IDEAS IN CONTEXT

Edited by Richard Rorty, J. B. Schneewind, Quentin Skinner and Wolf Lepenies

The books in this series will discuss the emergence of intellectual traditions and of related new disciplines. The procedures, aims and vocabularies that were generated will be set in the context of the alternatives available within the contemporary frameworks of ideas and institutions. Through detailed studies of the evolution of such traditions, and their modification by different audiences, it is hoped that a new picture will form of the development of ideas in their concrete contexts. By this means, artificial distinctions between the history of philosophy, of the various sciences, of society and politics, and of literature, may be seen to dissolve.

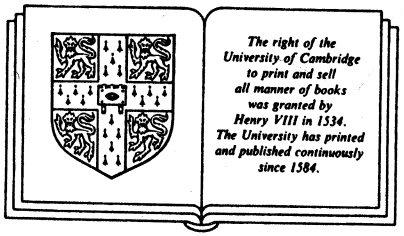
For a list of titles in this series, please see end of book.

Ideas in Context is published with the support of the Exxon Education Foundation.

THE LANGUAGES OF POLITICAL THEORY IN EARLY-MODERN EUROPE

EDITED BY

ANTHONY PAGDEN



CAMBRIDGE UNIVERSITY PRESS

CAMBRIDGE
NEW YORK PORT CHESTER
MELBOURNE SYDNEY

Genoese to the Ligurian Sea. Turn, he told his readers, to John Selden's *Mare clausum*, where you will find arguments which will do quite as well for Spanish claims to rights in the lands of America, as they do for the English king's claims to the North Sea and the North Atlantic.[59] Selden, of course, was writing in the terms of the language of 'modern' iusnaturalism (described here by Richard Tuck), a language in which objective conditions play a far larger role than they did for the Spanish Thomists. But the terms of that discourse were already beginning to look by the 1630s distincly unwieldy and outmoded. As Solórzano concluded, the whole issue to which Vitoria and his pupils had addressed themselves was now only of 'antiquarian interest' and was raised, when at all, only by 'certain heretics out of envy of our nation'.[60]

[59] *Política indiana*, p. 114. On Selden's *Mare clausum*, see Richard Tuck, *Natural Rights Theories*, pp. 86–7.
[60] *Política indiana*, pp. 112–13.

An earlier version of this essay was read as a paper at a conference on the Roman Law held at the Warburg Institute and at the Social and Political Theory Seminar at Cambridge. I am grateful to those present, and in particular to John Dunn, Quentin Skinner, Geoffrey Hawthorn and Istvan Hont, for their comments and suggestions.

5

The 'modern' theory of natural law

RICHARD TUCK

It is a familiar observation that the late eighteenth century in Europe witnessed one of the greatest revolutions which has ever occurred in the writing of philosophy. The novelty of the views of Kant and his followers was obvious to contemporaries, and has been a truism in the historiography of philosophy to this day. What is not so familiar is that the writing of the *history* of philosophy was transformed at the same time, and that it has remained in its new form ever since. In order to vindicate his own philosophy, Kant was located by both himself and his successors in a new version of the history of philosophy, sweeping away what had been commonplaces for more than a century. The transformation was most complete in the area of modern moral philosophy, for there not only did an old interpretation vanish, but so did a complete cast of characters. Given Kant's own views, this was understandable, but the survival of the post-Kantian history into our own time has proved a great barrier to a genuine understanding of the pre-Kantian writers. What I want to do in this essay is outline the history of recent moral philosophy which Kant rejected and seek to understand why it seems to the men of the Enlightenment to be such a powerful and obvious account of their origins.

The character of the revolution is best appreciated by contrasting two works written within fifty years of each other, the second edition of Johann Jakob Brucker's *Historia critica philosophiae* (1766; the first edition was 1742–4) and Johann Gottlieb Buhle's *Geschicte der neuern Philosophie* (1802). Both were vast compendiums written by professors at German universities to help their students find their way through the philosophy courses; both were also seized on by the wider European audience of their time as the best syntheses available of the history of philosophy. But both their overall structure and their specific content are startlingly different.

Brucker's main conviction was that 'eclectic' philosophy was characteristic of the modern world. Although the dogmatic schools of antiquity did have modern representatives, the purest strain of philosophical thinking since the Renaissance was represented by the man who respects no ancient authorities but 'diligently investigates the nature and properties of the objects which come under his observation, that he may from these deduce clear principles, and arrive at certain knowledge'.[1] This stress on *certainty* was, as we shall see, an important element in this history. Bacon, according to Brucker, was the first philosopher fully to exhibit this eclectic character, for he was the first (apparently) who knowingly repudiated all the philosophical schools of antiquity. Because eclectic philosophy does not admit of division into schools, Brucker argued, the history of post-Baconian philosophy should be written in terms of the areas of inquiry rather than the substantive positions taken up, and he therefore tried to write the history of modern 'moral and political philosophy' as a whole.

In this history, the first modern writer is Montaigne, closely followed by Pierre Charron, for they were undogmatic investigators, though they lacked the ability to put together a new and persuasive system. That honour fell to Hugo Grotius, who was the main hero of Brucker's account – a hero both because in his *De iure belli ac pacis* (1625) he produced a genuinely *new* system of ethics which was not simply a defence of one of the ethical theories of antiquity, and because of his *open* eclecticism. 'His eclectic spirit clearly appears, in the general maxim which he lays down concerning antient systems; that, "as there never was any sect so enlightened, as to be entirely destitute of truth." '[2] Grotius was followed closely by John Selden, Thomas Hobbes and above all Samuel Pufendorf, with whose *De iure naturae et gentium* (1672) Brucker ends his story, disclaiming any intention of carrying it down to his own time.

