

Chapter Two

Law

That the conclusions of reason in moral matters might more evidently appear to be laws, laws of God, I have thought it proper to make a philosophical inquiry into their causes, as well internal and external, the nearer and the more remote.

Cumberland, Introduction, iv

In Cumberland's view there is no law prior to the law of nature, or outside its scope. He holds, however, two distinct views of the law of nature which weave in and out of *De Legibus Naturae*, confusing, supporting and contradicting each other. Of the two, the 'conventional' theory runs thus: adult human beings possess right reason, with which they perceive that by pursuing the common good they benefit themselves and their fellows. This practical proposition acquires the status of a law because it is enforced by sanctions and originates from a legislator – God.

The second, 'utilitarian', theory depends upon a view of humankind living in *socialitas*, and its main points are these. We never were, nor can be, solitary. Living in society is not a skill acquired at the cost of our real nature but rather the only way in which human nature can be realised. The exercise of right reason presents to the sane mature mind the perception that the good of the individual and the good of the community are interdependent. It also becomes apparent that it is part of being human to care for one's fellows, that we are 'programmed' for kindness and generosity, and in this sense we ought to do what it is natural for us to do. Obligation, considered in this light, is not directly derived from the will of the legislator nor from the force of the sanctions

he imposes. It is rather the fulfilment of the nature of our species, making for its perpetuation, and cannot be resolved into the pursuit of self interest on the part of any one individual. That the terminology used to describe our moral conduct is the same, whether Cumberland is using the first or the second argument, should not disguise the differences between the two models; the most important is that by the second theory God's role is limited, virtually, to that of First Cause.

Cumberland, writing to refute what he took to be the atheism of Hobbes, nowhere says that the law of nature holds humanity in obligation even though there is no God; the argument is rather that if there were no God we should still be subject to it.¹ The 'utilitarian' law of nature, even in this muted form, is throughout *De Legibus Naturae* less prominently and less coherently expressed; the 'conventional' argument will be examined first. 'The Law of Nature and its Obligation' is the title of chapter five of *De Legibus Naturae*, and Cumberland approaches this core of his argument by way of four preparatory chapters: 'Of the Nature of Things', 'Of Human Nature and Right Reason', 'Of Natural Good' and 'Of the Practical Dictates of Reason'.

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In chapter one, Cumberland contends that man can properly be understood only in relation to his fellows and to his surroundings;² thus from the outset he has excluded from discussion the political theorists' fiction, solitary man. Humans acquire their ideas (among them awareness of the law of nature) by the impact of impressions on their senses and their minds' capacity to resolve these impressions into patterns. (Many thinkers of the period accepted the primacy of the evidence of the senses, and would have found that part of Locke's epistemology quite familiar.)³ The process can be observed in two different forms: the vulgar acquire their knowledge of the nature of things by 'obvious experience and daily observation', whereas philosophers achieve a more complete and coherent grasp of the same knowledge by contemplation and philosophical enquiries.

¹ Cumberland, 49; see Archibald J. Carey, 'Richard Cumberland and the Epistemology of Ethics', Washington University, St. Louis, Missouri Ph.D. thesis, 1967.

² Cumberland, 40.

³ James Gibson, *Locke's theory of knowledge and its historical relations*, Cambridge, 1931, 30; e.g. J. Tillotson, *Works*, 3rd ed. London, 1701, 314.

What ordinary people daily observe is that such goods as food, clothing and houses are better produced by the efforts of many than by one acting alone, and ‘contribute naturally to the life, preservation, strength, comfort and tranquility of man’.⁴ People soon learn that benevolence brings them many advantages, and become aware of the common good.

