

TWO PHILOSOPHICAL
INTERPRETATIONS
OF NATURAL LAW¹

For more than two generations what has come to be known as the “revival of natural law” has been in progress in Europe. Duguit and Hauriou, Geny and del Vecchio, Stammler and Krabbe, and Kohler, to mention only some of the earlier writers, have turned back to elements of the natural law tradition as a way out of the difficulties which positivism created. Most of this work has been done by jurists while philosophers have been concerned with quite different issues, although there are some notable exceptions, like Leonard Nelson, whose philosophical theory of right has been unduly neglected. It is much more recently, however, that thinking in terms of natural law has made substantial headway in English-speaking countries, the language itself having presented an obstacle. The English language does not differentiate between law and right in the same manner as the Continental European languages, each of which has a pair of concepts, such as *droit* and *loi*, *diritto* and *legge*, *Recht* and *Gesetz*, which correspond to the Latin *jus* and *lex*. Thus, *droit*, *diritto* and *Recht* have the pri-

1. Leo Strauss, *Natural Right and History* (Chicago, University of Chicago Press, 1953), and John Wild, *Plato's Modern Enemies and the Theory of Natural Law* (Chicago, University of Chicago Press, 1953). References to these two works are given in the text, indicating the page.

mary meaning of designating the entire body of legal rules comprising a legal system, which in English is one of the meanings of the word "law"; whereas "right" in English is primarily assigned the meaning of what in Continental jurisprudence is referred to as a "subjective right." A further consequence of this divergence is that the term "law" lacks that precision of reference to a specific general rule which *loi* and the corresponding terms possess. Thus while there can be little doubt that a *loi naturelle* (*Naturgesetz*) refers to a regularity in nature, such as the law of gravitation, the term "law of nature" in English may also refer to the *droit naturel*. It is essential to bear this semantic divergence in mind when considering two recent works of a philosophical nature which are concerned with natural law in the juristic and sociologico-political sense. Both books are the work of philosophers and they reflect the difficulty just alluded to by using, the one "law" and the other "right," for essentially the same entity. Nor is it accidental that Strauss, who came from Germany to the United States in the 1930's, should use "right" and "law." Both terms are needed, actually, for rendering the complex of ideas covered by *droit* or *Recht*.²

Wild focuses his attention upon those issues which have been highlighted by a group of writers in England and America who in recent years have been attacking Plato (and Aristotle as well!) as "totalitarian." He refers specifically to Warner Fite, *The Platonic Legend* (New York, Scribner's, 1934), R. H. S. Grossman, *Plato Today* (1937), A. D. Winspear, *The Genesis of Plato's Thought* (New York, Dryden Press, 1940) and K. R. Popper, *The Open Society and Its Enemies* (London, Routledge, 1945), Vol. I. He notes that there are many more articles and reviews in "technical journals" taking similar lines. Wild approves of the fact that these writers consider moral philosophy an "essential strand" of Plato's thought, and that they attempt "to relate his doctrines to the problems now confronting us." But he objects that they, being individualistic, utilitarian, Marxist and positivistic, should feel that since Plato is none of these things, is indeed philosophically opposed to them, he is also politically opposed. "They all agree that Plato, if he were alive today, would take his stand with totalitarianism and dictatorship against the forces of 'liberalism,' 'progress,' and 'democracy.'" And this in spite of the fact that Plato is "bitterly opposed to tyranny." (Implied here is the idea that totalitarianism is identical with tyranny—a more than questionable as-

2. Thus I found it desirable in rendering Hegel's *Philosophie des Rechts* into English to speak of it as a "Philosophy of Right and Law." Cf. my *The Philosophy of Hegel* (1953) for further clarification of this difficult issue.

Review Articles

sumption.) No doubt Wild is right in rejecting the notion that Plato is a "totalitarian." To him "the manifest rationalism of Plato's moral philosophy and his hatred of tyranny under any form . . . would seem to make these charges somewhat questionable." But cannot the same be said of Marx? Is there not always a considerable gulf between the ideas and their realization, as any reader of the *Great Inquisitor* should know? The argument, even if sound, is not sufficient. Wild undertakes to extend it by exploring the related issue of natural law, that is to say, of innate, ethical "tendencies." But before exploring its elaboration, it may be well to consider the position of Leo Strauss.

