

NATURAL LAW THEORY

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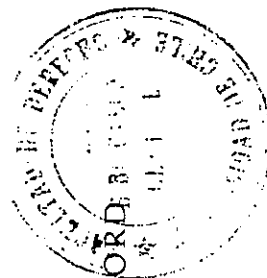
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49. Ibid. 42-3.
50. Williams, *Ethics and the Limits of Philosophy*, 155.
51. Pincoffs, *Quandries and Virtues*, 76-7.
52. Ibid. 105.
53. Ibid. 6.
54. Ibid. 44.
55. Ibid. 6.
56. Fuller, *The Morality of Law*, 11. Fuller conducted a protracted debate with H.L.A. Hart on the subject of natural law. Hart, of course, conceded the idea that there is a 'minimum content of natural law', and that it consists of certain generalizations about the human condition—conditions of vulnerability—which can be recognized without proffering 'grandiose' claims about human ends. H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1961), 187-93. Their debate over the intrinsic versus extrinsic value of human goods notwithstanding, Fuller and Hart were more in agreement than disagreement over what natural law theory should produce: namely, a short list of basic goods that positive law must bear in mind if the system of justice is to have any point.
57. *S.Th.* I, q. 60, a. 5.

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Truth, Natural Law, and Ethical Theory

JEFFREY STOUT

Human beings, being less than perfect in knowledge and virtue, construct imperfect moral codes. The beliefs their codes embody, though imposed by the powerful or accepted by the majority, are all too often untrue. We therefore honour women and men who, in the name of moral truth, have risked their lives in disobedience. Unfortunately, much of what they say in their own defence is hard to believe.

Antigone, in the Sophoclean tragedy that bears her name, defended her defiance of the mortal Creon by invoking the 'unwritten and unshakable' laws of the gods. Speaking of the decree that her brother be left unburied, she said: 'It wasn't Zeus, not in the least, who made this proclamation—not to me. Nor did that Justice, dwelling with the gods beneath the earth, ordain such laws for men.'¹ Thomas Jefferson, declaring independence from British tyranny, appealed to the 'laws of nature and of nature's God'. The God in question was Deism's. The laws, which he held to be self-evident, were largely Locke's. Martin Luther King, Jr., writing as a Baptist preacher from a gaol in Birmingham, Alabama, claimed that an 'unjust law is no law at all' and defined an unjust law as 'a human law that is not rooted in eternal and natural law'. His authorities for this doctrine were Augustine and Aquinas, but the content of the moral law he envisioned derived from the personalism he learned while earning his doctorate at the Boston University School of Theology: 'Any law that uplifts human personality is just. Any law that degrades human personality is unjust.'²

The theologies of Antigone, Jefferson, and King could hardly be further apart: pagan polytheism, Enlightenment Deism, and trinitarian Christianity. When such people claim that there is a law higher and better than the artificial constructions of human society, they differ drastically over the source and substance of that law. They cannot all be right, and they might all be wrong. Is

there any point in speaking of such a law once the dubious metaphysical trappings are stripped away? Is the idea of a higher law worth explicating and preserving? Is it wise to construct an ethical theory around it, as a long succession of natural law theorists have done?

Do not expect definitive answers to these questions from this chapter. Expect something more modest—a collection of doubts that keep me from becoming a theorist of natural law, doubts that true believers might wish to contemplate or address. I will begin by examining a few explications of the concept of a higher law and assessing their metaphysical costs. I have reservations about all of them except the least costly, which treats the higher law as an imaginative projection, but readers need not share these reservations to share my interest in determining what the costs are. I will then offer two sets of reasons for suspecting that natural law theory, as commonly understood, may not be a good thing to pursue. The first set has to do with the quest for system, the second with the doctrine of realism as natural lawyers have typically construed it.

Aquinas' conception of higher law can serve as a point of comparison. He held that promulgation is essential to law, that there is (literally) no such thing as a law not promulgated by someone.³ This implies that a higher law, if there is one, has a promulgator as its source. That promulgator cannot be merely human—not if the law in question is higher and better than all codes promulgated by the likes of us. The promulgator is God, the law he promulgates eternal.⁴ The natural law, which participates in the eternal law, is something that can be known by human beings naturally.⁵ The higher law, in both of these senses, is implicated in a beautiful but complicated metaphysical scheme. Assume a biblical divine promulgator, plus various bits of metaphysics that Aquinas borrowed from Greek and Latin writers, and you can have the Thomistic higher law; otherwise, not.

Thomism remains one prominent form of natural law theory. Other forms of natural law theory influential in the modern period but still dependent on the idea of a divine lawgiver include those of John Calvin, Thomas Hooker, John Locke, and Samuel Pufendorf. Yet it is easy to see why some modern theorists have found the metaphysical costs of this idea exorbitant.

ant. Ours is a context of religious diversity, marked at some times by religious warfare and at others by prudent avoidance of religious controversy. In a setting like this, where rational argument over theological questions has long since broken down, an ethical theory will have limited appeal and utility if it argues from theological premises. How, then, can one make sense of a higher law, if not by defining it in reference to a divine promulgator? In either of two ways: by finding a surrogate for God as promulgator of the higher law or by detaching the concept of law from that of promulgation.

The first way is to grant that promulgation is essential to law and then set out in search of a suitably defined promulgator. The trouble is that the promulgator must possess an authority capable of overriding any particular legal or moral code devised by human beings—otherwise the law it promulgates will not be a higher law in the relevant sense. But it is not immediately clear how any promulgator can possess such authority without being defined theologically, without being divine. Enlightenment philosophers made several attempts to resolve the paradox by raising Reason to the status of quasi-divinity. The most influential of those attempts in our day is Kant's. The higher law, he argued, derives from our own self-legislating capacity as rational agents. It is none the less able to override any code that might conflict with it because pure practical reason possesses an authority that no ordinary code, constructed by sensuous human beings, can have. Though ultimately affirmed as divine in the eyes of pure rational faith, this law can be defined for philosophical purposes without help from theological premises.

The result of Kant's work was a marvellous, if rather forced, intellectual achievement, and one whose difficulties are well known. While he was indebted to a heritage of natural law ideas, it would be misleading to describe him as a natural law theorist. Kant departed from natural law tradition by locating the authority of the higher law in an autonomous human capacity, not in an objective natural order. The doctrine of the *ordo quem ratio non facit* goes by the boards. According to Kant, we do not discover the higher law, we give it to ourselves.⁶

Something like the doctrine of the *ordo quem ratio non facit* does survive in modernity, however, and not only in Catholic thought. It is, for example, a major theme in Cambridge Platonism, Deism,

and the Scottish Enlightenment.⁷ The order of nature, though it may have been created by a divine being, is said to be governed by laws that human beings can discover through rational enquiry unaided by revelation or theological assumptions. In its fully secularized form, this idea involves jettisoning the assumption that promulgation is essential to law. The laws of nature, whether promulgated by someone or not, are to be defined simply as the deep structure of the natural order that reason aims to discover. If they are ultimately to be construed as the outcome of a divinity's creative work, that will have to emerge as the conclusion of an argument. It cannot be assumed in advance.

In early modern Europe the reasons for disconnecting laws of nature from divine decrees had as much to do with natural philosophy as with moral philosophy. The relevant developments in natural philosophy are summarized by Bas C. van Fraassen in a passage worth quoting at length:

The *Drang nach Autonomie* of physics, even as developed by such theological thinkers as Descartes, Newton, and Leibniz, needed an intermediate link between God's decree and nature. Aquinas had needed such a link to explain proximate causation, and found it in the Aristotelian substantial form (individual natures). For the seventeenth century another link was needed, one that could impose a global constraint on the world process [and thus integrate physics and astronomy]. In general terms this link was provided by the idea that nature has its inner necessities, which are not mere facts, but constrain all mere facts into a unified whole. The theological analogy and dying metaphor of law provided the language in which the idea could be couched.