The stricter discipline of philosophical enquiry also takes its origin in the perception of senses. From these it derives such ‘universal ideas’ as cause and effect, number, sum, order and duration. As they develop the capacity for formulating general propositions, philosophers are enabled to pronounce certain things naturally good, if they tend to preserve and enlarge human faculties, and naturally bad if they can be expected to bring ‘corruption, grief and troubles’. This notion of natural good underlies much seventeenth-century writing on natural religion.⁵ Cumberland explains that a proper understanding of nature includes the awareness that most of what happens to us is quite beyond our control: although our free will exists it has small scope. Those who realise this confine their hopes to the realm of the possible, and are quick to perceive the advantages of co-operating with their fellows since almost nothing can be achieved by the exercise of one solitary will. The philosopher, knowing that any one thing can only be in one place at a time, is well placed to recognise the wisdom of exclusive ownership, and also observes the mutual interdependence of the different parts of an animal’s body, the way species survive by co-operation and by caring for their young, and the vast beneficial order of the system of the heavens.

The philosopher’s observations compel the conclusion that ‘The good of the whole is greater than the good of a part. The causes which most effectually preserve and perfect a whole, or aggregate, whose parts mutually require one another’s assistance, do in like manner preserve and perfect the parts thereof.’⁶

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According to Cumberland these propositions are little less evident than mathematical statements, but although such different writers as Grotius, Spinoza, Hobbes, Culverwel and Locke had hopes of placing morality on

⁴. Cumberland, 54.

⁵. Cumberland, 58; cf. John Wilkins, *Of the Principles and Duties of Natural Religion: Two Books*, London, 1675, 12–13.

⁶. Cumberland, 63, 64, 70, 87.

a basis of mathematical certainty, others (for instance Stillingfleet and Tillotson) thought such processes of reasoning inapplicable to human affairs.⁷

In chapter two, Cumberland explores the implications of defining man as an animal endowed with a mind. We share many characteristics with animals; like them we can feed, move and reproduce; we can care for our young and for our own kind; we receive sensations; tend to be healthy when we are content; and needs only finite resources for our survival. The good of the whole species, as John Wilkins also saw, is best preserved by each member's acting benevolently and living in co-operation rather than competition with his or her fellows; this observation does not depend upon any hypothesis about an animal's intentions, or capacity to make prudential calculations. For the purposes of this argument, all that is important is that animals prosper if they are benevolent; man is an animal and he should therefore be benevolent if he would prosper.⁸ (Pufendorf could, on occasion, lay great emphasis on God's part in this: 'Man obtained a Social Nature from the good Pleasure of GOD ALMIGHTY, not from any immutable necessity.')

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Human beings differ from other animals not only in possessing minds but also in certain specialised modifications of their bodies. Cumberland examines these, partly to emphasise the evidence for humanity's being naturally social, partly to meet his own stipulation that we are only obliged to do what it is possible for us to do, and partly because he supposes 'it may be of some use, here to recount these things peculiar to man, that others, at least, may more happily explain their uses.' He writes with an anatomist's enthusiasm about the human brain and hand, discusses laughter and tears and exclaims over the beauty and memorability of the human face.¹⁰

Human beings are also distinguished from other animals by their long infancy, and having no specific breeding season; 'because the offspring of man continues longer weak and in need of the help of its

⁷ W. von Leyden, Introduction to (ed) von Leyden, *John Locke's Essays on the Law of Nature*, Oxford, 1954, 55; Edward Stillingfleet, *Origines Sacrae: or, a Rational Account of the Grounds of Christian Faith, As to the Truth and Divine Authority of the Scriptures and the Matters therein contained*, 5th ed. London, 1680, 213–4, 220; Tillotson, Preface to *Works*, unpaginated.

⁸ Wilkins, *Natural Religion*, 10; Cumberland, 93, 123–36.

⁹ S. Pufendorf, *Of the Law of Nature and of Nations*, (trans Nugent), 2nd ed. Oxford, 1710, 15.

