

CHAPTER IX

ECONOMICS AND ETHICS

THE opening chapter of the present work has suggested that economics and ethics must play the rôles of means and ends; more specifically, that moral systems and goals cannot legitimately divorce themselves from economic conditions and processes. A complementary thesis will be proposed in the present chapter: Just as ethics must realize that its hierarchy of values is conditioned by the social background against which it operates, so, in a like degree, economics must look to the directing power of moral concepts.

Such a statement will, of course, introduce the whole conflict between the historical, or descriptive, and the normative approaches to economics, a conflict that has translated into that discipline the classic division made by philosophy, the separation of the sciences of fact from those of value. That division, it need not be added, must not be taken too seriously. There is obviously no fixed and neat differentiation of scientific enterprises, just as there can be no precise separation between the concepts of fact and of value themselves. In the same measure that these concepts necessarily merge into one another, with no clear-cut boundary line between, so do the respective scientific branches blend, with no real possibility of labeling one completely factual or the other wholly interpretive. The most descriptive of scientists limits, if nothing more, his scope of factual material—thus introducing valuation. And a theorist surrounded only by values with no

facts in sight would be a strange creature indeed. Sciences such as medicine (and economics itself) represent this merger better than the disciplines ordinarily used to illustrate the traditional separation: The natural sciences on the one hand, and ethics, logic, æsthetics on the other.

While, however, this philosophic cataloguing of the sciences need not be interpreted too rigorously, still there is clearly a difference of emphasis that is indicated by such an attempt at classification. The descriptive sciences do concern themselves primarily with facts, data, "givens." The normative disciplines (science might object to the appropriation of its name) deal essentially in standards, norms, interpretations, values. And it cannot be denied that the recognition of this direction of attention to the different approaches that any problem may elicit, the difference, putting it crudely, between an "is" and an "ought" judgment, is of definite worth. Of equal worth is the recognition of that other familiar difference in scientific emphasis, really a corollary of this first distinction, the contrast between a factual and a "theoretical" approach.

Now, there will be no overambitious attempt here either to trace that pronounced change in economics away from the earlier ethical and theoretical approach to a later descriptive and quantitative one,¹ or to make any general judgment as to the nature of contemporary economics. The former is familiar enough, and the latter would imply that present-day economics is sufficiently unified so that any single statement might be applied to it, when, of course, the fact is that contemporary economic "theory" is in a most extraordinarily troubled and unorganized condition. That shift away from

¹ A brief and very clear account of the transition from the classical to the recent approaches to economics may be found in Professor Paul T. Homan's *Contemporary Economic Thought* (New York, Harpers, 1928), especially the Introduction and the first part of the concluding chapter on "The Present Impasse." See also *The Development of Economics*, by Professor O. F. Bouecke (New York, Macmillan, 1921).

classical political economy was the great theme of late nineteenth and early twentieth century economic theory, and it may be said, arbitrarily although conveniently, that Marshall presented the last great example of "ethical" neo-classicism, just as John Bates Clark was perhaps the final expression of the "logic" of neo-classic theory. Veblen's almost savage attack upon the Benthamite felicific calculus and the whole ethical nature of classical political economy, and his own proposed "institutional" interpretation, are supposed to mark the end of such an ethical approach (although, as it has repeatedly been pointed out, Veblen's onslaughts upon the economic anomalies and practices of present-day society certainly indicate a valuating, normative outlook).

The result of such reactions has been to direct at least one major strain of contemporary economic thought into "descriptive" channels. In many large sections of present-day economics, the word "theory" itself has become increasingly suspect and is being supplanted by more characteristic and suggestive terms, "statistics," "quantitative analysis," and the like. Even more unpopular, of course, are the ethical and logical concepts that once constituted almost the entire fabric of the science. The work of the late Professor Davenport with his emphasis upon a "cost" approach and his substitution of "technology" for logic, and even the important researches of Professor Mitchell² illustrate the more general thesis that economics must develop technically and statistically, not logically or ethically.³ And the very teaching of economics, with its absence of the traditional "principles"

² However, Professor Mitchell still maintains that ethics cannot be divorced from economics, and that economic operations must be interpreted in terms of some form of standard; see especially his statements and those about him in *The Trend of Economics*, edited by Professor R. G. Tugwell (New York, Knopf, 1924).

³ *A Critique of Economics* by Professor Boueke (New York, Macmillan, 1922), for example, defends this decisive distinction between economics and ethics.

and the reliance upon the "case" system,⁴ seems to suggest that there is certainly a representative group of economists who insist that economics must seek for data, but shun standards; correlate facts, but avoid values; be descriptive, not normative.

However, as was mentioned above, there can be made no inclusive characterization of contemporary economics. In fact, it would almost seem that in the last few years there is something of a renaissance in economic theory, an almost wistful longing again for "principles" and "logic," and, at least among those younger economists influenced by pragmatic instrumentalism, there appears to be even a return to ethics.⁵ (The work of Hobson and the "welfare" school of economics, which has kept to the forefront of discussion this ethical note, is being excepted, since academic economics has

⁴ One of the best and most recent examples of this approach is the text, *Economic Behavior*, published by the New York University department of economics, Atkins and others (New York, Houghton Mifflin, 1931).

⁵ The Tugwell volume (*op. cit.*) is a splendid illustration of such a pragmatic, neo-ethical emphasis. Representing the views of a number of the so-called "younger" economists, it presents selections which, with few exceptions, are quite sympathetic to the ethical point of view. Professor J. M. Clark, for example, holds that "economics cannot stop short of ethics," although he points out, of course, that it must be a pragmatic ethics that is being considered. Professor A. B. Wolfe adds that one can have little patience with "pure" science in a world as economically sick as ours. (This was all before the "depression.") A functional economics, he shows, must be ethical, although such ethical characteristics must be founded upon a correct psychology, and not upon the older hedonism. He also suggests that the small minority interested in economic "theory" is increasing. Professor Tugwell himself notes "the feeling of futility among the younger men," and suggests that any experimental approach to economics is "inescapably ethical." He mentions Patten, Hamilton, Mitchell, Clark, and Fisher as all interested in the ethical approach, although he admits that in their works (and this is certainly true of Professor Mitchell) there seems little interest in ethics itself.

Another interesting exposition of the more recent relation between economics and ethics, interesting because of the diverging views expressed, may be found in the *American Economic Review*, Vol. XII, Supplement, March, 1922, pp. 192-201. Here is a record of a discussion of the relation between economics and ethics which took place at the thirty-fourth annual meeting of the American Economics Association, December, 1921. Among the members entering into the discussion are: Professors F. H. Knight, A. B. Wolfe, H. G. Hayes, Jacob Viner, G. A. Kleene, and W. I. King.

not been overly sympathetic to their enterprises.) So, there is no intention in this connection of labeling contemporary economic theory as nonethical or as non-"theoretical"; no intention of selecting any school or any economist as typical of recent work. The following plea for the recognition of ethical standards in economics will be concerned simply with that emphasis in present-day economics which seems insufficiently sensitive to the place of moral judgment, just as the earlier insistence upon a recognition of economic conditions on the part of ethical theory referred only to the more aloof and splendidly isolated of ethical systems. Yet no man of straw, i. e., an unmoral economics, is being set up to be overthrown, for it can hardly be denied that a major ideal of much of our economics is the description of phenomena in terms of passionless, judgment-proof graphs.

Finally, this discussion will not seek to trace the historical record of such a dispute over the place of values in economics. That dispute may be considered to have begun as early as the work of Ricardo,⁶ and it perhaps reached its height during the controversies centering around the German historical school, those great controversies in the *Verein für Sozial Politik*.⁷ The present treatment of economics and ethics

⁶ Professor Boucke considers Ricardo to have signalized the expulsion of ethics from economics, although, as has been pointed out previously, the whole classical school of political economy was implicitly ethical. It is true that the great English economists felt that they were laying down the inexorable natural laws of a "natural" science, but their work may very easily be interpreted as a great logical rationalization of the background of ethical theory, e. g., laissez-faire and, later, utilitarianism.