If we then move on to Buhle's *Geschicte der neuern Philosophie*, we find a wholly different account. Gone, first of all, is the attempt to write the history of modern moral philosophy as a whole; instead, modern philosophy is characterised in every area by the opposition of two schools described, in a terminology unknown to Brucker, as

[1] Jacob Brucker, *Historia critica philosophiae*, IV.2 (Leipzig, 1766), p. 4. The translation is from William Enfield, *The History of Philosophy . . . drawn up from Brucker's Historia Critica Philosophiae* II (London, 1819), p. 469, which in this passage is a literal rendering of Brucker. The standard account of this Enlightenment historiography is Giovanni Santinello, *Storia dell storie generali della filosofia* (Brescia, 1980–).

[2] Brucker, *Historia*, p. 00; Enfield, *History*, p. 543.

'realists' and 'idealists', that is of course 'empiricists' and 'rationalists', the labels which have bedevilled the history of philosophy ever since. Grotius, the lynch-pin of Brucker's account of the modern history of ethics, is treated with dramatic contempt: his *De iure belli ac pacis* is 'ordinarily regarded as a system of natural law, which it is not, nor could it be, according to the object which the author set himself' – which was simply to write an analysis of international law.[3] To do so, Grotius had to outline the fundamental principles of natural law, but 'the principles which serve him as a point of departure are for the most part vague, inexact and without precision; for he presents the rights of men and of peoples against one another, now as general maxims of reason, now as features of social necessity, and sometimes as the customs of civil societies, to such an extent that the science of natural law has neither firm foundations nor any systematic unity in his work.'[4] Not only was his philosophy unsatisfactory: Buhle even argued that Grotius was temperamentally and intellectually ill-equipped to act as ambassador for the Queen of Sweden, the post Grotius held for more than a decade at Paris.[5]

It is Buhle's account which we find, in effect, in all subsequent general works on the history of philosophy: Grotius and Pufendorf have never re-emerged to take up places of honour in the history of modern moral philosophy. If they are mentioned, it is as late examples of scholasticism, and their *modernity*, which so impressed Brucker, is not taken at all seriously. (One example: Alasdair MacIntyre in *A Short History of Ethics* mentions Grotius's 'later development of Aquinas' view of natural law into a law for the nations'.)[6] The way in which international lawyers at the end of the nineteenth century rediscovered the scholastic writers on the laws of war, and placed both Grotius and Pufendorf in that tradition, helped to underwrite this view of them.

And yet, Brucker's history was far more than a piece of his own idiosyncracy. He was merely stating in very conventional terms a history of modern ethics which was a commonplace in his time, though he integrated it into a defence of 'electicism' which was,

[3] Johann Gottlieb Buhle, *Geschicte der neuern Philosophie*, III (Göttingen, 1802), p. 329; *Histoire de la philosophie moderne*, trans. A. J. L. Jourdan, III (Paris, 1816), p. 283.

[4] Buhle, *Geschicte*, p. 332, *Histoire*, p. 285.

[5] Buhle, *Geschicte*, p. 328n, *Histoire*, p. 282n.

[6] Alasdair MacIntyre, *A Short History of Ethics* (London, 1967), p. 120. That is the sum total of his discussion of Grotius; Pufendorf is not mentioned at all.

perhaps, more unusual.[7] The origins of this history lie in the late seventeenth century, and it received a comprehensive exposition at the very beginning of the eighteenth century. The first sketch of it is to be found in the preface to the first edition of Pufendorf's *De iure naturae et gentium* itself, in 1672: in the preface, he described Grotius as 'the first person to make our age value the study of natural law', and observed that his successors were Hobbes (in whose work, despite many errors, there is 'much of infinite value') and Selden.[8]

This sketch, like the rest of the work, came under fierce attack in the next six years, and in 1678 Pufendorf answered his critics and provided a justification and expansion of this history, in a volume entitled *Specimen contoversiarum circa ius naturale ipsi nuper motarum*. Most of the attacks on the *De iure naturae et gentium* had come from the pens of German Protestants; foremost among them were two colleagues of Pufendorf at Lund University in Sweden, Nikolaus Beckmann, professor of Roman Law (who later converted to Catholicism) and Josua Schwartz, professor of Theology. They were joined by Friedrich Gesen, the Lutheran minister of Gardelegen near Magdeburg, Valentin Velthem, professor of Theology at Jena, and Valentin Alberti, professor of Theology at Leipzig.[9]

Although these Lutheran worthies had a variety of elaborate arguments to make against Pufendorf, their central claim was that he was in effect a Hobbesian, and that he had therefore departed from the metaphysical and theological orthodoxy of the Protestant church. To establish this, they seized on two distinctive features of Pufendorf's theory. One was Pufendorf's argument that no human action is *in itself* either good or bad: actions do not exhibit inherent moral properties comparable to their physical properties, but instead have their moral qualities 'inputed' to them by the application to them of a rule devised by some agent or group of agents. His critics took this strong ethical anti-realism to be comparable to Hobbes's anti-realism, and to be in direct conflict with the truths of Aristotelianism (as indeed it was). The second feature of Pufendorf's ideas which disturbed the Lutherans was his claim that the principles

[7] A good example of the commonplace character of this history in the eighteenth century is provided by its incorporation in a characteristic work of the *salons*, Alexandre Savérien's *Histoire des philosophes modernes* (3rd edn, Paris, 1773, II, pp. 79ff. for Grotius).

[8] Samuel Pufendorf, *De iure naturae et gentium* (Lund, 1672), sig. b4v ff.

[9] A full discussion of this controversy is to be found in Fiammetta Palladini, *Discussioni seicentesche su Samuel Pufendorf* (Bologna, 1978). I am indebted to Istvan Hont for my introduction to this invaluable work.

of the law of nature can all be interpreted as means towards the end of the preservation of 'society', as this too seemed to them to be comparable to Hobbes's account of the laws of nature. Although they recognised that this latter claim was one which had also been made by Grotius, the Lutherans tended to argue that Grotius was fundamentally orthodox by virtue of his denial of the former claim; and both Velthem and Alberti in fact produced their own commentaries on Grotius to make this point.