The disquisition of Leo Strauss is essentially directed against "historicism." This is not exactly a new argument, for since Troeltsch and Max Weber wrote—to the latter Strauss devotes some forty pages of trenchant analysis—there has been an increasing volume of criticism, not only among philosophers, but even more among historians and sociologists. Usually, however, the argument runs in terms of contrasting the Western rationalism of the seventeenth and eighteenth centuries with the "German" historicism of the nineteenth and twentieth. Strauss, on the other hand, would seek the roots of the troubles of our day as much in this rationalism as in the historicism which followed it. Modern natural right doctrines are to him a perversion of the classic natural right as we find it in Plato, Aristotle, and Cicero, and it is this perversion which is at the center of our troubles.

Strauss argues with subtlety and learning, but his train of reasoning at times becomes turgid; this is in part due to the author's habit of not sharply indicating whether he himself or the author he is discussing is speaking. He also proceeds with sovereign contempt for almost all previous work, to which he refers only obliquely, without giving references, so that it is anyone's guess whom he has in mind. Finally, he has a habit of giving anywhere from three to a dozen references in one footnote to, e.g., the writings of Aristotle intended to substantiate a statement in the text, without indicating which one of these references is meant to bear the burden of proof. Since the several references often carry divergent implications, guesswork must decide which ones to consider; when this involves several authors such a method of reference borders on the absurd. One wonders what the purpose is: surely Strauss does not need to convince the reader that he has read these works *in extenso*? This, taken together with his failure to refer to and evaluate the work of others who have preceded him in the field, seems rather regrettable in a study of such value.

Strauss goes back beyond the writings of Plato and Aristotle, however, to discover "The Origin of the Idea of Natural Right" (Chapter III). He stresses the fact that "the idea of natural right must be unknown as long as the idea of nature is unknown" (p. 81). To this must be added, of course, the further observation, not clearly faced, that any idea of natural law or right must change with changing conceptions of nature. But such a historical approach to the idea of natural law would run afoul of Strauss' major purpose which is to establish an immutable natural law. "The philosophic quest for the first things presupposes not merely that there are first things but that the first things are always and that things which are always or are imperishable are more truly beings than the things which are not always." This presumably is Strauss' view and it constitutes the underlying major premise of much that follows. It is linked to his key proposition that "it can be said that the discovery of nature is identical with the actualization of a human possibility which, at least according to its own interpretation, is trans-historical, trans-social, trans-moral, and trans-religious" (p. 89). It is in reference to these terms that Strauss sees the fundamental distinction arising between "natures" and "conventions." "The distinction between nature and convention, between *physis* and *nomos*, is therefore coeval with the discovery of nature and hence with philosophy" (p. 90). Philosophy, arising as it does in conjunction with the discovery of "nature," affects man's attitude toward political matters in general and toward laws in particular. It challenges the authority of the ancestral tradition, and recognizes instead "that nature is *the* authority," or rather, "the standard" (p. 92). But Strauss almost immediately corrects himself, for he would contrast reason and authority. He puts forward the very common but highly questionable proposition that "obedience without reasoning why" corresponds to "authority proper" and adds the extravagant proposition that "philosophy stands and falls by the distinction between reason and authority." It would seem to me to be much more nearly true to say that philosophy stands and falls with its capacity to replace authority without reason by authority with reason! Thus the philosophy of St. Thomas Aquinas is precisely characterized, whereas the proposition put forward by Strauss would eliminate Aquinas from the rank of philosophers. (It is perhaps no accident that Strauss makes only passing, though highly appreciative, mention of Thomistic doctrine; he wonders, however, "whether the natural law as Thomas Aquinas understands it is natural law strictly speaking, i.e., a law knowable to the unassisted human mind." Thomas Aquinas' own unequivocal statements on

the subject do not permit one to have such doubts.) This misunderstanding of authority is of crucial importance. As will become apparent later, it undermines his argument concerning Locke and the moderns.

