this problem simply by denying that violent resistance is ever justified. This is

<sup>4</sup> Speech by Hitler, June 30, 1934, to the Reichstag, cited by William Shirer The Rise and Fall of the Third Reich, p. 282.

<sup>5</sup> The same principle I have noted at work in Nazism and Marxist Leninism can also be noted in Utilitarianism. Bentham rejected natural law as a theory. Yet, one can argue that the concept of natural law is being simply revised in his formulation of the utilitarian principle.

<sup>6</sup> Michael Novak, review of Gandhi by Geoffrey Ashe, and 'Non-Violence and Aggression' by H. J. N. Horsbury, The New Republic (June 22, 1968).

not the position I have adopted.<sup>7</sup> But the whole question shows the difficulties of applying a principle supposedly derived from the theory of natural law. Again, considering the American situation, one might ask whether non-violence is effective as an instrument of social and political change. Can the principle of non-violence be applied successfully in an actual political conflict?

In recent years the whole concept of non-violent resistance has come under a critical scrutiny, and there has been an increased emphasis on the use of force as a revolutionary instrument. Jo Grimond, the former leader of the British Liberal Party, has voiced these doubts as to the effectiveness of non-violent resistance:

However unpalatable it may be, the truth is that again and again useful reforms have been achieved in Britain by force after argument has failed. India<sup>8</sup> and Ireland would never have got their freedom from the British Government without violence. Even the latest student protests have won more by sit-ins than by reason. Strikes rely on pressure not on discussion. Yet they are now a hallowed custom in democratic countries. Demonstrations have come to be a routine form of protest, yet the most peaceful demonstration is nevertheless a threat.<sup>9</sup>

Grimond rejects this distinction between violent and non-violent resistance. He notes how non-violent resistance relies on the threat of force to attain its objects.

The effect of this sort of criticism is to weaken our faith in the practicality of non-violent resistance. In this

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<sup>7</sup> To argue that the theory of natural law positively proscribes all forms of armed resistance is, in my opinion, excessively dogmatic.

<sup>8</sup> It is significant that Grimond questions the belief that India received its independence as a result of the application of non-violent forms of resistance.

<sup>9</sup> Jo Grimond cited by W. F. Hall in article, "The Role of Violence in Politics", The Birmingham Post, Sept. 13, 1968.

connection I will refer to D. Novak's article Anarchism and Individual Terrorism:

Everyone advocating violence as the means of improving a particular situation has to be certain of a positive answer to two questions: Is violence the only possible means and, will it really achieve the aim? If the answer to the first question is negative, the use of violence is not morally justified; if the answer to the second question is negative, then resort to violence is both unjustified and useless. These two aspects of the problem express the interdependence of means and ends and are inseparably connected.<sup>10</sup>

Jo Grimond is arguing that violence often is more effective at attaining political aims than other methods. The principle of non-violence may be admirable. One fears that it is also irrelevant, in that it cannot be effectively applied to achieve political ends.

How does one meet this sort of objection? In reply, I would argue simply that the problem of application is intrinsic to the whole question of natural law. If one posits a moral law that can be perceived by reason, it seems inevitable that men will disagree as to the application of the moral law to a specific situation. In seeking to apply the principle of non-violent resistance there is bound to be disagreement. Yet moral discourse contains many areas of disagreement, but this does not mean moral discourse should cease. The principle of non-violent resistance may be a difficult one to apply, and one can even argue that the principle is incapable of application. This does not mean, however, one should give up the struggle to apply this principle.

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<sup>10</sup> D. Novak, "Anarchism and Individual Terrorism", Canadian Journal of Economics and Political Science, Vol. 20, No. 2. (May 1954), p. 182.



Summary and Conclusion

In the Introduction the essential problem of this paper was outlined. I argued, by reference to the Maccabean Revolt, that the revolutionary is confronted with the need to justify his action. It is necessary both to justify the concept of resistance as such, and to justify the particular means of resistance adopted. I indicated this problem could be resolved through recourse to the theory of natural law. In Chapter I, three distinct formulations of the theory of natural law were advanced, as identified with Marcus Tullius Cicero, St. Thomas Aquinas, and John Locke respectively. I argued that there is a basic agreement between these various exponents of the theory of natural law, as each asserts that God has implanted in man knowledge of the moral law. Despite this consistency within the theory there are certain differences between these formulations, as can be noted with reference to the context in which these statements were originally presented. I argued, in addition, that the theory of natural law prescribes a certain attitude in respect to human relationships, namely, a realisation of the dignity and worth of the individual.

