Introduction

A society, whether it be a stamp club or the political society which we term a state, can be seen to depend upon some structure of norms accepted by the generality of its members. There is of course a great difference between the rules of a club and the laws of a state in terms of significance, generality, volume and complexity of administration, but in each case the same basic function is served. Such a formal normative structure is not necessary for two broad reasons: firstly, to define what forms of conduct are prescribed or proscribed for the members of the society and, secondly, to set out a convenient framework for the conduct of day-to-day transactions and thus to avoid needless disruption occasioned by avoidable disputes and to resolve such disputes as do arise by peaceable means. The administration of such norms calls also for a set of rules governing the practical opposition of the system. Within any given society there are of course many other normative influences than those categorised as 'legal'. They include religious and ethical teaching, moral perceptions, convention, personal relationships and such apparently 'trivial' influences as fashion. From all of these, however, law is distinguished in a developed society by formal enunciation, generality of application and mandatory quality. Laws may in fact be described as mandatory human ordinances representing the most formal type of social regulation and prescribing at least those minimum standards of conduct and necessary formal procedures upon which the continuance of social order is taken to depend. Of these qualities the most immediately notable is that law is mandatory. Legal prescription does not offer a choice of compliance or non-compliance; by legal statement the pattern of conduct described is rendered in some manner a matter of 'obligation' for those subject to the system concerned.

This idea of the 'obligation' to obey laws is one of the most fundamental and controversial issues in the theory of law. The question in its most basic form is simply this — why do people obey 'laws' and why should they? Upon this issue there has been much debate but little apparent consensus. The central issue of debate is the effect of the quality, in particular the moral quality, of laws upon their claim to obedience, or, to put it another way,
Introduction

the relation of morality to validity in the assessment of laws. Are laws simply orders coercively imposed by the state and therefore claiming obedience ultimately by virtue of the application or threat of application of force? Alternatively do laws have a moral dimension which imposes some form of obligation to obey upon its subjects irrespective of the application or potential application of coercive measures? In the latter case the further problem arises of the effect upon the status of a purported 'law' of the absence or defectiveness of such a moral component.

It is generally said that there are two schools of thought upon these issues which broadly represent the two propositions outlined above: these are the 'Positivist' and 'Naturalist' schools of jurisprudence. In fact this simple demarcation line is much too simple but as a conventional wisdom must be accepted as a starting point. The Positivist school is the more recent in origin and dates from the turn of the eighteenth and nineteenth centuries. It has remained the dominant form of legal theory, at least in Anglo-American jurisprudence, through the post-war years, although the modern position of theory has more recently become much more fluid again. The identifying feature of a positivist legal theory is a concentration upon the formal identification of law as it is rather than upon law as it morally, or otherwise, ought to be. Thus upon positivist perceptions, once a means has been found of identifying formally binding rules, the requirements of legal theory are satisfied. The moral quality of laws, while obviously a matter of importance in its own right, is then seen as having no relevance to their status as 'laws'. This is what the founding father of legal positivism, Jeremy Bentham, termed 'expository jurisprudence'.

The analytical positivism of Bentham and his disciple John Austin is at first sight an attractively simple form of legal theory. Law is presented as essentially the command of a political sovereign, the ultimate political superior in a given society, backed by the threat of a sanction in the event of non-compliance. On this view it is the threatened sanction which is the cause of obedience. Bentham himself was prepared to treat the concept of sanction as embracing the promise of reward as well as the threat of punishment. Austin, however, took the simpler line of treating sanction as the threat of an unpleasant consequence.

Such an explanation may account fairly effectively for the operation of the criminal law so far as those of criminal inclination are concerned; it is much less satisfactory, however, as an explanation of the working of civil law. Much of civil law is not in reality essentially coercive but rather facilitative. The law of contract is designed to enable people to carry out their business in a convenient and known format, not to 'punish' them for breaches of contract. In another instance the law of succession and testamentation is designed to facilitate the transfer of property upon death and so far as possible to obviate damaging post-mortem disputes among the potential heirs. It is true that the law of tort is in many ways the civil equivalent of criminal law but even here the basic aim is to provide a forum for the peaceful resolution of major private disputes which might otherwise be settled in more socially dangerous ways. These major aspects of law lend themselves much more readily to a simple coercive model of law. Austin sought an explanation in a sanction of nullity, meaning, for example, that wills are made in accordance with the Wills Act, 1837, and succeeding legislation because the testator 'fears' that otherwise his or her wishes will not be implemented. This seems a strangely contorted view of what are in reality a set of instructions for the transaction of a piece of formal business. If the will does prove to be ineffective that is the inevitable product of incompetence upon the part of the testator or his solicitor and is surely no more to be seen as 'punishment' than the collapse of a badly assembled piece of self-assembly furniture. Viewed thus the purely coercive model of law becomes problematic. There is also the question of the derivation of sovereign power. Bentham explained sovereign power in terms of a general 'habit of obedience', which has a certain evident relevance. However, the insistence upon law as a simple command necessarily involves a concept of authority which cannot readily be explained in terms of the mere application of power.