Strauss then proceeds to give an extended analysis of “conventionalism.” He details the familiar line of reasoning of the Sophists more or less in Platonic terms, but shows that “the nerve of the conventionalist argument is this: right is conventional because right belongs essentially to the city and the city is conventional” (p. 108).³ He further argues that “conventionalism presupposes that all men understand by justice fundamentally the same thing: to be just means not to hurt others, or it means to help others, or to be concerned with the common good.” But the necessary specifications required to make each of these terms applicable to concrete situations are conventional. After an interesting excursion into the related thought of the Epicureans and more especially Lucretius,⁴ Strauss turns to the Socratic-Platonic doctrine of natural right which he considers the “classic natural right” (Chapter IV). To the extent that Socrates can be said to be the founder of political philosophy, he is also “the originator of the whole tradition of natural right teachings” (p. 120). In the light of a conventional review of Socrates’ teachings, in which the criticism of hedonism finds its appropriate central place, Strauss stresses that “wants” rather than “pleasures” are the primary factors of human nature. “The order of the wants of a being points back to the natural constitution, to the What, of the being concerned; it is that constitution which determines the order, the hierarchy of the various wants . . .” (p. 127). “It is the hierarchic order of man’s natural constitution which supplies the basis for natural right as the classics understood it.” Hence “the good life simply is the life in which the requirements of man’s natural inclinations are fulfilled in the proper order to the highest possible degree. . . .” In résumé, “the good life is the perfection of man’s nature.” The natural law then consists in “the rules circumscribing the general character of the good life” (*ibid.*). This is the life according to nature.

It follows from this line of reasoning that “restraint is as natural to man as is freedom.” But such restraint and such freedom result from the actual living together of men in limited societies, the *poleis* of ancient Greece

3. This proposition would be clearer if the term “law” rather than “right” were used. For “right,” in the common English connotation, does not “essentially belong to the city” whereas law might.

4. This excursion culminates in the proposition that “the good life, according to nature, is the retired life of the philosopher who lives at the fringes of civil society. The life devoted to civil society and to the service of others is not the life according to nature” (p. 113).

providing an ideal example. "Political freedom is not a gift of heaven; it becomes actual only through the efforts of many generations" (p. 131). Hence the chance of such freedom being universalized is small indeed. Only where forcible restraint is meaningfully related to the hierarchy of wants can happiness be achieved, since "the core of happiness consists in human excellence." Such a doctrine clearly implies a rejection of egalitarianism. "Equal rights for all appeared to the classics as the most unjust" (p. 135). This holds as true for Cicero as it does for Plato and Aristotle.⁵ Hence, any regime (*politeia*) is essentially an ordering of human beings; it is trans-legal, the factual distribution of power within the community. "No law, and hence no constitution, can be the fundamental political fact, because all laws depend on human beings," Strauss writes in paraphrasing his understanding of the classic "natural right" doctrine. It here becomes clear why he recoiled from speaking of natural *law*; law is a secondary phenomenon in his view and in his interpretation of the classic view. But he fails to meet the powerful arguments to the contrary that have been brought forward by many students of the legal philosophy of the ancients. His assertion that the classics in dealing with different regimes "implied that the paramount social phenomenon . . . is the regime" as just defined in terms of an actual distribution of power is more than doubtful. And it is not made more probable by his bold assertion that "we are in the habit of speaking of 'civilization,' where the classics spoke of 'regimes.'" For the *politeias* of Plato and Aristotle, their cyclical succession and their intrinsic value, are incomprehensible except in terms of an antecedent conception of law and justice in terms of which the classification proceeds.

Having said this, I hasten to add that Strauss' insistence upon the feasibility of the best regime is entirely justified; it may be extremely difficult to realize and highly improbable, but it is realizable "under the most favorable conditions." Should these conditions not exist, the best regime would cease to be feasible; it would also cease to be "legitimate." For the legitimacy of a regime is related to its adequacy; only if a regime fits the conditions is it just. "A very imperfect regime may supply the only just solution to the problem of a given community; but since such a regime cannot be effectively directed toward man's full perfection, it can never be noble." For "everything noble is just, but not everything just is noble." The purist interpretation of Strauss is highlighted in this superimposition

5. Strauss' rejection of the view of the Carlires and of Sabine (not cited!) that Cicero is an egalitarian and hence closer to Kant than to Plato and Aristotle is decidedly sound and supported by the numerous references he offers.

of the noble above the just as a higher value. This seems to me a basic misreading of both Plato and Aristotle. Strauss himself qualifies it by introducing the idea of consent. "The political problem consists in reconciling the requirement for wisdom with the requirement for consent" (p. 141). Only in classic natural right, wisdom takes precedence over consent (as contrasted with the modern egalitarian natural right).

