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THE BASIS OF THE NATURAL LAW IN LOCKE'S PHILOSOPHY

JAMES W. BYRNE*

THE QUESTION of the basis of "the law of nature" in Locke's philosophy is a relevant inquiry in view of the ambivalence which begins to appear in his later works which deal with morality. In the "early essays on the law of nature" the basis for the law of nature was a rationalistic one, that is, law was the proximate basis of moral obligation. It was called a natural law because it was thought that this law could be discovered by using the faculty of reason. In this way the will of God which Locke thought of as the ultimate basis of moral obligation was made known to man in a natural way. Thus, in the early essays Locke described the law of nature "as being the decree of the divine will discernible by the light of nature and indicating what is and what is not in conformity with rational nature, and for this very reason commending or prohibiting."¹ But as Locke continued the epistemological inquiries in the *Essay* which he had begun in these early essays, certain antinomies began to appear which require a careful analysis before the true basis of the law of nature, as the conclusion of his mature reflections on the epistemological questions of the *Essay* itself, can be determined. It will be the work of this article to attempt to point out the real basis of the law of nature in the light of the conclusions of the *Essay*, and to show what these conclusions really meant to Locke's moral philosophy.

In order to establish the basis for Locke's doctrine of the law of nature in the light of the metaphysical principles inherent in the *Essay Concerning Human Understanding*, it will be necessary for clarity's sake to set forth in a summary way Locke's doctrine of law and to compare it with the classical definition of law. St. Thomas Aquinas gave expression to

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¹ LOCKE, *ESSAYS ON THE LAW OF NATURE* 111 (von Leyden ed. 1954).

the classical definition of law when he defined it as "nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated."² Thus, the traditional meaning of law was something pertaining to reason. "Since reason is the universal rule and measure of action law then becomes an obligation prescribed by reason."³

Locke, on the other hand, departed from this tradition by adopting the Nominalist solution regarding the essence of law, that is, a *voluntarist theory* or a legislative ethics.⁴ This voluntarist solution with regard to law began with William of Occam, who was an extreme voluntarist of the fourteenth century. For Occam law is will,⁵ and reason can never know a law by knowing the nature of things. Thus, God's will could be known only through revelation, and all law is positive law.

For Locke law is the will of a superior, or of one who has the right of commanding obedience; "it is the decree of a superior will, wherein the formal cause of a law appears to consist. . . ."⁶ The proper function of law is to legislate, that is, "it lays down what is and is not to be done. . . ."⁷

² AQUINAS, *SUMMA THEOLOGICA*, I-II, q. 90, art. 4. St. Thomas' definition has been chosen as representative of the classical definition, because as Huntington Cairns states: "St. Thomas' legal writings are more than the working out of a jurisprudence adjusted to the thirteenth-century thinking. They are also an epitome of the major juristic principles which had come down to him tested by all the resources of Scholasticism." CAIRNS, *LEGAL PHILOSOPHY FROM PLATO TO HEGEL* 175 (1949).

³ CAIRNS, *op. cit. supra* note 2, at 169.

⁴ LOCKE, *op. cit. supra* note 1, at 51.

⁵ For example, the will of the sovereign is law. "This latter idea is an inheritance from the Byzantine period of Roman law. . . ." CAIRNS, *op. cit. supra* note 2, at 169.

⁶ LOCKE, *op. cit. supra* note 1, at 111-13.

⁷ *Id.* at 113.

and the fact that the superior who commands has a right and power over us makes the law, that is, the will of such a superior binding.

Law is at the heart of Locke's theory of civil society. According to Locke, civil government originated because of the need for a set of laws to govern society in order to preserve man's natural right to property.⁸ However, for Locke law was essentially a branch of ethics, and in their essence laws were moral rules.⁹ Furthermore, because of Locke's voluntaristic conception of law, the traditional distinction between the eternal and the temporal law had no meaning. Rather, since law is that which is set up by an authority for the measure of conduct and expresses the will of such an authority, all laws seem to be positive law.¹⁰ According to Locke rules of morality, which included rules of law, were distinguished from other rules because they were enforced or were associated with rewards and punishments. In the *Essay* Locke maintained that the rules or laws to which men generally refer their actions in order to judge their morality fall into three classes; the divine law, the civil law, and the law of opinion or reputation.

