

Rickless and *Passive Obedience*

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Abstract: Samuel Rickless has recently defended an act utilitarian interpretation of Berkeley's *Passive Obedience*. Part of his argument is a criticism of my natural law reading of Berkeley, particularly my contention that natural lawyers are committed to a distributive notion of universality, while utilitarians are committed to a collective sense of universality. This essay is, in part, a reply to Rickless's criticisms. I argue that *if* we assume that Berkeley was either a natural lawyer or a utilitarian, and *if* we can find grounds for distinguishing natural law theories from utilitarian theories, then a natural law theory provides a more philosophically defensible fit with the texts than does a utilitarian theory.

Samuel Rickless has recently defended an act utilitarian interpretation of Berkeley's *Passive Obedience*.¹ Part of his argument is a criticism of my natural law reading of Berkeley, particularly my contention that natural lawyers are committed to a distributive notion of universality, while utilitarians are committed to a collective sense of universality.² This essay is, in part, a reply to Rickless's criticisms. I argue that *if* we assume that Berkeley was either a natural lawyer or a utilitarian,³ and *if* we can find grounds for distinguishing natural law theories from utilitarian theories, then a natural law theory provides a more philosophically defensible fit with the texts than does a utilitarian theory. I shall argue that there are clashes between Berkeley's metaphysical presumptions and utilitarianism. While I shall be concerned with Berkeley's general remarks on moral theory (*PO* §§1–14), I shall focus on sections 5–7. In the course of my discussion, I shall show that my earlier contention that utilitarianism assumes a collective sense of universality while natural law assumes a distributive sense of universality is too simplistic.⁴

¹ Samuel C. Rickless, "The Nature, Grounds, and Limits of Berkeley's Argument for Passive Obedience," *Berkeley Studies* 26 (2015–2016): 3–19. Most comments on Rickless's interpretation are presented in my footnotes.

² Daniel E. Flage, *Berkeley* (Cambridge, UK: Polity Press, 2014), 137–63.

³ Mätti Häyry, "Passive Obedience and Berkeley's Moral Philosophy," *Berkeley Studies* 23 (2012): 3–14, argues that Berkeley's moral philosophy contains strains from many traditions and can be identified strictly with none.

⁴ Rickless contends that my distinction between the collective and distributive senses of universality is a distinction without a difference (13). To see that there is a difference, consider the following two statements, only one of which is true: "The United States of America is the richest country in the world," "All Americans are rich." Understood in terms of gross domestic product [i.e., the total value of goods produced and services provided in a country in one year, at nearly \$20.5 trillion (2018)], the United States is the richest country in the world, exceeding the second richest (China) by more than \$6 trillion (<https://tradingeconomics.com/united-states/gdp>). This is the collective sense of universality (cf. Rickless 13–14). This does *not* imply that each and every American is rich, which would be the distributive sense of universality. But even if did follow that all American are rich, "rich" is vague: there are wide and not clearly defined parameters that define who will count as rich. So, Rickless's suggestion that I take natural-law-*qua*-distributive to entail egalitarian standards (14) is unwarranted. For example, everyone in a society gains some security by following the rule "Thou shalt not resist the supreme power," but due to ambiguities regarding "happiness" (see ft. 10) and sometimes an unwillingness to follow all the laws established by the

1. Natural Law and Utilitarian Models

Historians of philosophy are committed to a principle of interpretive charity according to which if either of two interpretations could elucidate a philosopher's texts, one should choose the more philosophically defensible interpretation. The principle of utility is philosophically neat. Prescriptive natural laws—if there are such—are problematic. Natural laws are “known by reason,” although it is often unclear what that entails. So, if the alternatives are (1) determining moral rightness or obligation based on a standard of morality that requires some counting and simple arithmetic, as opposed to (2) the inscrutable use of “reason,” the point goes to utilitarianism.⁵

The principle of charity also requires that we carefully elucidate the models we use to detail the views of the philosophers we discuss, and there's the rub. Both natural law and utilitarianism are families of theories; those who claim to be proponents of either can assume any number of metaphysical positions. For example, *classical* natural law theories—Aquinas and earlier—assume a realistic metaphysics.⁶ Happiness (*eudaimonia*)

supreme sovereign (cf. *PO* §3), there is no presumption that everyone receives equal amounts of happiness or even happiness of the same kind by following the rule. That some philosophers who identified themselves with the natural law tradition understood the obedience to natural law as good distributively, is clear from Samuel Pufendorf's remark, “the End of the Law of Society is the *Good of Mankind*, therefore the Sense thereof is to be taken, so as to effectively preserve the Welfare of **every** [my emphasis] *Individual* or particular man” [*The Whole Duty of Man, According to the Law of Nature*, tr. Andrew Tooke, 1691, ed. Ian Hunter and David Saunders (Indianapolis: Liberty Fund, 200), 82]. Further, that the distinction was recognized in the early eighteenth century is clear from Isaac Watts's remark in his *Logic*: “If the plural number may be changed into the singular; that is, if the predicate will agree to one single subject; it is a distributive idea; otherwise it is collective” [*Logic: The Right Use of Reason in the Inquiry After Truth with a Variety of Rules to Guard Against Error in the Affairs of Religion and Human Life, as well as the Sciences*, 1724; reprint of the 1847 edition published by William Milner (Morgan, PA: Soli Deo Gloria Publications, 1996), 148]. Cf. Francis Hutcheson, *An Essay on the Nature and conduct of the Passions and Affections, with Illustration on the Moral Sense*, 1725, ed. Aaron Garrett (Indianapolis: Liberty Fund, 2002), 122, where he writes, “Is there then no *Parent* in NATURE, no *Physician* who sees what is necessary for the *Whole*, and for the good of each *Individual* in the whole of his Existence, as far as is consistent with the general Good?”

⁵ Of course, there is some reason to believe that Berkeley considered such “counting” to be insufficient or practically impossible as the basis for determining moral rules. See *PO* §§9–10.