¹⁰ Cumberland, 150, 153, 158.

parents', strong ties of affection are formed and the family needs support and government: as Gabriel Towerson put it, 'Parents ... dandle their children in their Arms, and in their Heart and never leave off providing for them, till they are in a capacity to provide for themselves.'¹¹ According to Cumberland, this devotion to the family and its welfare stems from the fact that while other animals tend to breed only at certain seasons, in human beings 'venereal inclinations ... are in some sort perpetual. Hence it is, that most men find it necessary to marry, and hence proceeds a strong desire of propagating their species'. So people come together in society at least in part because their physical nature drives them to it.¹²

Cumberland holds that human beings are further distinguished from animals by their sensitivity and their capacity for strong passions. Although he shares Hobbes's alarm at the destructive power of passion, he rejects the inference that because of it, mankind is naturally unfitted for society. With a wealth of anatomical detail he explains how the human heart and nervous system are equipped to register and transmit feelings more intense than other animals can experience, but that the human brain, large and well supplied with blood, has natural strength to curb any malevolent impulse these passions provoke. And only good can come from forceful passions properly controlled: for instance, 'nothing moves men more strongly' than affairs of property; intense feelings have made necessary the setting up of rules to control them and these now prove to be the basis of civil society.¹³

The mind, whose task it is to exercise this control, is the faculty which most completely distinguishes human beings from animals. It is, as Locke agreed, not truly free to decide whether or not it will receive and process impressions, for although we can concentrate or remember by an act of will, we cannot while waking refuse to observe what is before us, nor deliberately refrain from understanding it. Cumberland does not attempt to reduce this process to the level of a merely physical response, but he means it to be understood as natural rather than contrived.¹⁴ The role of the mind cannot simply be that of ensuring our physical survival, although it has this function, for some trees outlive people

¹¹ Cumberland, 156; Gabriel Towerson, *Explication of the Catechism of the Church of England*, London, 1678–88, part 2, vol. 1, *Explication of the Decalogue*, 213.

¹² Cumberland, 156.

¹³ Cumberland, 146–8, 150–6.

¹⁴ Cumberland, 98; John Locke, *An Essay concerning Humane Understanding*, London, 1690, 45.

‘even without sense, much more without reason’; the mind has also a ‘spiritual, incorporeal and God-like nature’ and excels in ‘those qualities which relate to the knowledge and worship of a deity, and to moral and civil [science]’.¹⁵ The Puritan heritage of seventeenth-century England predisposed theologians to see little good in unredeemed human nature; the Reverend Stephen Watkins, for example, preached that ‘The Lord is highly displeased with men and women in their natural state’. The influence of the Cambridge Platonists, however, led writers like Hezekiah Burton and Richard Cumberland to take a far more optimistic view, made easier by excluding from consideration ‘infants and madmen’.¹⁶

Cumberland follows Aristotle’s doctrine that the nature of a species is discerned in mature specimens without accident or deformity. Thus Cumberland takes the sting from Hobbes’s contention that man is born unapt for society: it is, he contends, only when discipline and experience have transformed the child into a rational adult that its nature becomes fully human. Nor is this the triumph of constraint or artifice; much of children’s education is derived from their own natural experience; it is nature which endows children with their retentive memories; and the principles which parents and tutors seek to instil must in turn have been drawn from their experience of the natural world. Locke was not alone in deprecating some contemporary methods of instruction; Tillotson, for instance, preached a ‘Sermon concerning the Education of Children’ in which he warned ‘when Nature is compell’d and forc’d, things proceed heavily’.¹⁷

Cumberland lists a number of the mind’s capacities, among them universal ideas and calculation. By universal ideas Cumberland does not mean innate knowledge of pure types; rather he is describing the power of the mind to categorise, to abstract and discern common qualities in disparate objects. Coupled with the use of ‘words spoken and written and other arbitrary signs’, universal ideas make possible the formulation of general principles, and thus all sciences and arts. This same capacity to distil ‘universal notions’ produces, unchangeable, and consequently in some sense eternal, rules of human action.¹⁸

¹⁵. Cumberland, 99.