The divine law is the will of the creator, which can be promulgated by the light of nature, and then it is called the law of nature, or by revelation, and then it is known

⁸ "The great and chief end, therefore, of men's uniting into commonwealth, and putting themselves under government, is the preservation of their property, to which in the state of nature there are many things wanting." LOCKE, *THE SECOND TREATISE OF GOVERNMENT* 71 (Peardon ed. 1952).

⁹ 1 LOCKE, *AN ESSAY CONCERNING HUMAN UNDERSTANDING* 474 (Fraser ed. 1959); *cf.* CAIRNS, *op. cit. supra* note 2, at 166-67.

¹⁰ ROMMEN, *THE NATURAL LAW* 41 (Hanley ed. 1947).

as divine positive law.¹¹ By divine law Locke meant the law which God has set to the actions of men. Locke thought that it was clear to all men that God has given a rule whereby men should govern their actions, and that God has promulgated this law. God has dominion over his creatures, and therefore as a superior being he has the right to legislate for them. By his goodness and wisdom God directs creatures to what is best for them, and furthermore God has the power to enforce his law by reward and punishment. Finally, Locke maintained that the only true standard of moral rectitude is a comparison of human actions with God's law. By this comparison men can judge their actions morally good or evil, that is, whether, as duties or sins, they are likely to procure them happiness or misery from the hands of the Almighty.¹² Law is the standard by which men judge the moral rectitude or depravity of their actions, and the true nature of law is that some reward or punishment is annexed to the performance of an action.

Civil law is "the rule set by the commonwealth to the actions of those who belong to it," and "is another rule to which men refer their actions; to judge whether they be criminal or no."¹³ The civil law is the expression of the will of the majority which derives its right of dominion and power of sanction from the "social contract," by which society invested a limited authority in civil government by a free donation of certain human rights to the State.¹⁴ However, the law of

nature is prior to civil society and it is this law which determines which rights are to be donated to the State, and whether laws are just.

The third class of laws to which men conform their actions, and by which they judge of the moral rectitude of their actions is the law of opinion or reputation. This type of law refers only to what custom in a certain time and place has praised as virtuous or condemned as vice.¹⁵ The popular test of the morality of an action is connected with commendation and disgrace in the eyes of the members of the society in which a man lives. However, Locke maintained that the law of opinion or reputation varies according to the place and in the various epochs of history. Nevertheless, he rejected the charge that he makes public opinion the ultimate nature of right or wrong, but it is the test that the majority of men use as a standard of morality. Rather, Locke himself believed

wherein the majority have a right to act and conclude the rest." *Cf.* "For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority. . . ." *Ibid.*

¹⁵ 1 LOCKE, *op. cit. supra* note 9, at 477: "Thus the measure of what is everywhere called and esteemed virtue and vice is this approbation or dislike, praise or blame, which, by a secret and tacit consent, establishes itself in the several societies, tribes, and clubs of men in the world: whereby several actions come to find credit or disgrace amongst them, according to the judgment, maxims, or fashion of that place. For, though men uniting into politic societies, have resigned up to the public the disposing of all their force, so that they cannot employ it against any fellow-citizens any further than the law of the country directs: yet they retain still the power of thinking well or ill, approving or disapproving of the actions of those whom they live amongst, and converse with: and by this approbation and dislike they establish amongst themselves what they will call virtue and vice."

¹¹ 1 LOCKE, *op. cit. supra* note 9, at 475.

¹² *Ibid.*

¹³ *Id.* at 476.

¹⁴ LOCKE, *op. cit. supra* note 8, at 55: "When any number of men have so consented to make one community or government, they are thereby presently incorporated and make one body politic

that the law of right and wrong is in itself eternal and unalterable. However, he does not explain the ground on which his moral faith is based.¹⁶

Locke does not feel that he has abandoned his own notion of law in making commendation and disgrace one of the strongest motives by which men are moved to adhere to public morality.¹⁷

From the point of view of Locke's theory of society, the law of nature is of the greatest importance, because it serves him in explaining pre-political society, and the origin of civil society, that is, the law of nature is the means by which men have certain inalienable rights for the greater protection of which they have united into civil society. The law of nature is also necessary to impose a limit on the will of the sovereign after the formation of civil society.