⁶ This is a very broad characterization. It applies to Plato and Aristotle—if they were natural lawyers—as well as Cicero and the Stoics. Part of the problem with the natural law tradition is that scholars do not agree who is included. John Wild [*Plato's Modern Enemies and the Theory of Natural Law* (Chicago: University of Chicago Press, 1953)] traces the natural law tradition to Plato. Heinrich A. Rommen [*The Natural Law: A Study in Legal and Social History and Philosophy*, trans. Thomas R. Hanley (Indianapolis: Liberty Fund, 1998), 3–29] finds its roots in Aristotle, even if Aristotle himself might not have been a natural lawyer. Javier Hervada, *Critical Introduction to Natural Law*, 10th edition corrected, trans. Mindy Emmons, Gratianus Collection Series (Montreal: Wilson & Lefleur, 2006), 1–7 traces it to the Roman lawyers, although they take their metaphysical assumptions from the Greeks. Some natural lawyers contend that a realistic metaphysics is essential to natural law (Hervada, *Critical Introduction to Natural Law*, 67–80; Wild, *Plato's Modern Enemies*, 108–109, and 123–32; cf. Bebhinn Donnelly, *A Natural Law Approach to Normativity* [Aldershot, Hampshire: Ashgate Publishing Ltd., 2007], 69–95, Rommen, *Natural Law*, 141–52), which would be sufficient to show that neither Berkeley nor most of the moderns who identify themselves with the natural law tradition

is the essential end of human beings. Natural laws are discoverable by reason and specify the means to happiness. The *modern* or Protestant natural lawyers of the seventeenth century were usually moral voluntarists, that is, they claimed natural laws are the effects of God's acts of will and are known by knowing God's design of the world. Further, many of them eschewed metaphysical realism.

By contrast, *classical* utilitarians (Bentham and Mill) embraced an impoverished metaphysics requiring only individual human beings (but neither forms, nor universals, nor God). Some later utilitarians (e.g., G. E. Moore) were metaphysical realists. To both the classical natural lawyers and the classical utilitarians, happiness is a natural property.⁷ The typical arrangement for both the classical natural lawyer and the classical utilitarian is that maximizing happiness (*natural* good) implies rightness or obligation, and engaging in an action that is right or obligatory entails that the action is morally virtuous.⁸ Of course, *some* utilitarians (Moore, Francis Hutcheson, if he was a utilitarian) claim that moral goodness (virtue) can be known prior to the utilitarian calculation, and one is obligated to engage in actions that maximize moral goodness. The notion of happiness, taken as a natural property, is ambiguous for both the natural lawyer and the utilitarian.⁹

are natural lawyers, since most of those eschew forms (universals). Since Locke, Grotius, and Pufendorf identify themselves with a natural law tradition, and since Berkeley was unquestionably acquainted with their work (*PO* §51), I shall include them in the natural law tradition, although, as we shall see, this requires an alternative metaphysical gambit to do the work that the metaphysical realist accomplishes by means of forms (universals).

⁷ As I shall understand “natural property,” a natural property is any property an object has that, as a property, is independent of moral or aesthetic considerations even if it can be used as a basis for raising moral or aesthetic considerations. For example, by eighteenth century standards, extension is a natural property of all physical objects; redness is a natural property of some physical objects. In the case of sentient beings, experiences of pleasure and pain, happiness and unhappiness, are natural properties insofar as they can be experienced without raising moral or aesthetic issues.

⁸ See, for example, John Locke, *An Essay concerning Human Understanding*, ed. P.H. Nidditch (Oxford: Clarendon Press, 1975), II.28.10, 353, where he says that “Vertue and Vice are Names pretended, and supposed every where to stand for actions in their own nature right and wrong; And as far as they really are so applied, they so far are co-incident with the *divine Law* above-mentioned.” Cf. *Essay* II.28.11, 356; and II.32.17, 390; Richard Cumberland, *A Treatise of the Laws of Nature*, trans. John Maxwell (1727), ed. Jon Parkin (Indianapolis: Liberty Fund, 2005), 463. Of course, Aquinas is often deemed the paradigmatic natural lawyer, and his “first precept of [natural] law, that *good is to be done and ensued, and evil is to be avoided*” (*Summa* 94, A2) is often taken to allude to moral good (virtue).

⁹ For example, Plato held that the happiness of workers is primarily the pleasures of the senses, the happiness of soldiers is primarily the pleasures of physical activity, and the happiness of the guardians is intellectual pleasure (Plato, *Republic*, Book 3, 414b–415e, cf. Plato, *Laws* 697b; Berkeley, *A* 2:13). Mill is famous for his distinction between sensible pleasure and the higher pleasures [J. S. Mill, *Utilitarianism*, in *Collected Works of John Stuart Mill*, vol. 10, ed. J. M. Robson (Toronto: University of Toronto Press, 1969), 210–213], and he was willing to include virtually anything one wishes in one's personal concept of happiness (*Utilitarianism*, *Collected Works* 10: 235–37). At *PO* §5, Berkeley suggests that what one identifies as happiness changes as one matures. The youth identifies happiness with immediately obtainable sensible pleasures. As one matures, one recognizes that some sensible pleasures, when enjoyed in excess, yields pain, and some pains, when endured, result in pleasures. That is, there is both a tendency “to consider the remote consequences of

So, on the surface, the situation is conceptually messy. If we dig a bit deeper, the situation is even worse, for some scholars assure us that many of those who identified themselves with the modern natural law tradition were actually utilitarians, indeed, that the natural law tradition is subsumed under utilitarianism.¹⁰ What should we do?

an action” (*PO* §5), and “as the nobler faculties of the soul begin to display themselves,” there is a tendency “to discover . . . goods far more excellent than those that affect the senses” (*PO* §5), presumably the joys of the arts and the intellect (cf. *NB* 787, 852). Whether these pleasures are inherently superior—as the utilitarian interpreter tends to suggest—or merely purer insofar as the pleasures tend not to degenerate into pains—is an issue we shall leave open. A similar concern with the multiplicity of “pleasures which constitute human happiness” is found in Berkeley’s *Guardian* essay of May 7, 1713 (*W* 7: 193), although Berkeley’s primary concern there is with the distinction between natural and fantastical pleasures. Natural pleasures are those caused by the object itself—whether that object is a natural object or an artifact—while fantastical pleasures are related to conventions such as money.

So is the ambiguity of happiness problematic? I don’t think so. Insofar as it is the end proposed by a moral theory, happiness must be an umbrella concept under which numerous specific kinds reside for all the reasons Berkeley states. Infants not only seek sensible pleasures, but they are also incapable of doing more, due to both their degree of intellectual development and their lack of factual knowledge. For example, they are incapable of solving mathematical and scientific problems. (Such a position should be expected from an empiricist.) Even as children develop, considerations of their intellectual abilities, educational environment, and, perhaps, innate inclinations determine what *could* yield happiness for an individual. So, whether one is a utilitarian or a natural lawyer, one must recognize that happiness is “subjective” and that many kinds of happiness must be acknowledged. Nor should one expect otherwise. Insofar as a society is composed of persons of many abilities, inclinations, and vocations, and insofar as happiness is said to be the end of human beings *as such*, no one kind of action will yield happiness for all. This assumes we are concerned with happiness as a natural state, rather than a supernatural state. We shall see below that, in *Passive Obedience*, Berkeleian *moral* laws pertain to living human beings.