¹⁶. S. Watkins, ‘The Misery of Man’s Estate by Nature’, in (ed Samuel Annesley), *The Morning Exercises at Cripplegate, St. Giles in the Fields and in Southwark: being divers sermons preached AD 1659–1689 by several ministers of the Gospel in or near London*, 5th ed. London, 1844, v, 138; Burton, *Several Discourses*, 50; Cumberland, 95.

¹⁷. Cumberland, 149; Tillotson, *Works*, 621.

¹⁸. Cumberland, 110–1.

In the seventeenth century people were well aware that civilisation advanced where standardised units and the use of money gained ground. Thomas Sprat, for instance, explains how in order to make trade 'still easier and larger men agreed on some common things, to be the universal standard of *value* and *price*: whence arose the use of *Mony*'. For Cumberland calculation is more than a practical skill, it is a means of devising and working a primitive form of felicific calculus: 'collecting many particulars (lesser good things for example) into one sum, and comparing the same with one another. ... Hence man can discover the chief good ... and a comparative good, perceiving one good to be greater or less than another. ...'¹⁹ In Cumberland's view, right reason is a capacity displayed by the sane mature mind to recognise self-evident truth and infer further truths from it; the truth of a proposition in no way depends upon the standing of whoever advances it: anyone who 'determines his judgment and his will by right reason must agree with all others who judge according to right reason in the same matter'. But this unanimity in certainty has to be striven for. We must take care

that our simple ideas be both clear from strong and frequent impressions of the same thing known in various circumstances [through the senses, and through different experiments]; and distinct, by a separate observation of the parts singly; and adequate also (as far as we can) by the assistance of memory and understanding, added to the discoveries of sense.²⁰

If all these precautions are taken, and our vision not blurred by distance or refraction (nor discoloured by jaundice), 'in these external impressions there can be no falsehood'. So far, so good. But we can still fall into error as we reflect on these data by 'a hasty rash and unseasonable use of liberty' which for 'a present advantage' incites us to form conclusions on points 'not yet sufficiently cleared up'.²¹

It is an awkward position to have taken up. The nature of things is fixed and unchanging,²² but unless they are abnormally punctilious in the exercise of their right reason people will fail to perceive it correctly. Yet Cumberland's claim is that we normally reach sound conclusions about the nature of things: a proposition is reasonable if it is seen to

¹⁹ Sprat, *History of the Royal Society*, 180; Cumberland, 101.

²⁰ Cumberland, 102–4, 107, 97; cf. Locke, *Humane Understanding*, 353–61.

²¹ Cumberland, 107–9.

²² Cumberland, 105.

be reasonable, and if a man who is clearly adult and apparently sane deems it unreasonable, he must either be mad after all, or like Hobbes, wilfully refusing to admit self-evident truth. By the end of the second chapter, then, Cumberland has sought to establish that the nature of things impresses on us the benefits of co-operation, that human nature includes certain capacities which fit us for society and one of them, right reason, is a proper measure of truth and falsehood.

The third chapter, 'Of Natural Good', is primarily concerned with establishing that 'good' is no mere label which humans attach to what they desire, but something which exists independently of our perceptions and is universally valid. Cumberland begins by defining it as 'that which preserves or enlarges and perfects the faculties of any one thing or of several'; he goes on to explain that the same is true of 'a series of things, in which some things 'profitable are inseparably connected with others that are hurtful' when the overall effect is profit rather than harm. This kind of 'good' can be understood without any reference to laws and can apply to things and animals as well as people; we recognise it by applying our right reason to the nature of things.²³

His next undertaking is to show how the good of many like creatures may be discovered from what is known of the good of one of them. His argument hangs partly upon extrapolation from self knowledge and partly upon our capacity to form categories or universal ideas. In practice, we may be confident that the well-being of our fellow humans is, like our own, promoted by 'nourishment ... exercise and sleep' and because 'the whole is the same with all its parts ... he who does good to one man without hurting any other, may justly be said to do good to the whole aggregate of mankind'. What Cumberland still avoids considering is the more difficult case of doing good to one person by hurting another; at this stage in his thought, apparently, he does not conceive of any conflict of interest between the parts and the whole. The chapter ends with his stating that 'the common good of the universe may be an end proposed by men' and takes priority over 'the volition of any smaller good'.²⁴

In chapter four, 'Of the Practical Dictates of Reason', he develops the scope of this concept in the light of the newly established best end that humanity can pursue: the common good of the universe. In Cumberland's view, to say that a particular course of action is most

²³. Cumberland, 165, 168; cf. Pufendorf, *Of the Law of Nature*, 29.

