Lectures on the Principles of Political Obligation
Editions Consulted

The present volume has been prepared by reference to three editions: The 1895 edition published by Longmans, Green & Co., the 1941 edition (a reprint from Green’s Philosophical Works, vol. II), Kitchener’s 1999 e-book edition (hereafter abbreviated “KE”), and the Cambridge University Press 1986 edition. The latter may be regarded, in some ways, as complimentary to the present edition in that it treats the manuscripts rather than early editions as sacred. No reference to it has been made in the present text.
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Introduction

If the issue of the importance of one’s life for the proper appreciation or even understanding of one’s work has never completely been resolved, it may be because of inconsistencies between the two spheres such as the one visible in the case of Thomas Hill Green. Green, it has often been noted, did not leave the world a magnum opus which summarised his political beliefs, nor did he leave any clearly written and less than obscure document which unequivocally clarifies his position in the matters he discussed (Williams 1987, 400). And the two works he left us—though they enjoyed a wide readership and influenced thinking about the issues under consideration for decades to come—might well have acted against him rather than in support of his views, as their style is more likely to put the reader off, than to invite further or careful reading. Green’s thought is clearly both remarkable and influential, yet this, it might be argued has as much to do with his activities as it has with the writings in which this thought is expounded. But maybe, as William points out, this is the source for the limitations of the reach of Green’s thought among political theorists today.

Green played an active role in local political life for many years while at Oxford, serving as an assistant commissioner to the Schools Inquiry Commission, getting involved with the English temperance movement, becoming elected to the Oxford School Board, and then getting elected to the Oxford Town Council representing the North Ward in 1876. And it has often been observed that Green preferred to implement his views on the role of politics in life rather than express them in the form of writing. But despite his predilection of writing, and despite the general view that his perspectives and philosophy spread through word of mouth rather than through his writings, Green was a poor speaker on stage, and this meant that he was not well-endowed for a full career in politics (Cacoullos 1974, 31).

If Green was a poor speaker, as Cacoullos claims, and he was a poor writer, as Williams points out, then how did his thought
reach such a wide audience, at least in the late nineteenth and early twentieth centuries (the above noted limitations among political theorists notwithstanding)? One may fruitfully look to the circumstances of his times for an explanation.

The nineteenth century is often characterised as a time when industrialisation and modernisation had led not to the betterment of life for all, but to the hitherto unprecedented gap which had developed between those who had taken advantage of technology, and the majority of the people who could not. The century had given rise to a growing awareness of inequality and exploitation, a consequence of which was a pressing need to solve problems of the below, and a growing repugnance to the perspectives of the above.

And with this in mind, let us turn to Green’s most central concept in *Lectures on the Principles of Political Obligation*—the common good. One could argue that Green’s Christianity and his sensitivity towards the socioeconomic divide between man and man were chiefly responsible for his insistence on a concept of goodness, but we need not venture into such territory since it involves a good deal of speculation and is not immediately relevant for a fruitful reading of the work. What is important to realise is that Green felt that the issue of goodness was in need of a proper argument if it was not to suffocate under the objections mounted against it. Above all, Green wanted to show that there was goodness that could stand on its own apart from other ends in whose service it could be used, as the utilitarians, for example claimed.

What I mean is this. The arguments against an absolute or non-arbitrary good were essentially as follows: Something can be good or bad only in relation to some end. If it helps attain that end, we call it good (for that end), if not, we call it bad (for that end). Unless this end is defined or understood, there can be no good or bad (which is non-arbitrary), since we would have no way of establishing the criteria which determine it.

The utilitarians used the concept good or bad in service of ends which, they considered, everyone agreed upon—maximum pleasure and minimum pain. But Green objected to this, considering it to be inaccurate. Perhaps the problem was that the utilitarians used the terms too broadly and almost invited objections
from those who were devoted to absolute goods and bads. At any rate, Green thought that there was rather such a thing as the common good to which the above argument could not be applied since it conformed to it. There are absolute goods and bads, and are determined by whether they serve the purposes of the common good or not. Whether, that is they are good for all. Yet this doesn't seem to ward off the problem of what is “good for all.”