⁷ See especially Haney, *History of Economic Thought* (New York, Macmillan, 1928 ed.), pp. 485-498. The whole "historical" approach may well be considered as the corollary, if not the very statement, of the descriptive, as opposed to the ethical, interpretation of economics. Roscher, Hildebrand, and Knies represented the "older" historical school, and, while they attacked classical absolutism, they cannot be considered to have been anti-ethical. (Cf. Keynes, *Scope and Method of Political Economy*, p. 20.) The "younger" school, composed of men such as Schmoller, Brentano, and a number of others, were more positive in their insistence upon an historical, nonmoral interpretation of the science, and prepared the way for the exaggerated statement of the thesis that political economy must be considered

will attempt merely to propose certain difficulties that may result from any serious exclusion of standards from economics,⁸ and to suggest possible examples of the return, after a period of banishment, of ethics to social disciplines that are related to economics. An exposition of the part that values played in Henry George's own economic system may illustrate the significance of such a fusion for any integrated social philosophy.

In opening such an argument as this, it must first be recognized that economics can hardly be blamed for turning away

as devoid of principles or direction, and that it must include nothing more than the expression of an historical development.

⁸The bibliography of this economics-ethics topic is not a very full one. In fact, in Professor Jerome Davis's foreword to J. A. Hobson's *Economics and Ethics* (New York, Heath, 1929) that volume was put forward as a pioneer work in the field. Of course all of Hobson's writings have been dominated by the "welfare" approach, but this present work of his presents perhaps one of the finest expositions of such an emphasis. The central theme of all of Hobson's economic philosophy may be considered to lie in his attempt to bridge the gap of coolness between economic theory and social reform, and to attack, therefore, the "pure" interpretation of the science. He is most severe against the ethical "atomism" of classical theory, and feels that he offers a program for "a world that has lost laissez-faire." His ethics, instead, is one of control, one which, while it criticizes the practice of communism, still holds before it the ethical communistic goal as an ideal; Hobson's attacks upon competition, private gain-seeking, and the whole concept of labor as a commodity, are as decisive as any of the socialists' criticisms.

To continue the bibliography: *Economics and Ethics*, by Sir J. A. R. Marriott (London, Methuen; New York, Dutton, 1923)—this is a conservative plea for the retention of the traditional ethical judgments; *The Nature of the Relationship between Ethics and Economics*, C. E. Ayres (The University of Chicago Press, 1918; No. 8 of the Philosophic Studies); "Moral Valuations and Economic Laws," Professor Warner Fite (*Journal of Philosophy, Psychology and Scientific Method*, XIV, 10.); "Economic Values and Moral Values," Professor R. B. Perry (*Quarterly Journal of Economics*, XXX, 445). See also Dewey and Tufts, *Ethics* (New York, Henry Holt, 1908; revised edition, 1932), Part III, especially Chaps. XXII through XXV; and the appropriate chapters in Professor Urban's recent *Fundamentals of Ethics* (New York, Henry Holt, 1930). Some of the older treatments may be found in articles such as the following from the *International Journal of Ethics*: "The Relation between Economics and Ethics," J. S. Mackenzie, Vol. III, April, 1893, pp. 281-308; "The Restoration of Economics to Ethics," C. S. Devas, Vol. VII, January, 1897, pp. 191-204; and Professor C. A. Ellwood's "The Sociological Basis of Ethics," Vol. XX, April, 1910, pp. 314-329. See also J. M. Keynes, *The Scope and Method of Political Economy* (London, Macmillan, 3d ed., 1904), especially Chap. II; and Professor E. C. Hayes, *Sociology and Ethics* (New York, Appleton, 1921). Bonar's classic *Philosophy and Political Economy* is, of course, largely historical.

from the earlier dogmatic, hortatory ethics that once greeted the social sciences.⁹ A system of values founded upon a mythological psychology and presented in terms of absolutism can have little appeal for an enterprise that is reaching for the goal of science. And it must also be noted at the outset that it is likewise not in the least strange that economics should look to the quantitative and physical ideal. It is trying to achieve scientific formulation at a time when physics and the mathematical approach are the recognized models of science, and when a new and more technical methodology has enormously increased the data of all the social sciences.

Such recognitions, however, are by no means complete justifications. That is, the reaction from a logico-hedonistic ethics is hardly a warrant for a reaction from an instrumentalist ethics. Economics can find little excuse for looking away from an ethics that is a critical valuation of values already socially current, and less excuse for ignoring the (ethical) fact that the consequences of economic processes, consequences which lie in the dimension of human satisfactions, must be part of the material that the science "describes." Such consequences are the satisfactions of material wants, and any "physical science" attempt on the part of economics to operate in a vacuum shut off from the recognition of such wants would seem to be abortive. As consequences, values enter into the very subject-matter of economics. (Even on the "purely" descriptive side of the science, valuation has been introduced, as, for example, in giving

⁹In the Devas article just mentioned there occurs a passage which illustrates what should *not* be the relation of ethics to economics: "Now, economics can be looked on somewhat as an ingenuous youth, who, like other youths, is liable to contract low tastes, such as a desire to disregard contracts, to cancel debts, cut up ancestral parks, confiscate inheritances, appropriate accumulations. And general ethics can be looked on as the parent, who, with this young man's eyes upon him, must keep to a high standard of conduct." (P. 203.) Were the relation of ethics to economics that type of Toryism, then certainly there should be little protest against keeping the two disciplines carefully segregated. (Cf. also the Marriott volume, *op. cit.*)

property a legal status.) This implicit presence of values should certainly suggest, moreover, that as economics approaches the goal of science, it must develop more faith in its own subject-matter instead of imitating the technique of other disciplines that deal with a distinctly different type of material.

There is no intention here, of course, of making a positive criticism of much of the technique of contemporary economics. That criticism would be as foolhardy as it would be foolish. Certainly the collection of data and the emphasis upon inductive processes must be welcomed and must be made the foundation of any enterprise that presumes to construct a rigorous discipline. The difficulties that will be suggested here are largely negative ones, and will be located chiefly in presenting the embarrassing situation in which values are placed by such a shift on the part of the social sciences away from ethics (for this "descriptive" emphasis of economics is but the expression of a general trend). Moral values have long since been expelled from the natural sciences, and now they are being squeezed out of the social sciences. Indeed, it would begin to appear that the exorcism of standards and norms is now a prerequisite for any enterprise that desires to achieve respectability. For example, if one should approach the economist¹⁰ with a plea for the recognition of values, if there is expressed the somewhat pious hope that economic data are to be organized in terms of economic welfare, he is politely referred to some of the other social fields, to sociology, perhaps, or to that vague field of

¹⁰ In the entire following discussion the use of "economist" or "economics" will connote this nonmoral interpretation. It has already been recognized that no such general judgment can be made, but, for the purposes of the present argument, it seems unnecessary to qualify every use of the words "economist" or "economics" with some such phrase as "of the nonmoral school." Such qualification is intended in each case, but it will not be made explicit except occasionally.

social ethics. (The work of the late Professor Davenport presents perhaps the best example of this reference of all "ethical" suggestions to some field other than economics. Economics must be technological and descriptive, he argued, not logical or ethical, and such questions, for example, as tax reform, or the distinction between land and capital, have little or no "technological," economic significance. However, it may be pointed out, even if there is no "technological," "economic" difference between the two, i. e., land and capital, still such a distinction must be considered *somewhere*. It does not seem vital that such a realm of difference may not be technically "economic"—according to Davenport's definition of the science—it exists, it must be handled, and the attempt by such economists to shunt it off to some other field of inquiry illustrates precisely the irresponsibility and lack of coöperation that, it is being suggested here, is introduced by the severing of two enterprises of the nature of economics and ethics. Ethics itself cannot be expected to handle such economic concepts as land and capital, and so such a dualism removes the consideration of a crucial, if "ethical," point from the jurisdiction of any responsible agency; the result is to place it literally in some airy land of nowhere. It is not only that mutual aid is precluded by this separation of economics from ethics, but, in addition, the issue, e. g., the land-capital controversy, which is raised is rendered thereby homeless.) But should one follow this suggestion of the economist, with what is he confronted? It will be found that these other social sciences are likewise engaged in a precipitous rush to the goal of description.¹¹ Should economics, for example, point to sociology for norms, it will be discovered that sociology is