In Chapter II it was noted that Cicero, Aquinas, and Locke each assert a relation between the theory of natural law and the concept of a right to resistance. There are differences as to the nature of this relation and it was argued that Locke based his doctrine of resistance upon the theory of natural rights which was only derived indirectly from the theory of natural law. I argued that Locke's doctrine of resistance was recognised in the American colonies and provided the theoretic justification

for the American Revolution. In Chapter III it was argued that the American Revolution engendered other outbursts of revolutionary activity, in which the theory of natural rights, as a basis for revolution, became more widely recognised. I noted both the direct and indirect influence of the theory of natural rights upon certain revolutionary movements. I noted the direct influence of the theory as consisting of the liberal claim that the citizen has a right to resistance should government prove oppressive. I argued that the claim to a right of resistance based on nationalism was an indirect application of the theory of natural rights. The nationalist is in effect positing the nation as a distinct personality, and imputing to this 'personality' the right of resistance, a right originally applied in respect to the individual citizen.

In Chapter IV this doctrine of resistance, was criticised in terms of the theory of natural law. I argued that revolutionary and nationalist movements often defeat their own moral ends through their resort to force. I argued that, although one may admit a right to resistance, this does not mean one should necessarily think in terms of violent revolution. I indicated by reference to Gandhi that according to the theory of natural law non-violent methods of resistance should be employed against oppressive government, if at all possible. In Chapter V I noted certain difficulties in this position, as relating both to the premises of my argument, i.e. the theory of natural law, and to the question of the applicability of the principle of non-violent resistance.

The Maccabean Revolt illustrates the personal character of moral decisions. Mattathais and Judas Maccabeus represented the forces of Jewish nationalism. On previous occasions, particularly during the period of the Judges of Israel, the Jews had asserted themselves against alien oppressors. The leaders of these rebellions could normally point to a distinct 'call', a moment when Yahweh had directed them to a particular task. The experience of Gideon may be taken as typical:

And the angel of the Lord appeared unto him and said unto him, The Lord is with thee, thou mighty man of valour. And Gideon said unto him, oh my Lord, if the Lord be with us why then is all this befallen us? and where be all his miracles which our fathers told us of saying, Did not the Lord bring us up from Egypt? but now the Lord hath forsaken us and delivered us into the hands of the Midianites. And the Lord looked upon him, and said, Go in this thy might and thou shalt save Israel from the hand of the Midianites: have I not sent thee?<sup>1</sup>

Mattathais and Judas diverge from this Jewish revolutionary tradition in this one respect, viz. unlike the Judges they could not point to a divine commission. Mattathais justified his action at Modin by an appeal to reason not revelation. The Maccabean period falls within 'The Four Hundred Silent Years' during which the voice of prophecy was silent. As in an earlier period of Israelite history, there was no "open vision". Mattathais had to sort out the moral problems involved in his act of resistance on his own.

In this paper I have argued in favour of a particular principle as being in accord with the theory of natural law. But I have not presented any moral panacea. Whether one should

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<sup>1</sup> Judges 6 : 12 - 14.

resist government through violent or non-violent means are not questions capable of an easy resolution. The individual may decide that, in the circumstances, violent resistance is the only means open. Such was Mattathais' viewpoint. Mattathais would appear to have been vindicated, as his violent revolution succeeded, whereas the non-violent methods previously employed had failed. If there are situations where violent resistance has succeeded there are also other situations where it has not. In A.D. 70 a revolt broke out in Jerusalem, the instigators of which looked to the Maccabees for their inspiration. This revolt failed, Jerusalem passing into Gentile control, the remnants of which were not obliterated until A.D. 1967. Violent resistance may be both justified and effective in some cases, but this is not so in all cases. The same principle applies to the concept of non-violent resistance. The individual should keep open both alternatives. I would argue, however, that the theory of natural law would dictate a preference for non-violent resistance.