¹⁰ See Colin Heydt, “Utilitarianism before Bentham,” in *The Cambridge Companion to Utilitarianism*, ed. Ben Eggleston and Dale Miller (Cambridge: Cambridge University Press, 2014), 16–37. Utilitarianism seems to be the most ecumenical moral theory insofar as utilitarians are willing to welcome into their fold moral theories that appear to be founded on far different principles. Such practices can be traced back at least as far as Mill, who suggested that Kant took the principle of utility as more basic than the categorical imperative. He writes:

But when he [Kant] begins to deduce from this precept any of the actual duties of morality, he fails, almost grotesquely, to show that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct. All he shows is that the *consequences* of their universal adoption would be such as no one would choose to incur. (Mill, *Utilitarianism, Collected Works*, 10: 207)

In one sense this moral ecumenism is what one would expect. The principle of utility is said to be *the* first principle of morality, so if a presumptive moral theory is an actual moral theory, it must be shown that it at least implicitly appeals to the principle of utility. Indeed, Mill recognized that, as a first principle, the principle of utility is not subject to proof; so his argument for its sanction is that it is assumed by all moral theories (*Utilitarianism*, Chapters 3–4). If the principle of utility is assumed by all moral theories, this is a philosophically important point of the first order. Nonetheless, I fear that committed utilitarians tend to assume that whenever they find words such as “the general well-being of all men” (*PO* §7), or “public good” (*PO* §§8, 9), or “Universal well-being” (*PO* §11), it is an implicit reference to the principle of utility. As Bentham’s hedonistic calculus makes clear, the utilitarian’s primary concern is with the collective good. As we noted above (ft. 5), at least some philosophers who identified themselves with the natural law tradition are concerned with the

I believe that the attempt to subsume natural law theory under the utilitarian umbrella blurs several distinctions. First, those who identify themselves with the natural law tradition hold that happiness is a proper end of human beings, in that happiness is what perfects humans. It is either essential to human beings (classical) or a product of divine design (modern). Utilitarians hold that it is merely a fact that human beings seek or tend to seek happiness. Even though the fact that all human beings seek happiness is the sole natural basis for claiming that happiness is the end of human beings, I believe this is an important difference between the utilitarian's scheme and the natural lawyer's scheme. Insofar as happiness is a proper end of human beings, humans not only seek happiness, but they also cannot do otherwise. To understand additional differences, we need to provide a more detailed account of the natural law tradition.

There are at least two ways to attempt to provide a general account of natural law. One is to undertake a broad survey of all those who have identified themselves with or have been identified with the natural law tradition and seek out their common elements. The other is to take a paradigm natural lawyer—Aquinas, for example—specify the principal elements of his or her theory, and judge whether a moral theory is a natural law theory based on its compliance with the elements of that paradigm. Both approaches, of course, are problematic. The first is pragmatically implausible insofar as the survey would be far too extensive to undertake in a short paper. More importantly, it would beg too many questions. The subtitle of *Passive Obedience* suggests that Berkeley identified himself with the natural law tradition, but the interpretative question is whether it is better identified with an alternative moral theory, even if the relevant theory had not been clearly articulated in Berkeley's time. The alternative also has drawbacks, since it provides a list of indicators—characteristics that apply to the paradigm—but which are neither necessary nor sufficient conditions to deem a theory a natural law theory. Nonetheless, this latter approach is workable. So, I will use Mark Murphy's seven indicators—based upon Aquinas—as the basis for my discussion.

Murphy writes:

the paradigmatic natural law view holds that (1) the natural law is given by God; (2) it is naturally authoritative over all human beings; and (3) it is naturally knowable by all human beings. Further, it holds that (4) the good is prior to the right, that (5) right action is action that responds non-defectively to the good, that (6) there are a variety of ways in which action can be defective with respect to the good, and that (7) some of these ways can be captured and formulated as general rules.¹¹

distributive sense of “universality.” So, as good historians, it is imperative that we look carefully at the primary texts in an attempt to provide a detailed account of Berkeley's moral theory. While cataloging Berkeley in terms of a common moral theory *should* be conceptually helpful, if the accounts of the theories themselves are vague or ambiguous at key points, it is important that we are not misled by classificational verbiage.

¹¹ Mark Murphy, “The Natural Law Tradition in Ethics,” *Stanford Encyclopedia of Philosophy* (Summer 2019 Edition), Edward N. Zalta (ed.), URL=<<https://plato.stanford.edu/archives/sum2019/entries/natural-law-ethics/>>. References to Murphy's seven points will be marked M1, M2, etc.

Let us examine these indicators individually.

(M1) In the Christian tradition, God is the ground of natural moral law (cf. *PO* §6). This means, at least, that God is the creator of the world and, as such, of natural laws. But this can be neither a necessary nor a sufficient condition for a law to be a natural moral law. If it were a necessary condition, then both the Greek and Roman natural law traditions would be excluded.¹² Among the ancients, obligation is presumably based on metaphysical forms that determine the natural end of human beings as humans (viz. happiness), since neither Plato, Cicero, nor Marcus Aurelius base natural law on the authority of the gods.¹³ Nor is it a sufficient condition, since not all the laws God creates are moral laws. Richard Hooker,¹⁴ who is usually identified with the natural law tradition, distinguished five kinds of laws, four of which are divine laws. In Hooker's words:

Now that law which as it is laid up in the bosom of God, they call *eternal*, receiveth according unto the different kinds of things which are subject unto it different and sundry kinds of names. [H1] That part of it which ordereth natural agents, we call usually *nature's* law; [H2] that which Angels do clearly behold, and without any swerving observe is a law *celestial* and heavenly; [H3] the law of *reason* that which bindeth creatures reasonable in this world, and with which by reason they may most plainly perceive themselves bound; [H4] that which bindeth them, and is not known but by special revelation from God, *Divine* law; [H5] *human* law that which out of the law either of reason or of God, men probably gathering to be expedient, they make it a law.¹⁵

Eternal law is founded on God's authority, but not all eternal law has moral content. H1 are the laws of the physical universe, presumably including nonhuman animals (Hooker 1.8.4, 77). The Berkeley of the *Principles* refers to these as "laws of nature" (*PHK* §30). H2 are laws concerning angelic behavior, of which we know nothing (cf. *PO* §7). H3, "the law of *reason*," consists of prescriptive laws concerning human behavior. They are natural moral laws. H4 are special laws God revealed to a certain group of people at a certain time, such as the various Hebrew laws of ritual purity (Hooker 1.15.1, 117). H5 are civil laws and cultural mores, some of which do, but not all of which need, conform to the natural laws of H3 (Hooker 1.10.9, 94; 1.10.10, 95; 1.15.1–2, 117). So, H5 is irrelevant to our concerns. Similarly, Berkeley identifies neither celestial law (H2) nor divine ritual law (H4) with moral law (cf. *PO* §7).