²⁴. Cumberland, 166, 173.

likely to promote the common good is the same thing as commanding oneself to do it, or saying that it ought to be done. He does not think that saying a 'possible action is most agreeable to human nature' is putting the same thing in another way, chiefly because this makes no reference to God, while the 'common good' means the good of all rationals, men and God together. At this stage, then, Cumberland explicitly rejects a form of argument on which the utilitarian version of the law of nature could be constructed.²⁵

Cumberland next asks whether Nature – now personified – has taught its laws with sufficient clarity. (Without explanation he has begun to use the terms 'laws of nature' to describe the practical dictates of reason considered in relation to the common good.) In his view, the promulgation is clear enough in that 'whoever shows me a triangle shows me with sufficient evidence that the two sides of a triangle are longer than the third, although he does not form the proposition for me.' There was nothing new in this analogy; it had been used before by Aquinas and Descartes, among others. Prompted by the reference to geometry, he adds that in morality and politics, as in mathematics, we need 'a few universal theorems' even if they cannot always be applied with great exactness, while calculations in both are made easier by using the algebraic technique of arguing from the known towards the unknown.²⁶ Cumberland has spent over a third of his book preparing the ground for an explanation of the law of nature: he has set out to establish that the nature of things impresses on us the benefits of co-operation; that human nature is fitted to live in society; that right reason is a proper measure of truth and falsehood; that 'good' represents something fixed and recognisable; that the common good is the best end of which we are capable and that we learn from nature we must be benevolent if we would pursue it. In Cumberland's view, if these propositions are allowed, the law of nature can be shown to exist and to be binding on all mankind.

His fifth chapter opens with a definition of the law of nature, but since 'he was not near the press while it [*De Legibus Naturae*] was working off ... it came into the world very incorrectly printed', and this, of all passages, is one which has suffered from the confusion at the printers', for within the 1672 edition, two distinct states survive. What will later be shown to be the first states that

²⁵ Cumberland, 179; Sprat, *History of the Royal Society*, 330; Cumberland, 181.

²⁶ Cumberland, 183, 185.

The law of nature is a proposition presented to or impressed upon the mind clearly enough by the nature of things from the will of the first cause, which points out that possible action of a rational agent which will most promote the common good and by which alone the complete happiness of individual people can be obtained.

This he had altered, in some copies at least, to read

The law of nature is a proposition presented to or impressed upon the mind clearly enough by the nature of things from the will of the first cause pointing out the action which will promote the good of rational beings and whose consequences, from the nature of rational beings, will be rewards if it is performed and sufficient punishments if it is neglected.

This second version continues (in a passage for which the first has no equivalent),

The first part of the definition contains the precept, the second the sanction and both are imprinted by the nature of things. Those rewards and punishments are sufficient which are so great and so certainly administered that it is obviously more conducive to the complete happiness of individual people (which they can obtain and must desire by reason of the nature of the universe) if they always promote the public good rather than if they were to attempt anything opposed to it.