This distinction between laws and mere facts suited philosophical reflection on science especially well, because science had rediscovered the axiomatic ideal of theoretical form. All science was to be developed *more geometrico*, with each proposition about fleeting or replicable circumstances to be deduced as an instance of basic principles.⁸

The new scientific concept of a law of nature was connected with the concepts of axiom and global constraint, necessity and universality. The axiomatic ideal gave laws of nature a life of their own, independent of theology. The same ideal holds out hope for a conception of higher law suited to a secular moral philosophy. I want to construct such a conception, keeping metaphysical assumptions to a minimum, and then to determine

what additional assumptions would be needed to make it serve the purposes of a natural law theory of ethics.

First consider some explications of the scientific concept, then some ethical analogues. By the time we reach the nineteenth century, laws of nature have shed the theological shadow they had even one or two centuries earlier. John Stuart Mill's *System of Logic* identified laws of nature with the 'fewest and simplest assumptions, which being granted, the whole existing order of nature would result'.⁹ In our century F.P. Ramsey once defined scientific laws as 'consequences of those propositions which we should take as axioms if we knew everything and organized it as simply as possible in a deductive system'.¹⁰ Notice how these definitions avoid the reference to actual divine decree by going counterfactual. The laws of nature are that from which the whole existing order of nature *would* result, if creation proceeded according to the fewest and simplest axioms. The laws of nature are what you *would* know, if you were omniscient and if you organized your empirical knowledge in accordance with the axiomatic ideal.

The most recent descendant of the definitions offered by Mill and Ramsey is the one David Lewis put forward in 1973. I will use it as a paradigmatic account of lawhood because I share the view, recently defended by van Fraassen, that it is the least metaphysical and most promising definition of lawhood currently under discussion in the philosophy of science.¹¹ It does not take a counterfactual form, and it sets out to resolve some problems left unresolved by Mill and Ramsey. Lewis writes:

Whatever we may or may not ever come to know, there exist (as abstract objects) innumerable true deductive systems: deductively closed, axiomatizable sets of true sentences. Of these true deductive systems, some can be axiomatized more *simply* than others. Also, some of them have more *strength*, or *information/content*, than others. The virtues of simplicity and strength tend to conflict. Simplicity without strength can be had from pure logic, strength without simplicity from (the deductive closure of) an almanac. Some deductive systems, of course, are neither simple nor strong. What we value in a deductive system is a properly balanced combination of simplicity and strength—as much of both as truth and our way of balancing will permit.¹²

An ideal deductive system achieves a best possible combination of simplicity and strength—if not the one and only best

combination, then one of the combinations tied for first place in the ranking of all such systems. (Mill and Ramsey had not allowed for the possibility that there might not be a uniquely best theory among all the true ones.) The notion of an ideal deductive system allows Lewis to propose this definition: 'a contingent generalization is a *law of nature* if and only if it appears as a theorem (or axiom) in each of the true deductive systems that achieves a best combination of simplicity and strength.'¹³

It is not hard to sketch a conception of lawhood for ethics along the same lines. Grant, for the purposes of argument, that there are moral truths. Assume that all the moral truths can be organized into deductive systems and that these, like Lewis's systems of empirical truths, achieve varying degrees of simplicity and strength. Now we can define the *moral law* as precisely those generalizations appearing as theorems or axioms in each of the best moral systems. The *natural law* would be that part of the moral law we human beings can discover unassisted by divine revelation. Here we seem to have the rudiments of a secularized natural law theory of ethics.

To employ the notions I have just defined, you need not be a theist. If you are a theist, you might wish to add that God is the author of the moral law. You might go on to describe the moral law as promulgated providentially or as an ordinance of divine reason for the common good. But you will still be able to spell out what you mean by the rudimentary concepts of your theory without resorting to theology. Lawhood has been defined not in terms of someone's decree, nor even in terms of what one would decree or know if one were like God, but rather in terms of concepts like truth, deductive system, axiom, strength, and simplicity.

If you did make the theological additions, you would of course be taking the moral law closer to what Aquinas calls the eternal law. Even so, the two notions will not be identical. To see why, consider what is involved when Lewis, in an aside, invites us to imagine a *Concise Encyclopedia of Unified Science*, written according to God's 'standards of truthfulness and our standards of simplicity and strength'.¹⁴ A published version of the moral law would be like Lewis's imaginary *Encyclopedia*. God's standards of truthfulness would prevail in that he, being omniscient, would be in a position to edit out all traces of falsehood. But our

standards of simplicity and strength, vague as they are, would also constrain the resulting system. Because these standards tend to conflict, it is likely that our need for reducing complexity to manageable levels will lead to significant sacrifices in strength. In contrast, there seems to be no such concession to human standards in Aquinas' concept of the eternal law.

The Thomistic eternal law satisfies God's standards of truthfulness, but what standards of simplicity and strength does it satisfy? In a word, God's. Aquinas would not presume to know what such standards are, but he does at various points seem to assume that the eternal law is maximally strong. No moral truth falls outside it. It forbids all the sins there could ever be, including those secreted away in the human heart. It encompasses all the moral truths and none of the moral falsehoods. Is the eternal law also maximally simple? Assuming that God is omniscient, there is no need for simplicity in this system. An omniscient being would know every detail of an infinitely long almanac of moral truth. If the eternal law is simpler than that, the simplicity must come without loss of strength. If God prizes simplicity for its own sake, then the eternal law may tentatively be defined in terms of generalizations appearing as axioms or theorems in each of the simplest of the maximally strong deductive systems of moral truth. How simple that might be we have no way of knowing. God only knows, if anybody does.

We have seen that it is possible to define the moral law non-theologically. What do we get if we strip the theology from the Thomistic concept of eternal law? We get something like the tentative definition just given of the eternal law minus the implication that the standards to be satisfied are God's. This should be no problem, provided that the notion of moral truth does not require theological gloss. But the non-theological concept of eternal law remains distinct from the moral law as I have defined it, for the following reason: if a system is the simplest of the strongest systems of its kind, it is not necessarily a system that achieves a best combination of simplicity and strength for systems of that kind.

Suppose a logic professor has given you several deductive systems of moral truths and the assignment of judging some of them ideal in the two senses just distinguished. The method for finding the simplest of the strongest systems is to begin by

isolating the strongest and then to select the simplest of those. The method for finding a best combination of simplicity and strength is to begin by isolating systems that are both simple and strong in high degree and then to select the ones that strike an ideal balance overall. It is possible but not necessary that the two methods would yield the same result. Given sufficiently various systems to pick from, the second method is likely to pick out systems that are simpler and weaker than the first.

I have now done enough to show how one could go about eliminating theological connotations from traditional concepts of higher law, but the value and metaphysical cost of these secularized versions of the concepts will remain unclear until we specify their interpretation more fully. I will attend mainly to one of these concepts, the moral law, on the assumption that it would be easy to infer conclusions about the other two concepts from conclusions we reach about this one. How, then, should our secularized concept of the moral law be interpreted?

It must be admitted at the outset that the moral law is at least as indeterminate as our standards of strength, simplicity, and balance are vague.¹⁵ Because those standards are quite vague, the resulting indeterminacy of the moral law may be too great for the purposes or tastes of some natural lawyers. I do not know how to reduce it substantially without resorting to drastic metaphysical remedies, but then I have no theoretical purpose that requires the moral law to be determinate. Nor am I concerned by the question of exactly whose standards are being invoked as 'ours'. If standards of strength, simplicity, and balance (as applied to moral systems) vary from group to group, I am happy to allow the meaning of the expression 'moral law' to vary accordingly for anyone who adopts my definition. The important thing, for my purposes, is for me to clarify what I mean by it. The standards relevant to that concern are mine.