In seeking the basis of Locke's doctrine of natural law, it will likewise be necessary to consider the metaphysical structure of his philosophy, and to connect his notion of the law of nature with his metaphysics. In the early "essays on the law of nature," Locke had accepted such metaphysical notions as God's existence and the teleological structure of the universe as a support for his theory of natural law. Furthermore, the law of nature was said to be a law which indicated "what is and what is not in conformity with rational nature. . . ."¹⁸ But when Locke continued his epistemological inquiries in the *Essay*, his metaphysics underwent some drastic changes.

As a result of the critique of human knowledge contained in the *Essay*, Locke

was aware that the proximate basis for the law of nature must be re-examined. Our knowledge of reality is the essences that exist in our minds. But we cannot know the *real essences*, because we cannot have a knowledge of *substance as such*. We can, however, know something about particular sorts of substances by giving a name to the various combinations of sense qualities that are usually observed together, and this is called the *nominal essence*. Thus, in the light of Locke's conclusions regarding the impossibility of knowing the real essences of either material or spiritual substances, the proximate metaphysical foundation of the law of nature was destroyed, because, since man is a substance his real nature is unknowable and cannot be the means of discovering the content of the natural law, and hence cannot serve as the proximate basis for this law.

When Locke's epistemological inquiries had sufficiently undermined the proximate basis of the natural law in the traditional sense (that is, as founded on the nature of man), he began to look to the nominal essence of man for a way of expressing God's will as far as morality was concerned. Thus, the hedonistic elements of his moral philosophy, which first appeared in his paper *Of Ethick in General*, began to come to the foreground in the ethics of the *Essay*. The idea of the law of nature is not abandoned, but he seeks a proximate basis for it more in accord with the principles of his philosophy as it developed in the *Essay*. Since human nature cannot be known in its real essence, then the moral law must be revealed to man in some other natural way, that is, some phenomenal manifestation on the sense level. Consequently, *good* and *evil* must be attached to the nominal essence of man.

¹⁶ *Id.* at 477 n.1.

¹⁷ *Id.* at 479.

¹⁸ LOCKE, *ESSAYS ON THE LAW OF NATURE* 101 (von Leyden ed. 1954).

Pleasure and pain were the means by which human reason could discover the suitability or unsuitability of action to the moral law. Thus, in the *Essay*, Locke defined moral good and evil as "the conformity or disagreement of our voluntary actions to some law, whereby good and evil is drawn on us, from the will and power of the lawmaker; which good and evil, pleasure or pain, attending our observance or breach of the law by the decree of the law-maker, is that we call *reward* and *punishment*."¹⁹ *Good* is defined as an aptness in a thing to produce pleasure in us, and *evil* as an aptness in a thing to produce pain in us.²⁰ Thus, Locke says that "things then are good or evil, only in reference to pleasure and pain."²¹ By pleasure and pain he means either bodily pleasure or pain known through sensation, or mental pleasure or pain known through reflection.²² Pleasure and pain, however, are the secondary sense qualities of certain objects, and thus they are only subjective modifications of the perceiver. Therefore, when we call something good or evil, we attribute a quality to it which we do not know to exist in the object as such, since all we know is that the object causes pleasure or pain in us. Thus, we have no knowledge of *good as such*, but only of certain phenomenal manifestations of an object in terms of sensation.

Nevertheless, the law of nature really

existed as a substratum for moral actions,²³ but it was lost under the phenomenal aspects of human existence, and there was no way for human reason to discover it except through the pleasure and pain caused by the objects of experience, and this is not to know the law as such, but only the manifestation of the law. Just as human nature was real but unknown to human reason, and the human mind must be content with the phenomenal manifestations of that nature in particular instances (the nominal essence), so the law of nature was real, and although Locke never said that it was unknowable because he felt that God had sufficiently revealed the moral law to us for our practical lives, yet the pleasure and pain that God has annexed to certain actions served as the phenomenal manifestation of moral good and evil. However, Locke's theological principles maintained that the historical evidences gave certitude only to the fact that Jesus is the Messiah, and only moral probability to the other parts of the Scriptures. Thus, the natural law would have only moral probability if it were based only on the Scriptures. Therefore, Locke sought some other basis besides that supplied by revelation.

That Locke's theory regarding the meaning of the law of nature is ambiguous is attested to by the fact that Tyrrell wrote to him asking for a clarification of his doctrine. Locke answered Tyrrell's inquiries in a letter dated August 4th, 1690, in which he tried to remove some of the ambiguities Tyrrell complained surrounded his doctrine in the *Essay* concerning the meaning of the

¹⁹ 1 LOCKE, *op. cit. supra* note 9, at 474.