Maxwell translation conflates the two definitions into ‘un mélange assez bizarre’.²⁷

It seems, then, at the very centre of his work, it was only on second thoughts that Cumberland opted unambiguously for the conventional definition of the law of nature; the discarded version is far more appropriate to the ‘utilitarian’ view. He yielded in fact to the traditional understanding of a law as something made and enforced by a legislator. Cumberland’s prolonged disquisitions on each of the terms of his

²⁷ Cumberland, *De Legibus Naturae*, 185, British Library copy; Dr. Williams’s Library copy; J. Barbeyrac, *Traité philosophique des lois naturelles*, Amsterdam, 1744, 209, fn, and see below pp 78–9.

definition of the law of nature do not repay close study; what is of greatest interest is that even when he comes nearest to resolving obligation into straightforward obedience, he is at pains to show how God's will does not conflict with, but rather crowns the prudential system of the first four chapters. This conformity will be examined when the utilitarian theory is discussed; meanwhile God's authority in the conventional scheme will be explored.

In a sense, rewards and punishments which result from the acts of human agents or natural forces can be said to originate from God, but Cumberland goes much further. God 'makes the same judgment on all actions equally hurtful, which men either do not know, or cannot punish ... the most secret actions cannot be concealed from him ... God has appointed punishments to secret crimes and ... will avenge ... insults upon the weak'. Moreover, 'if anything necessary to this end be wanting in this life, it will be supplied by God in a life to come'. Most Christians until the present time would have shared this view; some, like Isaac Barrow, gave even-handed emphasis to rewards meted out in this life and those only secured hereafter. Many were much more certain of justice after death.²⁸ Cumberland chooses to argue this point as a man rather than as a believer: the happiness we are promised 'extends itself not to the present life only but to that which is to come, as far as it may be known by the light of nature', and he writes of 'that happy immortality which natural reason promises to attend the minds of good men when separated from the body'. He does not reject specifically Christian doctrines about life after death but argues, rather oddly, that

because many persecutions arise, in opposition to those articles which are peculiar to the Christian faith or discipline; therefore, to strengthen Christians it was necessary that the resurrection and the glory of the kingdom of heaven should be revealed lest Christians should be [more miserable than other men].

Ordinary people leading less provocative lives can be satisfied with 'smaller certain rewards, or obscure hints of greater ones'.²⁹ Cumberland, although writing at a time when it was normal to be Christian, placed

²⁸. Cumberland, 230, 221; Isaac Barrow, *Works*, (ed Tillotson) London, 1686, i, 21.

²⁹. Cumberland, 267–9.

less emphasis than did Pufendorf and Leibniz on the role of Christian revelation in people's awareness of eternal life and the danger of eternal punishment.³⁰

In two respects natural law, unlike God, appears to be not always and everywhere the same. Cumberland notes that different communities have different mores and, like Bodin, anticipates Montesquieu in supposing that these

are acquired, partly from diversity of disposition or natural genius, more prone to habits of some sorts than others; partly from the temper of the body, climate, soil, education, religion, fortune and kind of business about which men are employed. From manners thus procured, arises to men as it were a second nature.

Nonetheless widely differing manners in no way 'destroy ... the consent of men in the general nature of good'; in Cumberland's view all humanity agrees on honouring God, gratitude to parents and benefactors, the wrongness of murder, the faith of the marriage bed and the right to property. Such a measure of agreement, if it could be proved to exist, would indeed vindicate the universality of the law of nature. In time as well as in space, natural law takes on very different appearances: for Cumberland the law of the patriarchs, the laws of Moses and of Christ, and contemporary civil law are all particular aspects or realisations of natural law; but in one brief passage he hints at a doctrine of progress which could eventually prove inconsistent with one unchanging yardstick of right and wrong:

it is certain from the experience of so many ages that the innumerable vicissitudes of human affairs have left us the world in a better rather than in a worse state, whence we have just reason to hope that it can hardly happen otherwise with our posterity.³¹

But clearly Cumberland does not suppose himself to have conceded any exceptions to the universal and eternal validity of the law of nature.

³⁰. Cf. Pufendorf, *Of the Law of Nature*, 121; Leibniz, 'Opinion on the Principles of Pufendorf' in (ed Patrick Riley), *The Political Writings of Leibniz*, Cambridge, 1972, 67.

³¹. Cumberland, 94–5, 170, 345.