My explication refers to systems of moral truths without saying what sort of thing a moral truth is. Lewis's definition of scientific law refers to axiomatizable sets of true sentences, presumably sentences of whatever kinds one finds in empirical science. Sentences in what language? van Fraassen asks. The question is apt here as well. A system formulated in one language might be relatively simple as compared with the same system translated into some other language.¹⁶ It is a familiar fact of life

for translators that a rendering in one language conveys somewhat different information (less or more or both) than a rendering in the language one is translating. This implies that translation can affect a system's strength. And the problem may be even more serious than that, for there are occasions when initial attempts at translating certain sentences go so poorly (when, for example, the loss of information is virtually total) that the translator's work will involve inventing new locutions, thus complicating the language in which the translation is cast. It is not clear, therefore, how we could know which systems of truths possess a best combination of strength and simplicity unless we first settle on a language in which the competition among systems will be run. Selection of a language for the competition seems bound to determine (or bias) the result.

Lewis responds to these difficulties by requiring that the competition among empirical systems be run in a 'correct' language, by which he means a language the basic predicates of which have as their extensions only 'natural classes'. Natural classes are marked by 'real', as opposed to 'arbitrary', distinctions.¹⁷ Suddenly, Lewis's account takes a sharp turn into a patch of fog. Thomists will find this talk of natural classes and real distinctions familiar and comforting, for these are two of the metaphysical weapons Thomists have long wielded in the battle with nominalists. A correct moral language, by Thomistic lights, would be one in which the basic ethical expressions correspond to the *real* moral species. Anyone suspicious of such talk is bound to demur. It is clear how to expand on such talk theologically: the real moral species will be the ones given unique metaphysical status by the Creator; all others will be the result of arbitrary human classifications. If, however, you delete the reference to the Creator, it becomes unclear how the line between real and arbitrary is to be drawn. It is still less clear why a secular philosopher would want to make ethics depend on the resolution of such a murky question.

What happens to my explication of the moral law if we do not restrict the competition among moral systems to those couched in a metaphysically designated 'correct' language? It quickly becomes evident that the competition among moral systems will turn on the question of which moral language to employ.¹⁸ When that question remains open instead of being closed off by meta-

physical stipulation, it becomes central. To judge a moral system by the standards of properly balanced strength and simplicity is to judge a set of sentences *in a given language*. The conceptual resources of that language will determine the strength and simplicity of which the system in question is capable. The competition is not between sets of language-independent propositions.¹⁹ A crucial aspect of the competition involves the issue of conceptual adequacy or fecundity.

I need to be explicit about what this metaphysically austere interpretation of the moral law entails—namely, that the moral law is an indeterminate ideal projected by an active philosophical imagination. There is nothing wrong with having an active imagination, unless its projections are mistaken for metaphysical findings.

What do you need to imagine to speak of the moral law in my sense? First, you need to imagine the possibility of the various conceptual improvements that could be made in the ways we think and speak about moral matters. Second, you need to imagine the possibility of the various sentences that could appear in the resulting language games. I do not mean that you need to be capable of knowing what all these possibilities consist in. There are too many of them for that—infinately many, in the case of the sentences. And there is no way of knowing the conceptual improvements we could adopt until somebody invents or discovers them. If we knew what any unactualized improvement consisted in, we could instantaneously make it actual by changing our ways. The point of the present exercise is to imagine the full range of possible improvements not yet actualized, while remaining agnostic about the details.

In addition to performing these acts of imagination, you need to accept the standard apparatus of deductive logic and grant that systems of moral sentences can be more or less simple and possess varying degrees of strength. Finally, and most importantly, you must be prepared, as I am, to apply the concept of truth to moral sentences. If you do all of these things, you can make intelligible use of the expression 'moral law' without entering the disputed domains of metaphysics. The improvements you will be projecting above and beyond the already existing moral codes will remain indefinite. Speaking of the moral law in this sense does not commit you to a view of what those improvements...

would look like. It merely holds out the idea that improvements are possible. It does not assume (nor does it deny) that all the true moral sentences and the ideal systems containing them already exist in some metaphysical realm of abstracta or possibilities, waiting to be known.

Presumably, like their empirical counterparts, the (projected) ideal moral systems would include some sentences cast in vocabularies yet to be invented. So a metaphysically parsimonious philosopher might well hesitate to say that such sentences and the systems constructed from them, as well as the laws defined in terms of them, already exist.²⁰ But that need not be seen as a problem for the minimal interpretation of the moral law. The whole point of an ideal, one might say, is to suggest a possibility that contrasts favourably with the actual. You can suggest a possibility without taking a stand on the ontology of possibles or committing yourself to propositions as timeless entities.

What good will my minimalist explanations do me? They will allow me to use such phrases as 'the moral law' and 'the natural law' in good conscience. I shall hereafter know what I mean when I echo Sophocles, Jefferson, or King and refer to a law higher and better than the codes of my peers. I will know how to mean what I say about that law without meaning too much.

Why preserve these locutions at all? They have long been a rhetorically effective means of emphasizing that the all-too-human codes we confront in society are always likely to include moral falsehoods and conceptual deficiencies. This fact makes room for conscientious objection to such codes. It underscores the need for social criticism. It assures us that a lonely dissenter or critic, taking a stand against the crowd or the powers that be, might be right.

Admittedly, the same point can be made without the concept of a higher law. What matters most in this context is the underlying concept of truth. If truth were a function of what the powerful dictate or what one's peers accept—or even what we, in our humble epistemic condition, are justified in believing—then we would have less reason to give dissidents a hearing or to entertain the possibility of becoming critics ourselves. But truth cannot be reduced to any of these things. It makes perfect sense to say, for example, that my peers and I are justified in believing a proposition and then to add that the same proposition might not be true.

This has been called the cautionary use of 'true'. Reductive analyses of truth tend to neglect or eradicate the concept's cautionary use, the very use that has proven most useful to dissenters and social critics.²¹ It is well worth resisting the reductions, thus helping keep the cautionary use of 'true' alive.

On the minimalist reading, the rhetoric of a higher law is little more than an imaginative embellishment of the cautionary use of 'true'. It evokes a picture of what some of our codes would be if they were perfectly true and perfectly systematic. It thereby gives the project of discovering particular imperfections something picturesque to strive for. The picture is less diffuse than the image of an infinitely long list of true moral sentences, and more inspiring than the image of an ideal moral almanac. Since our codes are sometimes expressed systematically in law-like form, the image of a higher law encourages striving for something of the same kind but better.

Better in what respects? Antigone, Jefferson, and King all rejected some feature of their opponents' codes. When they charged Creon, George III, and Bull Connor with acting on the basis of beliefs out of kilter with the higher law, the main point was that those beliefs were false. Sometimes, however, debates arise within the sphere of non-philosophical moral deliberation about how to strike a better balance between simplicity and strength—as when Pharisees, canon lawyers, or casuists have constructed a legalistic code around countless fine distinctions and someone like Jesus, St Francis, or Pascal argues for radical simplification. While overcomplicated codes may arise from honest efforts to engross truth and avoid falsehood, they arouse suspicion not only for making 'false' distinctions but for draining the spirit from life and fostering bad habits of rationalization. Oversimple codes have their share of notable critics too. Reinhold Niebuhr told the pacifists that love is not all you need. Edmund Burke denounced the Jacobins for reducing a rich moral inheritance to a few simple principles of liberty and equality.

Burke's occasional references to a higher law have caused puzzles for his interpreters. How could the same thinker consistently accuse Warren Hastings of violating 'the eternal laws of justice to which we are all subject' while also excoriating natural law theory as a threat to civilization?²² Some of Burke's interpreters attack him as an inconsistent theorist, others try to defend him

by explaining away either the references to a higher law or the abhorrence of theory.²³ The debate is misplaced. It is possible to use the rhetoric of a higher law selectively, in *ad hoc* criticism of an existing code, without putting the notion to work in an ethical or political theory.