The history which was implicit in these Lutheran critiques of Pufendorf was in some ways closer to the post-Kantian one. Velthem praised the 'prince of moralists' Aquinas and the 'father of metaphysics' Suárez, and saw Grotius as in some sense their successor; Hobbes was outside this realist tradition, and there was a fundamental break between his work and Grotius's.[10] To answer these critiques, Pufendorf once again stressed his rival history, which cut Grotius off from his predecessors and linked him both to Hobbes and to Pufendorf himself. In some ways this looks like a scramble for the authority of Grotius, but there was no particular reason why Pufendorf should have felt obliged to wrest it from his opponents – he had after all been quite critical of Grotius (and, indeed, of Hobbes) in *De iure naturae et gentium*. Pufendorf's account is more plausibly read as a genuine attempt to place himself in what he took to be his theoretical context, and to cast doubt on his opponents' understanding of recent intellectual history.

The first chapter of the *Specimen* is entitled 'The origin and development of the study of natural law', and it starts from the assertion that 'in fact, there was no one before *Hugo Grotius* who accurately distinguished the laws of nature from positive law, and put them in proper order'.[11] The New Testament contained the foundations of the law of nature, but it could not be used as the fundamental text in the study of the law, for it also contained much that non-Christians would not accept – and the essence of the laws of nature was that all men actually recognised their force. The classical writers were also deficient; it is true that 'among the various sects of ancient philosophy, the Stoics made some claims which, somewhat emended, would apparently have been easily developed into a body of natural jurisprudence; but they were neglected, and only the

[10] Samuel Pufendorf, *Specimen controversiarum circa jus naturale ipsi nuper motarum* (Uppsala, 1678), p. 26. For the problem of which work of Velthem's is quoted here, see Palladini, *Discussioni.*, p. 200, n.3.

[11] Pufendorf, *Specimen*, p. 1.

dogmas of Aristotle admitted to the schools'.[12] His objection to Aristotle's moral theory was its *localism*: 'his *Ethics*, which deals with the principles of human action, apparently contains scarcely anything other than the duties of a citizen in some Greek *polis*. Just as in his *Politics*, he seems mainly to have had in view the practices of his own Greek states, and to have put a special value on their liberty; which is a grave defect in a study intended to serve the interests of the whole human race.'[13]

Not until Grotius did anyone produce a work uncontaminated by the theories of earlier writers.[14] Pufendorf even conjectured that it had been inspired 'by what the most perceptive *Bacon*, once Chancellor of England, declared about the advancement of learning',[15] an association with Bacon which he was the first to make. His remarks represent a very early use of Bacon as a symbol of anti-scholastic enlightenment, at least outside the peculiar circles of the mid-seventeenth-century enthusiastics for a technological utopia who have been studied by Charles Webster; like Pufendorf's whole interpretation, this use of Bacon became a standard feature of histories of philosophy before Buhle, as we saw in the case of Brucker. Grotius was the model for all students of the laws of nature; though, in a sideswipe at Velthem and Alberti, Pufendorf warned against treating *De iure belli ac pacis* as a text in need of scholastic commentaries – in the end Grotius would become like Aristotle, buried beneath pedantry and casuistry.[16]

Although Grotius made the breakthrough into a modern science of natural law, Pufendorf was fairly critical of some of his views, and in particular of his claim that the laws of nature are equivalent to laws of *logic*, comparable to the proposition that twice two is four. Pufendorf of course denied just this in his *De iure naturae et gentium*, and he repeated his denial in the *Specimen*. But he also acknowledged that 'it can happen, that someone who goes wrong on some general issue, can get particular matters absolutely right. Though it should not make his definition any the less faulty, there are a vast number of questions which Grotius answers correctly.'[17] In other words, Pufendorf believed that while the *superstructure* of Grotius's theory was correct, its *foundations* were in need of modification. In the *Specimen* he failed to give a clear explanation of *why* he approved of the superstructure, other than some references to Grotius's use of

[12] *Ibid.*, p. 8. [13] *Ibid.*, p. 9.
[14] 'Accinxit porro sese *Grotius* ad moliendum opus, in quo nulla priorum vestigia ipsum regebant.' *Ibid.*, p. 10.
[15] *Ibid.*, p. 9. [16] *Ibid.*, p. 11; cf. also pp. 86–9. [17] *Ibid.*, p. 169.

the principle of 'sociability'. But it is fairly clear from his argument in the *De iure naturae et gentium* that he took the common ground between Grotius and himself to be, as his Lutheran opponents perceived, the idea that the laws of nature consisted of rules concerning the *preservation of individuals*.

The crucial passage in the *De iure naturae et gentium* is Book II, chapter 3.11:

> It is an easy Matter to discover the Foundation of Natural Law. Man is an Animal extremely desirous of his own Preservation, of himself expos'd to many Wants, unable to secure his own Safety and Maintenance, without the Assistance of his Fellows, and capable of returning the Kindness by the Furtherance of mutual Good: But then he is often malicious, insolent, and easily provok'd, and as powerful in effecting Mischief, as he is ready in designing it. Now that such a Creature may be preserv'd and supported, and may enjoy the good Things attending his Condition of Life, it is necessary that he be *social*; that is, that he unite himself to those of his own Species, and in such a Manner regulate his Behaviour towards them, as they may have no fair Reason to do him Harm, but rather incline to promote his Interests, and to secure his Rights and Concerns. This then will appear a [*recte* the?] fundamental Law of Nature, *Every Man ought, as far as in him lies, to promote and preserve a peaceful Sociableness with others.*[18]

This, as we shall see later, is more or less identical to Grotius's theory about the content of the laws of nature. Both Pufendorf and Grotius believed that what was *right* (*honestum*), was so because it was fundamentally *profitable* (*utile*) to an individual in need of protection from his fellow men, and both quoted with approval those passages of Cicero where he associated the right and the profitable (though Cicero did not believe that *utilitas* was logically prior to *honestas*). It was because Pufendorf believed this, that he could also speak of Hobbes with such approval, and bracket his name with Grotius's.