¹¹ The same qualification that has been made with reference to economics applies here also. That is, no attempt is being made to suggest any general characteristics of the social sciences, but there must be recognized, nevertheless, a prevailing tendency, as with economics, to shift from judgments and values to description and history.

busily engaged in neglecting standards for case histories. The social sciences seem yearning to be natural sciences. They are no longer content with remaining even historical descriptions; they must "go physical." No longer must the stigmas of "theoretical" or "deductive" or "introspective" or "arm-chair technique" or "closet approach" be placed upon them.¹²

This difficulty, therefore, presents itself: Where are values to find a refuge and how are they to exercise control? Of course, the realm of values may again seek a haven from such snubbing in some remote region of ethics, carefully insulated from the more lowly disciplines. That certainly would be nothing new; ethics has always striven to inhabit such an ethereal kingdom and has suffered nostalgia when removed from the upper air, but characteristically it had sought that speculative world itself, while now it seems to be banished there. The danger, then, that may result from the expulsion of values from economics and the other social sciences is the reintroduction, from another angle, of the traditional cleavage between ethics and the humble sciences that was so characteristic a part of former philosophy. That cleavage must be recognized to be present whether the approach be that of classic theory, which held that ethics was too exalted a creature to be hampered by the crudities of empiricist techniques, or that of the modern economist who refuses to be annoyed by the distractions that a consideration of standards would introduce into facts. The certain effect of both approaches is to make values remote and inoperative, to segregate judgment from description, and to present us with a dilemmatic choice between a social science that is without values or a social ethics that is without facts. Yet we must not forget, to distort a famous line, that "facts without values are blind; values without facts are empty."

¹² If this appears to exaggerate certain distinctions and approaches, that exaggeration is realized as such and perhaps may charitably be interpreted as suggesting emphasis.

The danger that is suggested here is not one that need greatly concern the physical sciences. They have traditionally—that is, since the birth of modern science—been exempt from the moral justification that has been demanded of the more hybrid social disciplines. Science has been recognized as disinterested and therefore privileged, and ideally ethics has been permitted to trouble the scientist as little as it has the artist. Such an æsthetic point of view, however, will hardly carry over to the enterprise of economics. Here, such “æsthetic,” intrinsic values are by no means implicit in the functions and operations of economic concepts, but are bound up inextricably with the meanings and operations of other disciplines of control, that is, of extra-economic social and moral agencies. Take, for example, the concept of property, or the distinction between earned and unearned income. Contemporary economics is attempting to operate with property as a phenomenon that is simply nothing more or less than the last step in a long and arduous evolutionary development. It is a given, an economic datum that is to be approached quantitatively, with perhaps at most a statistical investigation into its internal efficiency; that is to say, for purposes of economic science, it is to be accepted for what it is. Present-day economics likewise seems to be endeavoring to lump together all phases of income, avoiding distinctions between earned and unearned varieties of wealth. (Professor Davenport’s definitions of capital and property are particularly suggestive in this connection.) Income, like property, is to be accepted as a concept resulting from the operations of economics, its significance lying within the range of the science itself.

While such a procedure definitely represents the “scientific” aim of economics, namely, the attempt to handle its material dispassionately without the slant or direction that valuation would introduce, still the benedictions that have been re-

served for that approach in the physical sciences can with but little success, it seems, be dispensed in fields such as that of economics. Property and income can scarcely be accepted with the same equanimity that is accorded in the natural sciences to paramoecia or spinal frogs or catalysts. The subject-matter that concerns economics has often had too checkered a career to submit gracefully to the calmness that a quantitative or even an historical survey cheerfully bestows. In other words, the exemption of the data of physical disciplines from ethical standards is a unique privilege, and possible only because of the intrinsic values—perhaps dominantly æsthetic—that are present in the creative operations and technique of science; whereas perhaps because the social enterprises are too tainted with earth and Adam, with man and man's possessions, too humanistic (to use a word somewhat inaccurately), the divorce of facts from values in such endeavors would tend to cripple their social significance and to make complete the isolation of ethics.

This, however, must not be interpreted as a plea for the wholesale fusion of economics and ethics. It is rather the suggestion that, since it has been the insistence of much recent philosophy that ethics concern itself with the more prosaic enterprises in order to proceed upon its path of evaluating with sufficient descriptive material, a converse demand should be made upon economics to the effect that it in turn be not too neglectful of the responsibility of judging. One cannot ask too much of ethics. While it must attempt to grasp the significant findings of other studies, it cannot be expected, for example, to delve into the technical and often dismal details of economics. Nor, on the other hand, can an enterprise such as economics be required to act as a surrogate for moral speculation. But it may be demanded that just as ethics must place no insulation between itself and the social sciences, so likewise these alleged descriptive techniques

cannot rightfully disavow all consideration of values. Maybe a plea for a little less division of labor would be in order, for so long as economics and ethics each concentrates rigidly upon its specific approach, the one being descriptive and the other interpretive, the significant marginal spheres which surround each enterprise will never be able to coincide. There can be little intelligent coöperation if each social science is to remain descriptively isolated, each one outdoing the other in its disparagement of directing elements.

It has been mentioned above that the slighting of values in economics and the other social sciences has been, in part, a reactionary shift away from the eighteenth- and early nineteenth-century ethical approach. That ethical approach may perhaps be typified by the concept of natural rights. It is realized full well that even a mention of natural rights is always dangerous. Any discussion of the topic, even the briefest—as this will necessarily be—must labor under a genuine embarrassment, the difficulty of examining a cadaver without being suspected of the mutilation or, on the other hand, of the resurrection of the dead.¹⁸

¹⁸ It is being assumed that a knowledge of the long historical development that lay back of the eloquent expression of natural rights that appeared in the American and French Declarations is sufficiently familiar. The immediate ideational background was, of course, the work of Rousseau and Locke (the latter being of more influence upon American political theory than was "Jean Jacques, the inventor of natural rights"), and the whole social contract tradition (the completely antithetical interpretations on the part of Locke and Hobbes of the state of nature that preceded the forming of the social contract are one of the most vivid testimonials to the caprice of "nature"), while extending further back and underlying the very concept of rights were the forces evoked by the Puritan revolution, the radical Wycliffites, and the entire Protestant movement itself. "The theory of natural rights is simply the logical outgrowth of the Protestant revolt against the authority of tradition, the logical outgrowth of the Protestant appeal to private judgment, i. e., to the reason and conscience of the individual . . . Puritan England had produced the theory of natural rights; but the conditions were not yet favorable for its abundant growth . . . The theory of natural rights is Protestantism transferred to the region of worldly affairs, and stripped of the traditionalism against which at first it did not 'protest.'" (Ritchie, *Natural Rights*; London, Swan Sonnenschein, 1895, pp. 6, 10, 13.)

The concept of "natural," to be sure, has a much more hoary record

Nevertheless, it seems in point here, as a possible example of a reconciliation of fact and value in political and economic theory, to mention the more recent interpretation of the classic doctrine of rights. There must first be taken for granted, in any approach to such a concept, an awareness of the complete disapproval of the traditional formulation of the doctrine. The arguments that have been employed

behind it than that of abstract "rights." The Middle Ages did have rights, but they were rather the authoritative, specific grants of a feudal era—usually the correlates of duties—than the general, innate, "essential" rights of a later day; such a concept, i. e., rights that were inherent and natural, required the individualistic spirit of a Reformation superimposed upon the doctrines of late feudal legal theory. "Natural," on the other hand, traces back its ancestry to the Sophistic and Cynic separation of "convention" from "nature," to Aristotle's natural this and that, and, of more importance, to the natural law of the Stoics. ("Natural law," it must be remembered, was originally a political and ethical concept, the basis of a natural social order; the scientific emphasis, as we characteristically know it, was dependent upon the growth of scientific data which were to be "legally" organized.) The classic transference of Stoic natural law to Latin culture; the work of Cicero; the ultimate incorporation of the concept into Roman law, whence it became part of the mediæval heritage; all that is familiar. Thomas's "law of nature," as has been repeatedly pointed out, is essentially a combination of Aristotle's Nature plus Cicero's law of nature. Then came the work of Grotius, Pufendorf, and also of Hooker, who greatly influenced Locke, and "natural" came into English thought, where it was soon joined to "rights." And the end of the eighteenth century found the doctrine a most powerful weapon for the attack upon political exploitation. The concept of natural rights really affords one of the neatest examples of a thought that, although the definite product of a long historical lineage, yet was seized upon by its popularizers as an intuited revelation of an eternal metaphysical system.