Moral thinking, for Burke, is an essentially practical affair, properly guided by experience, detailed knowledge of an evolving way of life, and practical wisdom, not by an ethical theory. The project of theory, of trying to approximate the form and content of the higher law by constructing a deductive system of moral truth, is in Burke's eyes intrinsically biased toward simplicity. It is therefore likely to distort and diminish the complicated moral traditions we use to make sense of ourselves and each other in day-to-day life. Wedded to power, the project of theory can only do violence to such traditions and to the people who depend on them (namely, all of us). As a theist (of sorts), Burke believes that there is a higher law, and he does not hesitate to refer to it when highly certain of a particular moral judgement, especially when criticizing the behaviour of corrupt English imperialists in Ireland and India. He would not presume, however, to capture that law in a theory. The project of theory, according to Burke, is idle when not destructive. It leads not to greater wisdom but into the endless disputes of metaphysical speculation—which he calls, in a characteristically Miltonian allusion, 'the great Serbonian bog . . . where armies whole have sunk'.²⁴

There are many natural law theories, some less objectionable than others. But if a natural law *theory* does anything, it surely seeks to make some concept of a higher law central to a *theoretical* project. Whether such a project ought to be undertaken is distinct from the issue of whether the relevant concepts have an intelligible use. Burke used a concept of higher law. He believed that such a law exists and that its author is divine. Yet he wanted no part of the associated ethical theories. The example of Burke shows that you can believe in something, and be willing to use the concepts that refer to it when the time seems right, without holding that theorizing about its structure and content is an essential or desirable activity.

Something resembling Burkean resistance to theory has recently been revived, though not under Burke's name or in association

with his politics, by moral philosophers like Bernard Williams and Annette Baier. In the remainder of this chapter, I want to determine what sort of opposition to natural law theory this form of Burkean resistance entails. The question at issue is essentially this: how is it possible to oppose natural law theory without joining it in the Serbonian bog? How can one resist natural law theory on Burkean pragmatic grounds without committing oneself, even if only implicitly, to a competing ethical theory?

Williams defines an ethical theory as 'a theoretical account of what ethical thought and practice are, which account either implies a general test for the correctness of basic ethical beliefs and principles or else implies that there cannot be such a test'.²⁵ Natural law theories are paradigmatic instances of positive ethical theories in Williams's sense, for they typically propose some set of basic principles (derived from reflection on the nature of the cosmos, of humankind, or of rational agency) as definitive of the moral law. Then they propose a method for applying those principles to cases. One way of opposing such theories is to expose weaknesses in their constructive arguments, conclude from this that there are no rational tests in ethics, and then explain away the apparent evidence to the contrary. Williams argues that there is 'good reason to call that an ethical theory too, a negative one'.²⁶ His purpose in using the phrase 'ethical theory' in this way 'is to bring out the similarity of positive and negative theories in the claims they implicitly make for philosophy'.²⁷ Williams wants to oppose theories of both sorts.

Williams does, of course, hold reflective views about ethics. He is not denying the desirability of reflection. Neither is he denying that there are sometimes reflective tests for the acceptability of certain moral beliefs and principles. We do think in ethics, he says, 'in all sorts of ways'. His point is that such tests as there are tend to vary with one's circumstances and that the all-or-nothing game of the theorists is therefore played at the wrong level of generality and ambition. This is the level at which natural law theories typically operate. One need not be committed to a negative ethical theory like moral scepticism, nihilism, or relativism to deem this a bad thing. Even granting that there is a moral law in some significant sense, is it wise to ask philosophers to devise systems that approximate its simplicity and deductive structure? What good and what harm will the resulting approx-

imations lead to? These are questions natural law theorists need to confront.

Williams argues at length against various positive ethical theories. It is not surprising that some of his arguments parallel the arguments negative ethical theorists have directed at the same targets. His most interesting arguments, however, are more nearly Burkean in their view of the potential harm a positive ethical theory can do. The theorist's bias, on this view, is toward the highly general, the systematic, and the simple:

Theory looks characteristically for considerations that are very general ... because it is trying to systematize and because it wants to represent as many reasons as possible as applications of other reasons. But critical reflection should seek for as much shared understanding as it can find on any issue, and use any ethical material that, in the context of the reflective discussion, makes some sense and commands some loyalty. ... Theory typically uses the assumption that we probably have too many ethical ideas, some of which may well turn out to be mere prejudices. Our major problem now is actually that we have not too many but too few, and we need to cherish as many as we can.²⁸

When Baier says that she wants 'to attack the whole idea of a moral "theory" which systematizes and extends a body of moral judgements', I take her to mean by such a theory 'something which is more philosophical and less committed than moral deliberation, and which is not simply an account of our customs and styles of justification, criticism, protest, revolt, conversion, and resolution ...'.²⁹ If that is what she means, then she is not necessarily opposing all attempts to achieve reflective equilibrium between general beliefs and specific judgements in a particular area of moral concern, for some such attempts belong to ordinary moral deliberation. Her point is simply that ethical theorists consider it a professional obligation to impose law-like system on the codes they encounter and that this is not necessarily a good thing.

Most moral education gets along without benefit of 'explicit verbal codes of general rules', and the codes actually in use around us rarely exhibit the systemic structure of a moral theory.

Now if philosophers choose to see implicit rules wherever there is a tradition and a teachable practice, and implicit systems or theories wherever there are general rules, that is their hang-up (and one that a

reading of the *Brown Book* might cure). It is a mere Kantian dogma that behind every moral intuition lies a universal rule, behind every set of rules a single stateable principle or systems of principles.³⁰

I would add that the mere dogma is not merely Kantian. Many natural law theorists adhere to it as strongly as their Kantian associates do. It would be equally dogmatic, of course, to assume in advance that there is never a point in systematizing moral intuitions of a given kind into a legalistic code. In some passages, Baier comes close to this form of dogmatism.

One area in which the efforts of natural law thinkers have actually done some good, I believe, is in reflecting on the conditions of just warfare, where there is every reason to desire a self-consistent, systematically developed, and widely followed legalistic code. Hugo Grotius, the international lawyer and a major figure in the early modern history of natural law ideas, was also a great systematizer of just-war criteria. His successes in this delimited area are still influential to a degree far exceeding the influence of his ethical theory, taken as a whole. And rightly so. Because Baier does not discuss examples of this kind, her objections to the use of legal imagery in ethics sometimes seem more sweeping than anything I would be willing to accept. The prudent policy is to take each case on its merits, systematizing a region of discourse only where this serves a legitimate practical purpose. If natural lawyers wish to systematize moral discourse as a whole, they ought to reflect on the possibly disproportionate unintended consequences of the attempt.

Baier raises especially telling questions about the unintended consequences of teaching ethical theory. Natural law theorists often portray themselves as defenders of civilization against the evil forces of scepticism, nihilism, and relativism. Yet, as Baier points out, courses on the varieties of ethical theory, from natural law to utilitarianism, are 'a very effective way to produce a moral skeptic'.³¹ This would not be so if ethical theory in fact tended to supply the sort of systematic adequacy and metaphysical reassurance it seeks. As Alasdair MacIntyre has often argued, the theorists are quite good at poking holes in one another's theories. The cumulative effect of the poking is not only embarrassing for theorists claiming that there are substantive moral principles evident to the natural light of human reason, it is also demoraliz-

ing for students who have been led to believe that the rational legitimacy of moral discourse ultimately depends on the systematic rendering and defence of such principles. No wonder courses in ethical theory tend to produce sceptics, nihilists, and relativists.