APPENDIX IILLUSTRATIONS OF THE TAO

Reproduced from C. S. Lewis's "Abolition of Man" - see Appendix

The following illustrations of the Natural Law are collected from such sources as come readily to the hand of one who is not a professional historian. The list makes no pretence of completeness. It will be noticed that writers such as Locke and Hooker, who wrote within the Christian tradition, are quoted side by side with the New Testament. This would, of course, be absurd if I were trying to collect independent testimonies to the Tao. But (1) I am not trying to prove its validity by the argument from common consent. Its validity cannot be deduced. For those who do not perceive its rationality, even universal consent could not prove it. (2) The idea of collecting independent testimonies presupposes that 'civilisations' have arisen in the world independently of one another; or even that humanity has had several independent emergences on this planet. The biology and anthropology involved in such an assumption are extremely doubtful. It is by no means certain that there has ever (in the sense required) been more than one civilisation in all history. It is at least arguable that every civilisation we find has been derived from another civilisation and, in the last resort, from a single centre - 'carried' like an infectious disease or like the Apostolical succession.

1. The Law of General Beneficence

(a) Negative

'I have not slain men.' (Ancient Egyptian. From the Confession of the Righteous Soul. 'Book of the Dead'. v. Encyclopedia of Religion and Ethics (= ERE), vol. v. p. 478.)

'Do not murder.' (Ancient Jewish. Exodus xx. 13.)

'Terrify not men or God will terrify thee.' (Ancient Egyptian. Precepts of Ptahhetep. H. R. Hall, Ancient History of Near East, p. 133 n.)

'In Nastrond (= Hell) I saw ... murderers.' (Old Norse. Volospa 38, 39.)

'I have not brought misery upon my fellows. I have not made the beginning of every day laborious in the sight of him who worked for me.' (Ancient Egyptian. Confession of Righteous Soul. ERE v. 478.)

'I have not been grasping.' (Ancient Egyptian. Ibid.)

'Who meditates oppression, his dwelling is overturned.' (Babylonian. Hymn to Samas. ERE v. 445.)

'He who is cruel and calumnious has the character of a cat.' (Hindu. Laws of Manu. Janet, Histoire de la Science Politique, vol. i, p.6).

'Slander not.' (Babylonian. Hymn to Sama. ERE v. 445.)

'Thou shalt not bear false witness against thy neighbour.' (Ancient Jewish. Exodus xx. 16.)

'Utter not a word by which anyone could be wounded.' (Hindu, Janet, p. 7).

'Has he ... driven an honest man from his family? broken up a well cemented clan?' (Babylonian. List of Sins from incantation tablets. ERE v. 446).

'I have not caused hunger. I have not caused weeping.' (Ancient Egyptian. ERE v. 478.)

'Never do to others what you would not like them to do to you'. (Ancient Chinese. Analects of Confucius, trans. A. Waley, xv. 23; cf. xii. 2.)

'Thou shalt not hate thy brother in thy heart.' (Ancient Jewish. Leviticus xix. 17.)

'He whose heart is in the smallest degree set upon goodness will dislike no one.' (Ancient Chinese. Analects, iv.4).

## (b) Positive

'Nature urges that a man should wish human society to exist and should wish to enter it.' (Roman, Cicero, De Officiis, iv. iv.)

'By the fundamental Law of Nature Man (is) to be preserved as much as possible.' (Locke, Treatises of Civil Govt. ii. 3.)

'When the people have multiplied, what next should be done for them? The Master said, Enrich them. Jan Ch'iu said, When one has enriched them, what next should be done for them? The Master said, Instruct them.' (Ancient Chinese. Analects, xiii. 9.)

'Speak kindness ... show good will.' (Babylonian. Hymn to Samaš. ERE. v. 445.)

'Men were brought into existence for the sake of men that they might do one another good'. (Roman. Cicero, De Off. 1. vii.)

'Man is man's delight.' (Old Norse. Hávamál 47.)