In an allegedly general summary formula, Strauss asserts that "the simply best regime would be the absolute rule of the wise; the practically best regime is the rule, under law, of gentlemen, or the mixed regime" (p. 143). But this statement is true for Plato neither when he wrote the *Republic* nor when he wrote *The Laws* (though more nearly so), while Aristotle would reject the first part of the statement. The statement also contradicts what Strauss said earlier about the nature of the *politeia* (regime), namely, that it is more fundamental than any laws. For how can it be at the same time more fundamental than and under the law?

In short, Strauss' approach to "Socratic-Platonic-Stoic natural right teaching" starts from a basic contradiction. In trying to develop a corresponding notion of justice, Strauss gets bogged down in further contradictions. Various types of justice are discussed, the "citizen-morality," and the justice oriented toward the ultimate end of man which is knowledge of the eternal truth, so that justice becomes identical with "the conditions of the philosophic life" (p. 151). But the Ciceronian notions are still different, and in Aristotle finally, according to Strauss, natural right becomes "concrete decisions." We also are told that justice *resides* in concrete decisions rather than general rules. But is it the same thing to "become" something and to "reside" in it? Finally, as Strauss notes, Aristotle suggests that natural right is "changeable." To resolve the problem posited by this proposition, Strauss reverts back to a notion that "the just is the common good." But what is "the common good"?⁶

Wild is in substantial agreement with the main line of Strauss' reasoning. For him, too, Plato and Aristotle are the founders of the true doctrine of natural law. But Wild's approach to the problem is reinforced (from his point of view) by the metaphysics of realism. This doctrine is expounded in the third part of his study which is devoted to elucidating realism in rela-

6. There are some shrewd remarks interlarded here about the "extreme situation," pp. 160 ff., which offer Strauss an opportunity to draw a distinction between Aristotle and Machiavelli, who denies natural right because *inter alia* "he seems to derive no small enjoyment from contemplating these deviations" from the right. But these observations are scarcely adequate, considering Strauss' major concern with historicism which harks back to Machiavelli and Thucydides who are concerned with another kind of "law of nature."

tion to ethics. "Tendency" is the ontological ground of ethics, that is to say, right action is action in accordance with natural tendencies. Value is grounded in the facts of existence which only empirical inquiry will disclose. The Aristotelian and Thomist heritage which is expressed in these formulations is evident and readily acknowledged. But this is not the place to explore the problem it presents. Let it be noted in passing that this "realistic" interpretation appears much more dubious when applied to Plato, though Wild made a valiant effort to re-appraise Plato in such terms in his *Plato's Theory of Man—An Introduction to the Realistic Philosophy of Culture* (Cambridge, Mass., Harvard University Press, 1946).

Wild, in any case, stresses five basic doctrines which are essentially doctrines regarding nature (*physis*) as characteristic of such a realistic view of natural law: (1) the world is an order of divergent tendencies which on the whole support one another; (2) each recurrent tendency is determined by a specific structure or form; (3) this structure determines certain basic existential tendencies that are also common to the species; (4) such tendencies must be activated according to a certain normal pattern of law; (5) good and evil are existential categories; it is good for an entity to exist in a condition of active realization (pp. 132-33 and 134 are combined here; Wild gives still other versions on pp. 138, 158 and elsewhere; the divergencies in these "definitions" are a bit puzzling). These doctrines are considered as five related meanings of the term "nature" which they embody. They have three ethical corollaries, namely (1) moral or natural laws are universal; (2) norms founded on nature exist; (3) the realization of human nature is the ultimate good for men (p. 134). These corollaries, as well as the ontological propositions upon which they rest, this "realistic" view of nature and of the law of nature, have, Wild believes, been characteristic of natural law teaching throughout the ages; Wild more specifically argues that they are contained in the Stoic doctrines, in Thomas Aquinas, in Hooker, Grotius and Thomas Paine. But he roundly asserts that "the early thinkers of the Reformation were led to ignore it, or even to deny it, by their anti-intellectualism . . ." (p. 175) an untenable view not only for Luther who fully accepted medieval natural law doctrine, but more especially for Melancthon who developed the Thomist position to fit it into Protestant thought, thus paving the way for Hooker as the latter was only too ready to acknowledge.⁷

7. See for all this my *Inevitable Peace* (1949), Ch. IV, where this problem is more fully discussed. Generally speaking, the history of natural law is more complex than Wild seems to recognize; there is no indication that he is familiar with the literature in the field, e.g., A. P. d'Entreves' admirable *Natural Law*—see below.