Natural law theories typically involve not only an anti-sceptical attempt at systematic representation of the naturally knowable features of the moral law but also a realistic theory of moral truth designed to rebut nihilism and relativism. This is where the contest between positive and negative ethical theories is most directly engaged. A theory of moral truth aims to explain what it is (if anything) for a true moral sentence to be true or what (if anything) makes a moral sentence true. Realistic theories do this by postulating something 'real' or 'natural'—something the existence of which does not depend on human artifice—and then defining truth as a relation of correspondence to that something. Metaphysical interpretations of the moral law or the eternal law are candidates for this explanatory role often favoured by natural lawyers. Can my minimalist explications of higher law be used to support the moral realist's claim that moral truth is a relation of correspondence to the real? No, for my explications have presupposed the notion of moral truth. It would be circular to use such concepts of eternal law to explain moral truth.

On my interpretation, it goes without saying that true moral sentences correspond to the eternal law, for the concept of eternal law merely takes the concept of truth ordinarily applied to moral sentences and combines it with a vague notion of improved vocabularies and a particular ideal for the construction of deductive systems. Such a concept is suitable for some uses in moral discourse, but it can hardly play the explanatory role natural law theorists assign to it in their sort of moral realism. So far as I can see, the only way to obtain a concept fit for that theoretical role is to make one's ethical theory dependent on questionable metaphysical commitments.

Even the most patient reader may well be perplexed at this point in my argument. Several paragraphs back, I sounded suspiciously like a natural law realist, attacking all attempts to reduce moral truth to a function of what the powerful command, what one's peers accept, or what one is justified in believing. My claim was that such reductive analyses of truth neglect or eradicate the cautionary use of 'true'. Natural law realists make the same

claim in the hope of holding out for truth as correspondence to something fixed, given, and unchangeable.

Now, however, I am expressing the suspicion that realist explanations of moral truth are not any better. Anti-realists express the same suspicion. Because they share my suspicions about the metaphysical commitments of realistic ethical theory, they either provide something other than correspondence for moral truth to consist in or else abandon the idea that acceptance of a moral sentence involves commitment to its truth. This is where the reductive treatments of truth appear. One kind of anti-realist analyses truth in terms of a watered-down substitute for truth-as-correspondence, and then proposes to go on using the concept in this diluted sense. Moral truth, it might be said, is nothing more than conformity to the implicit social contract or conventions of one's group. The other kind of anti-realist turns the reductive analysis into a rule for eliminating the concept from moral discourse. And yet I have, since the first paragraph of this essay, been employing the concept of moral truth in the undiluted way that realists do—cautionary use and all. In fact, I have stressed that the (undiluted) concept of moral truth is presupposed by my explications of lawhood. My position seems to alternate paradoxically between affirmation and denial of realism.

The paradox dissolves when one distinguishes between accepting the various uses of 'true' as legitimate moves within ordinary moral discourse and accepting a theoretical explanation or definition of moral truth. My claim is that the theoretical explanations take you into the Serbonian bog. This claim leaves me free to view the various uses of 'true' as innocent until proven guilty. The rejection of those uses advocated by one sort of anti-realist is also in the Serbonian bog, for it shares the realist assumption that the legitimacy of those uses depends on the success of the realist's explanation. All of these positions get the relation between ethical theory and ordinary linguistic practice wrong. They assume that the legitimacy of the practice depends on the success of a particular kind of theoretical explanation.

Realism and anti-realism are theories competing to give the best answer to the same question: is moral truth to be treated by the ethical theorist (*n*) as a relation of correspondence to something real (like the non-minimalist's eternal law) that is higher

and better than the artificial codes we construct, (*b*) in terms of a watered-down substitute for correspondence-to-the-real (like warranted assertibility or conformity to convention), or (*c*) as an illegitimate notion because there is nothing of the right kind for moral sentences to correspond to? Realists opt for *a*, anti-realists divide between *b* and *c*.³² I am tempted to answer the question by saying 'none of the above', but this might create the impression that I am preparing the way for yet another theoretical explanation of what makes moral truths true. It is less misleading to say that I reject the question. The problem with the question, and the factor that limits the possible range of answers, is the special sort of explanatory task it implicitly assigns to the 'ethical theorist'.

I am not objecting to what Baier calls descriptive anthropology — 'an account of our customs and styles of justification, criticism, protest, revolt, conversion, and resolution'.³³ Such an account, carried out with tools borrowed from philosophers of language like J.L. Austin and Donald Davidson, as well as from the historians and sociologists, might teach us a great deal about how the term 'true' functions in moral discourse. Nor do I object to the idea that such an account might, in some significant sense, be theoretical and explanatory. It can be expected to include, for example, both a semantics and a pragmatics. I have no qualms about theory as such, nor any desire to reify the distinction between description and explanation, as some Wittgensteinians have done. I am objecting, however, to the idea that we need a theory of moral truth in a sense that transcends the result of both descriptive anthropology and ordinary moral deliberation. Descriptive anthropology tells us how the term 'true' functions in moral discourse. Ordinary moral deliberation tells us which moral sentences we have good reason to deem true *in medias res*. I see neither the need for more than this nor the likelihood that trying for more will end outside the Serbonian bog.

We acquire the concept of truth by participating in language games in which the term 'true' is used. Thus we discover very early on that the term has a use implying acceptance, as in the sentence 'What King said about the injustice of segregation is true.' To believe that a given proposition is true is (at least) to accept the proposition. To say that a given proposition is true is to express one's acceptance of it and perhaps to do such other things as endorse, proclaim, or admit it. The term also has more

specialized metalinguistic uses, as in the Tarskian formula ' "S" is true if and only if S'.³⁴ And it has the cautionary use to which I have already referred.

Now suppose that you have mastered all of these uses, in moral contexts and others. Suppose further that you have developed a reflective account of them. You know what pragmatic force the term 'true' adds to this or that speech act, you know how to put the term to full use in Davidsonian semantics, and you know how to distinguish the use of the predicate 'is true' from that of certain other predicates (like 'is justified'). In short, you know how to behave competently with the term and you know everything the various compartments of descriptive anthropology can tell you about its behaviour. It follows that not only have you acquired the concept of truth, you understand it. There is nothing missing that a theory of moral truth would supply. A theorist may desire a concise definition of the concept. But surely this neat result would merely be a summing up of whatever details of linguistic behaviour one's descriptive anthropology has managed to discover. Moreover, experience shows that not all concepts admit of definitions that are both informative and concise. Some terms are too varied in their uses to be readily summarized in a definition. Others are so central to our discursive practices that one would not know how to define them without employing the very concept one is trying to define. 'True' resists definition for both of these reasons. It is therefore best left undefined.

Arthur Fine is one of several philosophers with whom I share this conclusion about truth.³⁵ A brief discussion of his work in the philosophy of science should help clarify the similar tack I am taking in moral philosophy.³⁶ His work has critical, diagnostic, and prescriptive components. The critical component is a set of arguments against the leading contemporary versions of realism and anti-realism in the philosophy of science. The diagnostic component traces each of these versions to the same root causes. The prescriptive component advises us how to avoid the difficulties of both realism and anti-realism—namely, by adopting what Fine calls 'the natural ontological attitude'.

As one might expect, the critical component of Fine's work relies heavily on arguments realists and anti-realists have already made against one another. For example, the cumulative

effect of his presentation is considerably strengthened by allusions to arguments Larry Laudan and Bas van Fraassen have made against realism. When Fine puts these together with some related arguments of his own, he is able to make a convincing case for the conclusion that the most widely respected recent defences of realism are question-begging. The major claim of those defences is that realism provides the best explanation for the progress of science. So Fine supplements his case with historical commentary on relativity and quantum theory as 'living refutation of the realist's claim'.³⁷

When Fine turns to the anti-realists, he first considers those he calls 'truthmongers', who retain truth as a concept central to the scientific enterprise but define it in epistemic terms. The leading contemporary forms of truthmongering, Fine says, can all be understood as portraying 'the truth of a statement *P* as amounting to the fact that a certain class of subjects would accept *P* under a certain set of circumstances'.³⁸ These forms vary according to the constraints they place on the subjects and circumstances in the question. The most plausible form takes the subjects to be perfectly rational and the circumstances to be those in which all evidence has finally been uncovered by the procedures of rational enquiry. The result is a definition of truth as ideal rational acceptance. We can think of this theory as starting out from the uses of 'true' that imply acceptance, treating these as paradigmatic, and then trying to enrich the notion of acceptance until the metalinguistic and cautionary uses are accounted for as well. The theory is more plausible than other forms of truthmongering because it seems to accord better with the cautionary use of 'true'.