Three issues which arise in Cumberland's exposition of the law of nature illustrate the way in which the conventional and utilitarian interpretations shade into one another; each raises problems which could be answered by a restatement of the orthodox teaching of God's omnipotence but Cumberland seeks to resolve them with evidence drawn from the pattern of goodwill and interdependence he discerns in the universe. An examination of these three knots in the argument makes a useful introduction to the utilitarian version of the law of nature.

The first difficulty to be explored is one which Cumberland has twice been seen to evade: what happens when the good of the individual clashes with that of the whole community? In answering Hobbes's claim that everyone has an unlimited right to self-preservation, Cumberland places that right under two *a priori* restrictions: '(1) That if religion or the public welfare of men requires it we be ready to part with the last drop of our blood: and (2) that no innocent person is to be hurt, to procure to ourselves any advantage.' Later he explains how it is possible for the law of nature to require people to lay down their lives for their country:

A liberal education, learning, the security arising from government, the agreeable intercourse of mankind, and all other ornaments which we owe to mutual assistance, are what make life worth enjoying; therefore, after we have for several years reaped these advantages from the benevolence of our fellow subjects promoting the public good, they would make no unreasonable demand should they command us to restore or lay out for their benefit, that life which was at first received and afterwards often preserved, by their means. Nay, after all, we should still be debtors to our native country or fellow citizens, though in some uncommon cases and when our country is in the utmost necessity we should at their desire, repay that life which it gave us and which it daily and perpetually preserved.³²

Normally, as Hezekiah Burton also insists, an individual's concern for his own well-being can be harnessed to the cause of the common good.³³ This coincidence of public and private benefit is a cornerstone of Cumberland's argument, yet here he is clear that when a clash

³². Cumberland, 65, 268.

³³. Burton, *Several Discourses*, 51.

cannot be avoided it is the public good which must prevail, even at the cost of someone's life. This, he argues, is a rare special case within the rules of the law of nature rather than an exception to them; yet being killed cannot in any simple sense do us good. That society has hitherto been a person's benefactor and put him or her in its debt does not make an ordinary individual in middle years expect anything other than a happy old age. Cumberland's explanation combines the force of the conventional argument—nature can order us to die for our country – with that of the utilitarian theme: the law's chief function is to preserve the group or species. It is as if, in this extreme case, neither version unaided could carry enough weight.³⁴ Cumberland makes no mention of the sovereign's will as the immediate or the ultimate source of this obligation; it is to our country or our fellow subjects that we are indebted.

The second problem can be seen as a mirror image of the first: if rewards and punishments reliably follow good and bad actions (except in cases like that discussed above, so rare it can be discounted) is it not possible that the law of nature rests upon a base of simple hedonism and calls us to nothing higher than enlightened self-interest?

This objection is one Cumberland anticipates and to which he offers a sophisticated solution. We must recognise 'that natural obligation is not discovered by [men as individuals] in the same order in which it is founded and established in nature by the author thereof'. God, outside time, can perceive the primacy of his own purposes and the interlocking duties and desires which descend through creation from them; humanity on the other hand must work this out inductively. Our first knowledge, as Cumberland has shown, is mundane and immediate, only educated reflection brings us to a proper awareness of the high benevolence which lies beyond the limited goodwill we encounter in daily life. Even when we understand that the law of nature emanates from God rather than man, human affairs continue to clutter the foreground of our perception and God's majesty is diminished, as it were, by a trick of perspective. We may still feel that our own well-being is our chief objective, but this is feeling not fact: 'although this method of coming at knowledge be evidently natural and very common ... we may not therefore thence affirm what is most worthy to be known or amiable above all other things'.³⁵

³⁴. Cf. Pufendorf, *Of the Law of Nature*, 50.

³⁵. Cumberland, 271–2.