Some idea of what is meant by this in the present book is given by Green in point 7 of his opening chapter:

“The value... of the institutions of civil life lies in their operation as giving reality to [the] capacities of will and reason, and enabling them to be really exercised. In their general effect, apart from particular aberrations, they render it possible for a man to be freely determined by the idea of a possible satisfaction of himself, instead of being driven this way and that by external forces, and thus they give reality to the capacity called will: and they enable him to realise his reason, i.e. his idea of self-perfection, by acting as a member of a social organisation in which each contributes to the better-being of all the rest.”

The reader of this paragraph will be interested to get a better idea of what is entailed by the satisfaction of will and reason. And also whether what is entailed will give sufficient cause for Green’s contempt for utilitarianism. But we are best advised to leave these matters for the reader of Green’s works to look for them while reading the primary sources, rather than entering into these discussions here.

The common good then ought to be the aim of the law. How law achieves this is quite an intricate matter to which Green gives deep consideration. In so doing, he uses the idea of a natural law which is quite distinct from the law as determined by political institutions. He does not claim that such a natural law ever existed or could exist, but he does assert that it is the end of political institutions to bring about the state in which we can all live in a society ruled by such natural laws, since this is the only way to bring about the common good.

In the present work, Green assesses the application of his theory in diverse areas from the state’s treatment of family relations to land law. I think the way in which this assessment is carried out is
as relevant to us today as Green’s thought to historians of British idealism.
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Chapter 1
The Grounds of Political Obligation

1. The subject of this course of lectures is the principles of political obligation; and that term is intended to include the obligation of the subject towards the sovereign, the obligation of the citizen towards the state, and the obligations of individuals to each other as enforced by a political superior. My purpose is to consider the moral function or object served by law, or by the system of rights and obligations which the state enforces, and in so doing to discover the true ground or justification for obedience to law. My plan will be (1) to state in outline what I consider the true function of law to be, this being at the same time the true ground of our moral duty to obey the law; and throughout I distinguish moral duty from legal obligation; (2) to examine the chief doctrines of political obligation that have been current in modern Europe, and by criticising them to bring out more clearly the main points of a truer doctrine; (3) to consider in detail the chief rights and obligations enforced in civilised states, inquiring what is their justification, and what is the ground for respecting them, on the principle stated.

2. In previous lectures I have explained what I understand moral goodness to be, and how it is possible that there should be such a thing; in other words, what are the conditions on the part of reason and will which are implied in our being able to conceive moral goodness as an object to be aimed at, and to give some partial reality to the conception. Our results on this question may be briefly stated as follows.

The highest moral goodness we found was an attribute of character and so far as it issued in acts done for the sake of their goodness, not for the sake of any pleasure or any satisfaction of desire which they bring to the agent. But it is impossible that an action should be done for the sake of its goodness, unless it has been previously contemplated as good for some other reason than that which consists in its being done for the sake of its goodness. It must have been done, or conceived as possible to be done, and have been accounted good, irrespectively of its being done from which we ultimately come to regard as the highest motive. In other words, a prior morality, founded upon interests which are other than the pure interest in being good, and governed by rules of conduct.
relative to a standard of goodness other than that which makes it depend on this interest, is the condition of there coming to be a character governed by interest in an ideal of goodness. Otherwise this ideal would be an empty one; it would be impossible to say what the good actions were, that were to be done for the sake of their goodness; and the interest in this ideal would be impossible, since it would be an interest without an object.

3. When, however, morality of the latter kind has come to be recognised as the highest or the only true, morality, the prior morality needs to be criticised from the point of view thus gained. Those interests, other than the interest in being good, which form the motives on the part of the individual on which it rests, will not indeed be rejected as of no moral value; for no one can suppose that without them, or except as regulating them, the pure interest in being good could determine conduct at all. But they will be estimated according to their value as leading up to, or as capable of becoming elements in, a character in which this interest is the governing principle. Again, those rules of conduct, according to which the terms right and wrong, good and bad, are commonly applied, and which, as was just now said, are relative to a standard certainly not founded on the conception of good as consisting in the character described, are not indeed to be rejected; for without them there would be nothing to define the duties which the highest character is prepared to do for their own sake. But they have to be revised according to a method which inquires into their rationale or justification, as conditions of approximation to the highest character.