But even the most plausible form of truthmongering is unsuccessful. Even if all the evidence were in and our perfectly rational agents were weighing it, they would still have choices to make in striking a balance between simplicity and strength in the explanatory systems they devise, and there is no assurance whatsoever that a single system would emerge as *the* best. Lewis was rightly careful, when defining empirical lawhood, to leave open the possibility that there are numerous *true* deductive systems achieving a best combination of simplicity and strength. Think of how many best combinations there might be if the false systems are not ruled out of the competition from the start, as in Lewis's

definitional procedure. The truthmonger, who is attempting to define truth, has no means for excluding false deductive systems from the start without begging the question. So it seems clear that ideal rational acceptance is likely to yield far too many truths, some of which will be incompatible with one another.

Fine links this acceptance-oriented form of truthmongering to behaviourism, alludes to the standard charges of reductionism that have been successfully prosecuted against the behaviourists, and then gives a compressed but powerful argument of his own to show that acceptance theories generate an unacceptable endless regress. The only way to stop the regress, it turns out, is to use the concept of truth in a sense at odds with the truthmonger's theory. In a suggestive footnote, Fine proposes a number of other ways to display the gaps between the behaviour of 'true' and that of the favoured conceptions of acceptance.³⁹ Sensing that he would be beating a dead horse, he goes no further with his criticisms of truthmongering, and turns his attention to the empiricists. Here he aims to undermine empiricist reasons for limiting truth-talk to the observable. His criticisms focus on whether the distinction between the observable and the non-observable can be made out clearly and on whether there is any non-arbitrary reason to see that distinction as carrying the significance empiricists want to ascribe to it.

It should be obvious that the theorists discussed by Fine are answering a multiple-choice question exactly analogous to the one I have located at the centre of ethical theory. His realists can be paired with mine, his truthmongers with my diluters, his empiricists with my disposers of moral truth. Are Fine's critical arguments conclusive? He would be the first to say no. As he puts it, 'One can always dodge the arguments and, where that fails, bite the argumentative bullets.'⁴⁰ In controversies of this sort, even especially compelling critical attacks on a position often force its advocates to do nothing more than return to the drawing-board in the hope of devising new and improved armour. If one cannot take precisely the same position while wearing the new armour, the new position will be called sophisticated, the former one naïve. For this reason, Fine switches from the critical to the diagnostic mode. He argues that conflict between realists and anti-realists has a discernible pattern that allows us to explain why theorists suffering defeat in battle tend to retreat only long

enough to repair their armour instead of giving up the fight. If each side always finds weapons capable of piercing the opposition's new armour, why not conclude that the positions being defended are ultimately indefensible? Why see each new defeat as temporary and reversible?

The scientific realist, Fine says, sees science as looking out on reality, striving 'to grab hold of significant chunks of its definite structure'. Truth is pictured as the desired relation between certain bits of scientific language and the significant chunks. Believing the truth is conceived as successful grabbing. The trouble comes in trying to make sense of this picture without presupposing the notion of truth being explained. The picture becomes trivial when truth is presupposed, incoherent or mysterious when truth is not presupposed. For any particular version of this picture produced so far, anti-realists have succeeded in exposing the trouble. So the truthmongers, convinced that no such picture can be corrected, have encouraged us to turn around, 'to look back at our own collective selves, and at the interpersonal features that constitute the practice of the truth game'.

We are invited to focus on the mundane roots of truth-talk and its various mundane purposes and procedures. Concepts having to do with acceptance provide a rich setting for all these mundane happenings. If we then take truth just to be the right sort of acceptance, we reap a bonus for, when we bring truth down to earth in this way, we obtain insurance against the inherent, metaphysical aspects of realism.⁴¹

The truthmongers, Fine says, seek security by sheltering for awhile in a nest of interpersonal relations. But it would be a mistake to think that we will find truth there. That is to say, truth cannot be reduced to some feature of that nest, even an idealized feature. The behaviourist arguments for the reduction are not good ones. The truthmongers seem to have taken shelter in that corner mainly in reaction to realism.⁴²

The dialectic linking these two positions thus exhibits the following pattern:

Realism reaches out for *more* than can be had. Behaviorism reacts by pulling back to the 'secure' ground of human behavior. In terms of that it tries to impose a limit, short of what realism has been reaching for. The limit imposed by behaviorism, however, is simply *less* than what we require. So realism reacts by positing something more, and then reaches

out for it again. What we can learn from this cycle is what makes it run, and how to stop it.⁴³

The thing that makes the cycle run is an assumption both sides share—the idea that truth is a ‘substantial something’, the sort of thing ‘for which theories, accounts, or even pictures are appropriate’. The diagnosis follows: realists and truthmongers are both searching for the substantial something that truth is. They share the assumption that it must be a substantial something, something that can be the fitting object of an explanatory theory. To search for such a something is to engage in a metaphysical quest, to enter the Serbonian bog where armies whole have sunk. Next, then, comes the Burkean prescription: shun the quest. Avoid the bog. Stop the cycle. Give up the idea that truth must be a substantial something.

This is not the same prescription the empiricist gives. Fine does not advise that we stop employing the concept of truth in connection with scientific theories or in specifying the aim of scientific enquiry. Empiricism still poses as having reasons of a special theoretical sort for permitting the use of ‘true’ in some contexts and not in others. But these reasons have not proved any more defensible than the realist metaphysics of the correspondence theorists or the behaviourist metaphysics of the truthmongers. And here too there is a commonality linking the debating partners, for empiricists share with their opponents the desire to explain at a very high level of generality what the scientific enterprise is all about. The methodological strictures that empiricists place on the use of the term ‘true’ derive from the explanation they favour. Yet from Fine’s point of view, it is not clear why science needs an explanation of the kind realists and anti-realists are all trying to give. If the explanation is not needed, and if the attempted explanations have all fared poorly, why bother?⁴⁴

Fine’s ‘silence is golden’ policy does not counsel complete silence in philosophy of science. It leaves plenty of room for what Baier calls descriptive anthropology. As for the concept of truth, ‘Its uses, history, logic, and grammar are sufficiently definite to be partially catalogued, at least for a time’. So it is possible to improve one’s reflective understanding of the concept. ‘But it cannot be “explained” or given an “account of” [in the sense that

pretends to transcend descriptive anthropology] without circularity. Nor does it require anything of the sort.’⁴⁵ To rest content with descriptive anthropology while allowing actual scientific practice to determine which sentences should be counted as true hypotheses is to adopt the natural ontological attitude. I am recommending the same attitude to moral philosophers.

Natural law theory in its traditional form was intertwined with the realist metaphysics of traditional natural philosophy. It sought to provide a kind of correspondence to the real that would explain what makes moral sentences true. The idea seemed plausible so long as natural philosophy conceived of the cosmos in a moralized, teleological fashion. But when the teleological cosmos gave way to the impersonal and infinite universe of modern science, scientific and ethical realism tended to break apart, and ethical theorists predisposed toward realism had to work hard at finding something suitably real and natural for moral sentences to correspond to. In this context, scientific realists often looked upon their ethical counterparts with suspicion, and diverse forms of anti-realism were proposed for ethics. The new plausibility of anti-realism in ethical theory derived from the sense that the world, as currently understood, was able to do something for scientific sentences that it was powerless to do for moral sentences—that is, make them true.