It would be patently absurd to present in this connection any attempt at elaborate bibliography; the history of the concepts "natural" and "rights" boasts of too pretentious a literature to be cavalierly treated. A few direct and specific references, however, may be suggested here simply as characteristic samples: Ritchie (*op. cit.*), Chaps. I, II, III, IV; Carl Becker, *The Declaration of Independence* (New York, Harcourt, Brace, 1922), Chap. II; Berolzheimer, *The World's Legal Philosophies* (Jastrow trans., New York, Macmillan, 1924), Introduction, Chap. V; Bryce's *Studies in History and Jurisprudence* (Oxford, 1901), Vol. II, Chap. XI; R. W. and A. J. Carlyle, *A History of Mediæval Political Theory in the West* (Edinburgh, Blackwood, 1903; 5 vols.), particularly, Vol. I for the mediæval development of natural law; F. J. Goodnow, *The American Conception of Liberty and Government* (Brown University, 1916), Part I; Roscoe Pound, *Law and Morals* (University of North Carolina, 1924); *The Spirit of the Common Law* (Boston, Marshall Jones, 1921); *An Introduction to the Philosophy of Law* (Yale University Press, 1922). There is a very suggestive article by the late Professor G. H. Mead, "Natural Rights and the Theory of Political Institutions," in the *Journal of Philosophy, Psychology, and Scientific Method* (March 18, 1915, Vol. XIII, No. 6).

against natural rights are now almost commonplace: For example, that the "individual," upon whose metaphysical status as a discrete and autonomous entity the whole problem of rights depends, is a concept quite questionable when tested by an organismic standard of social processes; that the concept "natural" is a very poor methodological instrument, since it demands a criterion essentially unempirical, intuitive, noetic, "rationalistic," and since, as experience has unmistakably shown, it has been used to justify all manner of doctrine; that these rights were too rigid, too absolute, and likewise too many in number, that they "multiplied essences" and were therefore inapplicable for purposes of expediency and utility; that the whole concept of natural rights, instead of being any ultimate and eternal precious charter of liberties, was rather a clearly traceable historical phenomenon that came into such tremendous import largely because it was used as a weapon by eighteenth-century liberals; all this must be recognized as legitimate and familiar criticism of the natural rights approach to the relation of the individual to society, criticism, moreover, which reaches back to early nineteenth-century English jurists and political theorists, Bentham, Burke, Austin.

However, the thought that will be suggested here is that this "metaphysical" interpretation of the doctrine of natural rights, which perhaps well deserved the strictures that have been directed against it, was essentially a narrow and over-rigorous interpretation. It is quite true that "natural" as a political and economic criterion is unsound as a metaphysical concept, i. e., that there is no warrant for postulating an eighteenth-century apotheosis of Nature as the basis of social orders and economic systems, and unsound also—for want of a better word—as an epistemological concept, namely, that there is no way of knowing when the "natural" state is achieved, that no bell rings at its realization. But when cor-

rections and allowances are made in terminology, it may be recognized that "natural" means normative, and that the seeking after the natural is ethical and not metaphysical; it is a demand for standards and criteria, the symbol—perhaps hypostasized—for values. And it is under the aspect of this nonmetaphysical interpretation that the concept of natural rights, and likewise that of natural law, are being subject to a new evaluation, at least in certain disciplines such as that of jurisprudence.

The philosophy of law, just as that of economics, experienced in the nineteenth century a decided revolt against the absolutism of eighteenth-century legal concepts represented, for instance, by the natural law of Blackstone, and jurisprudence became concerned with an historical approach such as that of Eichorn and Savigny, and later with what Roscoe Pound calls the emphasis of the "mechanical sociologists." The scientific spirit of the late nineteenth century could brook no philosophizing in law, and so the law became a social "language" or a set of evolutionary formulas which could be traced and discussed, but which it would be futile to attempt to direct or to evaluate. However, just as the overemphasis of the metaphysical approach by the eighteenth century resulted in the onslaught upon natural rights and natural law, so there has been in legal philosophy a reaction against the overhistoricism and neglect of values of nineteenth century jurisprudence. The work of the Natural Rights school in France, of Kohler and Stammler in Germany, who, although opposed to the natural rights concept, oppose even more vigorously the mere descriptive and historical approach to legal theorizing, and of jurists such as Dean Pound and Justice Holmes in this country—also some of the writings of Professor Hocking and Professor Cohen—definitely point to a changing interpretation of some of the classic concepts, an interpretation that emphasizes the ethical

rather than the traditional metaphysical approach. Dean Pound can write that:

Already there is a revival of natural law, not of the natural law that would have imposed upon us an idealized version of the law of the past as something from which we might never escape, but of a creative natural law that would enable us to make of our received legal materials, as systematized by the legal science of the last century, a living instrument of justice in the society of to-day and to-morrow. Such a natural law will not call upon us to turn treatises on ethics or economics or sociology directly into institutes of law. But it will not be content with a legal science that refuses to look beyond or behind formal legal precepts and so misses more than half of what goes to make up the law.¹⁴

This is, of course, not an essay in jurisprudence and the only point that is intended in these last paragraphs is that the criterion of "natural" is not one that has been summarily and permanently banished. It remains in ethics if not in metaphysics. It is a symbol of the cry for better things—for better laws, better social orders, better economic systems. A "natural" order, a "natural" right, a "natural" law, are postulated because men seek to find some sure basis for the things that "ought" to be. If they can point to Nature, then their demands seem more solidly grounded. Here in Nature is the way things should be; look to the "natural" standard and then criticize, value, improve. It is true that such a standard may be admittedly a creative fiction; granted that there is no "natural" this or that in the nature of things, and granted that, if there were, no one would ever know when it had been reached; still, "natural" has a significance that was certainly not exhausted, perhaps not really understood, by eighteenth-century metaphysicians. The significance is basically that of a dissatisfaction with existing conditions, a discontent with mere description and the colorless technique

¹⁴ *Law and Morals*, pp. 87-88.

of scientific statement, and is instead a reaching forward to ideals and goals.

This point, however, will be misinterpreted if it is thought to imply a serious criticism of the descriptive, historical, scientific approach. It is simply the suggestion that the appeal to norms is one that is corrective of much of the narrowness that may result from too strict a worship of data and too studied a neglect of values. It is an appeal that refuses to accept conditions with equanimity simply because they are facts. All this seems to be suggested by "natural" and perhaps that is why the concept cannot be for long disregarded. As a specific program, "natural" may be of little service, but as a recognition of the place of values, it serves an essential purpose. The argument that is crudely expressed here is summed up, in connection with its presence in the problems of law, by Professor Hocking:

The law of any place and time is either subject to criticism or it is not. Unless the idea of "improvement" and the idea of the "law" are somehow incongruous, there must be at least a logical distinction between what the law is and what it ought to be. This is so evident to common sense that any opposing view would seem possible only by way of reaction from some atrocious misuse of the idea. It was the fate of the Natural Rights schools to provoke such a reaction, and to send an entire century of legal philosophers burrowing among the facts of law past and present for instruction which they agreed could not be found in ideals set up in total independence of history. Now, at the opening of still another century, we find common sense once more taking courage. The Natural Right-ists were right in at least one respect: the question, What ought the law to be? is a pertinent question, and they were even right in assuming that the human will had something to do about it.¹⁵

This same nonmetaphysical approach to the concept "natural" may also be applied to that of "rights." It may

¹⁵ *The Present Status of the Philosophy of Law and Right* (Yale University Press, 1926), pp. 4-5.

be granted that the notion of an individual existing prior to any social and political system, with rights bequeathed to him by a rational Creator, rights which were inherent, inalienable, imprescriptible, and self-evident, was a myth. It cannot be denied that the idea of a State formed by a compact between autonomous, independent individuals in order to safeguard the rights of all through a mutual respect for the rights of each, was a product of a pre-sociological and pre-anthropological political background. Any conception of man as a completely individualistic animal, whose present political and social status is essentially artificial, one arrived at by contract, is fantastic. All this and more may be granted, and still there remains that important transition from metaphysics to ethics. It may be true that man *has* no rights—rights, that is, according to an eighteenth century pattern; yet there are rights that he *should* have. He must be treated “as if” he had moral claims upon society in order that he *will* be able to realize such claims; the concept is a presumptive fiction.