4. Such a criticism of moral interests—of the general motives which determine moral conduct and regulate such moral approbation and disapprobation as is not based on a strict theory of moral good may be called by the term a “theory of the moral sentiments.” The criticism of recognised rules of conduct will fall under two heads according as these rules are embodied in “positive law” (law of which the observance is enforced on the individual by a political superior) or only form part of the “law of opinion” (part of what the individual feels to be expected of him by some person or persons to whose expectations he ought to conform).

5. Moral interests are so greatly dependent on generally recognised rules of conduct that the criticism of the latter should come first. The law of opinion, again, in so many ways presupposes a social fabric supported by “positive” law, that we can only fairly take account of it when we
have considered the moral value and justifiability of the fabric so supported. I propose therefore to begin our inquiry into the detail of goodness into the particular kinds of conduct which the man wishing to do good for the sake of its goodness is entitled to count good—by considering what is of permanent moral value in the institutions of civil life, as established in Europe; in what way they have contributed and contribute to the possibility of morality in the higher sense of the term, and are justified, or have a moral claim upon our loyal conformity, in consequence.

6. The condition of a moral life is the possession of will and reason. Will is the capacity in a man of being determined to action by the idea of a possible satisfaction of himself. An act of will is an action so determined. A state of will is the capacity as determined by the particular objects in which the man seeks self-satisfaction; and it becomes a character in so far as the self-satisfaction is habitually sought in objects of a particular kind. Practical reason is the capacity in a man of conceiving the perfection of his nature as an object to be attained by action. All moral ideas have their origin in reason, i.e., in the idea of a possible self-perfection to be attained by the moral agent. This does not mean that the moral agent in every stage of his progress could state this idea to himself in an abstract form, any more than in every stage in the acquisition of knowledge about nature a man can state to himself in an abstract form the conception of the unity of nature which yet throughout conditions the acquisition of his knowledge. Ideas do not first come into existence, or begin to operate, upon the formation of an abstract expression for them. This expression is only arrived at upon analysis of a concrete experience which they have rendered possible. Thus we only learn to express the idea of self-perfection in that abstract form upon an analysis of an experience of self-improvement which we have gone through ourselves, and which must have been gone through by those with whom the possession of language and an organisation of life (however elementary); but the same analysis shows that the same idea must have been at work to make such experience possible. In this idea all particular moral ideas all ideas of particular forms of conduct as estimable originate, though an abstract expression for the latter is arrived at much sooner than such an expression for the idea in which they originate. They arise as the individual’s conception of the society on the well-being of which his own depends, and of the constituents of that well-being, becomes wider and fuller; and they are embodied in the laws, institutions, and social expectation, which
make conventional morality. This embodiment, again, constitutes the moral progress of mankind. This progress, however, is only a moral progress insofar as it tends to bring about the harmony of will and reason, in the only form in which it can really exist, viz. in the characters of persons. And this result is actually achieved, in so far as upon habits disciplined by conformity to conventional morality there supervenes an intelligent interest in some of the objects contributory to human perfection, which that conventional morality subserves and in so far as that interest becomes the dominant interest of the character.

7. The value then of the institutions of civil life lies in their operation as giving reality to these capacities of will and reason, and enabling them to be really exercised. In their general effect, apart from particular aberrations, they render it possible for a man to be freely determined by the idea of a possible satisfaction of himself instead of being driven this way and that by external forces, and thus they give reality to the capacity called will; and they enable him to realise his reason, i.e., his idea of self-perfection, by acting as a member of a social organisation in which each contributes to the better-being of all the rest. So far as they do in fact thus operate they are morally justified, and may be said to correspond to the “law of nature” the *jus naturae*, according to the only sense in which that phrase can be intelligibly used.