Many theorists decided that something less cosmological, something having to do with *human* nature or practical reason or collective intersubjectivity, would have to be substituted for the traditional correspondence relation if the notion of moral truth was to be retained. Some of the resulting programmes, which I am calling anti-realist, called themselves natural law theories, but they were hardly of the traditional kind. Ethical anti-realists—including both scientific realists and empiricists—began arguing with one another over whether the notion of moral truth should be redefined or dropped altogether. There arose new forms of ethical realism (such as intuitionism, utilitarianism, and value theory) to take up the third side of the triangular debate. Meanwhile, traditional natural law theory became increasingly nostalgic in tone and quixotic in performance. It was treated more and more dismissively by the anti-realist opposition as an exemplification of some fairly obvious fallacy and by its realist successors as a quaint relic from a prescientific age.

It is high time for moral philosophy to rethink its relation to the philosophy of science. If Fine and others like him have correctly diagnosed the debates over truth endemic to the latter, and the familiar philosophical pictures of science deserve rejection, then those pictures can no longer serve as fixed points of comparison and contrast for the analysis of moral discourse. Doubts of the form, 'But what could there be for moral sentences to correspond to?' and 'What would it be to observe that murder is wrong?' lose a significance they once had. If philosophers of science follow Fine's advice and stop asking the question of what sort of relation to a special something makes a given sentence true, the old reasons for wondering what on earth (or in heaven) could make a *moral* sentence true will collapse. And in their absence, the ordinary language user's disposition to say 'It's true that murder is wrong' will seem perfectly in order—which is to say, neither metaphysically tainted by philosophical realism nor in need of being taken at something other than face value. The natural ontological attitude, says Fine, is to take science and its characteristic uses of 'true' at face value, without the overlay of philosophical interpretation provided by something grander than descriptive anthropology. This attitude promises to break up the triangular debate in which natural law theory participates and to restore moral discourse to respectability. The threat of unfavourable contrasts with science disappears—and along with it the rationale for viewing natural law theory as a chivalrous knight defending the honour of morality against its decadent modern detractors. In fact, the line of demarcation between science and ethics begins to fade away.

Thus Fine says that the natural ontological attitude is 'basically at odds with the temperament that looks for definite boundaries demarcating science from pseudoscience, or that is inclined to award the title "scientific" like a blue ribbon on a prize goat'.⁴⁶ When Fine's attitude is applied to ethics, it tends not only to restore one's confidence in moral truth but also to rehabilitate the thought that moral and scientific truth are inseparably intertwined. Why? Not because the teleological cosmos has been reconstituted. One reason is that when we try to refrain from big pictures and instead try to make sense of science in the fine-grained way, it will become impossible to avoid appraising the human purposes, virtues, communities, and social consequences

that figure in the stories of scientific endeavours we will need to tell. Another reason is that it once again becomes natural to admit that moral truths depend (though not in the systemic and deductive way natural lawyers have sometimes claimed) on what the world and human beings are in fact like. If it were not true, for example, that members of our species have a tendency to bleed and experience pain when cut, certain acts that are cruel and vicious would not be. If firing nuclear missiles caused no more damage than a large grenade, many sentences belonging to the ethics of war would change truth values. Counterfactuals like these preserve what is worth saving from the natural law doctrine of the *ordo quem ratio non facit*.⁴⁷

In this chapter, I have tried to demonstrate the possibility (and suggest the desirability) of standing back from natural law theory without falling backwards into the arms of another ethical theory. I began by assessing the significance, value, and meta-physical costs of several conceptions of higher law, drawing especially on van Fraassen's extensive sceptical arguments against analogous conceptions in the philosophy of science. I then criticized two distinct undertakings that have gone by the name of natural law theory—one related to the quest for system, the other related to worries over the status of moral truth. I called on Bernard Williams and Annette Baier for help in criticizing the first and on Arthur Fine for help in criticizing the second.⁴⁸

But I have also tried to distinguish suspicions about the theoretical projects of natural lawyers from the doubt that relatively unphilosophical references to a higher law, like those found in Burke's speeches, are intelligible and legitimate fixtures of moral discourse. Nothing I have said entails striking the locutions of Sophocles and King from our lexicon. When a great poet or social critic decks out the cautionary use of 'true' in a memorable image and empowers the search for this-worldly betterment, the moral philosopher is wise to leave well enough alone.

NOTES

© Jeffrey Stout 1992. I wish to thank David Bromwich, Robert George, Russell Hittinger, Richard Rorty, and an anonymous referee for commenting on the first draft of this chapter.

1. Translated by Robert Eagles in *Sophocles: The Three Theban Plays* (New York: Penguin Books, 1984), 82.
2. 'Letter from Birmingham City Jail', in *A Testament of Hope: The Essential Writings of Martin Luther King, Jr.*, ed. James Melvin Washington (San Francisco: Harper & Row, 1986), 293.
3. *Summa Theologiae*, Ia IIae, q. 90, a. 4.
4. *Ibid.*, q. 91, a. 1.
5. *Ibid.*, q. 91, a. 2, Ia IIae, q. 90, a. 4.
6. Any attempt to seek moral guidance from the order of nature was bound to fail, from a Kantian point of view, for at least two reasons: first, as a violation of moral autonomy, and second, because of the fact that scientific enquiry into the laws of nature had largely abandoned a teleological conception of nature. If the objective order of nature as we experience it is essentially devoid of meaning and purpose, if science contemplates a world of matter in motion where Aquinas had once contemplated a world of Aristotelian substantial forms, how can there be a law of nature with moral implications?
7. For an account of some of the relevant historical background, see Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge, Mass.: Harvard University Press, 1989), chs. 14–16.
8. Bas C. van Fraassen, *Laws and Symmetry* (Oxford: Clarendon Press, 1989), 6–7.
9. Quoted *ibid.* 40.
10. Quoted in David Lewis, *Counterfactuals* (Cambridge, Mass.: Harvard University Press, 1973), 73. See F.P. Ramsey, *Foundations of Mathematics* (London: Routledge & Kegan Paul, 1931), 242.
11. See *Laws and Symmetry*, ch. 3, for van Fraassen's extensive critical discussion of Lewis on lawhood. As will become clear, van Fraassen does not accept Lewis's account of laws of nature. Nor does he accept any other. He counts Lewis's as the most nearly successful of an ultimately unsuccessful lot. He surveys the best of that lot in chs. 3–5, and argues a strong case against the very idea of laws of nature in ch. 8. An important point emerges along the way: that the idea of laws of nature is now much more important to philosophers than it is to scientists. Of course, if van Fraassen's conclusions are accepted,

it will cease being an important idea to philosophers of science as well. Is this a death knell for the idea of laws of nature in the culture as a whole? Does not the best contemporary epistemological and scientific thinking owe more to Pascalian probability than to the idea of laws of nature?