His disagreement with Grotius came over the question of whether a belief that some course of action was profitable (in this general sense) was *in itself* sufficient to induce a belief in an agent that the course of action was morally obligatory. Grotius apparently believed that it was, and that an accurate assessment of social realities was enough to give rise to knowledge of an obligatory moral law. Pufendorf, on the other hand, observed that men can often act quite knowingly against their own interests, and that therefore knowledge of what is in our interests cannot be sufficient to make us believe we are under an *obligation* to perform the actions.

[18] Samuel Pufendorf, *The Law of Nature and Nations*, ed. Jean Barbeyrac, trans. Basil Kennet (London, 1749) p. 134.

To make these Dictates of Reason obtain the Power and Dignity of Laws, it is necessary to call in a much higher Principle to our Assistance. For altho' the Usefulness and Expediency of them be clearly apparent, yet this bare Consideration could never bring so strong a Tie on Mens Minds, but that they would recede from these Rules, whenever a Man was pleas'd either to neglect his own Advantage, or to pursue it by some different Means, which he judg'd more proper, and more likely to succeed. Neither can the will of any Person be so strongly bound by his own bare Resolution, as to hinder him from acting quite contrary, whenever the Humour takes him.[19]

This 'higher principle' upon which Pufendorf called was the will of God; it was only because all men believed in a God who had power over them, that they felt obliged to do something which they might not otherwise choose to do. His criticism of Grotius (and Hobbes) in this area is forceful and perceptive. But the crucial point to stress at the moment is that the criticism did not take him as far away from Grotius and Hobbes as one might have expected, if one considered only these foundational matters. Pufendorf believed that we determine what it is that God wills us to do, by considering what is in our best, long-term *interests*: we know that God wishes us to be preserved, and therefore we know that we are obliged to do whatever is necessary for our preservation. We need no beliefs which a rational and self-controlled atheist could not also possess, in order to determine the content of the laws of nature; and Pufendorf always emphasised that the content of the laws was the important issue, and that there was no point to the kind of trivial propositions which his Lutheran opponents believed to be foundational to a moral theory, such as 'what is morally right is to be performed'.[20] As Pufendorf said, the problem was to determine what *was* morally right; and his answer to this question suggests that the Lutherans who accused Pufendorf of a kind of Hobbism had seen a genuine and important feature of his theory.

Having argued that Grotius represented a fundamental break with all previous theories of natural law, Pufendorf went on to outline the developments in the subject after 1625. The principal followers of Grotius, Pufendorf argued, were John Selden and Thomas Hobbes. Both shared Grotius's basic approach, and in particular his hostility to scholasticism; but both had grave deficiencies. Selden 'did not deduce the law of nature from some principle whose force all nations would recognise', but from a specifically *Jewish* source, albeit one supposedly promulgated to all mankind, namely the *Praecepta*

[19] *Ibid.*, p. 141. [20] See his remarks in the *Specimen*, p. 123.

noachidarum.[21] Hobbes tried to construct a mathematical model of the laws of nature, but what he developed was in fact the old Epicurean hypothesis (possibly, Pufendorf conjectured, because his great friend Gassendi had tried to do the same in physics).[22] Nevertheless, he was a man of great intellect, and he had forced his opponents to think very carefully about fundamental features of the law of nature. The last person to figure in Pufendorf's historical sketch was another Englishman, Richard Cumberland, who had published his *De legibus naturae* in the same year as Pufendorf's *De iure naturae et gentium*. Pufendorf recorded his delight at finding that someone else had independently discovered many of the same points (particularly in opposition to Hobbes) which he himself had thought of, and in the second edition of the *De iure naturae et gentium* he incorporated extensive references to Cumberland.[23]

In its broad outlines, Pufendorf's sketch was to go through almost unaltered into the eighteenth-century textbooks. Only one thing needed to be added to this account of modern moral philosophy in order to turn it into precisely the history which Brucker put forward. As we saw, alongside Bacon and Grotius, Brucker put Montaigne and Charron: the modern moral science, in his eyes, began as a response to ethical *scepticism*. Although in some ways this was indeed assumed by Pufendorf, it is not at all explicit in his work; the writer who put it at the centre of the history of morality was the French Protestant philosopher Jean Barbeyrac. At the beginning of the eighteenth century he undertook to place the ideas of the modern natural-law school before as wide a public as possible. His great editions of Grotius and Pufendorf, and their translations into French and English, flooded both Europe and the New World, and represented in themselves virtually an encyclopaedia of modern political thought. To the 1709 edition of his Pufendorf he appended a history of ethics, which was translated into English as *An Historical and Critical Account of the Science of Morality*, and which sets out more or less completely the history which was to be repeated by Brucker. According to Barbeyrac, the writers of antiquity and the Middle Ages all failed to produce an adequate scientific ethics; the Stoics and Cicero (whom Barbeyrac took to be a 'moderate Academic', i.e., sceptic) came nearest, but even they were deficient in a number of crucial respects. Not until Grotius 'broke the ice' after the long domination of Aristotle did a new and truly scientific ethics appear.[24]

[21] *Ibid.*, p. 3. [22] *Ibid.*, p. 12.
[23] *Ibid.*, p. 13. [24] Pufendorf, *The Law of Nature and Nations*, pp. 63, 67.

But in addition to recapitulating Pufendorf's views about the unity and identity of the new school (Grotius's followers, Barbeyrac said, being Selden, Hobbes, Cumberland, Pufendorf and now Locke), Barbeyrac explained just what Grotius had done that was so significant.

Barbeyrac's *Account* begins with some sections of general philosophical reflection, in which he sought to establish that there could be a demonstrable moral science. He was very clear where the chief objection to this programme lay, and what was wrong with the objection.

> Some have, for a long Time, believ'd, and, even at this Day, many do maintain, that Morality is a science very uncertain, and wherein scarce any Thing, beyond Probabilities, is to be found: But it is solely for want of due Examination into the Nature of Things, that this false Notion has prevail'd.[25]

As examples of the objection, he singled out particularly the works of Montaigne and Charron, though he also referred to the views of the sceptics of antiquity (notably Carneades), and to the writings of his own contemporary Pierre Bayle.[26] It was the distinctiveness of its answer to this scepticism which in Barbeyrac's eyes made the *De iure belli ac pacis* the foundational text of the modern natural-law school.