It is not only our well-being in this life which we might mistakenly overvalue. Cumberland has emphasised that if by some mischance virtue is not adequately rewarded or vice punished before we die, God will redress the balance in the next life. In earthly terms too single-minded a pursuit of our own good may conflict with the law of nature, but it is hard to see how anyone who looks beyond death can doubt that he or she will eventually profit from doing good. This is not 'simple hedonism' yet there seem here grounds for supposing that the obligation to pursue the law of nature turns out, at bottom, to be merely prudential. In this case it is not that the combined strengths of the utilitarian and conventional arguments are called upon but that the issue falls into some no man's land between them.

The third issue which illuminates the territory between these two arguments arises because Cumberland supposes that a valid law is one enforced by a legislator. He seems to envisage a hierarchy of obedience from children to fathers, from citizens to intermediate authorities, from them to sovereigns and from sovereigns to God; in each stage but the last the legislator is subject to some higher power. This means that the laws enforced must conform ultimately or immediately to the law of nature and that the power to command is not merely arbitrary. God, however, is subject to nobody, and is therefore free, one might suppose, to make good, evil and evil, good as often as he pleases. According to Cumberland he is nonetheless constrained, like lesser powers, by the law of nature (although in this instance it cannot be a true law since there is no over-God to impose it on him). It 'may analogically be called the law of the divine actions'. To Cumberland there is nothing odd in declaring that there are certain things even God cannot do, because he is benevolent as well as omnipotent and 'perfect liberty does not consist in the power of doing better, or worse, but in the power of equally doing for the best'. It does not lie in God's nature to will evil, so it is meaningless to imagine him punishing virtue or thwarted in a longing to reward thieves and murderers. Here Cumberland was at one with the Cambridge Platonists and Cudworth's perception that people would be threatened rather than protected by an 'Understanding Being infinitely Powerful, having no Law but his own Will'.³⁶

³⁶ Cumberland, 320; Ralph Cudworth, *The True Intellectual System of the Universe: The First Part; wherein, all the Reason and Philosophy of Atheism is confuted; and its Impossibility demonstrated*, London, 1678, 83.

It is only within the terms of the ‘conventional’ law of nature that this particular problem – who legislates for the Legislator? – can arise, and in answering it with the notion of an unchanging right to be discerned in the operation of the universe rather than the will of God, Cumberland falls back on the strength of the utilitarian position. Here he parts company with Pufendorf; as Leibniz pointed out, the German natural lawyer, for all his talk of the primacy of justice, opted in the end for an obligation grounded on the command of a superior.³⁷

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De Legibus Naturae contains no formal pattern of argument for the ‘utilitarian’ theory to parallel Cumberland’s wandering but deliberate advance on the conventional position. It is perhaps best approached from the point where the last argument ended: ‘whilst the nature of things remains such as now it is ... neither the wisdom nor the will of God’ can prevent two and two from making four. In both arithmetic and geometry certain results follow from certain actions – ‘Geometry does not become uncertain, by any disputes arising from the explanation of freewill’.³⁸ This, in Cumberland’s view is a parable of human life; if people pursue certain innately human courses of action certain good consequences must inevitably follow. He is even prepared to concede that self-interest is the motive for many of these actions, despite his efforts to show that the law of nature makes larger demands than this. Even Hobbes, of course, concedes that some animals are fitted for social life, but he claims that man’s nature with its capacity for reason, the use of words, memory and the love of honour is too different from theirs for the same to be true of people. Cumberland answers this by asserting that ‘these things peculiar to man ... rather promote benevolent inclinations, which it is evident are perpetually united to the animal nature, than extirpate or weaken them’. ‘We seem first to know and love man’ and we learn of God’s goodness ‘from his works and chiefly from man’. We learn naturally of those desires ‘which are so interwoven’ into our frames, like those of other animals, ‘as to become part of their nature’, so that it ‘determine[s] them generally’ to benevolence.³⁹

³⁷ Riley, (ed), *Political Writings of Leibniz* 73–4.

³⁸ Cumberland, 226, 56.

³⁹ Cumberland., 143, 210, 135.