H. L. A. Hart undertook a reworking of the 'command' theory of law taking account of these problems. He replaced the simple command model with a double classification of legal rules as 'primary', or duty imposing, and 'secondary', or power conferring. The latter classification takes account much more satisfactorily of the phenomenon of constitutional law and thus permits a more subtle analysis of sovereignty. Here Hart distinguishes between 'obligation' and 'being obliged' — the one being a concept of duty and the other merely the practical effect of coercion, law importing the former. At the end of the day, however, the aim of positivist theories is the identification of the formally valid law, which properly describes obligation in the sense of a formally imposed duty. Positivism does not and has no need to consider the alternative aspect of legal obligation — that is to say the moral
claim of the positive law to be obeyed irrespective of formal definition or processes. Hart properly attributes the sense of legal obligation to the recognition of ‘authority’ rather than the mere fear of force but the ultimate claim of authority is a matter falling somewhat outside the scope of positivist enquiry since it is a claim based upon moral as well as formal or political assumptions.

The attempt to incorporate moral factors into the definition of ‘law’ is the hallmark of the other broad school of legal theory, that collectively termed ‘Naturalism’. This is a very much older and more diverse body of theory than is the relatively more recent body of positivist theory. The principal concern of naturalist theory is the moral quality of law and the status of a formally enacted or otherwise made law and the effect of moral defect upon its status. This branch of theory concerns a different aspect of ‘obligation’ — the moral claim to obedience. The naturalist enquiry is not an easy one to pursue since two apparently intractable difficulties immediately manifest themselves. The first is the external criterion upon which the moral authority of law is to be based, the second is the practical implication of any such criterion for the claim of laws to obedience. The nature of this type of theory is often misrepresented as a crude claim that a morally defective ‘law’ is not effective, literally, ‘lex iniusta non est lex’. Since all too many examples of morally dubious laws which have indeed been enforced may be brought to mind upon even the scanty of historical reviews, any such proposition would be patently absurd.

The actual form of naturalist concern was expressed more usefully by the great Dominican thinker St Thomas Aquinas in the form: ‘les tyrannica, cum non sit secundum rationem, non est simpliciter lex, sed magis es quaedam perversitas legis’, which is to say that a tyrannical law which is contrary to reason is not absolutely and straightforwardly law but a perversion of law. This implies not that ‘bad’ laws cannot be made and imposed but that such laws are defective in being wrongly made and are thus limited or even entirely lacking in their claim to be obeyed as a matter of conscience. This is in fact a concern with the moral nature of the power to make laws rather than with the formal identification of state prescription. The two basic issues call for separate discussion.

The moral criterion of identification

A moral assessment of law must be made upon some exterior standard. Various possibilities have been and are advanced. All involve, however, some pattern of expectation to which the reality of legal provision can be compared. Crudely these may be categorised as the absolute and the deduced. The one is derived from a perception of an externally created moral order such as the will of God, the other from an evaluation of human nature. These categories are of course no more than descriptive and are certainly not mutually exclusive in that many theories have elements of both. For example, there is no reason why expectation should not be derived from observation of human nature while attributing that nature to the Divine will. In such a case one may call the method deductive but the rationale absolute. On the other hand there are many supposedly objective theories which actually include a considerable element of doctrinal choice, whether or not the choice is perceived or admitted. In fact, the distinction is one of order rather than type. In either case a superior order is argued and set up as a criterion of moral assessment by which the quality of positive law may be considered. It is in the perception of the origin of the higher order, and in the effect of derivation from it, that the distinction emerges.