What is meant by this is simply that if political and economic science is to function at all, it must recognize that the concept of “social,” taken by itself, may become as abstract, as empty, and as fruitless as the concept of “individual.” Despite the admitted validity of an organismic approach, the welfare of governments and economics orders is not, after all, an abstract conceptual welfare, but the welfare of individual members, members who must be treated psychologically as well as socially; that is, they must be so treated if the social structure is to be subject to criticism and redirection. “Nothing is more evident, I venture to think, as a result of two or three thousand years of social philosophizing, than that society must live and thrive by way of the native impulses of individual human beings.”¹⁶ Has not the paradoxical yet

¹⁶ Hocking, p. 68.

frequent attempt on the part of the historical school to consider governments and social systems *qua* governments and social systems, rather than as instruments that serve "the native impulses of individual human beings," been an almost studied effort to ignore the very values and standards by which alone governments and social orders can be judged? And is not the pronounced tendency to study the social organism as a self-sufficient unit, with scant attention being paid to the individual status of its constituent organs (the result, perhaps, of a false physiological analogy, or of an overemphasized biological approach), indicative of precisely that descriptive attitude which refuses to concern itself with critical evaluation? The purely historical treatment of the State and of existing economic structures may well concentrate upon these products of evolutionary social development, to the exclusion of a consideration of purposes and goals, but that approach is not one that can intrigue a seeker after values.

It must be suggested that the historical approach to politics and economics becomes involved in a serious dilemma when it seeks to prefer factual material to that concerning values. Such an approach results either in no valuation judgment at all, or in the erecting of historical events into a standard of values. The former horn of the dilemma certainly cannot be accepted by any philosophic approach; philosophy, in a real sense, may be designated as the science of values. And the latter alternative means a procedure that is as absolute as the traditional natural rights theory, one which indeed might be termed a variant of that theory, interpreting "natural" in this case simply as the historically existential. It may be granted that political and social organization is what it is because of certain historical forces, but there always lurks in the background the demand for a norm, a standard, an ideal, for testing such an organization.

That standard must be, in some form or other, "the impulses of individual human beings." This is not political atomism, but simply a recognition, to repeat, that the category of "social" may turn into an historical, descriptive concept instead of being used as a critical one, that valuation and interpretation of "social" demand the necessary correlative of "individual." In the words of Dean Pound:

. . . Much that advertises itself as social is in truth individualist; it is individualism to be attained through society rather than through individual self-help . . . Just as in the seventeenth century an undue insistence upon public interests, thought of as the interests of the sovereign, defeated the moral and social life of the individual and required the assertion of individual interests in bills of rights and declarations of rights, there is like danger now that certain social interests will be unduly emphasized and that governmental maternalism will become an end rather than a means and defeat the real purposes of the legal order. Although we think socially, we must still think of individual interests, and of that greatest of all claims which a human being may make, the claim to assert his individuality, to exercise freely the will and the reason which God has given him. We must emphasize the social interest in the moral and social life of the individual. But we must remember that it is the life of a free-willing being.¹⁷

And again:

Toward the end of the nineteenth century a new movement became manifest in law and in the science of law. Faith in the spontaneous development of legal institutions began to give way to faith in the efficacy of effort to make or to shape the law to known ends . . . In particular, whereas the immediate past had

¹⁷ This quotation is directly preceded by the following: "But we must not infer that the contribution of eighteenth-century theory to our legal tradition is to be cast out utterly. For the theory of fundamental principles to which law must conform and of fundamental interests which law must secure at all events has another side . . . Men are saying today that material welfare is the great end to which all institutions must be directed and by which they must be measured. Men are not asking merely to be allowed to achieve welfare; they are asking to have welfare achieved for them through organized society . . ." (*The Spirit of the Common Law*, pp. 108-111; this passage is followed by "Much that advertises itself" . . . etc.)

put the whole emphasis upon the general security, greater weight began to be given to the individual human life . . . In jurisprudence it was manifest first in a better understanding of the relation of legal rights to so-called natural rights. It came to be seen that the ultimate thing was the claim or demand or desires of a human being; that out of all such *de facto* claims or demands or desires some were recognized by moralists and jurists as reasonable and were called natural rights, and some were recognized and delineated by law and as so delimited were given effect by legal rights.¹⁸

This tentative, empirical quality that is thus being attributed to a concept that was originally absolute and intuitional is the one sure basis for a reinterpretation of the natural rights doctrine such as that which has been a characteristic theme in French jurisprudence since the opening of the century. There can be no attempt made here at all to discuss that approach,¹⁹ but it is clear that the more important of the French theorists who are concerned with this question take, if not a fictional, hypothetical attitude, at least the position that any acceptance of "natural rights" must be founded upon social utility, a utility, moreover, that is changing and developing. Whether it be the functional conception of Duguit,²⁰ or the plea for "idealism" of Charmont, the "reas-

¹⁸ *Law and Morals*, pp. 108-109. In this connection see also Professor Dewey's *The Public and Its Problems* (New York, Henry Holt, 1927), *passim*.

¹⁹ For the best brief account of these movements, see *Modern French Legal Philosophy*, by Fouillée, Charmont, Duguit, and Demogue (Scott and Chamberlain trans.), Vol. VII of the Modern Legal Philosophy Series (the Boston Book Company, 1916), especially editorial preface, and Part I, Chaps. VI, IX, XII; Part II, Chaps. I-VIII, XI. For other material see: Beudant, *Le Droit Individuel et l'État* (this book, which appeared in 1891, may be considered as the beginning of the revival of the natural rights concept); Saleilles, "L'École historique et droit naturel" (*Revue Trimestrielle de Droit Civil*, 1902, I, 80, 98); Planiol, *Traité Élémentaire de Droit Civil* (1900); Génny, *Méthode d'Interprétation et Sources en Droit Privé Positif* (1900). These latter two works, representing an attempt—in the words of Duguit—"to adapt the antiquated codes to modern needs by a looser interpretation," have been severely criticized by him. Compare also the more comprehensive works of Duguit, especially his *Les Transformations générales du droit privé depuis le Code Napoleon* (Paris, Alcan, 1912), and of Fouillée and Charmont, particularly the latter's *La Renaissance du Droit Naturel*.

²⁰ For an interesting and similar functional approach to rights and particularly to the right of property, see R. H. Tawney's *The Acquisitive Society*

suring placard, 'changing content guaranteed,'" is always present. No one, for example, could be more bitter against the metaphysical notion of a social contract and of inherent, inalienable rights than Duguit,²¹ yet his essentially psychological postulate of an "individual" and of an "individual will and mind as the basis of all phenomena" reintroduces a doctrine of rights as a necessary condition for that individual's functioning, such functioning, as he attempts to show, being a necessary part of the social process.²² Rights, according to this conception, have a much different status from the older natural ones; they are socially useful and hence socially necessary. A quotation from Charmont may, in addition, illustrate the variable concept of natural:

The idea of natural law, then, is differently conceived from the way it formerly was. It rests upon another foundation, and at the same time it undergoes certain transformations. It reconciles itself with the idea of evolution, with that of utility. It loses its absolute, immutable character, for it possesses only a variable content. It takes account of the interdependence of the individual and the community; it thus tends to bring the individual conscience and external law into accord, instead of setting them in opposition.²³

(New York, Harcourt Brace, 1921). F. and H. Laski in *Law in the Modern State* (New York, Huëbsch, 1919) present a functional "public service" rather than "sovereignty" thesis of the law.