²⁰ *Id.* at 340-41.

²¹ *Id.* at 303.

²² *Id.* at 306: "[B]y pleasure and pain, delight and uneasiness, I must all along be understood (as I have above intimated) to mean not only bodily pain and pleasure, but whatsoever delight or uneasiness is felt by us, whether arising from any grateful or unacceptable sensation or reflection."

²³ STRAUSS, *NATURAL RIGHT AND HISTORY* 21 (1953): "We thus arrive at the conclusion that Locke cannot have recognized any law of nature in the proper sense of the term."

law of nature. In this letter Locke refers Tyrrell to Book I, c. 3, s. 13 "where it was proper for me to speak my opinion of the law of nature;"²⁴ and to Book II, c. 27, s. 7 and 8 "where I have occasion to speak indefinitely of the divine law."²⁵ Locke maintained that in order for practical principles to be innate, the knowledge of the rewards and punishments attached to the moral laws would have to be innate also. In other words, an innate idea would express not only the essence of the thing, but also all that was implied by that essence. Thus Locke thought that pleasure and pain, which were the means of recognizing moral actions in the practical order, would also be imprinted on the mind with the idea of the thing, if that idea was innate. But he holds that this is not so "unless with an innate law they can suppose an innate Gospel too."²⁶

Thus, it seems that Locke held that the knowledge of divine positive law is necessary in order to know the moral law because it is through this divine positive law that we learn of the sanctions attached to the moral law. However, Locke immediately asserts that his denial of an innate law does not mean that he holds only to positive law, but, on the contrary, he maintained that there is also the law of nature.

In this letter to Tyrrell, Locke attempted to clarify certain misunderstandings about where his law of nature was to be found. It is worth noting that Tyrrell's objections focussed on two points: in the first place that the rewards and punishments attached to this law are in the next life, and therefore,

are not known naturally; and in the second place that it seems Locke finds this law in the Sacred Scriptures.²⁷ However, Locke replied that these objections arose because the readers misunderstood his intention, and thus accused him of lacking clarity. Actually Locke maintained that he was not attempting to base the law of nature on the divine law, but rather he only intended to point out the fact that men judge the moral rectitude of their actions by comparing them with the divine law. In these two sections of the *Essay*, he claimed only to show that men receive a standard for their moral ideas from some divine revelation, no matter whether revealed naturally (the law of nature) or miraculously.²⁸

Locke held that men became aware of the content of their moral ideas by comparing their actions with the divine law. But then how can Locke speak of this content of the divine law as something naturally known without revelation? Furthermore, if human nature cannot be the source of the content of the natural law by apprehending the intelligibility of man's nature, and his relations with God and the world, then how does man become aware of the divine law in a natural way? It would seem that Locke is guilty of the error of dogmatism in accounting for the moral ideas which he said comprised the law of nature. "He simply made the law of nature include the moral principles of the liberal Christian and Whigs of his day."²⁹ Leo Strauss points out that for

²⁴ Letter From John Locke to Tyrrell, Aug. 4, 1690, in 1 KING, LIFE OF JOHN LOCKE 366 (1830).

²⁵ *Id.* at 367.

²⁶ 1 LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 78 (Fraser ed. 1959).

²⁷ Cf. GOUGH, JOHN LOCKE'S POLITICAL PHILOSOPHY 22 (1950): "To a great extent, the source of Locke's inspiration on the subject of natural law was the Bible, which he cites freely."

²⁸ Letter From John Locke to Tyrrell, *op. cit. supra* note 24, at 366-73.

²⁹ LAMPRECHT, THE MORAL AND POLITICAL PHILOSOPHY OF JOHN LOCKE 86 (1918).

Locke ultimately the law of nature is "a creature of the understanding rather than a work of nature,"³⁰ and this law, as contained in Locke's philosophy, "formulates the conditions of peace or, more generally stated, of 'public happiness,' or 'the prosperity of any people.'" ³¹

Thus, when Locke seemingly realized the inadequacy of his attempt to base morality on reason alone, he introduced a non-rational standard, that is, his hedonistic approach to the origin of moral ideas. The difficulties of his epistemology gradually led him to drop all reference to the abstract morality of "mixed modes," and his purely rationalistic ethics was never carried through to a consistent and successful conclusion. Thus, "the ambiguity of his treatment of the nature of ideas"³² gradually led to the abandonment of an abstract ethics, and his hedonistic approach began to come to the fore in the latter half of Book II of the *Essay*. Ultimately, the basis for all morality is not the intelligibility that reason can discover in the nature of reality, but the sanctions attached to morally good or evil actions by the divine will of the Creator, which sanctions are phenomenalized as pleasure and pain and are thus perceptible to the senses.