The perceived relationship between law and morality is a very ancient one but the common assumption of a very simplified perception in early times is somewhat mistaken. Law develops from custom but it is a controversial question whether or not custom is law or merely pre-law which, as suggested by Hart, awaits the addition of an administrative and rule-making ‘superstructure’ to become ‘true’ law. Whatever the status of customary rules as ‘law’, such rules are closely related to moral ideas. They are in effect enshrined traditions of ‘proper’ social behaviour. Customary rules are further commonly associated with tribal or ‘national’ ancestral spirits and by extension therefrom with divine command. The resulting quasi-‘sanctity’ of established habit is a common feature of most societies. Problems of a jurisprudential nature arise when law-making institutions are developed, as opposed to mere acceptance of inherited static rules. The problem is to transfer the apparent ‘authority’ of customary rules to newly made rules which are obviously not the work of gods or ancestral spirits, nor indeed sanctified by long traditional usage. The obvious solution to this difficulty is to relate the power to make laws de novo to the same higher power from which customary rules were seen as deriving their authority. Thus law-making comes to be seen as a power granted upon terms through some mechanism which
transcends the machinations of human politics. This in turn means that new rules are related to a conceptual scheme which sets limits to the proper scope of their operation. This is not of course to say that a powerful ruler could not step beyond such bounds, merely that he would encounter difficulty in doing so to an increasing extent as he moved beyond the conceptual limits. It has been established that most 'primitive' rulers were very powerful within a known tribal tradition but would have found it virtually impossible to effect major changes in the tradition. Examples may be found in societies that were very far from 'primitive' also. An extreme instance of this may be seen in the case of the Egyptian Pharaoh Amenophis IV. This ruler, who was seen not merely as a servant of the gods but as a god in his own right, attempted to overthrow the established, and chaotic, polytheism of ancient Egypt and to replace it with a monotheistic solar cult of his own devising based upon the worship of the sun disc, Aten. As a symbol of the new order the Pharaoh changed his name to Akhetaten. Even Pharaonic power could not achieve such a change, however, and upon the death of Akhetaten the new order collapsed. His successor but one, the youthful Tutankhaten, changed his name to Tutankhamun to symbolise the restoration of the traditional polytheistic religion headed by the priesthood of Amun-Ra at Thebes.

The codes of laws promulgated by ancient near-eastern civilisations clearly indicate the derivation of law-making power from a higher authority. One of the best known of such codes, that of King Hammurabi of Babylon, is headed by a relief carving of the king standing before the god Shamesh whose approval of the king's work is clearly implied. It would be possible to view this development as a cynical manipulation of religious belief by powerful rulers but cynicism would be both misplaced and rather naive here: it was in essence a recognition of the moral nature of law and government. This type of perception lies at the root of most naturalist legal theory and amounts to the idea of governmental power as a power which is not unlimited but held upon terms that it should be exercised for the good of the community. The many and very apparent divergences of opinion derive from the varying forms attributed to the perceived resulting 'trust'.

To judge from the evidence of the code Hammurabi, the Babylonian idea was of a divine commission to the king to do justice. The actual modes of the king's doing so were perceived in a very secular and surprisingly 'modern' way. The code was really a secular code presented in the form of royal edicts or judgements dealing with particular problems and recorded both as specific decisions and as exemplars. However, it would appear from the curses called down upon anyone who might seek to set aside the code or to traduce its principles that to step outside the divine commission to do justice might have been seen as some form of denial of the basic role of kingship. It must of course be admitted that attempts to protect inscription from defacement by ritual curses upon prospective vandals was a common enough practice in the ancient world, perhaps a parallel with modern attempts to cow defacers of notices with threats of legal proceedings and roughly as effective. It may even be possible, while admitting the dangers of reading too much into such ancient records, to discern in the ancient Babylonian conception of law a naturalist and religion-based theory of the authority of law linked with a quasi-positivist view of the actual making of laws.

Other ancient legal theories took a variety of views upon the nature and detail of the relationship of the higher order to human prescription. In ancient Judaic theory the 'law' was seen overtly as the will of God enshrined in the scriptures as a divinely ordained way of life for the faithful. This code, which is much more detailed than the Code Hammurabi, is found in the Pentateuch (the first five books of the Old Testament). However, if the Torah was not to become a frozen Holy Law, some means of taking account of new situations not originally contemplated had to be found — in other words the familiar problem of conferring authority upon new prescription. The solution was found in a process of interpretative accretion through the unwritten tradition of the Halakah. The divine authority of the Torah was extended to the Halakah by the elegant device of an assumption that an accepted interpretation was a 'discovery' of something necessarily inherent in the original prescription and thus sharing in its authority. This of course is a very rigorous form of naturalism in which the higher authorisation is identified with the specific details of prescription as well as with the general purpose of prescription.