'He who is asked for alms should always give.' (Hindu. Janet, i.7.)

'What good man regards any misfortune as no concern of his?' (Roman. Juvenal xv. 140).

(I am a man: nothing human is alien to me.' (Roman. Terence, Heaut. Tim.)

'Love thy neighbour as thyself.' (Ancient Jewish. Leviticus xix. 18.)

'Love the stranger as thyself.' (Ancient Jewish. Ibid. 33, 34.)

'Do to men what you wish men to do to you.' (Christian. Matt. vii. 12.)

## II. The Law of Special Beneficence

'It is upon the trunk that a gentleman works. When that is firmly set up, the Way grows. And surely proper behaviour to parents and elder brothers is the trunk of goodness.' (Ancient Chinese Analects, i. 2.)

'Brothers shall fight and be each others' bane.' (Old Norse. Account of the Evil Age before the World's end, Volospá 45.)

'Has he insulted his elder sister?' (Babylonian. List of Sins ERE v. 446).

'You will see them take care of their kindred (and) the children of their friends ... never reproaching them in the least.' (Redskin. Le Jeune, quoted ERE v. 437.)

Love thy wife studiously. Gladden her heart all thy life long'. (Ancient Egyptian. ERE v. 481).

'Nothing can ever change the claims of kinship for a right thinking man.' (Anglo-Saxon. Beowulf, 2600.)

'Did not Socrates love his own children, though he did so as a free man and as one not forgetting that the gods have the first claim on our friendship?' (Greek. Epictetus, iii. 24.)

'Natural affection is a thing right and according to Nature.' (Greek. Ibid. l. xi.)

'I ought not to be unfeeling like a statue but should fulfil both my natural and artificial relations, as a worshipper, a son, a brother, a father, and a citizen.' (Greek, Ibid. III. ii.)

'This first I redden thee: be blameless to thy kindred. Take no vengeance even though they do thee wrong.' (Old Norse. Sigdrifumal, 22.)

'Is it only the sons of Atreus who love their wives? For every good man, who is right-minded, loves and cherishes his own.' (Greek. Homer, Iliad, ix. 340).

'The union and fellowship of men will be best preserved if each receives from us the more kindness in proportion as he is more closely connected with us.' (Roman. Cicero, De Off. I. xvi.)

'Part of us is claimed by our country, part by our parents, part by our friends.' (Roman. Ibid. I. vii.)

'If a ruler ... compassed the salvation of the whole state, surely you would call him Good? The Master said, It would no longer be a matter of "Good". He would without doubt be a Divine Sage.' (Ancient Chinese. Analects, vi. 28.)

'Has it escaped you that, in the eyes of gods and good men, your native land deserves from you more honour, worship, and reverence than your mother and father and all your ancestors? That you should give a softer answer to its anger than to a father's anger? That if you cannot persuade it to alter its mind you must obey it in all quietness, whether it binds you or beats you or sends you to a war where you may get wounds or death?' (Greek. Plato, Crito, 51 A, B.)

'If any provide not for his own, and specially for those of his own house, he hath denied the faith.' (Christian. I Tim. v. 8.)

'Put them in mind to obey magistrates.' ... 'I exhort that prayers be made for kings and all that are in authority.' (Christian. Tit. iii. 1 and I Tim. ii. 1, 2.)

### III Duties to Parents, Elders, Ancestors

'Your father is an image of the Lord of Creation, your mother an image of the Earth. For him who fails to honour them, every work of piety is in vain. This is the first duty.' (Hindu. Janet, i. 9.)

'Has he despised Father and Mother?' (Babylonian. List of Sins. ERE v. 446).

'I was a staff by my Father's side ... I went in and out at his command.' (Ancient Egyptian. Confession of the Righteous Soul. ERE v. 481).

'Honour thy Father and thy Mother.' (Ancient Jewish. Exodus xx. 12)

'To care for parents.' (Greek. List of duties in Epictetus, III. vii.)

'Children, old men, the poor, and the sick, should be considered as the lords of the atmosphere.' (Hindu. Janet, i. 8.)

'Rise up before the hoary head and honour the old man.' (Ancient Jewish. Lev. xix. 32.)