What led Barbeyrac to stress the importance of scepticism as a background for the Grotian moral science was clearly the activity of Bayle, who during the 1680s and 1690s published a wide variety of essays defending Pyrrhonian scepticism. This activity culminated in his famous *Dictionnaire historique et critique* of 1697, in which the articles on the sceptics of antiquity (notably, again, Carneades) are miniature treatises on the desirability of their ideas. Bayle even sought to some extent to appropriate the leaders of the modern natural-law school for his own enterprise – the articles on both Grotius and Hobbes (especially the latter) are full of praise for their subjects, particularly on account of their religious beliefs.[27] By 1709 it seemed to Barbeyrac that scepticism was as flourishing as it had been in the time of Montaigne, and he emphasised accordingly that Grotius and his followers had been explicit and well-judged *opponents* of scepticism.

[25] *Ibid.*, p. 5.
[26] *Ibid.*, pp. 5–8 (Montaigne and Charron), p. 9 (Bayle) and p. 56 (Bayle compared to Carneades).
[27] Pierre Bayle, *The Dictionary Historical and Critical*, ed. P. Des Maiseaux (London, 1734–8), II, pp. 325ff. (Carneades), III, pp. 241ff. (Grotius) and 467ff. (Hobbes).

The obvious question to ask about Barbeyrac's belief that the modern natural-law school developed as a reply to scepticism is, how far was that belief shared by Grotius and Pufendorf themselves? In fact, Grotius in the *Prolegomena* to *De iure belli ac pacis* did signal quite clearly that his main intention was to answer the sceptic. He remarked,

> since it would be a vain Undertaking to treat of Right, if there is really no such thing; it will be necessary, in order to shew the Usefulness of the Work, and to establish it on solid Foundations, to confute here in a few Words so dangerous an Error. And that we may not engage with a Multitude at once, let us assign them an Advocate. And who more proper for this purpose than *Carneades* . . .? This Man having undertaken to dispute against Justice, that kind of it, especially, which is the Subject of this Treatise, found no Argument stronger than this. Laws (says he) were instituted by Men for the sake of Interest; and hence it is that they are different, not only in different Countries, according to the Diversity of their Manners; but often in the same Country, according to the Times. As to that which is called NATURAL RIGHT, it is a mere Chimera.[28]

The use of Carneades as the principal spokesman for the position which Grotius was about to attack was, I think, unprecedented in any work on the laws of nature. The medieval and sixteenth-century scholastics had never put their theories in this kind of context: their intention had always ostensibly been to interpret the ethical theories either of Aristotle or Aquinas, neither of whom saw the refutation of scepticism as their prime task. After Grotius, however, the fragments of Carneades's discussion of justice (which had been embedded in a lost work by Cicero, and had been preserved only in extracts from that work in the Christian father Lactantius)[29] became part of the standard repertoire of modern discussions of natural law. It is fairly clear that the fragments had become far more than curiosities of the history of ancient philosophy through their new association with the sophisticated and comprehensive scepticism of the late-sixteenth-century writers, and that for 'Carneades' one should in effect read 'Montaigne' or 'Charron'.

Grotius's reply to the sceptic was, as Pufendorf perceived, to stress the importance of *self-interest*. To understand the force of this, we have to consider the character of contemporary scepticism. The first point to stress is that for Montaigne and Charron, as for the ancient sceptics, the force of their scepticism in ethical matters came simply from their apprehension of the truth of moral relativism – in

[28] Hugo Grotius, *The Rights of War and Peace*, ed. Jean Barbeyrac, trans. anon. (London, 1738), pp. xiv–xv.
[29] Lactantius, *The Divine Institutes*.

the most famous passage in Montaigne, 'what truth is that, which these mountains bound, and is a lie in the world beyond?'[30] It thus had a different basis from their scepticism in general epistemological matters, for that rested primarily upon the illusory character of sense experience. It is true that in each case no *criterion* was available with which to distinguish true from false belief, and the sceptic thus had to suspend judgement; but if a *criterion* had become available in the physical sciences, this would have been no remedy for the moral sciences, as no true account of the material world will necessarily resolve fundamental moral disagreement. There was thus an *empirical* basis to the sceptical doubt in the area of morality: it arose from an observation about the beliefs and practices to be found in different human societies, and not from any general considerations about the nature of ethical thinking.

The second point which must be made is that the sceptic did not merely register his disbelief in all scientific propositions. Scepticism (again both in antiquity and sixteenth-century France) underpinned a way of life: the sceptic still had *some* principles to live by. His main goal was a life of *ataraxia* or *apatheia*, free from the disturbance caused by emotions based on beliefs, including beliefs about the virtues and vices. The one thing which he did not exclude from this life was, however, the simple desire for self-preservation, for it was precisely to preserve oneself that the sceptical sage recommended *ataraxia*. The flight from the world which the sceptic advocated had as its objective the preservation of the individual from the emotional and – often – the physical harm consequent upon an engagement in public life. At this point in the writings of the post-Renaissance sceptics (and maybe also in those of Carneades himself), scepticism reached out to hold hands with Stoicism, for the Stoics too had argued that man's primary desire was to preserve himself. They had also argued that principles of justice would be compatible with this, something which Carneades ridiculed in the passage which Grotius quoted, and it is noteworthy that although both Montaigne and Charron exhibited a great respect for and interest in the Stoic arguments, they were unwilling to pick up the Stoic defence of justice.[31]

Grotius's great idea seems to have been that the sceptic could be

[30] Michel de Montaigne, *Essayes*, trans. J. Florio, ed. J. I. M. Stewart (London, n.d.), p. 524.