8. There has been much controversy as to what the *jus naturae* (Naturrecht) really is, or whether there is such a thing at all. And the controversy, when it comes to be dealt with in English, is further embarrassed by the fact that we have no one term to represent the full meaning of “jus” or “Recht,” as a system of correlative rights and obligations, actually enforced or that should be enforced by law. The essential questions are: (1) whether we are entitled to distinguish the rights and obligations which are anywhere actually enforced by law from rights and obligations which really exist though not enforced; and (2), if we are entitled to do so, what is to be our criterion of rights and obligations which are really valid, in distinction from those that are actually enforced.

9. No one would seriously maintain that the system of rights and obligations, as it is anywhere enforced by law—the “jus” or “Recht” of any nation—is all that it ought to be. Even Hobbes holds that a law, though it cannot be unjust, may be pernicious. But there has been much objection to the admission of *natural* rights and obligations. At any rate the phrase is liable to misinterpretation. It may be taken to imply that rights and obligations can exist in a “state of nature”—a state in which every indi-
individual is free to do as he likes—that legal rights and obligations derive their authority from a voluntary act by which individuals contracted themselves out of this state; and that the individual retains from the state of nature certain rights with which no legal obligations ought to conflict. Such a doctrine is generally admitted to be untenable; but it does not follow from this that there is not a true and important sense in which natural rights and obligations exist—the same sense as that in which duties may be said to exist, though unfulfilled. There is a system of rights and obligations which should be maintained by law, whether it is so or not, and which may properly be called “natural,” not in the sense in which the term “natural” would imply that such a system ever did exist or could exist independently of force exercised by society over individuals, but “natural” because necessary to the end which it is the vocation of human society to realise.

10. The “jus naturae,” thus understood, is at once distinguished from the sphere of moral duty, and relative to it. It is distinguished from it because admitting of enforcement by law. Moral duties do not admit of being so enforced. The question sometimes put, whether moral duties should be enforced by law, is really an unmeaning one; for they simply cannot be enforced. They are duties to act, it is true, and an act can be enforced; but duties to act from certain dispositions and with certain motives, and these cannot be enforced. Nay, the enforcement of the outward act, of which the moral character depends on a certain motive and disposition, may often contribute to render that motive and disposition impossible; and from this fact arises a limitation to the proper province of law in enforcing acts, which will have to be further considered below. When obligations then are spoken of in this connection, as part of the “jus naturae” correlative to rights, they must always be understood not as moral duties, not as relative to states of will, but as relative to outward acts, of which the performance or omission can and should be enforced. There is a moral duty to discharge such obligations, and to do so in a certain spirit, but the obligation as such, as that with which law has to do or may properly have to do, is relative to an outward act merely, and does not amount to a moral duty. There is a moral duty in regard to obligations, but there can be no obligation in regard to moral duties. Thus the “jus naturae”—the system of rights and obligations, as it should become no less than as it actually is maintained—is distinct from morality in the proper sense. But it is relative to it. This is implied in saying that there is a moral duty in regard to actual obligations, as well as in
speaking of the system of rights and obligations as it should become. If such language is justifiable, there must be a moral ground both for conforming to, and for seeking to develop and improve, established “Recht,” a moral ground which can only lie in the moral end served by that established system.

11. Thus we begin the ethical criticism of law with two principles:—(1) that nothing but external acts can be matter of “obligation” (in the restricted sense); and (2) that, in regard to that which can be made matter of obligation, the question what should be made matter of obligation—the question how far rights and obligations, actually established by law, correspond to the true “jus naturae”—must be considered with reference to the moral end, as serving which alone law and the obligations imposed by law have their value. 4