'I tended the old man. I gave him my staff.' (Ancient Egyptian ERE v. 481.)

'You will see them take care ... of old men.' (Redskin. Le Jeune, quoted ERE v. 437.)

'I have not taken away the oblations of the blessed dead.' (Ancient Egyptian. Confession of the Righteous Soul. ERE v. 478.)

'When proper respect towards the dead is shown at the end and continued after they are far away, the moral force (tê) of a people has reached its highest point.' (Ancient Chinese. Analects, i. 9.)

#### IV Duties to Children and Posterity

'Children, the old, the poor, etc. should be considered as lords of the atmosphere.' (Hindu. Janet, i.8.)

'To marry and to beget children' (Greek. List of duties. Epictetus, III. vii.)

'Can you conceive an Epicurean commonwealth? ... What will happen? Whence is the population to be kept up? Who will educate them? Who will be Director of Adolescents? Who will be Director of Physical Training? What will be taught?' (Greek Ibid.)

'Nature produces a special love of offspring' and 'To live according to Nature is the supreme good.' (Roman. Cicero, De Off. I. iv, and De Legibus, I. xxi.)

'The second of these achievements is no less glorious than the first; for while the first did good on one occasion, the second will continue to benefit the state forever.' (Roman. Cicero, De Off. I. xxii.)

'Great reverence is owed to a child.' (Roman. Juvenal, xiv. 47.)

'The Master said, Respect the young' (Ancient Chinese. Analects, ix. 22.)

'The killing of the women and more especially of the young boys and girls who are to go to make up the future strength of the people, is the saddest part ... and we feel it very sorely.' (Redskin. Account of the Battle of Wounded Knee. ERE v. 432.)

#### V The Law of Justice

##### (a) Sexual Justice

'Has he approached his neighbour's wife?' (Babylonian. List of Sins. ERE v. 446.)

'Thou shalt not commit adultery.' (Ancient Jewish. Exodus xx. 14.)

'I saw in Nástrond (= Hell) ... beguilers of others' wives.' (Old Norse. Volospá 38, 39.)

##### (b) Honesty

'Has he drawn false boundaries?' (Babylonian. List of Sins. ERE v. 446).



'To wrong, to rob, to cause to be rolled.' (Babylonian. Ibid.)

'I have not stolen' (Ancient Egyptian. Confession of Righteous Soul. ERE v. 478.)

'Thou shalt not steal.' (Ancient Jewish. Exodus xx. 15.)

'Choose loss rather than shameful gains.' (Greek. Chilon Fr. 10. Diels.)

'Justice is the settled and permanent intention of rendering to each man his rights.' (Roman. Justinian, Institutions, l.i.).

'If the native made a "find" of any kind (e.g. a honey tree) and marked it, it was thereafter safe for him, as far as his own tribesmen were concerned, no matter how long he left it.' (Australian Aborigines. ERE v. 441.)

'The first point of justice is that none should do any mischief to another unless he has first been attacked by the other's wrongdoing. The second is that a man should treat common property as common property, and private property as his own. There is no such thing as private property by nature, but things have become private either through prior occupation (as when men of old came into empty territory) or by conquest, or law, or agreement, or stipulation, or casting lots.' (Roman. Cicero, De Off. l. vii.)

### (c) Justice in Court, etc.

'Whoso takes no bribe ... well pleasing is this to Samaš.' (Babylonian. ERE v. 445.)

'I have not traduced the slave to him who is set over him.' (Ancient Egyptian. Confession of Righteous Soul. ERE v. 478.)

'Thou shalt not bear false witness against thy neighbour.' (Ancient Jewish. Exodus xx. 16.)

'Regard him whom thou knowest like him whom thou knowest not'. (Ancient Egyptian. ERE v. 482.)

'Do no unrighteousness in judgement. You must not consider the fact that one party is poor nor the fact that the other is a great man.' (Ancient Jewish. Leviticus xix. 15.)

## VI The Law of Good Faith and Veracity

'A sacrifice is obliterated by a lie and the merit of alms by an act of fraud.' (Hindu. Janet, i. 6.)