Judaic naturalism contributed one of the two major strands to the development of Western naturalist legal theory. The other, and contrasting, strand of development was derived from classical Hellenistic thought. The Hellenistic tradition was based upon rational enquiry into the nature of man and his social life. Whether based, as in the case of Plato, upon a rational but abstract idealism, or, as in the case of Aristotle, upon consideration of human nature as
such, the basic perception was similar in outlook. The ideas resulting were presented as the product of enquiries into the nature of things with the aim of setting up a rational standard for consideration and criticism rather than a doctrine. The role, if any, of divine intervention was seen as a separate and very much vaguer issue.

These widely variant approaches were fused eventually in the development of the Christian tradition of legal theory. The early church took a Judaic absolutist view with the further point that law was necessitated only by sin and would, in the eventual abandonment of sin through redemption by Divine grace, in due course cease to have a role to play. A law which was itself sinful or an inducement to sin was naturally seen as an abomination. This simple view was gradually modified over the centuries, especially after the Christianisation of the Roman Empire under Constantine the Great (AD 306–37). St Augustine of Hippo believed that law was both the penalty and the remedy of sin and that the ideal life according to the will of God would have no place for it. However, in the fallen state of man law was ‘good’ in so far as it curbed sin according to the Divine will and ‘bad’ in so far as it did otherwise. In that this view posits an ideal prescription to which law is very much a ‘second best’, it is really a form of Christian Platonism. St Thomas Aquinas (1225–77) carried the process of synthesis further, having the benefit of the rediscovery of the works of Aristotle since the time of St Augustine. For Aquinas, as for Aristotle, law was the natural product of the life of man as a social animal and not a temporary aberration. Aquinas considered that the ‘good’ positive law would accord with the Lex Aeterna, the will of God, as known to man through the Lex Divina (revelation through scripture) or the Lex Naturalis (perception of the Divine will made manifest in the natural order through the operation of human reason). However, he thought also that law had no necessary connection with sin — it was its coercive nature rather than its prescriptive function which was the product of the Fall. This view is maintained to the present day, the work of the Thomist writer John C. H. Wu being a very clear example.

The Age of Reason naturally sought its inspiration in less spiritual forms and favoured Social Contractarianism which appeared in the seventeenth century and developed over the course of the eighteenth century. The chosen method of this form of theory was to enquire into the basic social needs which law evolved to satisfy. The model for law is then one which is perceived as most adequately fulfilling these requirements. The ‘contract’ itself was, at least for the later theorists of this school, a rhetorical device rather than an assertion of a historical reality. It was in fact the direct ancestor of John Rawls’s ‘original position’ with the initial contractors behind their ‘veil of ignorance’. On this view the moral suasion of law is seen to depend upon the extent to which it fulfils its designated social purpose.

Within the historical tradition of Western naturalism there is thus a wide range of opinion upon the source of the moral authority of law although a closer investigation shows much less conflict in reality than is prima facie apparent.

Outside the European tradition, legal theory has also tended to take a naturalist form, again with a range of types of approach. Two examples from opposite ends of the spectrum sufficiently illustrate the point. Islamic legal theory is the product of one of the most legalistic of societies but also one which most directly identifies its theory and practice of law with religious doctrine. In its fundamentalist form, Islamic legal theory argues that mankind, and most especially the faithful, is already governed by a direct divine prescription superior to and superseding positive law in the form of the Sha’ria, the Holy Law of Islam. The Sha’ria is seen as having been given directly by Allah to the prophet Mahomet as an immutable law for the faithful. In fact and inevitably the Sha’ria, like the Torah, is associated with many accretions of tradition in the form of Haddith. The Hadditha are recognised traditions which have themselves become authoritative. There are in fact considerable divergences of interpretation and disputes as to application, which are resolved partly by internal mutual toleration.

Upon the orthodox Islamic view the Sha’ria is not the ideal model for positive law — it is itself the only true law. After some years of secular dilution in many parts of the Islamic world the impact of modern Islamic fundamentalism has led to a massive resurgence in the influence of Sha’riat law in many jurisdictions.