We agree with him in general, though, that the strand he identifies as “realist” is the dominant one and that Hobbes and Locke are “deviations.” Strauss who calls theirs the “modern natural right” doctrine is essentially saying the same thing; neither faces the problems presented by such thinkers as Pufendorf who combine Grotius’ and Hobbes’ doctrine into a pattern which becomes dominant in the eighteenth century. There is a corresponding misinterpretation in Wild of Kant’s views on natural law, which flows from his general notions concerning Kant as “subjectivist” and “dualist,”—familiar and all-too-common notions, alas. An examination of Kant’s *Critique of the Power of Judgment* and of his *Theory of Law* (*Rechtslehre*) will show him to be in substantial agreement with Aristotle and the other expounders of natural law as characterized by Wild; whether this is “realist” is another question. The extraordinary, stimulating, and in some ways strained interpretation of Plato which identifies the Platonic ideas with nature could, *ceteris paribus*, be applied to Kant as well. The same holds true of the three ethical corollaries of the ontological propositions. For what but these is the “moral law within” that seemed to Kant to be as much cause for “Wonder” as the “starred heaven above”? Yet according to Wild, this would make Kant a “moral realist.” In advancing this criticism, I wish to emphasize my basic accord with Wild, rather than underline our differences, since I consider his erroneous interpretation of Kant as rather incidental. But in what did Hobbes, Kant’s main butt in the field of moral philosophy, and Locke who according to both Wild and Strauss is his somewhat qualified follower, diverge from this great tradition of natural law? Wild does not examine Hobbes with reference to his three ethical theses, but with regard to the five ontological principles, rightly finding him wanting in regard to all of them. Natural chaos, and not natural order, at least in the state of nature, is the condition of man. The individual is not marked by an essential nature determining necessary tendencies; blind efficient force is the only cause he recognizes. This last proposition is true enough, but Hobbes nevertheless very definitely expounded a view of man which involved an essential nature determining necessary tendencies. This nature is epitomized by the desire for peace and the fear of violent death from which he derives his rules of prudent conduct (which he calls “laws of nature”). Wild also erroneously maintains that Hobbes does not recognize “natural” sanctions for any violations of these “laws.” The opposite is the true Hobbesian doctrine; indeed, he asks that the members of the commonwealth depend upon such natural sanctions for punishing the “unjust sovereign.” The real issue is not the

absence of such sanctions, but their interpretation. In keeping with Hobbes' hedonistic and materialist doctrine, they are seen in terms of pleasure and pain, rather than in terms of a failure of human self-fulfillment, characteristic of the spiritual tradition of natural law. This point is well made by Wild himself in relation to his fifth theorem.

Strauss, who is known for his penetrating monograph on Hobbes,⁸ does not, of course, commit similar errors. This is in part due to his interpreting Plato and his followers not as realists, but as idealists, for it was against this presumed idealism that Hobbes' argument was directed. The one fundamental mistake of traditional political (natural law) philosophy was, according to Hobbes, that of assuming that man is by nature a political or social animal. Strauss states that by rejecting this assumption, Hobbes joins the Epicurean tradition (p. 169). But from the apolitical view that man is not a social animal, he turns to a political purpose. By instilling the spirit of political idealism into the Epicurean tradition, he became the founder of "political hedonism." Strauss feels that this doctrine of political hedonism has revolutionized human life in an unprecedented fashion. To buttress his interpretation, he turns to Hobbes' philosophy of nature; it is of the type classically represented by Democritean physics. But Hobbes learned from Plato whom he considered the best of the ancient philosophers that mathematics is the mother of all natural science. Hobbes' natural philosophy is both mathematical and materialist-mechanistic. By synthesizing political idealism with this view of nature, Hobbes was inevitably led to the notion of a dogmatic philosophy based on extreme skepticism. Certain or scientific knowledge of things is possible only when we have ourselves made them, constructed them, caused them,—indeed it must be "conscious construction." Only such construction puts them "into our power."