¹² Scholars generally trace the natural law tradition back to at least the tradition of Roman law. See ft. 7.

¹³ If having a form and an essential end as a thing of a kind is a sufficient condition for grounding natural moral law, the role of Aquinas's God is primarily that of creator, for Aquinas's world is an Aristotelian world of form and matter. So, the forms would be sufficient to ground natural law.

¹⁴ Berkeley was certainly acquainted with Hooker. See *The Correspondence of George Berkeley*, ed. Marc A. Hight (Cambridge: Cambridge University Press, 2013), 320, 429, 534.

¹⁵ Richard Hooker, *Of the Laws of Ecclesiastical Polity: Preface, Book I, Book VIII*, ed. Arthur Stephen McGrade (Cambridge: Cambridge University Press, 1989), Book I, Chapter 3, Section 1 (58); see also 1.16.1 (121). Nor is Hooker alone in claiming that not all eternal law is natural moral law. Aquinas also takes natural moral law to be a kind of eternal law. See *Summa Theologica*, Question 91, Articles 1–2.

Not all divine laws are natural laws, and not all natural laws are moral laws. So being established by divine authority is not a sufficient condition for being a natural moral law. But even if there were a clear way to distinguish moral laws from non-moral laws established on divine authority, being a moral law established on divine authority is not a sufficient condition for a theory to be a natural law theory. Divine command theories establish moral rules based on divine authority,¹⁶ but those rules need not be naturally knowable (M3). Finally, theological utilitarianism assumes divine authority as the basis for the principle of utility.¹⁷ So, basing a moral system on the authority of God is not a sufficient condition for deeming a theory a natural law theory of morals.

(M2) Natural moral laws are naturally authoritative over humans. This concerns the end of human beings, whether that end is based on inherent essences, such as Aristotelian forms, or acts of divine creation and preservation. It is natural insofar as human beings are part of nature and individually recognize a certain end and recognize that the same end is desired by all human beings. So, all humans desire “happiness,” even if the precise constituents thereof might vary greatly among individuals,¹⁸ and it is because of this “common end” that laws concerning the best means to that end have natural authority.

(M3) Natural moral laws are naturally knowable by human beings. This entails that even if the laws are grounded in divine acts, one does not need divine revelation to know them. How can they be known? Since at least some natural law theories assume an empiricist epistemology, we are going to assume that true factual claims are relevant to our reasoning. Since we are concerned with Berkeley, some of those presumably factual claims will be drawn from *Passive Obedience*. I believe the reasoning goes something like this.¹⁹

¹⁶ Divine command alone will not allow us to distinguish moral rules from religious rules. Presumably that distinction is based on the meta-ethical principle that *moral* rules must be universal.

¹⁷ At least I assume the theological utilitarian takes divine authority to establish the principle of utility. Most theological utilitarians are rule utilitarians, holding that determinate laws are chosen by God on the basis of the principle of utility. If Rickless’s contention is that Berkeley was an act utilitarian, the remarks on the divine foundation of moral rules at *PO* §§6–7 would imply that God’s authority must be the foundation for the principle of utility, since the act utilitarian holds that there is properly exactly one moral rule.

¹⁸ See footnote 10.

¹⁹ This is strictly the way *I* can make sense of the claim. While most of the prominent philosophers who identify themselves with the natural law tradition contend that natural laws can be known by reason, I find most of their accounts puzzling. For example, I have no idea how murder, homosexuality, etc. are contrary to or inconsistent with human nature and therefore immoral. I’m not sure how “human nature” is known apart from experience, and the fact that most people never engage in murderous acts doesn’t seem to entail that murder is inconsistent with human nature. If the commonality of an action allowed one to determine what is consistent and inconsistent with human nature, it seems that attempting to publish an article in *Berkeley Studies* falls on the side of inconsistency and is therefore morally perniciousness—a point with which at least Steve Daniel might take issue. So, I apologize in advance to the Thomists, Ciceronians, Grotians, Pufendorfians, Hookerians, and fans of any other variety of natural law theory for my ignorance.

All human beings are self-interested;²⁰ all human beings seek happiness, although the precise meaning of “happiness” varies with one’s psychological development: for infants it is the immediate gratification of sensible desires, while for adults it involves a longer-term gratification, and some forms of gratification might include aesthetic pleasures (cf. *PO* §5). So, assume we’re dealing with an adult who is rationally mature and has extensive knowledge of human behavior. Since both the laws of the physical universe and the laws of the moral universe (Hooker’s H1 and H3) are said to be “laws of nature,” let us assume that they are known in analogous ways.

Physical laws are known by experience. These laws are of two kinds. The first may be deemed “primary natural laws.” They concern consistent occurrences in the natural world: spring is followed by summer, which is followed by autumn, which is followed by winter; pure water at standard atmospheric pressure boils at 212°F; acorns develop into stately oaks, all things being equal (that is, if its development is not interrupted by squirrels, infection, drought, excessive moisture, little boys with hatchets, etc.).²¹ These primary natural laws give “us a sort of foresight, which enables us to regulate our activities for the benefit of life” (*PHK* §30). What may be deemed “secondary natural laws” are general laws that, for example, a gardener might discover that allow her to increase the probability that an acorn will develop into a stately oak. Such laws are hypothetical and specify the means to determinate end. For example, a gardener might accept the rule: If you want an acorn to develop into a stately oak, then protect it from squirrels, infection, drought, excessive moisture, little boys with hatchets, etc.

If the moral laws are comparable to physical laws, then they are also known by experience; they concern laws of human behavior. So, the primary natural moral law specifies the end of all human beings: all human beings seek happiness. Secondary natural laws specify the means to that end: if you’re human and seek happiness, don’t murder; if you’re human and seek happiness, don’t commit adultery; if you’re human and seek happiness, don’t steal, etc. (cf. *PO* §§32, 3, 15). These apply to all human beings.²² Three points should be noticed. First, each of the secondary laws specifies a means to

²⁰ This was not only Berkeley’s view (*PO* §5, NB 773; *PHK* §§100, 153); it was the common view of the time. Cf. Locke, *Essay* 2.20 1–2, p. 229; Joseph Butler, *Butler’s Fifteen Sermons Preached at the Rolls Chapel*, ed. T. A. Roberts (London: S.P.C.K., 1970), p. 100; Francis Hutcheson, *Logic, Metaphysics, and the Natural Sociability of Mankind*, ed James Moore and Michael Silverthorne (Indianapolis: Liberty Fund, 2006), p. 122.