²¹ See *Modern French Legal Philosophy* (*op. cit.*), Part II, Chap. VIII (taken from Duguit's *L'État: Le Droit Objectif et la Loi Positive*).

²² *Ibid.*, Part II, Chap. IX. Duguit's work is, in a great measure, influenced by that of Durkheim and Lévy-Bruhl. Cf. the doctrines that equality, instead of being any primal attribute, is the definite product of an advanced civilization.

²³ *Ibid.*, p. 146. (From *La Renaissance du Droit Naturel*.) Professor Morris R. Cohen has written a very suggestive paper, "Jus Naturale Redivivum" (*The Philosophical Review*, Vol. XXV, No. 6, November, 1916, pp. 761-777), which is practically a summary of the points that have been made in favor of this whole reinterpretation of natural law and natural rights. He takes up four arguments directed against the classic concept, the historical, psychological, legal, and metaphysical arguments, and shows that each of them is in no sense irrefutable. He is particularly concerned with the value of "ought" in jurisprudence, the distinction between "substantive codes" and a "science of principle," and he warns against too complete an athrow of historicism. He writes, for example, "The essence of all doctrines of natural law is the appeal from positive law to justice, from the law that

Natural rights and natural law, then, "can only creep into sight" in a greatly amended form. They must become empirical, elastic, workable, pragmatic. If all these qualifications really transform the traditional concept into something entirely different, that difference is essentially one of content; although their connotations have undergone a fundamental adjustment, the phrases and the "form" of natural rights and natural law may well remain—as indeed they have—a part of the literature of political and legal theory.

If the "individual," then, is to be treated as the reasonable test of the efficacy of legal and political and social systems, if his "claims or demands or desires" are to constitute a regulative factor, he must be postulated as possessing such claims or demands or desires independent of social arrangement. This is what is meant by the previous statement that even if metaphysically and historically men are endowed with no such claims—or rights—yet they should be so endowed by the political theorist. Take, for example, in this fictional, hypothetical, "as if"²⁴ approach to the question of rights, the matter of the equality of all men before the law. There is probably no writer on jurisprudence who would be so rash as to hold that such legal equality is based upon the "fact" of man's "natural" equality, upon the actuality that men "are" thus equal. On the contrary, a concept of equality tends definitely to ignore conditions which exist, but only for the purpose of endeavoring to bring about conditions that are held to be desirable. Legal rights are hypothetically

is to the law which ought to be; and unless we are ready to assert that the concept of a law that ought to be is for some reason an inadmissible one, the roots of natural law remain untouched." (P. 769.) This article appears now as Chap. IV of Book III, in *Reason and Nature* (New York, Harcourt Brace, 1931).

²⁴ Vaihinger does not consider in detail the concept of natural rights in his important contribution to this "as if" approach. Natural law he holds to be one of the "summational fictions." (*The Philosophy of As If*, 1911, Ogden trans., 1924.)

postulated, conditions are presumed to exist, because of an essentially melioristic outlook; the law may operate with fictions, but it does so in order to direct realities—that is, law interpreted ethically, not descriptively. The same is true of the concept liberty; men perhaps are actually as little “free” before the law as they are “equal,” but “if most powers develop best in liberty—as they do—liberty will be a presumptive right.”²⁵ In other words (and the argument here will follow closely that of Professor Hocking), what we mean by such presumptions, by the whole category of rights, are those conditions under which individual powers normally develop. “Rights, we say, are the conditions under which we must presume that human powers will best come to their own. . . . It is objectively ‘right’ that an individual should develop his powers.”²⁶ If we are to assume that the individual must be the regulative factor, the standard in criticizing social institutions, we must realize that individual rights are nothing more—or nothing less—than the social recognition that such an individual is a functioning,²⁷ developing entity with definite potentialities. That social recognition, however, is manifested in the form of a presumption, or a fiction, since it treats men in a way that is not supported by (historical, scientific) facts—e. g., men are treated as free and equal—but it is a fiction that seeks, on the one hand, to evaluate, for it recognizes that there should be an effort made to bring about these conditions, and, on the other, to develop, for it treats man as if his powers were further progressed. As it has been put, this presumption has the same value as that

²⁵ Hocking, *op. cit.*, p. 72.

²⁶ *Ibid.*, pp. 72-73, 71-72.

²⁷ Duguit's argument for rights is that they belong to a man because he has functions to perform. Hocking does not accept that position but concentrates upon this “development of powers.” It is not easy to see the significance of the difference between these two claims. Correct functioning—functioning, that is, in an Aristotelian sense—depends definitely upon the development of powers, and conversely unless those developed powers are correctly directed, function will not be achieved.

of considering a youth to be several years older than he really is. Rights, in this sense, are a necessary and constructive fiction.²⁸

The individualism that is being suggested throughout this present argument is thus an ethical, not a metaphysical, individualism, and it may well be asked of the historical school whether it is prepared to deny that individuals as such have a title to basic moral consideration, just as it may be asked of much current political theory whether its emphasis upon the social has any ethical status at all if such claims to (moral) individuality are denied.²⁹

It may be in place here to mention just a word further as to the significance of the statement that the standard of "natural" and of "right" is "admittedly a creative fiction." What is meant by this is that a recognition of a presumptive, hypothetical character in an approach to concepts such as those of natural rights and natural law will not only remove much of the absolutism that was so objectionable a feature of the classic doctrines, but will also prepare the only possible way for a readmittance of such concepts into present-day theory. For example, it may be true that from the standpoints of law and politics men are endowed with no innate, imprescriptible, natural rights. Still, as has been seen, for purposes of social manipulation they must be treated, and,

²⁸ The argument is summed up by Professor Hocking: "If the different presumptive rights are so many ways of promoting the development of individual human powers; if any law is right because it does this promoting, and only so far as it does it, ceasing to be right when and in so far as it fails of this achievement; then this measure or standard by which we test what is 'right' or 'just' gives us the nature of 'rightness' or 'justice.' It defines what we may please to call the absolute right, which is nothing more than to say, it defines what right is. It is right, absolutely right, that an individual should develop the powers that are in him. He may be said to have a 'natural right' to become what he is capable of becoming. This is his only natural right . . . Wherever moral ambition exists, there rights exist." (*Op. cit.*, pp. 74-75.)

²⁹ For a very recent and penetrating discussion of this whole problem see Professor W. W. Willoughby's *The Ethical Basis of Political Authority* (New York, Macmillan, 1930).

in fact, have been treated, as if they did possess such rights. This is a transition from metaphysics to ethics, and an important transition. An "as if" approach—that of a necessary fiction or a creative presumption—postulates as a regulative factor, not as a categorical statement, that "the claims or demands or desires of a human being" (to use Pound's phrase) must direct legal and social, political and economic thought. A doctrine of rights, therefore, is not one that can be unconditionally expelled from political and social theory, but it needs definite qualification, and this presumptive handling of the concept seems to introduce the most valuable type of qualification. It recognizes that rights are fundamentally a name for ethical claims flowing from the very nature of the individual, and that the concept of rights introduces a theory which includes man as an ethical factor as opposed to a view which excludes such a factor. It is an approach that concerns itself with values, but since the treatment of rights is hypothetical it does not attempt to read them existentially into the social structure. The eighteenth-century natural rights concept, from a metaphysical standpoint, was "pure" fiction, whereas the ethical, "as if" interpretation is a "creative" fiction, a moral presumption.