Strauss notes that "power" is the key term in Hobbes' philosophy, that in this concept Hobbes condensed the quintessence of his thought. And since power is centrally a political term, political thought moves into the center of philosophy. Yet it was only in Hobbes' work that power becomes "for the first time *eo nomine* a central theme" of political philosophy. But beyond politics, Hobbes' whole philosophy is one of "power." We have criticized Strauss himself for injecting this emphasis on power into Plato and Aristotle by making the paramount social phenomenon in their philosophy the "actual distribution of power," that is, the "regime." If

8. *The Political Philosophy of Thomas Hobbes—Its Basis and Its Genesis* (Oxford, Clarendon, 1936).

Review Articles

Strauss were right, the difference between Hobbes and the classics would be much less pronounced than it is.⁹ Strauss summarizes and extends his well-known critique of the Hobbesian position, of which he writes, paradoxically, that in both his theoretical and his practical philosophy, Hobbes “teaches that reason is impotent and that it is omnipotent, or that reason is omnipotent, because it is impotent.” Subtly, and rightly, Strauss argues that “reason has no cosmic support” in Hobbes’ view. Yet precisely that fact frees it to “construct” its universe, and thus to accomplish the “conquest” of nature. Likewise, reason is impotent against passion, but it can become omnipotent, if it harnesses that passion. And this basis of political power is not a free construct. For “we understand not merely what we make but also what makes our makings” (p. 201). The knowledge of the nature of man is hence, in Hobbes’ view, not hypothetical, as is all natural knowledge, but true insight: dogmatic. Any ultimate critique of Hobbes must, as a consequence, turn upon whether his insight is true; but with the existential unsoundness and the inherent contradictions of Hobbes’ position regarding man Strauss does not further concern himself. Perhaps he considers them too obvious.

Locke is seen, by Strauss as by Wild, as essentially a Hobbesian, though more cautious and circumspect and ever alert to cite the more generally approved authorities, like the “judicious” Hooker.¹⁰ If classic natural law is accepted as a norm, we are forced to conclude that “Locke cannot have recognized any law of nature in the proper sense of the term” (p. 220). This is sharply at variance with the accepted interpretation, but Strauss feels that it resolves many of the contradictions, illogical flaws and inconsistencies with which Locke is usually charged and which could not have escaped the notice of so acute a mind. The *Treatises on Government* are essentially political propaganda, not a philosophical argument; and they are based upon the Hobbesian “lead.” Hence Locke’s deviation from Hooker is profound. This is especially manifest in the doctrine of a “state of nature” which is at variance with the tradition of natural law (as it is with that of the Bible). Human beings are needed to apply the sanctions

9. For the importance of this concept of power in interpreting the age of the Baroque, see my *The Age of the Baroque—1610–1660* (1952). Here also the elucidation of the power-impotence paradox.

10. Strauss offers an amusing excursus on “caution” as “noble fear.” Quoting Locke’s *Reasonableness of Christianity* in a number of passages, he is able to show that Locke thought even Jesus to have practiced such “caution” as “to keep himself out of the reach of any accusation.” Cautious speech is legitimate, in Locke’s view, “if unqualified frankness would hinder a noble work . . . or expose one to persecution or endanger the public peace,” he writes (p. 209).

which are required for the enforcement of such laws of nature as prevail in the state of nature; for they are not “implanted in man” or “writ in the hearts of mankind” or “imprinted or stamped upon our minds.” Only the basic right of nature, that of self-preservation, is always and universally observed. It is “the strongest desire God planted in men, and wrought into the very principles of their nature” (p. 227). Reason is the faculty of discovering the means for implementing this basic right; reason therefore wills peace. So far, so good. But when Strauss finally recognizes that Locke sharply deviates from Hobbes in showing that this principle of self-preservation requires limited, constitutional government, he at once introduces the really vital issue. For how can such a limitation be made to work if the Hobbesian conception of man and the consequent principle of sovereignty are accepted?