However, despite the changes that occurred in the *Essay*, Locke does not give up his doctrine of the law of nature, even though it became apparent that the philosophical work of his maturity, that is, the *Essay*, has completely undermined the basis of natural law, even in the limited sense in which he meant natural law, that is, the divine law known in a natural way without

revelation. In what direction, then, was Locke's philosophy to develop? Clearly, it would seem that Locke should have developed his moral philosophy in the same direction as the later utilitarian ethics of Bentham, and thus abandon all reference to natural law.³³ The reason that Locke does not openly espouse a utilitarian ethics seems to lie in the general history of his own time.

In the seventeenth century the Platonic approach to morality (that is, the origin of moral ideas) took the form of the doctrine of innate ideas. Locke opposed this theory as proposed by Lord Herbert of Cherbury. However, in the *Essay* Locke still held to some type of intuition as necessary for certitude in human knowledge.³⁴ Hence even in the conclusion to the *Essay* (Bk. IV) Locke still held on to the doctrine that human knowledge of moral ideas which was certain could be obtained by our natural faculties "which by their own expansion, and not by the reception of notions from without, are not only capable of but must

³⁰ STRAUSS, *op. cit. supra* note 23, at 230.

³¹ *Id.* at 229.

³² LAMPRECHT, *op. cit. supra* note 29, at 87.

³³ DRIVER, SOCIAL AND POLITICAL IDEAS OF SOME ENGLISH THINKERS OF THE AUGUSTAN AGE 81 (Hearnshaw ed. 1923): "His great difference from Bentham lay in the fact that he posited this law at the back of things, and believed it the source of pleasure; whereas Bentham rested his philosophy on no such piece of cosmic speculation, but upon the simple pleasure-pain fact of experience." For an opposite viewpoint, cf. MORRIS, LOCKE, BERKELEY, HUME 56 (1931): "Certainly he thought that the primary duty of man is to seek happiness and avoid misery, and certainly he thought of happiness in terms of pleasures; and it never occurred to him to doubt whether happiness is the highest possible aim of man. Probably, therefore, his moral theory when worked out would have been not unlike the utilitarian system developed by Bentham a century later. Certainly Locke's view is the same as Bentham's in regard to the bearing of morality on politics."

³⁴ 2 LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING 165-75 (Fraser ed. 1959).

necessarily expand into its own specific flower."³⁵ Thus, in some passages of the *Essay* it seems that Locke himself had a confused perception of the distinction between innate ideas and innate faculties. Consequently, there are two tendencies in Locke's moral philosophy, one retaining a trace of Platonic idealism (the reflective aspect of knowledge), and the other stressing sensation as the ultimate element in knowledge. Locke never succeeded in synthesizing this duality into the unity of a philosophical system. For this reason, therefore, there is a difference between Locke's utilitarian ethics and that of Bentham.³⁶

Although Locke's conception of natural law may be largely utilitarian in the practical order, his theory of natural law is based on the existence of a real law or logos which is bound up with the order of the physical universe. Human reason cannot discover the existence of this law, but its real existence is attested to by the fact that this inexorable law takes its revenge on those who disregard it by bringing pain in its wake, or by causing pleasure in those who observe its precepts. Thus, the law of nature can be conceived of because of its physical manifestations which are perceptible to the senses, but the senses do not give us any knowledge of the content of this law, and thus it is impossible to discover a rational approach to the moral life. Consequently, this law can hardly be called a *law of reason*, but rather it seems to be a *law of instinct*, since the morality of actions is judged by a pleasure and pain theory, and not by discovering the inner intelligibility of moral actions. So, ultimately Locke reduces the law of nature to a non-rational

basis, that is, the cosmic forces taking revenge on those who violate the laws of the physical universe. Thus, ultimately Locke must turn to the divine law to receive any real content for his moral laws. But Locke never gives up his attachment to the law of nature as a basic principle in his moral philosophy and considers this law to lie at the basis of his moral theory, although it is of little use in the practical order, and consequently, expediency and utilitarianism must be the guide to our right actions in the practical order.