[31] See Myles Burnyeat, 'Can the sceptic live his scepticism', in *Doubt and Dogmatism*, ed. Malcolm Schofield, Myles Burnyeat and Jonathan Barnes (Oxford, 1980), pp. 20–53.

answered once the full implications of his acceptance of the principle of self-preservation had been thought out. The argument is in fact set out most clearly in his early work, *De iure praedae* (which he composed in 1604/5, and which remained largely in manuscript), though it is presented in a much more detailed form in *De iure belli ac pacis*. In *De iure praedae* he argued that

> since God fashioned creation and willed its existence, every individual part thereof has received from Him certain natural properties whereby that existence may be preserved and each part guided for its own good, in conformity, one might say, with the fundamental law inherent in its origin. From this fact the old poets and philosophers have rightly deduced that love, whose primary force and action are directed to self-interest, is the first principle of the whole natural order. Consequently, Horace should not be censured for saying, in imitation of the Academics [i.e., the Academic sceptics, headed in the second century B.C. by Carneades], that expediency might perhaps be called the mother of justice and equity.[32]

Thus the two primary laws of nature, he asserted, were '*It shall be permissible to defend one's own life and to shun that which threatens to prove injurious*' and '*It shall be permissible to acquire for oneself and to retain those things which are useful for life.*' 'On this point the Stoics, Epicureans and Peripatetics are in complete agreement, and apparently even the Academics have entertained no doubt.'[33]

As the last remark shows, Grotius presented these laws in what would later be regarded as an 'eclectic' manner, as principles which all men would accept, and which all societies would acknowledge. In part, this involved a simple observation of human societies: Grotius's contention was that no society had been or could be found in which *this* moral principle was denied, though many other moral principles, e.g., of the Aristotelian kind, were frequently disregarded. The moral relativist had therefore jumped to too pessimistic a conclusion. Grotius argued the same about the next two laws of nature, which he presented as secondary to the principle of self-preservation, but equally universal – '*Let no one inflict injury upon his fellow*' and '*Let no one seize possession of that which has been taken into the possession of another.*'[34] These bans on *wanton* injury of another human being were also principles which no man or group of men would deny, though they would at the same time concede that injury to another in the cause of self-preservation might be justified (this is the door which led fairly directly to Hobbes). Grotius's explanation of why all these laws were universal was essentially that they were

[32] Hugo Grotius, *De iure praedae commentarius*, I, trans. G. L. Williams (Oxford, 1950), p. 9. [33] *Ibid.*, pp. 10–11. [34] *Ibid.*, p. 13.

functionally necessary for social existence: no society could be imagined in which they were systematically flouted. But the persuasiveness of his case came as much from his deployment of empirical evidence about social practices as from this functionalist explanation.

In the *De iure praedae*, this account of the *content* of the laws of nature in terms of self-preservation is associated with what might be called a 'voluntarist' theory of their *form*. Grotius argued that 'What God has shown to be His Will, that is law . . . The act of commanding is a function of power, and primary power over all things pertains to God, in the sense that power over his own handiwork pertains to the artificer and power over inferiors, to their superiors.' He even asserted, in dramatic contrast to what he was to say in *De iure belli ac pacis*, that 'a given thing is just because God wills it, rather than that God wills the thing because it is just'.[35] But, like Pufendorf later, he believed that we can determine what it is that God wills for mankind, not by consulting Scripture or what seems intuitively obvious, but by considering what must be done if a man, made as God has made him, is to be preserved from his fellow men. The *De iure praedae* would in fact have met many of the objections which Pufendorf and Barbeyrac levelled at the *De iure belli ac pacis*; ironically, it remained locked away in the house of the De Groot family, and was not made public until 1864.

However, during the twenty years after he wrote *De iure praedae* Grotius abandoned this theory about the form of the laws of nature, and in *De iure belli ac pacis* produced instead the notorious claim that the laws would bind mankind, 'though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs'. The laws of nature, Grotius now argued, could only be ascribed to God in the sense that 'it was his Pleasure that these Principles should be in us'.[36] Despite this, Grotius's account of the *content* of the laws in 1625 was very close to what it had been twenty years earlier. In Book I he argued that 'the first impression of nature' is 'that Instinct whereby every Animal seeks its own Preservation, and loves its Condition, and whatever tends to maintain it'.[37] This instinct may be governed by rational reflection on the needs of society, but social life itself is to a great extent the product of man's necessity: 'Right Reason, and the Nature of Society, . . . does not prohibit all Manner of Violence, but only that which is repugnant to Society, that is, which invades

[35] *Ibid.*, p. 8. [36] Grotius, *The Rights of War and Peace*, p. xix. [37] *Ibid.*, p. 24.

another's Right: For the Design of Society is, that every one should quietly enjoy his own, with the Help, and by the united Force of the whole Community.'[38] These are the two principles of *De iure praedae*, self-preservation and the ban on *wanton* injury.

In the *Prolegomena* to *De iure belli ac pacis*, it should be said, Grotius did emphasise more than he had done in *De iure praedae* the positive advantages of society and the universal human desire to live with his fellows, and this led him to reverse his judgement on the quotation from Horace he had endorsed in 1604/5; but he did so in a somewhat qualified way. His new position is summed up in the following passage:

> the Saying, not of Carneades only, but of others, *Interest, that Spring of Just and Right* [Horace], if we speak accurately, is not true; for the Mother of Natural Law is human Nature itself, which, though even the Necessity of our Circumstances should not require it, would of itself create in us a mutual Desire of Society: . . . But to the Law of Nature Profit is annexed: For the Author of Nature was pleased, that every Man in particular should be weak of himself, and in Want of many Things necessary for living Commodiously, to the End we might more eagerly affect Society.[39]

The substantial continuity of Grotius's most powerful and original idea (particularly in the body of his text), despite a radical change in his view of the laws' foundations, is a striking illustration of the fact that foundational issues are not the most important ones in this history. What is important is the continued attempt to integrate the laws of nature into a system based on the principle of self-preservation; beyond that, there was scope for a great deal of disagreement (even, as we have just seen, within one person's own intellectual career) about how to interpret the system as a whole, and how to explain the obligatory character of the laws. We could draw a rather strict analogy with contemporary natural science: Galilean physics provided a new and integrated system, but left a substantial opening for philosophical discussion about its metaphysical basis.