The image of man which Locke operates is sharply at variance with that of Hobbes; man is no longer that apolitical, asocial being which Strauss rightly had stressed as the basis of Hobbes’ peculiar construction, but a sociable being enjoying community with other men. Consequently, once the vital issue of Locke’s “image of man” is taken account of,¹¹ the divergence between him and Hobbes becomes very striking. This is elaborated by Strauss himself in his comments on property which he, with other modern commentators, would place in the center of Locke’s political teaching (pp. 234 ff.). Following McPherson, Larkin, and others, he points out that this right is a derivative one, related to the common good. “Acquisitiveness is not merely compatible with general plenty, but the cause of it.” And labor is consequently important as a source of wealth. “The public good of the people is identical with plenty,” peace and safety are indispensable conditions of this plenty. Hence the end of civil society is the preservation of property. All this is true enough; but Strauss, like some others, neglects to mention the very broad definition of property which Locke gives. Even so, we can agree with Strauss that Locke’s teaching on property, and therewith his whole political philosophy, are revolutionary. That “hopeful self-reliance and creativity become henceforth the marks of human nobility” (p. 248) is also very true. Even if the metaphysical basis of such a view is weak, it would seem preferable to Plato’s conservative “obeying and imitating nature.” Locke certainly is a hedonist;

11. Strauss himself, in an admirable passage, stresses that “every society regards a specific human type as authoritative” (p. 137), and he further recognized that this type may be the common man. “In order to be truly authoritative, the human beings who embody the admired habits or attitudes must have the decisive say within the community . . .” (*ibid.*).

Review Articles

pleasure and pain are his yardsticks; but surely this is no news to any student of political thought or philosophy. If “all knowledge depends on labor and is labor,” as Strauss rightly claims for Locke, then labor indeed takes the place of the art which imitates nature and becomes its master; for labor does not accept but modifies nature; it is, “in the words of Hegel, a negative attitude” (p. 250). This is the strongest root of the equalitarianism which distinguishes modern natural right, in Hobbes, in Locke and beyond. Should we argue with them on that account? No. We object to it in Hobbes, because his image of man foreshadows the mass man of contemporary totalitarianism; we approve of it in Locke, because his image of man provides the starting point for the common man—citizen of contemporary constitutional democracies.

But what of the issue of historicism which seemed the original focal point of Strauss’ approach to natural right? What Strauss has to say on “Natural Right and the Historical Approach” and on “Natural Right and the Distinction between Facts and Values” seems to us largely very sound. He defines historicism in broad terms. Thus he writes: “according to our contemporaries all philosophizing essentially belongs to a ‘historical world,’ ‘culture,’ ‘civilization,’ ‘*Weltanschauung*,’ that is, to what Plato called the cave. We shall call this view ‘historicism.’”¹² As such it is a species of relativism; but historicism ought not to be confused with skepticism. For it radically and rather uncritically asserts that the source of all true knowledge is “the experience of history.” Strauss does not enter upon a detailed analysis of this curious concept, with its intuitional overtones. It might have been more illuminating than his attempt to make central the belief in an “absolute moment in history.” I do not agree with Strauss’ aside about Hegel in this connection, but what “Hegel meant” is and probably will always remain a moot point, especially what he meant by the absolute truth as he expounded it. More especially I question whether Hegel “assumed that his own time was the end of history and hence the absolute moment.” There are several very important passages which show him conscious of a future which he as a philosopher cannot analyze, because he cannot predict the workings of the world spirit. For after all Hegel was a philosopher, not a historian, and his emphatic insistence upon this fact is of vital importance. But this does not really affect what Strauss has to say on historicism and its limitations. His

12. P. 12. By including *Weltanschauung* in this list, Strauss overshot the mark, for such a *Weltanschauung* is a philosophy, and therefore that part of the statement is merely a harmless tautology, whereas it might have been well to include “race” and “class” as other vital aspects of historicism which have had unfortunate practical consequences in our time.

characterization of “radical historicism” (p. 26 f.) is masterful in its subtlety, but defies brief summation; historicism is relativist in insisting that all thought, including its own, is historically conditioned. It rests upon the claim that “history—history divorced from all dubious or metaphysical assumptions—became the highest authority.”