A presumptive approach, moreover, recognizes no hard and fast order that is eternal and unchangeable. Presumptions and fictions change; they are empirically determinable and mould themselves to fit the exigencies of utility. The natural rights of an "as if" world, for example, would possess the same characteristics as that "as if" world—they would be relative, variable, and not too enamored by the charms of rational absolutism. They do not constitute an immutable ideal system to which the contingent, positive legal right must conform, but they are concepts that vary according to their usefulness. They are "interests which we think ought to be secured; demands which human beings may make which we

think ought to be satisfied," and those interests and demands are neither universal nor eternal. Interests and demands are elastic, and therefore presumptive natural rights are elastic. The absolute character of the older doctrine may really be said to have been its basic defect; it disturbed the late nineteenth century because science and history could discover no such absolute nature, and it is even more annoying to present tendencies which attempt to work with and to use concepts. A rigid system of absolutes is not an easy thing to manipulate, to operate with, and that handicap, rather than any metaphysical one, is the damaging feature of classic natural rights. But the characteristic argument against this rigidity of rights cannot be brought to bear upon an interpretation that recognizes and demands that rights be made amenable to conditions which are in a state of transformation, an interpretation that holds that such concepts must be tested by a standard of social efficiency.

It may be necessary to suggest one or two warnings or qualifications, however, in connection with this type of "as if" argument. One is that the insistence upon the recognition and development of individual powers assumes, obviously, that there actually exist such interests and powers. "Rights"⁸⁰ themselves may be presumptive and fictional, since they are essentially a social reaction, but those bases upon which they depend cannot be so regarded. Yet this is nothing more than a corollary of the previous postulate that it is by the category "individual" that the concept of "social" is to be measured. This independent existence of certain "interests" that the law concerns itself with is clearly accepted by Roscoe Pound:

A legal system attains its end by recognizing certain interests, individual, public, social; by defining the limits within which these interests shall be recognized legally and given effect through

⁸⁰ "Rights" here signify legal rights; cf. the Pound passage above.

the force of the State, and by endeavoring to secure the interests so recognized within the defined limits. *It does not create these interests.* There is so much truth in the eighteenth-century theory of natural rights. . . . They [individual interests] *arise apart from the law . . . The law does not create them, it only recognizes them . . .* The seventeenth- and eighteenth-century theory, however, confused the interest, which exists independently of law, and the legal rights, the creature of law . . . *Natural rights mean simply interests which we think ought to be secured; demands, which human beings may make which we think ought to be satisfied. It is perfectly true that neither law nor State creates them . . . it is fatal to all sound thinking to treat them as legal conceptions. . .*⁸¹

A more serious qualification, therefore, is that the terms "fiction" and "as if" must not be taken too literally. That is to say, the argument that has been made in these last pages may perhaps be stated in a stronger fashion if it is put solely in temporal terms, in terms of a future. The individual must be treated so that he *will* have certain rights; he must be handled so that his having of rights may be *furthered*. That is the implication and justification of any hypothetical approach. A fictional theory might be interpreted as a static theory, whereas what is intended here is that the "as if" approach is a dynamic one, and in so far a reality. The fictional view must not be thought of as an abstraction, but as an aim, as a directive principle of action which itself is in no way a fiction. Natural rights—as ethical rather than legal concepts—must be understood as directing realities, and in that sense they could be designated as fictional only by those who would treat all ethical claims as fictional. It is recognized, therefore, that there is a possible ambiguity in employing an "as if" phraseology, for if a thing is morally real it is somewhat misleading to designate the approach to it as a fiction.

⁸¹ *The Spirit of the Common Law*, pp. 91-92. (Italics mine.)

There is no intention here, to conclude, of implying that such a hypothetical interpretation of natural rights was in any way the approach of Henry George. No attempt will be made to minimize his absolutistic attitude. For him, natural rights were sacred, eternal, God-given things, derived from the very nature or essence of humanity, and they were never anything less. He himself held that all his economic doctrines were implicit in the bills of rights of the American and French Declarations, and that his political philosophy was a free rendering of the classical presentation of natural rights.³² And neither will there be any suggestion that for George the ethical emphasis in economics was essentially a provisional one. His statement of the ethical nature of economics was too rigorous to permit such an approach.³³ But there must be introduced the thought that while George undoubtedly relied in terminology and methodological con-

³² These are some of George's characteristic passages: "There are those who, when it suits their purpose, say that there are no natural rights, but that all rights spring from the grant of the sovereign political power. It were waste of time to argue with such persons. There are some facts so obvious as to be beyond the necessity of argument. And one of these facts, attested by universal consciousness, is that there are rights between man and man which existed before the formation of government, and which continue to exist in spite of the abuse of government; that there is a higher law than the human law—to wit, the law of the Creator, impressed upon and revealed through nature, which is before and above human laws, and upon conformity to which all human laws must depend for their validity. To deny this is to assert that there is no standard whatever by which the rightfulness or wrongfulness of law and institutions can be measured; to assert that there can be no actions in themselves right and none in themselves wrong. . . . These natural rights, this higher law, form the only true and sure basis for social organization." (From the chapter on "The Rights of Man" in *Social Problems; Works*, Vol. II; p. 92.) "The simple yet all-embracing statement of natural rights in the Declaration bears the stamp of primary truth; it includes all partial truths and coördinates all other truths. This perfect liberty, which, by giving each his rights secures the rights of all, is order, for violence is the infringement of rights; it is justice, for injustice is the denial of rights; it is equality, for one cannot have more than his right without another having less; it is reverence towards God, for irreverence is the denial of His order; it is love towards man, for it accords to others all we ask for ourselves." (From a speech on "Wanted—a Democratic Party," at the Brooklyn Reform Club, March 12, 1883.)

³³ See *Supra*, pp. 139-140.

cepts upon the older formulation of the doctrine of natural rights, the essence of his position lay in an ethical individualism. The ethical status of individuals, the nature and scope of claims morally made in behalf of individuals, were the great sanctions behind any theory of rights. To deny natural rights was "to assert that there is no standard whatever by which the rightfulness or wrongfulness of laws and institutions can be measured." And that is why it is felt that this preceding discussion of the more recent "as if" interpretation of natural rights, an approach that regards such a doctrine as an insistence upon the necessity of standards of judgment, has not been a gratuitous or arbitrary one.

This distinction between the "ethical" and "metaphysical" elements in George's interpretation of the concept "natural" may be illustrated by his handling of property rights. The phrase, "the natural right to property," connotes characteristically a strictly conservative use of the idea. It is familiar that the bulwark of the reactionary individualism that dominated much of nineteenth century thought was precisely this "natural" sacredness of property. Property in land, in goods, and in men (from Aristotle to the pro-slavery constitutions of pre-Civil War days) have all been justified by the sacrosanct qualifications of "natural."⁸⁴ In fact, all of the smugness of conservative laissez-faire, all the deplorable effects of an unenlightened, hands-off Manchester policy, found their sure basis in man's natural and inalienable right to himself and to the fruits of his labor. (It was "unnatural," therefore, to prohibit women and children from working sixteen hours a day in mines since their rights would have been violated!)

⁸⁴ The absolutistic approach to "natural" always demands the appeal from intuition to intuition. As Bentham put it, the fairest of those who hold things to be natural is "that sort of man who speaks out and says, I am of the number of the elect; now God himself takes care to inform the elect what is right . . . If, therefore, a man wants to know what is right he has nothing to do but to come to me." (*Principles of Morals and Legislation*; Clarendon Press ed., pp. 17-20, n.)

And perhaps the logical, "metaphysical" conclusions from such a premise of natural right might have been that to which the hard-headed Manchester school was led.³⁵ The attacks of all "welfare" economists, e. g., Hobson, upon classical economy have been precisely that its "natural laws" and "natural rights" sought (although unsuccessfully) to operate outside of the dimension of ethics, and therefore partially prepared the way for the reactionary distortion that followed. A non-moral, "physical" functioning of natural law and natural right could not be questioned by the social reformer.