If a concern with Carneades, and a commitment to refute what he had said by using the principle of self-preservation, are the *leitmotivs* of the modern natural-law school, then both Pufendorf and Hobbes do indeed amply qualify for membership. Pufendorf devoted two sections of the chapter in which he discussed the general character of the law of nature to a discussion of Carneades's argument that 'there's no such Thing as natural Law, but that all Law first arose from the Convenience and the Profit of particular States', and he

[38] *Ibid.*, pp. 25–6. [39] *Ibid.*, p. xx.

refuted it (as we have seen) by deductions from the principle of self-preservation.[40] Hobbes, of course, thought more deeply about just these issues than any other seventeenth-century philosopher; but he too seems to have had contemporary scepticism largely in mind. A particularly striking example is the well-known passage of *Leviathan* in which he remarked,

> The Foole hath sayd in his heart, there is no such thing as Justice; and sometimes also with his tongue; seriously alleaging, that every mans conservation, and contentment, being committed to his own care, there could be no reason, why every man might not do what he thought conduced thereunto: and therefore also to make, or not make; keep, or not keep Covenants, was not against Reason, when it conduced to ones benefit.[41]

This looks very much as if Hobbes had in mind the same observation of Carneades which Grotius also attacked, that 'either there is no justice; or, if there is such a thing, it is the greatest foolishness, since one will harm oneself while consulting the interests of other people' (*aut nullam esse iustitiam; aut, si sit aliqua, summam esse stultitiam, quoniam sibi noceret alienis commodis consulens*).[42] Mersenne in fact recommended Hobbes's *De cive* to Sorbière as the ideal refutation of scepticism.[43] The particular character of the refutation of scepticism in both Pufendorf and Hobbes (and, indeed, in Grotius himself) left them, however, open to the charge that they were sceptics of a kind themselves: for they refuted the sceptic by employing one of his own ideas, that the fundamental principle of human conduct was the desire for self-preservation. Hobbes was continually attacked for endorsing this sceptical proposition, and when Pufendorf's opponents accused him of Hobbism, they often joined this to an accusation of moral scepticism – Friedrich Gesen, for example, alleged that Pufendorf was in fact a new Carneades.[44] Although Barbeyrac may have overstressed the singlemindedness with which his heroes combatted contemporary scepticism, it is clear enough that this was indeed a crucially important element in their enterprise, and that many of their differences from earlier natural-law theories can best be understood in this context. It is also clear that post-Kantian writers have misrepresented their strategy because they have forgotten the original point of their ideas. Grotius and his successors were responding to a straightforward pre-Humean moral

[40] Pufendorf, *The Law of Nature and Nations*, p. 125.
[41] Thomas Hobbes, *Leviathan*, ed. C. B. Macpherson (Harmondsworth, 1968), p. 203. [42] Lactantius, *Opera omnia*, I, ed. S. Brandt (Vienna, 1890), p. 449.
[43] Thomas Hobbes, *De Cive: The Latin Version*, ed. Howard Warrender (Oxford, 1983), p. 86. [44] Palladini, *Discussioni*, p. 177.

scepticism, which simply pointed to the multiplicity of beliefs and practices around the world, and concluded that there were no common moral beliefs and hence nothing stable upon which to build a universal ethics. Part of their response consisted equally simply in demonstrating that there were actually at least two universal moral beliefs (the right of self-preservation and the ban on wanton injury), and that this minimalist ethics could be used as the basis for a universal moral science. There was therefore a substantial element of descriptive ethical sociology in their works, since that was the battleground chosen by their opponents. When Hume (and also, it should be said, Rousseau, though in a much more allusive fashion) pointed out that no information of *that* kind could possibly be relevant to the construction of a *moral* theory, theirs was a new kind of scepticism, which no earlier writer had had to deal with.

I hope to deal in another context with the eighteenth-century criticisms of the modern moral science; here, my purpose is simply to consider its general character, and its relationship to its predecessors and competitors. In particular, recognising the centrality of the arguments against scepticism for the modern natural lawyers helps us to understand Pufendorf's and Barbeyrac's sense that there was a fundamental division between the ancient or medieval natural-law writers and the modern ones, and it also helps us see the *humanist* roots of the latter. When the particular anti-sceptical point of the modern school was forgotten, it was easy to see it as merely an extension of the long medieval tradition of natural-law theory, and wholly distinct from the humanist mode of political theorising (in which, it was always clear, the notion of 'natural law' played a very small part). But as we have seen, Pufendorf and his followers believed strongly in an absolute break between the medieval moral philosophy willprove unsatisfactory: no major work of ethics devoted *explicitly* to refuting the sceptic survives from utterly different in their eyes from the genuinely 'modern' writers.

The explanation of this is that if one is principally alert to the problem of moral scepticism, then it is true that both ancient and medieval moral philosophy will prove unsatisfactory: no major work of ethics devoted *explicitly* to refuting the sceptic survives from antiquity (though it is clear that there were some), and medieval natural-law thinking is conspicuous by its lack of awareness that full-blooded moral scepticism was an intellectual possibility. The Ockhamists, who of course exhibited a scepticism about the realist basis for a demonstrative moral science, never denied that such a

science was possible. The simple deduction which Montaigne and Charron made from the observed fact of radical moral disagreement, that perhaps there could *be* no universal standard of right and wrong, was something to which men at the beginning of the seventeenth century had to think up their own response.

The men who were most likely to think up such a response were men trained in a humanist manner. Elements of scepticism had been present from the early Renaissance, in the work of people such as Valla, and we have already seen the importance of a detailed knowledge of the ancient sceptical texts for sixteenth-century sceptics. Montaigne simply saw very clearly the implications of many things which earlier humanists had argued. A sensitivity to the force of these ideas, and therefore a desire to confront them in a sympathetic manner, was going to be found at the end of the sixteenth century among humanists themselves rather than among contemporary natural lawyers trained in a scholastic style. The biographies of Grotius or Hobbes are indeed strikingly different from that of Suárez: both the former were brought up largely on the humanist texts, and both displayed all the interests and abilities of the humanist. They each wrote poetry, both in their vernaculars and in Latin; throughout their lives they also wrote history, and retained an interest in literary and textual criticism as well as philosophy. Grotius was of course internationally famous for his precocious humanist talents. While not ignorant of medieval and contemporary scholastic writers, the context in which they employed that knowledge was always shaped largely by their humanist concerns.