If one would understand Locke's doctrine of natural law, therefore, he must see that there are two conceptions of the natural law, the traditional doctrine and the Lockean doctrine. According to the traditional doctrine the idea of natural law is the result "of the doctrines of the priority of the intellect over the will (law is reason) in both God and man, of the knowability of the essences of things and their essential order, their metaphysical being and the ordered hierarchy of values."³⁷

On the other hand, Locke's notion of natural law is a revolutionary and individualistic interpretation directly bound up with the Hobbesian notion of "the state of nature" and also with the state as a social unit, and this doctrine ultimately is connected with the notion of a free contract as the beginning of society, which is both arbitrary and artificial and in no way can be traced to the nature of things themselves but "is determined by utility and is not metaphysically necessary."³⁸ Also in the Lockean conception the primacy of the will is

³⁵ 1 LECKY, *HISTORY OF EUROPEAN MORALS* 123 (1882).

³⁶ DRIVER, *op. cit. supra* note 33.

³⁷ ROMMEN, *THE NATURAL LAW* 41 (Hanley ed. 1947).

³⁸ *Id.* at 5.

stressed, and the law becomes a command of the will, rather than a dictate of reason. As a result, positivism is the consequent in both philosophy and theology. This positivistic approach to knowledge of the natural law results in "the renouncing of all efforts to know the essences of things (nominalism), the repudiation of the metaphysics of hierarchized being and value."³⁹ Hence, if Locke speaks of a law of nature after the critical evaluation of human knowledge contained in the *Essay*, he does not have the usual meaning for moral law. He merely means that the laws of the universe itself express the will of the Creator, who arbitrarily willed that the universe be governed by this set of laws, which can be naturally known to us by the pleasure and pain attached to the respecting or disrespecting of their observance. It is only through pleasure and pain that we know in a natural way of what the will of the Creator consists. Thus, there is no objective way of ascertaining a hierarchy of moral values. Man must be content to assay such a hierarchy through his experience, and in a pragmatic appraisal of pleasure and pain decide on what brings the greatest ultimate pleasure. In this way a hierarchy of pleasures is established. The *common good*, which is not a real thing, but the sum total of all particular goods or interests of individuals, becomes the ultimate basis for judging the ordering of the value into a hierarchy. So, whatever will bring peace and prosperity becomes the basis for determining the morality of action both on the part of the State and the individual. Civil law becomes nothing but the will of the majority, based on this utilitarian estimate.

The history of philosophy after Locke's

³⁹ *Id.* at 41.

time developed both sides of the duality latent in the principles of Locke's philosophy. Condillac and his followers reduced the philosophy of sensation to its simplest expression by removing the element of reflection from Locke's philosophy. On the other hand, the Scottish and German writers concentrated on the ideal aspects of Locke's epistemology. The moral philosophy, which was based on Condillac's interpretation of Locke, was accompanied by a morality of interest, while the ideal philosophy, which took its origin from Locke's philosophy, was accompanied by the assertion of the existence of a moral faculty.⁴⁰

Undoubtedly, the many historical factors at work in the seventeenth century accounted for Locke's continuing naively to employ the notion of natural law in the political writings of his maturity. However, the application of the law of nature to his political doctrine makes it clear that the law of nature had become nothing more than the sum of the dictates of reason in regard to men's "mutual security," or to "the peace and safety of mankind."⁴¹ Leo Strauss thus concludes that "The law of nature, as Locke conceives of it, formulates the conditions of peace or more generally stated of 'public happiness' or the 'prosperity of any people.'"⁴² But natural law thus understood "as the formulation of the conditions of peace and public happiness, is utilitarian."⁴³ In the last analysis the influence of the *Essay* is apparent even when Locke appeals to the law of nature in his treatises on government. This is evident because the content of

(Continued on page 87)

⁴⁰ 1 LECKY, *op. cit. supra* note 35, at 124-25.

⁴¹ STRAUSS, *NATURAL RIGHT AND HISTORY* 228 (1953).

⁴² *Id.* at 229.

⁴³ *Id.* at 235 n.107.

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(Continued)

the law of nature is seen to be a utilitarian

interpretation of the law in terms of the public good, and natural right, as such, is connected with the peace and security of the nation.