12. Before proceeding, some remarks have to be made as to what is implied in these principles. (a) Does the law, or is it possible that it should, confine its view to external acts? What exactly is meant by an external act? In the case of obligations which I am legally punishable for disregarding, the law, in deciding whether punishment is or is not due, takes account of much beside the external act; and this implies that much beside external action is involved in legal obligation. In the case where the person or property of another is damaged by me, the law does not inquire merely whether the act of damage was done, and done by means of my bodily members, but whether it was done intentionally; and if not done with the direct intention of inflicting the damage, whether the damage arose in a manner that might have been foreseen out of something which I did intend to do; whether, again, if it was done quite accidentally the accident was due to culpable negligence. This however does not show that the law can enforce or prevent anything but external action, but only that it is action which it seeks to enforce or prevent, for without intention there is no action. We talk indeed of a man acting against his will, but if this means acting against intention it is what it is impossible to do. What I call an act done against my will is either (1) an act done by someone else using my body through superior force, as a means, in which case there is an act, but it is not mine (e.g., if another uses my hand to pull the trigger of a gun by which someone is shot); or (2) a natural event in which my limbs are affected in a certain way which causes certain results to another person, (e.g., if the rolling of a ship throws me against another person who is thus thrown into the water); or (3) an act which I do under the influence of some strong inducement, (e.g., fear of death, but which is
contrary to some strong wish). In this case the act is mine, but mine because I intend it; because it is not against my will as = intention. In saying then that the proper, because the only possible, function of law is to enforce performance of or abstinence from external actions, it is implied that its function is to produce or prevent certain intentions, for without intention on the part of someone there is no act.

13. But if an act necessarily includes intention, what is the nature of the restriction implied in calling it external? An external action is a determination of will as exhibited in certain motions of the bodily members which produce certain effects in the material world; not a determination of the will as arising from certain motives and a certain disposition. All that the law can do is to enjoin or forbid determinations of will as exhibited in such motions, etc. It does indeed present a motive, for it enforces its injunctions and prohibitions primarily by fear—by its threat of certain consequences if its commands are disobeyed. This enforcement is not an exercise of physical force in the strict sense, for in this sense no force can produce an action since it cannot produce a determination of will; and the only way in which the law or its administrators employ such force is not in the production but in the prevention of action (as when a criminal is locked up or the police prevent mischievous persons from assaulting us or breaking into our houses). But though, in enforcing its commands by threats, the law is presenting a motive, and thus, according to our distinction, affecting action on its inner side, it does this solely for the sake of the external act. It does not regard the relation of the act to the motive fear as of any intrinsic importance. If the action is performed without this motive ever coming into play under the influence of what the moralist counts higher motives, the purpose of the law is equally satisfied. Indeed, it is always understood that its purpose is most thoroughly served when the threat of pains and penalties has ceased to be necessary, and the obligations correlative to the relations of individuals and of societies are fulfilled from other motives. Its business is to maintain certain conditions of life—to see that certain actions are done which are necessary to the maintenance of those conditions, others omitted which would interfere with them. It has nothing to do with the motive of the actions or omissions, on which, however, the moral value of them depends.

14. It appears, then, that legal obligations—obligations which can possibly form the subject of positive law—can only be obligations to do or abstain from certain acts, not duties of acting from certain motives, or
with a certain disposition. It is not a question whether the law should or should not oblige to anything but performance of outward acts. It simply cannot oblige to anything else, because the only means at its command for obtaining the fulfilment of obligations are (1) threats of pain, and offers of reward, by means of which it is possible indeed to secure the general performance of certain acts, but not their performance from the motive even of fear of the pain threatened or hope of the reward offered, much less from any higher motive; (2) the employment of physical force, (a) in restraining men disposed to violate obligations, (b) in forcibly applying the labour or the property of those who violate obligations to make good the breach, so far as is possible; (as, e.g., when the magistrate forestalls part of a man’s wages to provide for a wife whom he has deserted, or when the property of a debtor is seized for the benefit of his creditors.)

15. Only outward acts, then, can be matter of legal obligation; but what sort of outward acts should be matter of legal obligation? The answer to this question arises out of the above consideration of the means which law employs to obtain the fulfilment of obligations, combined with the view of law as relative to a moral end, i.e., the formation of a society of persons acting from a certain disposition, from interest in the society as such. Those acts only should be matter of legal injunction or prohibition of which the performance or omission, irrespectively of the motive from which it proceeds, is so necessary to the existence of a society in which the moral end stated can be realised that it is better for them to be done or omitted from that unworthy motive which consists in fear or hope of legal consequences than not to be done at all.