²¹ In Scholastic language, becoming a stately oak is the end or final cause of an acorn. Berkeley was not an opponent of final causes. See *PHK* §60; *A* 3:1; *Analyst* §11, *W* 4:71; *Siris* §§231, 251.

²² I believe there are also tertiary laws, which concern persons holding specific roles in a society. For example, “All lawyers who want to be happy are lawyers who do not betray their clients’ confidences.” We should note in passing that if natural laws support counterfactuals, this is most evident in the case of tertiary laws. Since few of us are lawyers, it would still hold that “If I were a lawyer who wanted to be happy, then I would not betray my clients’ confidences.” But since Berkeley’s own focus is on what I have called secondary natural laws, we shall say little more about tertiary laws. There seems to be reasons why Berkeley and most moralists in the early modern period focus on the content of what I call secondary natural laws: they’re needed for the degree of personal security necessary to profitably pursue other ends.

(necessary condition for) happiness.²³ Second, they can all be known by experience. So, third, since these laws are known by experience, anyone who would draw a distinction between descriptive and prescriptive natural law must place these on the side of descriptive natural laws.²⁴ If Berkeley was a natural lawyer, his focus was on secondary natural laws. How could these laws be discovered by reason?

I'm sitting in my philosophical closet, trying to figure out how best to obtain my desired end, namely, happiness. I'm not in an intellectual vacuum. I know that I desire happiness, and I've observed enough other people to conclude that people have a general tendency to seek pleasure and avoid pain, that is, they seek happiness too. So, I conclude (inductively) that all humans seek happiness. But it's my own happiness with which I'm concerned, and my question is "What is the best means for me to obtain my own happiness?" I think about various human behaviors. Murderers can expect the victim's friends and families to seek revenge.²⁵ If I were being sought by persons whose intent is to kill or maim me, I would not be happy. So, if I murder, I am not happy. So, if I'm happy, I don't murder. Similar considerations would apply to stealing, adultery, and breaking oaths (*PO* §§3 and 15). So, I conclude that it's in my long-term best interest to abstain from those kinds of activities. Further reflection points to two additional considerations. First, human beings are similar to one another. So, if rules such as "Don't murder," "Don't commit adultery," etc. increase the probability of my happiness, they will have similar effects for any other human being. Second, if I follow the rules, but no one else does, I will not obtain happiness. The only way to greatly increase the probability of my happiness is if everyone or, at least, the overwhelming majority of humans follow those rules. Similarities among humans imply that each person will gain if all people follow those rules, if we assume there are either metaphysical forms or that God designed and preserves the natural order²⁶ and that (a) human nature will not change

²³ Because some scholars read Aquinas's natural laws as specifying the means to an end—see Anthony J. Lisska, *Aquinas's Theory of Natural Law: An Analytic Reconstruction* (Oxford: Clarendon Press, 1996), 103–109, cf. 195–201—I believe such a reading is within the natural law tradition. See also Hooker, *Laws of Ecclesiastical Polity*, 1.8.1, 75. Of course, it is not only the natural lawyer who considers moral rules as means to happiness; the utilitarians do as well. Hutcheson held the same (*Logic, Metaphysics*, 122). Jeremy Bentham begins his *Principles of Morals and Legislation* with the words:

Nature has placed mankind under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. [*The Works of Jeremy Bentham*, vol. 1, ed. John Bowring (London: Simpkin, Marshall, 1843), 121.]

Bentham's hedonistic calculus famously uses considerations of the causes of pleasure and pain to calculate moral obligations, that is, what individual actions or kinds of actions cause a balance of pleasure over pain.

²⁴ This suggests they do not bridge Hume's "is"—"ought" gap, an issue I address below.

²⁵ I don't *know* that this is true. Some anecdotal evidence that it has long been believed to be true may be drawn from the ancient Hebrew practice of designating refuge cities, that is, cities where those who accidentally killed another human (killed without malice aforethought) could go to avoid blood vengeance. See Deuteronomy 19:1–10.

²⁶ See the discussion of M1 above.

and (b) the causal order will not change. So, a certain set of natural laws jointly provide the best general means to human happiness: everyone gains if everyone follows what I have called secondary natural laws since they provide the personal security necessary for other beneficial individual and communal effects to occur.²⁷

Murphy's remaining four indicators apply to any teleological or consequentialist rule-theory.

(M4) The good is prior to the right. In most natural law theories, happiness (natural goodness) is the end that determines what is right or obligatory. The same holds for classical utilitarian theories. In such theories, a distinction is drawn between natural goodness as the determiner of what is right and moral goodness (virtue) which arises from following the moral law (rule).²⁸ In other theories—Moore's and Hutcheson's utilitarianism, for example—moral goodness (virtue) is prior to obligation.²⁹

²⁷ My reconstruction takes seriously Berkeley's contention that self-love (self-interest) is "a principle of all others the most universal, and the most deeply engraven in our hearts" (*PO* §5). It assumes that the reasoner is mature, one who has had sufficient experience to be concerned with her *long-term* self-interest. If one takes one's long-term interests seriously, one will recognize that for one to obtain one's long-term interests, others must obtain their long-term interests as well and that those are long-term interests of the same kinds one oneself has. So, if we take self-interest seriously, we are led to posit universal laws and a supporting metaphysics. If the overwhelming majority of people obey these laws, *everyone* gains: they provide for the general good distributively. Even the thief gains, since she need not devote the energy to protect her ill-gotten gains that she would need to exert if there were no moral rule against theft. Notice, it is the *fact* that everyone is self-interested that functions in this reasoning; self-interest has no *moral* import.

Classical utilitarians are hedonists or eudaemonists, that is, they also claim that self-love or self-interest is a basic fact about human beings. However, they focus on maximizing the total amount of pleasure or happiness in a society. While each person might strive to maximize her own happiness, it is unclear to me why such a one would conclude that it is in her long-term self-interest to accept moral rules that yield either happiness for the majority of people or the greatest total happiness regardless of how that's distributed are in her best long-term interest. It doesn't take something as sophisticated as John Rawls's veil of ignorance [*A Theory of Justice* (Cambridge: Harvard University Press, 1971), 136–42 and *passim*] for her to recognize that there is a chance that she will be in the unhappy minority or that she will be exploited, and therefore unhappy, so that the total amount of happiness is increased, even if that happiness is enjoyed by a minority. So, if we take hedonism–eudaemonism–self-interest seriously, and if "being known by reason" is understood to entail that anyone could *in principle* (even if not in fact, due to a lack of intellectual maturity, factual knowledge, or raw intellectual ability) figure out what moral laws would further that self-interest, it is unclear to me that we would reach a utilitarian conclusion.