At the opposite extreme stood classical Chinese legal theory. This theory was the product of the union of two sharply conflicting philosophies, Legalism and Confucianism. The legalists believed that man is inherently inclined to vice and must therefore be coerced into proper conduct by the rigorous application of minutely detailed, positive laws. The Confucians in contrast believed that man is basically inclined towards virtue and will follow a virtuous example when one is set before him. The legalists triumphed initially under the first Imperial dynasty, the Chin, but
their overthrow by Liu Pang and the foundation of the Han dynasty led to the establishment of Confucianism as the state ideology of Imperial China. The result was that the role of law was severely limited to what we would call the criminal sphere. Civil disputes were made a matter for non-official (but nevertheless clearly understood) procedures dependent upon convention and social pressure. Within its defined arena the law was highly legalist in tone and seen as a means of coercing into the appearance of virtue those who were not otherwise inclined to it. Virtue itself was seen as residing in a universal natural order which prescribed the proper life of man as well as natural phenomena in general. This natural order was seen as founded upon the dictates of Heaven (Tien), but the Confucian sages considered that the nature of the powers of Heaven were unknown and that speculation upon the point was therefore idle. Confucian theory therefore depended upon a certain perception of human nature which was recognised as having a higher origin along with the rest of the natural universe, the nature of the originator being unclear, however.

Naturalist strains may also be discerned in realms of theory where they would not at first sight be anticipated. Marxists would not willingly accept the label of naturalism since Marxist theory is conceived as pre-eminently scientific and objective as an exposition of the processes of social development through the medium of ‘class struggle’. However, the Marxist view of law does have some distinctively naturalist features. In the classical Marxist exposition law is seen as an instrument of class repression used by a ruling class to maintain its economic dominance and especially associated with the ‘bourgeois’ phase of development, that is to say with the capitalist economy. The end of social development through class struggle is seen as occurring with the ‘proletarian revolution’ after which the process of successive overthrow of dominant classes ceases for lack of further repressed economic groupings. This ultimate revolution is said to be followed by a re-educative period of ‘dictatorship of the proletariat’ which is to usher in the era of genuine communism. In the communist society the bourgeois legal order is seen as having withered away to be replaced by a communal ‘ordering of things’. However, during the ‘dictatorship of the proletariat’ positive law would remain with the twin function of protecting the interim socialist state against ‘counter-revolutionary’ elements and supplying a mechanism of ideological re-education. Lenin himself took a very positivist, almost Benthamite, view of positive law and regarded it as a strictly temporary and regrettable phenomenon, as did the leading Russian theorist of the day, E. B. Pashukanis. Subsequently, however, in the era of Vyshinsky the doctrine of ‘socialist legality’ developed, in which the making and application of positive law is subjected to ideological considerations thereby producing a ‘socialist’ law free from ‘bourgeois’ taint. The earlier view which disdains law has something vaguely in common with Platonic theory and the later view clearly subjects positive law-making to an alternative prescription, albeit in this instance a man-made alternative. This is not of course conventional naturalism but the affinities with naturalism appear upon study to be much closer than would otherwise be expected prima facie.

The effect of the moral criterion

Having made a decision as to what moral criterion of assessment is to be applied in the consideration of the quality of positive law, the naturalist must next ask what is to be the effect of application of the criterion. In particular, what is the status of the positive enactment which falls short of the moral standard set? Few, if any, naturalist theories fall into the fatuity of claiming that an inquisitorious enactment is devoid of effect. Sadly, simple observation of world events suffices to disprove any such idea. The range of possible opinion is none the less broad. At one extreme it might be argued that a morally ‘bad’ law has no claim to be called a true ‘law’ being rather the coercive demand of a tyrant without moral claim to obedience. At the other extreme it might be argued that an assessment of moral defect in a law is a useful tool of criticism, and an argument for appropriate change, but does not in itself have any effect upon the enactment or its status. Whichever side is leaned towards, there is mingled with the first question the problem of social stability and the issue of what ‘price’ in bad law ought properly to be paid for its continuance.

It is commonly assumed that religion-based theories incline to the former view and rational theories to the latter. In fact few theories reach either extreme and the expectation that many would involve a misunderstanding of the nature of the enquiry being made. The error commonly made is to seek for a moral effect upon the way a law actually ‘works’, that is, has effect. On this basis of course no law is directly invalidated by moral defectiveness, as John Austin correctly asserted, believing himself thereby to have
refuted naturalism. As the positivists assert, laws are made formally and abrogated formally whether their content be moral, immoral or merely amoral. What is in question from the naturalist viewpoint is not the formal status of ‘laws’ from the positivist position but the extent to which laws have a claim to obedience operating upon the conscience of their subjects in the absence of immediate coercion. In short the question is the authority of a law and not the extent to which it can successfully be imposed through naked coercion. Much can be done which should not be, which is not to say that such things should be accepted or encouraged.