16. We distinguish, then, the system of rights actually maintained and obligations actually enforced by legal sanctions ("Recht" or "jus") from the system of relations and obligations which should be maintained by such sanctions ("Naturrecht"); and we hold that those actions or omissions should be made obligations which, when made obligations, serve a certain moral end; that this end is the ground or justification or rationale of legal obligation; and that thus we obtain a general rule, of both positive and negative application, in regard to the proper matter or content of legal obligation. For since the end consists in action proceeding from a certain disposition, and since action done from apprehension of legal consequences does not proceed from that disposition, no action should be enjoined or prohibited by law of which the injunction or prohibition interferes with actions proceeding from that disposition, and every ac-
tion should be so enjoined of which the performance is found to produce conditions favourable to action proceeding from that disposition, and of which the legal injunction does not interfere with such action.

17. Does this general rule give any real guidance in the difficulties which practically arise in regard to the province of law—as to what should be required by law, and what left to the inclination of individuals? What cases are there or have there been of enactments which on this principle we can pronounce wrong? Have attempts ever been made by law to enforce acts as virtuous which lose their virtue when done under fear of legal penalties? It would be difficult, no doubt, to find instances of attempts to enforce by law actions of which we should say that the value lies in the disposition from which they are done actions, e.g., of disinterested kindness—because the clear conception of virtue as depending not on outward results but on dispositions is but slowly arrived at, and has never been reflected in law. But without any strictly moral object at all, laws have been made which check the development of the moral disposition. This has been done (a) by legal requirements of religious observance and profession of belief, which have tended to vitiate the religious source of morality; (b) by prohibitions and restraints, unnecessary or which have ceased to be necessary, for maintaining the social conditions of the moral life, and which interfere with the growth of self-reliance, with the formation of a manly conscience and sense of moral dignity—in short, with the moral autonomy which is the condition of the highest goodness; (c) by legal institutions which take away the occasion for the exercise of certain moral virtues (e.g., the Poor-law, which takes away the occasion for the exercise of parental forethought, filial reverence, and neighbourly kindness).

18. Laws of this kind have often been objected to on the strength of a one-sided view of the function of Law; the view, viz., that its only business is to prevent interference with the liberty of the individual. And this view has gained undue favour on account of the real reforms to which it has led. The laws which it has helped to get rid of were really mischievous, but mischievous for further reasons than those conceived of by the supporters of this theory. Having done its work, the theory now tends to become obstructive because in fact advancing civilisation brings with it more and more interference with the liberty of the individual to do as he likes, and this theory affords a reason for resisting all positive reforms—all reforms which involve an action of the state in the way of promoting conditions favourable to moral life. It is one thing to say that the state in
promoting these conditions must take care not to defeat its true end by narrowing the region within which the spontaneity and disinterestedness of true morality can have play; another thing to say that it has no moral end to serve at all, and that it goes beyond its province when it seeks to do more than secure the individual from violent interference by other individuals. The true ground of objection to “paternal government” is not that it violates the “laissez faire” principle and conceives that its office is to make people good, to promote morality, but that it rests on a misconception of morality. The real function of government being to maintain conditions of life in which morality shall be possible, and morality consisting in the disinterested performance of self-imposed duties, “paternal government” does its best to make it impossible by narrowing the room for the self-imposition of duties and for the play of disinterested motives.