²⁸ See, for example, Locke, *Essay* 2.28.10, 353; 2.28.11, 356; 2.32.17, 390; and Cumberland, *Laws of Nature*, 463.

²⁹ At one point, Rickless describes "ethical egoism, the view that one is obligated to pursue one's own self-interest in all things" (5). This is a loose and popular way of describing ethical egoism, but I don't believe it is technically correct. The principle of ethical egoism is, "Act in such a way that you maximize your (long-term) self-interest." The egoist principle—or to the utilitarian, the utilitarian principle—determines what one's duties or obligations are or what actions are right. To the egoist, doing what is in one's own interest is a right-making property. Obligation is subsequent to the principle; it is not contained in it.

(M5) Right action is action that responds non-defectively to the good. This means simply that by engaging in a right action, one never decreases the relevant good. This applies equally to natural law theories, utilitarian theories, and egoistic theories.

(M6) There are a variety of ways in which action can be defective with respect to the good. Murder decreases the amount of goodness. Theft decreases the amount of goodness. And so forth. Here it makes no difference whether one is a natural lawyer, a utilitarian, or an egoist; each recognizes that some kinds of activities can decrease the total amount of goodness. All recognize that at least some these kinds of action that would decrease goodness can be formulated as prohibitive general rules (M7).³⁰

In summary, natural moral laws are naturally authoritative because human beings have a natural end, happiness (M2). Natural law theories that assume metaphysical realism ground the obligation of natural laws in the form or essence of humanity; hence, humans have a natural end. Natural law theories that do not assume a realistic metaphysics—including most of the Protestant natural law theories of the early modern period—ground natural law in the voluntary actions of God (cf. M1). God creates and preserves individual entities; the end of human beings is divinely instituted. One can discover natural moral laws by reason (M3). As I've reconstructed the reasoning, if one takes self-interest seriously, and the result is a collection of universal laws understood distributively, everyone gains.³¹

If my reconstruction of an argument for natural laws is plausible, it also shows that my published contention that one could distinguish between a natural law theory and utilitarianism solely based on the distinction between the distributive and collective senses of universality is wrong.³² If utilitarian reasoning is anything like Bentham's hedonistic calculus, the utilitarian's initial calculus concerns collective good. Following the moral rules "Do not murder," "Do not steal," etc. yields more total happiness than would be obtained if they were not followed. This is collective, but it has distributive entailments. Rules against murder, theft, adultery, and forswearing (promise-breaking) are so basic, that even legal positivists maintain that there must be some positive laws

³⁰ Even an act-utilitarian or act-egoist will grant that there are rules of thumb (summary rules) that inform us about what is a *generally* proscribed action.

³¹ The secondary laws we have considered to this point concern security: everyone gains if the laws are usually obeyed. As we shall see below, the same applies to the principle "Thou shalt not resist the supreme power," since a sovereign power prevents the anarchic insecurity associated with a state of nature. This does *not* imply that everyone will gain equal amounts of happiness. In the case of the law of sovereignty, some will be unwilling to follow some of the sovereign's positive laws, in which case those persons should passively accept the relevant punishment (*PO* §3): doing so will still result in greater happiness than would be found in a lawless society. In the case of other secondary rules, such as that proscribing theft, the victim of a robbery is still likely to attain a greater amount of happiness by following the rule against theft than she would attain if she attempted to steal back the object. Tertiary laws apply directly to persons holding determinate positions in society, and the laws are mutually beneficial to those affected by it—both the lawyer and the client by the lawyer's rule against betraying confidences.

³² See Flage, *Berkeley*, 141–42.

against them for society to function.³³ When the overwhelming majority of members of a society obey rules against murder, theft, etc., there are consequences that affect every member of society (that are distributively beneficial). Rules against murder, theft, etc. provide the basis for personal and societal security. These are conditions in which the benefits of civilization—divisions of labor, leisure, education, invention, etc.—can, and some natural lawyers claim do, arise.³⁴ These consequences are distributively beneficial. Since the utilitarian's concern is with not only the immediate but also with the remote consequences of actions or the compliance to rules, I grant that the utilitarian must have at least some interest in distributive well-being. Nonetheless, given the concerns of something like Bentham's hedonistic calculus, the utilitarian's initial concern must be with collective good; and if there are any analogies between natural physical laws and natural moral laws, it is reasonable to suggest that the natural lawyer's concern is with distributive good, since natural physical laws pertain to each and every physical object: they are distributive laws.³⁵

There are two additional points we shall consider before turning to the texts. First, if God designs the world then God, like any good architect, creates things to fulfill or obtain certain ends. Happiness is the end of human beings (cf. *PO* §5). Assume God is a good utilitarian, that is, the principle of utility is grounded in God's volitions and God chooses determinate laws in accordance with the principle of utility. One day God says to herself, "I'm going to make 'Thou shalt not do *x*' a moral rule. Since I know everything, I know that if everyone followed the rule, seven-eighths of all humans would receive one unit of happiness, and one-eighth would receive one unit of unhappiness. Doing the subtraction,

³³ See H. L. A. Hart, "The Minimum Content of Natural Law," in his *The Concept of Law* (Oxford: Clarendon Press, 1961), 189–95. Cf. Hume, *Treatise of Human Nature*, Book 3, Part 2, Section 2.

³⁴ Thomas Hobbes, *Leviathan*, ed. J. C. A. Gaskin (Oxford: Oxford University Press, 1996), Chapter 46, Section 6, 442–43; cf. Plato, *Republic*, Book 2, 369b1–372a1.