George's interpretation of a "natural right to property," however, was an ethical one. That is to say, while George's approach was undoubtedly phrased in absolutistic terms, still the concept of "natural" was used by him critically; "natural," in a word, was that which *ought* to be law. For example, George sought to make an important (ethical) qualification in the classical statement of such a natural right to property, a qualification founded upon a labor basis. That labor amendment distinguished between property in land and property in the product of labor, or capital, and attempted to demonstrate that there was a moral sanction, e. g., for the socialization of rent.³⁶ There could be no natural right

³⁵ Of course, it was not logic but good business that led to such an interpretation. Unfortunately, when the concept of property is based upon an uncompromising natural right, there must be those who read the auguries, and the keeping of the intuition of the natural right to property has been so often in the care of property-owners. As Dean Pound puts it: "The theory of inherent moral qualities, while it would serve for interests of personality . . . would not serve as a basis for the so-called natural right of property . . . None of the jurists of that time (seventeenth and eighteenth centuries) questioned the existing social order. On the contrary, they assumed as beyond question a natural right of property." (*The Spirit of the Common Law*, p. 93.) For a brief statement of the various "rights" to property based upon these differing logical or metaphysical emphases, see Ritchie's chapter (XIII) on the "Right of Property." (*Op. cit.*) It was such examples that made him impatiently conclude his discussion with "the dispute between those two scholastic theologians, Mr. Henry George and Pope Leo XIII," over the right of property in hand. (Pp. 270-271.)

³⁶ See *supra*, pp. 133 ff.

to property in land, since such a right was dependent only upon the expenditure of labor. Now, whether or not such a distinction is appealing, George's efforts show unmistakably that it was the ethical aspect of property that attracted him, and not any logical or metaphysical one. And it may therefore be said that George's concern with natural rights was largely an ethical concern.³⁷ When the over-rigorous interpretation of rights led to conclusions which, for him, were directed away from economic welfare, he refused to follow them. This is not to say that such a treatment of rights by George was in every case a conscious one. There can be little doubt that the metaphysical dress in which he clothed the whole concept of rights, and the eighteenth-century vocabulary which he employed, were generally uncriticized by him. Yet it does seem evident that it was the function of natural rights in providing a norm that made the concept a very foundation for his joint structure of economics and ethics. And it is believed that this whole previous presentation of the "normative" value of a doctrine of rights may, without any serious distortion, be considered applicable to George's underlying ethical emphasis.

It was such an emphasis, moreover, that may be held responsible for George's classical, "theoretical" phrasing of economics. The attack on the part of all rationalistic systems of ethics upon the fumbling efforts of experience was

³⁷ Such a concern is made clear in expressions such as these: "Our so-called recognition of the equal and natural rights of man is to large classes of our people nothing but a mockery, and as social pressure increases, is becoming a more bitter mockery to larger classes, because our institutions fail to secure the rights of men to their labor and the fruits of their labor." (*Social Problems*, p. 96.) "What use are political rights unless they can be used to gain social rights? I care not what the form of government may be; I care not how you treat of the rights of men—so long as the equal, inalienable right of men to gain a free, fair living by their own labor is denied." (From a lecture at the Midland Institute, Birmingham, England, January 23, 1884.) It is clear that George's distinctly ethical conception of natural rights insisted upon the moral phase of politics as well as of economics.

implicit in his approach to political economy; the science must be decisive and rigid. It is of course by no means necessary, or, in fact, advisable, to accept such an absolutistic system of ethics as that which appealed to George; indeed, it must be evident that this whole interpretation of his work is attempting to explain ethical significance through another approach. But it is felt that it is necessary to accept his fervent contention that economics derives its significance from a rapprochement with ethical consequences and ethical standards. In other words, the point here is not as to what interpretation is to be given ethics, rationalistic or instrumental, but it is whether economics is to consider itself as ethically determined or not. The only way, for George, that economics could so consider itself determined was to follow the theoretical presentation of the classical school. That is an argument that may or may not be accepted, but the more general contention that the background of economics must be an ethical one is a thesis that can be disregarded, it seems, only with great danger. One does not have to be completely unorthodox to insist that those "nonmoral" efforts of recent economists have as yet achieved scant success. Contemporary economics finds itself as helpless as classical political economy (and much less confident) in the face of the economic evils with which civilization is confronted. Its vocabulary is more "scientific" than the syllogistic terminology of the early nineteenth century, its graphs are imposing, and its researches intricate, but there still are (should not one add that they are increasing?) poverty, misery, economic unrest. Economics must develop further in a quantitative dimension, it is answered. Perhaps. But should that development sacrifice values and standards to statistics, should it become so engrossed with figures as to blind itself to symptoms and cures, then one must evince a polite skepticism.

The question, finally, that must be raised here is whether economics and the other social sciences should seek the goal of description and quantification with a resolute and calm determination to ignore anything that savors of valuation and judgment. Will they be more successful than jurisprudence and better preserve some of their recently won physical science attributes? Or will ethics begin to creep back? Or should there be the definite and unconcealed attempt to thrust values again into economics? Shall a discipline such as economics, which is concerned with probably the most vital and menacing problems that a social order is called upon to face, be praised for accepting the material that comes to it without attempting to evaluate, to criticize, to amend?

Economics, since it is an enterprise that investigates man's attempts to satisfy his material wants, may indeed be considered, in an age of industrialism and competition such as this, in an "acquisitive society," as the "science of survival." Economics, and no longer biology, seems to be the technique that treats of the struggle for existence. Those fittest who survive and flourish in an acquisitive, competitive society must be studied, not by biology or even psychology, but rather as specimens subject to economic analysis. The point is more than a facetious one. It suggests perhaps that the phenomena which are the materials for the operations of economics are too portentous, too indicative of unsolved moral problems, to be accepted uncritically as the subject-matter of a descriptive or historical science. By uncritically is meant here specifically the failure to distinguish between the normal and the pathological, a failure that is not present in some of the disciplines that economics seems to choose as models. Psychology, for example, does not confuse the healthy and the morbid; economics too often does. And the cause may perhaps be located in the absence of norms and standards.

One more point: There have recently been launched at-

tacks upon the overspecialization of contemporary science and technical knowledge (the *Encyclopedia of the Social Sciences* represents a reaction from such specialization in its field), and the plea has been made for the introduction of an intellectual synthesis, of an age of system-construction. Modern physics is being hailed in many quarters as the locus of such a physical synthesis. This challenge directed against an overspecialized concern with minutiae, against an ignoring-of-the-forest-for-the-trees technique, seems to be even more applicable to the social sciences than to the natural sciences, more applicable, perhaps, because that hyperspecialized technique does not appear to fit the social enterprises as neatly as it does the physical disciplines; great gaps of body show here and there. However, this indictment of overspecialization should not be confined to the realm of fact itself, but must be expanded so as to embrace in its charge a criticism of the exclusion, upon the grounds of specialization, of value from fact, an exclusion that banishes from the social sciences vision along with values. A warning of the dangers of such a type of specialization seems particularly pertinent in the case of economics.

It is felt here that economics may become richer and more vital if it puts aside, at least partially, certain feverish efforts to resemble physics or biology. It need not fear that a re-introduction of values would open the way for a wholesale return of all the concepts of classical political economy, for, as has been noted, when a doctrine of ethical import such as that of natural rights is resurrected it reappears in a new garb; the new form corresponds to the empirical instead of the rational. There is scarcely opportunity in this connection to mention the significant alteration that such a new form effects in ethical as well as in economic operations. It may be suggested, however, that the recent emphasis, as in Professor Dewey, upon the operational point of view (using the

expression made current by contemporary scientific thinking) as applied to ethics, namely, that values as well as concepts be tested in terms of their operations, may benefit from a greater degree of coincidence between two such disciplines as economics and ethics. Such an emphasis might disclose a new approach to their mutual operations which would tend to make the one more susceptible to direction and the other less void of content. Certainly, there need be no fear of such a coincidence unless economics, on the one hand, begins to realize that it has been operating largely with surface material, or ethics, on the other, that it has too often neglected material of any nature.

It is a somewhat depressing paradox that facts and values seem so often at odds in economics. The pendulum appears to swing from the thesis that the science must be a branch of logic and ethics, to the antithesis that it must shun the dim region of norms. Surely, there must be a synthesis that unites both in a common field of thought.