'Whose mouth, full of lying, avails not before thee: thou burnest their utterance.' (Babylonian. Hymn to Samaš. ERE v. 445.)

'With his mouth was he full of Yea, in his heart full of Nay?' (Babylonian. ERE v. 446.)

'I have not spoken falsehood.' (Ancient Egyptian. Confession of Righteous Soul. ERE v. 478.)

'I sought no trickery, nor swore false oaths.' (Anglo-Saxon. Beowulf, 2738.)

'The Master said, Be of unwavering good faith.' (Ancient Chinese. Analects, viii. 13.)

'In Nastrond (= Hell) I saw the perjurers.' (Old Norse. Volospá 39.)

'Hateful to me as are the gates of Hades is that man who says one thing, and hides another in his heart.' (Greek. Homer. Iliad, ix. 312.)

'The foundation of justice is good faith.' (Roman. Cicero, De Off. I. vii.)

'(The gentleman) must learn to be faithful to his superiors and to keep promises.' (Ancient Chinese. Analects, I. 8.)

'Anything is better than treachery.' (Old Norse. Havamal 124).

### VII The Law of Mercy

'The poor and the sick should be regarded as lords of the atmosphere.' (Hindu. Janet, i. 8.)

'Whoso makes intercession for the weak, well please is this to Samas (Babylonian. ERE v. 445.)

'Has he failed to set a prisoner free?' (Babylonian. List of Sins. ERE v. 446.)

'I have given bread to the hungry, water to the thirsty, clothes to the naked, a ferry boat to the boatless.' (Ancient Egyptian. ERE v. 478.)

'One should never strike a woman; not ever with a flower.' (Hindu. Janet, i. 8.)

'There, Thor, you got disgrace, when you beat women.' (Old Norse. Hárbarthsljóth 38.)

'In the Dalebura tribe a woman, a cripple from birth, was carried about by the tribes-people in turn until her death at the age of sixty-six.' ... 'They never desert the sick.' (Australian Aborigines. ERE v. 443.)

'You will see them take care of ... widows, orphans, and old men, never reproaching them.' (Redskin. ERE v. 439.)

'Nature confesses that she has given to the human race the tenderest hearts, by giving us the power to weep. This is the best part of us.' (Roman. Juvenal, xv. 131.)

'They said that he had been the mildest and gentlest of the kings of the world.' (Anglo-Saxon. Praise of the hero in Beowulf, 3180.)

'When thou cuttest down thine harvest ... and hast forgot a sheaf ... thou shalt not go again to fetch it: it shall be for the stranger, for the fatherless, and for the widow.' (Ancient Jewish. Deut. xxiv. 19.)

### VIII The Law of Magnanimity

#### A.

'There are two kinds of injustice: the first is found in those who do an injury, the second in those who fail to protect another from injury when they can.' (Roman. Cicero, De Off. I. vii.)

'Men always knew that when force and injury was offered they might be defenders of themselves; they knew that howsoever men may seek their own commodity, yet if this were done with injury unto others it was not to be suffered, but by all men and by all good means to be withstood.' (English. Hooker, Laws of Eccl. Polity, I. ix.4.)

'To take no notice of a violent attack is to strengthen the heart of the enemy. Vigour is valiant, but cowardice is vile.' (Ancient Egyptian. The Pharaoh Senusert III. cit H.R. Hall, Ancient History of the Near East, p. 161.)

'They came to the fields of joy, the fresh turf of the Fortunate Woods and the dwellings of the Blessed ... here was the company of those who had suffered wounds fighting for their fatherland.' (Roman. Virgil, Aen. vi. 638-9,660.)

'Courage has got to be harder, heart the stouter, spirit the sterner, as our strength weakens. Here lies our lord, cut to pieces, our best man in the dust. If anyone thinks of leaving this battle, he can howl forever.' (Anglo-Saxon. Maldon, 312.)

'Praise and imitate that man to whom, while life is pleasing, death is not grievous.' (Stoic. Seneca, Ep. liv.)

'The Master said, Love learning and if attacked be ready to die for the Good Way.' (Ancient Chinese. Analects, viii, 13.)