³⁵ There is an additional characteristic that is common to many natural law theories, which, although it is not found in *Passive Obedience*, is found in some of Berkeley's other works (*Guardian* #126, Wednesday, August 5, *W* 7:227–28; *Alciphron* A 1.16, A 2:10, A 3.8; cf. *Querist*, questions 579–85, *W* 6:153). This is a tendency to compare society to an organic body (Aristotle, *Politics*, 1302b34–1303a20; Aquinas, *Commentary on the Nicomachean Ethics*, Book 3, ¶3 (§474); Hugo Grotius, *Rights of War and Peace*, trans. into English from the edition of Jean Barbeyrac, ed. Richard Tuck (3 vols; Indianapolis: Liberty Fund, 2005), Book 2, Chapter 9, 665–66; Cumberland, *A Treatise of the Laws of Nature*, 70. Hobbes took a commonwealth to be an artificial man and draws out the analogies [Hobbes, *Leviathan*, Introduction, 7; cf. Samuel Pufendorf, *On the Natural State of Men: The 1678 Latin Edition and English Translation*, trans. Michael Seidler (Lewiston, NY: Edwin Mellon Press, 1990), §1, 83 and 109. In *On the Citizen*, Hobbes compares a society to "an automatic Clock or other fairly complex device" [Thomas Hobbes, *On the Citizen*, trans. and ed. Richard Tuck and Michael Silverstone (Cambridge: Cambridge University Press, 1998), 10]. These thinkers understand the cell-body relation holistically. Of course, cells constitute the body, and the health of the body as a whole depends upon the health of the individual cells, although not all the cells need to be functioning properly for the body to be healthy; indeed, some cells are damaged at any given time. But a healthy body is one in which the individual cells are best able to thrive. Similarly, a society is composed of individuals. Just as an individual cell cannot exist apart from the body of which it is a part, so humans cannot exist apart from a society: today's hermit was once a volatile infant. Just as a healthy body is beneficial to individual cells, a healthy (secure, peaceful) society allows benefits (leisure, education, the arts) to accrue to individuals.

three-quarters of the human population would gain. So, it's justified on utilitarian grounds. Who could complain?"³⁶ It would seem that anyone in the dismal eighth could complain, since she must act contrary to her divinely determined nature to follow the divinely established moral rule. Such a one might suggest that there is an inconsistency in divine intentions between the created end of humans and the moral rule. The best a theological utilitarian could reply is that this apparent inconsistency is rectified in an after-life, that by following the rule and suffering in the earthly realm one will be rewarded with eternal bliss in the heavenly (cf. *PO* §42). This is the theological rule utilitarian's solution to the utilitarian's general problem with justice, and it is plausible if and only if eternal rewards and punishments are an inherent part of the moral theory.³⁷

Second, on the utilitarian scheme a divinely-instituted morality seems to be an overlay, that is, the laws of morality are somehow distinct from and an addition to God's original act of creation. On the natural law scheme, the laws of morality are part of the natural order: that is, they are part of the original act of creation, in that divine creation and God's moral legislation are only conceptually distinct. As known, a secondary natural moral law specifies a means to human happiness, and we discover them through experience in the same way a gardener discovers physical laws specifying the best ways to raise plants. On both the theological utilitarian and the theistic natural law schemes, there is a sense in which after God has "legislated," she is irrelevant to the moral order; although insofar as the natural lawyer or theological rule utilitarian is committed to universal moral rules, she must be committed to a stable natural order and to God as a preserver of that order.³⁸

³⁶ If the reader considers my reconstruction of a utilitarian God's reasoning flippant, I'm not quite sure how else the reasoning could be reconstructed. It *can't* be simply that one-eighth of all humans won't follow the rule: on utilitarian grounds a moral rule is justified so long as a *majority* gain by following it. As Mill noted in *On Liberty*, this entails moral problems regarding minorities ("the tyranny of the majority"). So, if one were to object that no one should lose by following a moral rule, I cannot understand how such would be justified on utilitarian principles.

³⁷ As William Frankena noted more than forty years ago, no pure utilitarian theory entails a theory of justice. See William K. Frankena, *Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1973), 48–52. While my example assumes a form of *rule* utilitarianism, the same problems would arise for the act utilitarian, since, with God's blessing, the rightness of an action would be consistent with the suffering of a minority of those affected by it.

³⁸ Any consequentialist moral theorist must assume that there is at least a fair degree of (causal) regularity in both the physical and psychological realms if she is to be able to act morally: apart from this she could not predict the consequences of her actions. If one is concerned with "the general well-being of all men, of all nations, of all ages of the world, which God designs should be procured by the concurring actions of each individual" (*PO* §7), and if one is a rule-theorist who proposes universal laws, the regularity needs to be nearly perfect or the laws could not be universal. The act-theorist has less need for near perfect behavioral regularity. Since the only moral rules she recognizes are summary rules—rules that generally apply—she can allow that human behaviors might change over time. So, even if a person caught in an act of adultery in 1700 could expect severe physical repercussions, that does not imply that the same consequences occur in 2019. So, actions that were (usually) wrong in 1700 might not be (usually) wrong in 2019. Notice, this consideration applies only to the act-theorist's summary rules. The act-theorist as such must grant that even if acts of marital infidelity are (usually) wrong, that does not imply that they are wrong in a specific case.

2. Berkeley

Turning to *Passive Obedience*, we should notice that Berkeley claims he will discover moral rules through reason alone (*PO* §§2 and 4). He indicates that “Self-love being a principle of all others the most universal, and the most deeply engraven in our hearts, it is natural for us to regard things as they are fitted to augment or impair our own happiness; and accordingly we denominate them *good* or *evil*” (*PO* § 5). The identification of good with happiness or pleasure as the end of human beings was common in the modern period.³⁹ We noted above that “happiness” is ambiguous in both the utilitarian and natural law traditions, and Berkeley’s discussion of the development and changes in one’s notion of happiness over the course of one’s psychological development (*PO* §5) is consistent with that ambiguity.

Sections 6 and 7 of *Passive Obedience* concern theistic issues to which we shall return.

The principal case for a utilitarian interpretation begins in Section 8, where Berkeley concerns himself with the public good. Berkeley wrote:

The well-being of mankind must necessarily be carried on one of these two ways: Either first, without the injunction of any certain universal rules of morality, only by obliging every one upon each particular occasion, to consult the public good, and always to do that which to him shall seem, in the present time and circumstances, most to conduce to it. Or, secondly, by enjoining the observation of some determinate, established laws, which, if universally practised, have, from the nature of things, an essential fitness to procure the well-being of mankind; though in their particular application, they are sometimes, through untoward accidents, and the perverse irregularity of human wills, the occasions of great sufferings and misfortunes, it may be, to very many good men. Against the former of these methods there lie several strong objections. For brevity I shall mention only two. (*PO* §8)

Already in Section 7, Berkeley had indicated that God’s concern in formulating laws was “not therefore the private good of this or that man, nation, or age, but the general well-being of all men, of all nations, of all ages of the world, which God designs should be procured by the concurring actions of each individual” (*PO* §7). This concern with the public good, “the general well-being of all men,” is a recurrent theme throughout the remaining general discussion of morality. In Section 8, Berkeley argues that morality must be based on rules rather than calculations of the goodness of individual acts, that it is “by enjoining the observation of some determinate, established laws, which, if universally practised, have, from the nature of things, an essential fitness to procure the well-being of mankind” (*PO* §8). In Section 10, he writes that “the observation of certain, universal, determinate rules or moral precepts, which, in their own nature, have a necessary tendency to promote the well-being of the sum of mankind, taking in all nations and ages, from the beginning to the end of the world” (*PO* §10) is the basis of morality. In Section 11, he writes, “whatsoever practical proposition doth to right reason