The two philosophers whom Strauss considers decisive in precipitating the “crisis of modern natural right” are Rousseau and Burke. He deviates from recent Rousseau scholarship which has tended to stress the rational in Rousseau (Derathe) and stresses rather Rousseau’s concern with passion and freedom. Yet Rousseau was “a somewhat unwilling witness” to the superiority of the rational tradition in natural law teaching (as contrasted with Hobbes and Locke). Still, Rousseau, according to Strauss, “refused to admit that man is by nature a social being.” He supports this questionable proposition by the highly confusing statement that the root of society is found in human passions “as distinguished from the fundamental sociability of man.” Surely, this is a distinction without a difference! Strauss’ analysis culminates in a similar distinction: “The ultimate of this attempt (of Rousseau) was the substitution of freedom for virtue or the view that it is not virtue which makes man free but freedom which makes man virtuous.” Surely this is a misreading of Rousseau’s doctrine which in fact makes freedom an essential condition of virtue,—a view which he shares with a large number of philosophers throughout the ages and from whom he is in no sense distinctive. We cannot here consider the remainder of Strauss’ analysis of Rousseau; it is vitiated by the basic error we have noted. Nor can we do justice to his treatment of Burke. Suffice it to observe that on the whole his analysis stays within the bounds of the familiar notions about Burke’s relations to Hegel as well as to the historical school. Strauss does not elucidate how both can be true, considering the basic ontological conflict between Hegel and the historical school. But he does recognize that Burke did not in fact accept the position of what later became historicism. “Burke was still too deeply imbued with the spirit of ‘sound antiquity’ to allow the concern with individuality to overpower the concern with virtue” (p. 323). True enough. But then, why close a discussion of natural right and history with a discussion of Burke? Genuine historicism denies the significance of universal norms,¹³ “the historical school destroyed the only solid basis of all efforts to transcend the actual.” “Historicism thrives on the fact that it inconsistently exempts itself from its

13. Hegel did not; and recent careful work by men like Stoll and Zwiggmeyer has shown that it is not true of Savigny, either.

Review Articles

own verdict about all human thought." "The historicist thesis is self-contradictory or absurd." Hence, historicism ends in nihilism.

I must confess at feeling slightly ill at ease with this verdict because of the term "nihilism," which is rapidly becoming the most fashionable term of philosophical abuse. Originally employed by Dostoyevsky to characterize certain revolutionary fanatics, and by Nietzsche for related purposes, it is now considered suitable to characterize whatever one does not like or disagrees with radically. One can go a long way in working with "historical" materials without necessarily becoming an "historicist," let alone a nihilist. The careful "historical" elucidation of what men in the past have actually thought and said (a task to which Strauss himself is so genuinely devoted) does not exclude the maintenance of an interest in the standard of truth as an ultimate yardstick in metaphysical, ontological terms. It seems that we are at the present time beset with "historical" judgments on the part of dogmatists who assert that various positions sharply antagonistic in their conception are "identical," because they happen to have some single judgment or two in common. From here it is an easy step to the proposition that because there exists the particular identity, one thinker "leads" to the other. Thus Hegel and Hobbes and Machiavelli and Saint Augustine and the Gnostics and Plato and Aristotle and eventually anything you please is shown to "lead" to totalitarianism, and hence proven to be bad, *q.e.d.* The errors of all these thinkers are great and patent to some or to most of us, but I admit to a certain longing for the day when the witches' sabbath of such identifications yields to a saner, more philosophical (and more historical) assessment of past thought. For even if one agrees to a large extent with an author about his basic position, and I think I do to some extent at least with both Strauss and Wild, I would like to think that the basic "wonder" which is the alpha and omega of all philosophy might lead to a greater interest in what thinkers in the past were right about than in what they failed to do. Hegel, surely a dogmatist if ever there was one, once put it nicely in his notes: "When a man has finally reached the point where he does not think he knows it better than others, that is when he has become indifferent to what they have done badly and he is interested only in what they have done right, then peace and affirmation have come to him." There is not enough of this peace and affirmation in these treatments of natural law and right. Could it be that neither author has ever climbed down far enough into the cave of existential reality to struggle with the problems of injustice in the concrete context of law and politics as history shows it to the diligent observer?