It is not enough to say, however, that a law which does not meet the selected criterion lacks moral suasion; some guide to propriety of action — whether mere argument or active resistance — is called for together with some provision for the making of the determination in the first place.

In the first place a certain, though limited, degree of bad law is preferable to the anarchy which a frivolous disregard for law would bring about. The great issue is how much and how ‘bad’ the level of tolerability is — in short that point at which morality and good conscience dictate that positive prescription cannot be followed — notwithstanding issues of social stability. The comfortable assumption of those of us reared in a well meaning legal order that such a point is practically inconceivable is unfortunately a dangerous misconception. The present century discloses all too many instances in which men and women have been faced with exactly that dilemma and have chosen the path of conscientious disobedience. Many of them died for their beliefs as martyrs in concentration camps, some survived to pose their questions anew. Issues of such drama are spared to most but such remains the end of the road of denial of the relevance of morality in the consideration of law-making.

Again a range of types of approach is available. The simplest option is to regard actual or potential immorality as a political rather than a jurisprudential fact and to await its effects upon that level. The mainstream of classical Hellenistic legal theory was upon those lines. Plato, in The Last Days of Socrates, argued, or rather imputed the argument to Socrates, that it is the duty of a good citizen to argue for changes to bad law but, if his fellow citizens reject his advice, then he should abide by their decision or move to another state. This was of course more practical advice in the era of small Greek city-states than in the modern world. The view is that laws should be moral and that their failure to be so is ground for criticism and change but not a denial of any element of ‘law’ quality.

The detail of the Christian view of the matter has shifted over the centuries in matters of detail but the fundamental conception of the transcendence of the will of God over positive ordinance has not. The view of all theorists who considered the matter up to and including St Thomas Aquinas was that a law defying the will of God would be an abomination. St Augustine denied such an ordinance the status of ‘law’, comparing it with the tyrannical demands of a brigand or a pirate which might of course secure compliance but which had no power to command the Christian conscience. St Thomas Aquinas also denied immoral or ungodly moral authority but referred to them as laws which were spoilt. His essential point was that the power to make law is granted by God for the benefit of mankind in accordance with His will; abuse of that power for other purposes is an evil which can only be imposed through coercion since it has no inherent authority. St Thomas recognised the dangers in a purely subjective and random selection of ‘good’ laws by the individual and sought systematic assessment. This was readily available in medieval Europe in the form of the centralised power of the Papacy which could and did bring considerable pressure to bear upon secular governments. In theory the ultimate sanction lay in the secular powers of the Holy Roman Emperor but that was more theory than fact in practice. In modern times, indeed since the late sixteenth century, that approach has hardly been a viable option although doctrinal pronouncement remains far from without influence in many countries. Despite the lack of direct effect the moral position of the Churches can be effective even though now, as in a sense perhaps always, a particular crisis must be resolved by the person facing it and not by an institution.

Legal theory cannot supply a dogmatic answer to such particular questions of conscience but it can provide a framework of reference against which such issues may be judged. It is true that law in general has a claim to the obedience of its subjects in that it represents the basic formal structure of the society in which they live. However, the law and the makers of laws do not anywhere have an unlimited power to demand whatever they will. The dividing line between what may properly be demanded and what may not is the boundary drawn between the rule of law and tyranny.

Even in the most virtuous of societies not all laws are ‘good’ and even in the most morally reprehensible not all are ‘bad’. The
Introduction

distinction between 'good' and 'bad' laws and the proper reaction to the latter are difficult issues, as the historical multiplicity of answers given clearly demonstrates. The fact that the answers may be obscure does not rob the question of importance, however. There are in fact many common strands of thoughts to be discerned in the various naturalist theories, especially once some of them have been extracted from their archaic historical settings. The aim of the present study is to present some of the more important ideas and to seek in them some general naturalist principles of value to the modern study of law in a world which has no less need to understand the moral nature and proper limitations of law-making than any previous age.

Notes

2. Positive law is that which is formally enacted or made by human institutions of state as binding prescription within a particular society, in distinction from, for example, the law of God, the laws of Nature or scientific laws.