This obvious fact about their biographies has not carried much weight with many recent writers (including, I should confess, myself in an earlier work.)[45] This is largely because the modern moral scientists used extensively the terminology of *natural law*, and it is almost a defining characteristic of the humanist political theorist that he did not. It is true that Grotius and his followers broke decisively with the humanist view of politics and ethics as *practical* subjects (in the Aristotelian sense, i.e., not deductive systems, 'sciences' or *epistemes*); their refutation of scepticism allowed them to reinstate the idea that the study of men's actions could be 'scientific', and to this extent they did resemble contemporary scholastics. But the scholastic writer in both the Middle Ages and the sixteenth century believed that it was possible to put Aristotle's ethics, or a similar account of the classical virtues, on a theoretical and scientific

[45] Richard Tuck, *Natural Rights Theories* (Cambridge, 1979), p. 176.

foundation, while the modern natural lawyers saw clearly that this was impossible: in their eyes, the sceptical critique of such ethical theories was overwhelming.

The sympathy which these writers retained for many features of humanist and even sceptical moral theories comes out in many important aspects of their work. It is a familiar fact, for example, that the seventeenth-century natural-law writers stressed the distinction between a state of nature and civil society to a degree far beyond any medieval author. This was because they shared the sceptics' sense that most familiar moral beliefs and practices were the product of specific circumstances and histories, and differed from place to place; their history was the history of civil societies. But the minimalist core of universal moral principles was not part of that story, and could be used to describe (speculatively) what life would be like without the superadditions of civility. It could also be used for the same reason to describe relations between different civil societies, the first use to which it was in fact put, in the writings of Grotius.

But perhaps the most important way in which the modern moral science preserved something of the outlook of the late-sixteenth-century sceptical humanist is in the deep *pluralism* inherent in it. The function of the new moral science was not crudely to rebut scepticism but to *transcend* it: to use what the sceptic himself believed as the basis for an anti-sceptical science. Thus the multiplicity of possible beliefs and customs to which the relativist pointed was not to be denied, or treated as evidence for human irrationality, but (in general) to be endorsed and absorbed into the new theory. As Grotius said plainly, 'there are several Ways of Living, some better than others, and every one may chuse what he pleases of all those Sorts'.[46] All the writers in this tradition, including even Hobbes, saw it as part of their duty to defend a relatively pluralist intellectual and aesthetic culture against its enemies – notably the Calvinist and Catholic churches. This aspect of Pufendorf's work was another reason for the hostility levelled at him by the Lutheran clergy.

It would, I think, be impossible to overestimate the importance to these writers of their sense that large areas of life needed defending from fanatics, that is, from people who believed in more extensive universal moral obligations than those contained in the minimalist core. In a way, they all wished to see the world made safe for the sceptic; the irony was that scepticism itself could not show how the world

[46] Grotius, *The Rights of War and Peace*, p. 64.

was to be made safe, for it could not in principle show why the fanatic was *wrong* in holding his moral beliefs and acting upon them, however violently. We can see the character of this ambition clearly if we contrast the fortunes of both scepticism and what we might call 'post-scepticism' in the United Provinces and in France. The fact that the wars of religion had been fought to a stalemate across Europe, and that henceforward politicians in most major European countries were going to have to live with fundamental and irreconcilable ideological divisions within their states, undoubtedly fostered a kind of disengaged and sceptical attitude in the leaders of many states by the beginning of the seventeenth century. 'To know nothing is the surest faith' remarked Jan van Oldenbarnevelt, Advocate-General of the United Provinces and the patron of the young Grotius; 'in matters of state the weakest are always wrong' observed Cardinal Richelieu of France, ironically enough to Grotius *à propos* of the fall and execution of Oldenbarnevelt.[47] Richelieu helped the so-called *libertins érudits* and contributed to the sceptical culture which was so prominent in seventeenth-century France; there, the power of the state protected such ideas and to some extent even based itself upon them. In the United Provinces, on the other hand, the execution of Oldenbarnevelt and the exile of Grotius were dramatic illustrations of the fact that disengaged and pluralist politicians were themselves vulnerable to the attacks of fanatics. It is no accident that in France (as Professor Keohane has shown) the kind of post-sceptical moral science I have been discussing hardly developed;[48] it was Holland and England above all where it was invented, two countries where in the first half of the seventeenth century the power of the state was threatened or broken by religious dogmatists. Nor is it an accident that so many of these modern natural-law writers turned to a powerful and – in our terms – illiberal state to protect intellectual freedoms from mistaken or dogmatic philosophers arrayed in churches. Pufendorf too fits into this picture, for one of his principal concerns apart from his natural jurisprudence was an analysis of the German constitution in the wake of the destructive religious wars of the mid-century, in which he pleaded for strong and effective states in Germany to prevent such a catastrophe being repeated.

This deeper understanding of the humanist roots of the modern

[47] Jan den Tex, *Oldenbarnevelt*, I (Cambridge, 1973), p. 7; Grotius, *Briefwisseling*, II, ed. P.C. Molhuysen (The Hague, 1936), p. 448.

[48] Nannerl Keohane, *Philosophy and the State in France* (Princeton, 1980), p. 122.

moral science is merely one example of the kind of insight which is available to us once the post-Kantian history of morality is replaced with the pre-Kantian one. The moral theories of the late-seventeenth- and eighteenth-century natural lawyers constituted in many ways the most important language of politics and ethics in Europe, influential over a huge area and in a wide variety of disciplines. Their essential unity has been fractured and their character misunderstood for the last two centuries; but if we allow ourselves to be guided by the 'history of morality' which they themselves inspired, we can recover a truer sense of what they represented. Not the least important consequence of this is then that we can put into a proper perspective the invention at the end of the eighteenth century of the political and ethical theories by which in one way or another we all still live.