## B.

'Death is to be chosen before slavery and base deeds.' (Roman. Cicero, De Off. I. xxiii.)

'Death is better for every man than life with shame.' (Anglo-Saxon. Beowulf. 2890.)

'Nature and Reason command that nothing uncomely, nothing effeminate, nothing lascivious be done or thought.' (Roman. Cicero, De Off. I. iv.)

'We must not listen to those who advise us "being men to think human thoughts, and being mortal to think mortal thoughts," but must put on immortality as much as is possible and strain every nerve to live according to that best part of us, which, being small in bulk, yet much more in its power and honour surpasses all else.' (Ancient Greek. Aristotle, Eth. Nic. 1177B.)

'The soul then ought to conduct the body, and the spirit of our minds the soul. This is therefore the first Law, whereby the highest power of the mind requireth obedience at the hands of all the rest.' (Hooker, op. cit. I.viii.6.)

'Let him not desire to die, let him not desire to live, let him wait for his time ... let him patiently bear hard words, entirely abstaining from bodily pleasures.' (Ancient Indian. Laws of Manu. ERE ii. 98.)

'He who is unmoved, who has restrained his senses ... is said to be devoted. As a flame in a windless place that flickers not, so is the devoted.' (Ancient Indian. Bhagavad gita. ERE ii.90.)

## C

'Is not the love of Wisdom a practice of death?' (Ancient Greek. Plato, Phaedo, 81A.)

'I know that I hung on the gallows for nine nights, wounded with the spear as a sacrifice to Odin, myself offered to Myself.' (Old Norse. Hávamál, l. 10 in Corpus Poeticum Boreale; stanza 139 in Hildebrand's Lieder der Alteren Edda. 1922.)

'Verily, verily I say to you unless a grain of what falls into the earth and dies, it remains alone, but if it dies it bears much fruit. He who loves his life loses it.' (Christian. John xii. 24, 25.)

APPENDIX IIUNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS:PREAMBLE AND SELECTED ARTICLES

(Reproduced from Keesing's Contemporary Archives)

Preamble: Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world; whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people; whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of the law;

whereas it is essential to promote the development of friendly relations between nations;

whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women, and determined to promote social progress and better standards of life in larger freedom;

whereas Member-States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms;

whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge;

The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member-States themselves and among the peoples of territories under their jurisdiction.

Art. 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood.

Art. 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

Art. 3: The rights set forth in this Declaration apply equally to all inhabitants of trust and non-self-governing territories.

Art. 4: Everyone has the right to life, liberty, and security of person.

Art. 5: No one shall be held in slavery or servitude. Slavery and the slave trade shall be prohibited in all their forms.

Art. 6: No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.

Art. 7: Everyone has the right to recognition everywhere as a person before the law.

Art. 8: All are equal before the law, and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Art. 9: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.

Art. 10: No one shall be subjected to arbitrary arrest, detention, or exile.

Art. 11: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Art. 12: 1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Art. 13: No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Art. 14: 1) Everyone has the right to freedom of movement and residence within the borders of each State.

2) Everyone has the right to leave any country, including his own, and to return to his country.

Art. 15: Everyone has the right to seek and enjoy in other countries asylum from persecution.

2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Art. 17: 1) Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage, and at its dissolution.

3) The family is the natural and fundamental group unit of society, and is entitled to protection by society and the State.

Art. 18: 1) Everyone has the right to own property alone as well as in association with others.

2) No one shall be arbitrarily deprived of his property.

Art. 19: Everyone has the right to freedom of thought, conscience, and religion. This right includes freedom to change his religion or belief, and freedom, either alone or in community with others, and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

Art. 20: Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Art. 21: 1) Everyone has the right to freedom of peaceful assembly and association.

2) No one may be compelled to belong to an association.

Art. 22: 1) Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.

2) Everyone has the right of equal access to public service in his country.

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Notes on sources:

1. I have distinguished between primary and secondary sources. This distinction is largely analytic, as in a work of this nature it is difficult to make any real distinction between the primary and secondary sources.

2. I have assimilated references to articles consulted within the category of secondary sources.

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