19. The question before us, then, is “in what ways and how far do the main obligations enforced and rights maintained by law in all civilised societies contribute to the moral end described; viz., to establish those conditions of life in which a true, i.e., a disinterested or unselfish, morality shall be possible?” The answer to this question will be a theory of the “jus naturae;” i.e., it will explain how far positive law is what it should be, and what is the ground of the duty to obey it; in other words, of political obligation. There are two things from which such a theory must be distinguished. (1) It is not an inquiry into the process by which actual law came to be what it is; nor (2) is it an inquiry how far actual law corresponds to and is derived from the exercise of certain original or natural rights. (1) It is not the former, because the process by which the law of any nation and the law in which civilised nations agree has come to be what it is, has not been determined by reference to that end to which we hold that law ought to be directed and by reference to which we criticise it. That is to say, the process has not been determined by any such conscious reference on the part of the agents in the process. No doubt, a desire for social good as distinct from private pleasure, for what is good on the whole as distinct from what is good for the moment, has been a necessary condition of it, but (a), as an agent in the development of law, this has not reached the form of a conception of moral good according to that definition of it by which the value of law is to be estimated; and (b) in bringing law to its present state it has been indistinguishably blended with purely selfish passions and with the simple struggle for existence.
20. (2) A true theory of “jus naturae,” a rationale of law or ideal of what it should be, is not to be had by inquiring how far actual law corresponds to, and is derived from, the exercise of certain original or natural rights, if that is taken to mean that we know, or can ascertain, what rights are natural on grounds distinct from those on which we determine what laws are justifiable, and that then we can proceed to ascertain what laws are justifiable by deduction from such rights. “Natural rights,” so far as there are such things, are themselves relative to the moral end to which perfect law is relative. A law is not good because it enforces “natural rights,” but because it contributes to the realisation of a certain end. We only discover what rights are natural by considering what powers must be secured to a man in order to the attainment of this end. These powers a perfect law will secure to their full extent. Thus the consideration of what rights are “natural” (in the only legitimate sense) and the consideration what laws are justifiable form one and the same process, each presupposing a conception of the moral vocation of man.

21. The doctrine here asserted, that all rights are relative to moral ends or duties, must not be confused with the ordinary statement that every right implies a duty, or that rights and duties are correlative. This of course is true in the sense that possession of a right by any person both implies an obligation on the part of someone else, and is conditional upon the recognition of certain obligations on the part of the person possessing it. But what is meant is something different, viz., that the claim or right of the individual to have certain powers secured to him by society, and the counter-claim of society to exercise certain powers over the individual, alike rest on the fact that these powers are necessary to the fulfilment of man’s vocation as a moral being, to an effectual self-devotion to the work of developing the perfect character in himself and others.

22. This, however, is not the ground on which the claim in question has generally been asserted. Apart from the utilitarian theory, which first began to be applied politically by Hume, the ordinary way of justifying the civil rights of individuals (i.e., the powers secured to them by law as against each other), as well as the rights of the state against individuals, (i.e., the powers which, with the general approval of society, it exercises against them), has been to deduce them from certain supposed prior rights, called natural rights. In the exercise of these natural rights, it has been supposed, men with a view to their general interest established political society. From that establishment is derived both the system of rights and obligations maintained by law as between man and man, and the right of
the state to the submission of its subjects. If the question then is raised, why I ought to respect the legal rights of my neighbours, to pay taxes, or have my children vaccinated, serve in the army if the state requires it, and generally submit to the law, the answer according to this theory will be that if I fail to do so I shall directly or indirectly be violating the natural rights of other men; directly in those cases where the legal rights of my neighbours are also natural rights, as they very well may be (e.g. rights of liberty or personal safety); indirectly where this is not the case, because, although the rights of the state itself are not natural and many rights exercised by individuals would not only not be secured but would not exist at all but for legal enactment, yet the state itself results from a covenant which originally in the exercise of their natural rights men made with each other, and to which all born under the state and sharing the advantages derived from it must be considered parties. There is a natural right, therefore, on the part of each member of a state to have this compact observed, with a corresponding obligation to observe it; and this natural right of all is violated by any individual who refuses to obey the law of the state or to respect the rights, not in themselves natural, which the state confers on individuals.