12. *Counterfactuals*, 73, italics in original.
13. *Ibid.*, italics in original.
14. *Ibid.* 74. I discuss Lewis's *Encyclopedia* and certain other matters related to the topic of this paper in an essay entitled, 'On Having a Morality in Common', in Gene Outka and John P. Reeder, Jr., eds., *Prospects for a Common Morality* (forthcoming).
15. Cf. van Fraassen, *Laws and Symmetry*, 41–2.
16. *Ibid.* 42.
17. David Lewis, 'New Work for a Theory of Universals', *Australian Journal of Philosophy*, 61 (1983), 343–77; van Fraassen, *Laws and Symmetry*, 43.
18. For a discussion of the vagaries of the concept of a moral language, see my *Ethics after Babel: The Languages of Morals and Their Discontents* (Boston: Beacon Press, 1988), ch. 3. I should add that for present purposes the distinction between moral and non-moral can be drawn in virtually any way you please. Because of my holistic inclinations in the philosophy of language, I would not want to place too much weight on the distinction or to draw it in terms of the use of particular words that are sometimes thought to be distinctively action-guiding.
19. Lewis identifies propositions with sets of possible worlds and defines sentences as expressible propositions. See *Counterfactuals*, 45–7. I prefer to define propositions as interpreted sentences and to view sentences, like the languages in which they are cast, as human artefacts.
20. I would count Martin Heidegger, Donald Davidson, and Richard Rorty as parsimonious. See especially Rorty's essay, 'Were Newton's Laws True Before Newton?' (forthcoming).
21. I borrow the phrase 'cautionary use' from Richard Rorty, 'Pragmatism, Davidson and Truth', in Ernest LePore, ed., *Truth and Interpretation: Perspectives on the Philosophy of Donald Davidson* (Oxford: Basil Blackwell, 1986), 333–55.
22. The quoted phrases come from Burke's speeches in support of Hastings's impeachment. See *Edmund Burke: Selected Writings and Speeches*, ed. Peter J. Stanlis (Gloucester, Mass.: Peter Smith, 1968), 390, 406. The exhortation of natural law theorizing begins with his early parody, *A Vindication of Natural Society*, and extends throughout Burke's career. Needless to say, Burke was attacking mainly the

most prominent 18th-cent. forms of natural law theory, though I believe his criticisms have much wider application.

23. For a dismissal of Burke as a shoddy theorist and turncoat, see Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, Ind.: University of Notre Dame Press, 1989), 8, 217–19, 229, 353. For an interpretation that plays down the references to a higher law, see C.E. Vaughan, *Studies in the History of Political Philosophy*, ii (Manchester: Manchester University Press, 1925), ch. 1. For an attempt to explain away the abhorrence of theory, see Peter Stanlis, *Edmund Burke and the Natural Law* (Ann Arbor, Mich.: University of Michigan Press, 1958).

24. The context is as follows: 'These are deep questions, where great names militate against each other, where reason is perplexed, and an appeal to authorities only thickens the confusion: for high and reverend authorities lift their heads on both sides, and there is no sure footing in the middle. The point is the great *Serbonian bog*, between *Damiate* and *Mout Casius* old, where armies whole have sunk. I do not intend to be overwhelmed in that bog, though in such respectable company.' From Burke's 'Speech on Conciliation with the Colonies', in *Selected Writings and Speeches*, 170, italics in original. The allusion is to *Paradise Lost*, ii, 592.

25. Bernard Williams, *Ethics and the Limits of Philosophy* (Cambridge, Mass.: Harvard University Press, 1985), 72.

26. *Ibid.* 74.

27. *Ibid.*

28. *Ibid.* 116–17.

29. Annette Baier, *Postures of the Mind* (Minneapolis: University of Minnesota Press, 1985), 232.

30. *Ibid.* 208.

31. *Ibid.* 234.

32. Most theories advertising themselves under the label 'natural law' are realist, but some modern varieties influenced by Kantian constructivism (called deontological by Lloyd Weinreb and minimalist by Russell Hittinger) may belong to the first type of anti-realism.

33. Baier, *Postures of the Mind*, 232.

34. Rorty calls the first sort of use the 'endorsing use' and the second the 'disquotational use'. See 'Pragmatism', Davidson, and Truth', 334–5.

35. Donald Davidson and Richard Rorty have also reached conclusions like mine and Fine's, and I have been influenced by both. Unfortunately, a very confusing debate has arisen over whether Davidson should be read as a correspondence theorist, a coherence theorist, or as a 'no-theory' theorist, and he has complicated matters further by choosing various cryptic self-descriptions. Rorty, while never accused

of being a correspondence theorist, has sometimes identified himself with anti-realist reductions of truth to warranted assertibility or to what would be believed at the end of enquiry. It would be too daunting a task to sort out the relationships between my views and theirs in the remaining pages of this essay. For relevant works by Davidson, see the essays collected in his *Inquiries into Truth and Interpretation* (Oxford: Oxford University Press, 1984). For his claim that we should take the notion of truth as primitive, see 'A Coherence Theory of Truth and Knowledge', in Lepore, ed., *Truth and Interpretation*, 308. For two of Rorty's more careful recent attempts to avoid reductive definitions of truth, see 'Pragmatism, Davidson and Truth', cited above, and 'Is Natural Science a Natural Kind?' in Ernan McMullin, ed., *Construction and Constraint: The Shaping of Scientific Rationality* (Notre Dame, Ind.: University of Notre Dame Press, 1988), 49–74. For my criticisms of Rorty's less careful moments, see *Ethics after Babel*, ch. 11, where I refer to the position I am taking here as modest pragmatism.

36. Arthur Fine, *The Shaky Game: Einstein, Realism and the Quantum Theory* (Chicago: University of Chicago Press, 1986), esp. chs. 7 and 8.

37. *Ibid.* 122.

38. *Ibid.* 138.

39. *Ibid.* 141 n. 4.

40. *Ibid.*

41. *Ibid.* 139, italics in original.

42. *Ibid.*, 140. A few sentences later on the same page, Fine identifies the relevant sort of behaviourism with 'the idea that if the working practices of the truth exchange are the practices of acceptance, then acceptance is what truth is *all* about, and *nothing but* acceptance' (my italics). It is important to see that it is the reductionist character of the behaviourism that causes the problem. There is nothing wrong with lavishing one's attention on the working practices or with holding that descriptive anthropology gives us exactly the kind of reflective understanding we need of the concept of truth. The trouble comes when the working practices are thought to be capable of referring only to themselves. As Fine puts it on p. 142, 'To be sure, the antirealist is quite correct in his . . . recommendation to pay attention to how human beings actually operate with the family of truth concepts. Where he goes wrong is in trying to fashion out of these practices a completed concept of truth as a substantial something, one that will then act as a limit for legitimate human aspirations.'

43. *Ibid.* 141–2, italics in original.

44. Fine makes this point as follows: 'But science is not needy in this way. Its history and current practice constitute a rich and meaningful setting. In that setting questions of goals or aims or purposes occur spontaneously and *locally*. For what purpose is a particular instrument being used, or why use a tungsten filament here rather than a copper one? . . . These sorts of questions have a teleological cast and, most likely, could be given appropriate answers in terms of ends, or goals, or the like. But when we are asked what is the aim of science itself, I think we find ourselves in a quandary . . .' (p. 148, italics in original).

45. *Ibid.* 149.

46. *Ibid.*

47. For a discussion of this doctrine from a perspective sympathetic to traditional natural law theory, see Russell Hittinger, 'Varieties of Minimalist Natural Law', *American Journal of Jurisprudence*, 34 (1989). Hittinger and I are putting pressure, from opposite directions, on natural law theorists who would like to get by without making the extensive metaphysical commitments of traditional Thomism. Hittinger would like to persuade natural law theorists to return to something resembling the Thomistic metaphysical scheme, whereas I am recommending trying to get by with as little dependence on metaphysics as possible. But if I understand him correctly, Hittinger shares my conviction that a return to metaphysical claims about the nature of human action and its perfection in the virtues would drastically limit the role one could reasonably expect a natural law theory to play in a pluralistic society. (See Hittinger's essay in the present volume.) He is content to have the theory play a role within a religious community already committed to the metaphysics the theory requires. I do not accept the metaphysics, but I respect the modesty of Hittinger's hopes for his theory.

48. I am not claiming that these authors would approve of what I am doing with their unwitting assistance. Williams would surely oppose much of what I have said in approval of Fine. Williams's doubts about systematicity do not prevent him from offering an ethical theory of the second sort, a theory that plays out a form of ethical anti-realism against a background of scientific realism. See *Ethics and the Limits of Philosophy*, chs. 8 and 9.

PART II

NATURAL LAW AND LEGAL THEORY