23. This, on the whole, was the form in which the ground of political obligation, the justification of established rights, was presented throughout the seventeenth century, and in the eighteenth till the rise of the “utilitarian” theory of obligation. Special adaptations of it were made by Hobbes and others. In Hobbes, perhaps (of whom more later), may be found an effort to fit an anticipation of the utilitarian theory of political obligation into the received theory which traced political obligation, by means of the supposition of a primitive contract, to an origin in natural right. But in him as much as anyone the language and framework of the theory of compact is retained, even if an alien doctrine may be read between the lines. Of the utilitarian theory of political obligation more shall be said later. It may be presented in a form in which it would scarcely be distinguishable from the doctrine just now stated, the doctrine, viz., that the ground of political obligation, the reason why certain powers should be recognised as belonging to the state and certain other powers as secured by the state to individuals, lies in the fact that these powers are necessary to the fulfilment of man’s vocation as a moral being, to an effectual self-devotion to the work of developing the perfect character in himself and others. Utilitarianism proper, however, recognises no vocation of man but the attainment of pleasure and avoidance of pain. The
only reason why civil rights should be respected—the only justification of them—according to it, would be that more pleasure is attained or pain avoided by the general respect for them; the ground of our consciousness that we ought to respect them, in other words their ultimate sanction, is the fear of what the consequences would be if we did not. This theory and that which I deem true have one negative point in common. They do not seek the ground of actual rights in a prior natural right, but in an end to which the maintenance of the rights contributes. They avoid the mistake of identifying the inquiry into the ultimate justifiability of actual rights with the question whether there is a prior right to the possession of them. The right to the possession of them, if properly so called, would not be a mere power, but a power recognised by a society as one which should exist. This recognition of a power, in some way or other, as that which should be, is always necessary to render it a right. Therefore when we had shown that the rights exercised in political society were derived from prior “natural” rights, a question would still remain as to the ground of those natural rights. We should have to ask why certain powers were recognised as powers which should be exercised, and thus became these natural rights.

24. Thus, though it may be possible and useful to show how the more seemingly artificial rights are derived from rights more simple and elementary, how the rights established by law in a political society are derived from rights that may be called natural, not in the sense of being prior to society but in the sense of being prior to the existence of a society governed by written law or a recognised sovereign, still such derivation is no justification of them. It is no answer to the question why they should be respected; because this question remains to be asked in regard to the most primitive rights themselves. Political or civil rights, then, are not to be explained by derivation from natural rights, but in regard to both political and natural rights, in any sense in which there can be truly said to be natural rights, the question has to be asked, how it is that certain powers are recognised by men in their intercourse with each other as powers that should be exercised, or of which the possible exercise should be secured.

25. I have tried to show in lectures on morals that the conception expressed by the “should be” is not identical with the conception of a right possessed by some man or men, but one from which the latter conception is derived. It is, or implies on the part of whoever is capable of it, the conception of an ideal, unattained condition of himself, as an abso-
lute end. Without this conception the recognition of a power as a right would be impossible. A power on the part of anyone is so recognised by others, as one which should be exercised, when these others regard it as in some way a means to that ideal good of themselves which they alike conceive: and the possessor of the power comes to regard it as a right through consciousness of its being thus recognised as contributory to a good in which he too is interested. No one therefore can have a right except (1) as a member of a society, and (2) of a society in which some common good is recognised by the members of the society as their own ideal good, as that which should be for each of them. The capacity for being determined by a good so recognised is what constitutes personality in the ethical sense; and for this reason there is truth in saying that only among persons, in the ethical sense, can there come to be rights; (which is quite compatible with the fact that the logical disentanglement of the conception of rights precedes that of the conception of the legal person; and that the conception of the moral person; in its abstract and logical form, is not arrived at till after that of the legal person).

Conversely, everyone capable of being determined by the conception of a common good as his own ideal good, as that which unconditionally should be (of being in that sense an end to himself), in other words, every moral person, is capable of rights; i.e., of bearing his part in a society in which the free exercise of his powers is secured to each member through the recognition by each of the others as entitled to the same freedom with himself. To say that he is capable of rights, is to say that he ought to have them, in that sense of “ought” in which it expresses the relation of man to an end conceived as absolutely good, to an end which, whether desired or no, is conceived as intrinsically desirable. The moral capacity implies a consciousness on the part of the subject of the capacity that its realisation is an end desirable in itself, and rights are the condition of realising it. Only through the possession of rights can the power of the individual freely to make a common good his own have reality given to it. Rights are what may be called the negative realisation of this power. That is, they realise it in the sense of providing for its free exercise, of securing the treatment of one man by another as equally free with himself, but they do not realise it positively, because their possession does not imply that in any active way the individual makes a common good his own. The possession of them, however, is the condition of this positive realisation of the moral capacity, and they ought to be possessed because this end (in the sense explained) ought to be attained.