³⁹ See Locke, *Essay* 2. 20.1–2, 229. Cf. Berkeley, NB #773; *PHK* §§100, 153; Butler *Sermons*, 100; Hutcheson, *Logic, Metaphysics*, 122

evidently appear to have a necessary connexion with the Universal well-being included in it, is to be looked upon as enjoined by the will of God,” that “God willeth the universal well-being of mankind” (*PO* §11). Each of these is ambiguous. If my contention in *Berkeley* that a utilitarian is committed to a collective sense of universality while a natural lawyer is committed to a distributive sense of universality were correct,⁴⁰ then we could understand each of these passages in either way.⁴¹ Of course, if my present argument above is cogent, then the utilitarian grants that the remote consequences of a principle such as “Do not murder” are distributively good (the benefits of civilization). Hence, the ambiguity is of little consequence. So, I’m unconvinced that the passages settle the question whether Berkeley was a utilitarian or a natural lawyer.

Before we return to Sections 6 and 7, we should note the implications of Berkeley’s argument in Sections 9 and 10 that the public good should be determined by rules, rather than individual by calculations. His reasons are pragmatic. First, no human being knows enough about “hidden circumstances and consequences of an action” to calculate the public good; “it being far more easy to judge with certainty, whether such or such an action be a transgression of this or that precept, than whether it will be attended with more good or ill consequences” (*PO* §9). Even if this were not the case, we simply don’t have the time to make the calculations in each individual case (*PO* §9). Second, there would not be agreements regarding the calculations:

since the measure and rule of every good man's actions is supposed to be nothing else but his own private disinterested opinion of what makes most for the public good at that juncture: and, since this opinion must unavoidably in different men, from their particular views and circumstances, be very different: it is impossible to know, whether any one instance of parricide or perjury, for example, be criminal. (*PO* §9)

So, there must be general moral rules. Assuming he was a utilitarian, some these comments are usually taken to show that Berkeley was a *rule* utilitarian, rather than an act utilitarian.⁴²

⁴⁰ Flage, *Berkeley*, 141–42.

⁴¹ For example, consider Berkeley’s allusion to “the general well-being of all men” in Section 7. Had Berkeley written “the general well-being of men,” it would point to a utilitarian interpretation, since not everyone need gain so long as the majority does. Had he written “the well-being of all men,” it would have pointed toward a natural law interpretation, since the natural lawyer would claim that, at least, no one loses from following the law. Much the same might be said about the other passages.

⁴² See, for example, Stephen Darwall, “Berkeley’s Moral and Political Philosophy,” in *The Cambridge Companion to Berkeley*, ed. Kenneth P. Winkler (New York: Cambridge University Press, 2005), 311–38, especially 326–35. We might note in passing that part of Berkeley’s argument for the moral law “Thou shalt not resist the supreme power” parallels the argument at *PO* §9. At *PO* §19 Berkeley writes, “But in all instances to determine whether a civil law is fitted to promote the public interest; or whether submission or resistance will prove most advantageous in the consequence; or when it is that the general good of a nation may require an alteration of government, either in its form, or in the hands which administer it: these are points too arduous and intricate, and which require too great a degree of parts, leisure, and liberal education, as well as disinterestedness and thorough knowledge in the particular state of a kingdom, for every subject to take upon him the determination of them.”

I do not believe that these passages establish that *if* Berkeley was a utilitarian, then he was a rule utilitarian. A *rule* utilitarian maintains that determinate moral rules follow from the principle of utility. For example, generally speaking, abstaining from murder yields greater good to humankind than allowing the occasional homicide with malice aforethought. The rule itself is justified by the principle of utility. It is universal: there are no exceptions. An *act* utilitarian does not eschew determinate moral rules; she simply holds that they are summary rules or rules of thumb—usually reliable but imperfect generalizations—rather than moral rules properly so called. This recognizes that, generally speaking, we don't know enough or don't have time to do the utility calculations in particular cases, just as Berkeley claimed. So, an act utilitarian might argue that murdering a particularly heinous dictator is justified on the basis of the principle of utility, since the only "rule" against murder that she acknowledges doesn't carry proper moral weight: it is just an imperfect generalization. The same cannot be said for the rule utilitarian, for whom the rule is a proper universal moral rule, even if one could argue for exceptions based on the principle of utility itself.

So, *if* Berkeley was a utilitarian, the texts are ambiguous between an act utilitarian and a rule utilitarian reading. Nor does Berkeley settle the point by remarking in Section 14 that "it is evident that those actions are not adapted to particular views, but all conformed to certain general rules, which, being collected from observation, are by philosophers termed laws of nature." I grant that one can discover the consequences of actions on the basis of observation, and thereby apply the principle of utility to determine whether a particular action is right or wrong—assuming one had sufficient information—or whether a certain kind of action is generally right or wrong. This is consistent with both act and rule utilitarianism. However, no one holds that the principle of utility itself can be known through observation; whereas, if my arguments above are cogent, one can discover determinate rules specifying the means to happiness on the basis of reasoning from experience. So, if anything, the remark in Section 14 favors a natural law reading over a utilitarian reading of *Passive Obedience*.⁴³

If Berkeley was a utilitarian, he has to have been some kind of theological utilitarian: to claim that he was a pure (agnostic) utilitarian is inconsistent with the texts that allude to

⁴³ Rickless construes Berkeley as an act utilitarian and the rules as mere summary rules, since he wrote, "On this view, the *standard* of right conduct is act-utilitarian, while the *decision procedure* for meeting the standard involves conformity to certain rules. If rule utilitarianism is understood as the doctrine that the *standard* for right action is conformity to certain sorts of rules, then, on the interpretation we are considering, Berkeley would not be a rule-utilitarian" (Rickless 11–12). But if Berkeley were an act utilitarian, the "rules" could not be a proper decision procedure if that requires that one reach the correct moral conclusion, for there can be cases in which an action that will yield the greatest total good is an exception to a rule prohibiting such an action. For example, the assassination of a particularly heinous dictator followed by a carefully planned coup might be justified on utilitarian grounds; but a bloodless coup, such as that which resulted in the *Magna Carta* in 1215, might be justified on utilitarian grounds. If Berkeley were an act utilitarian, general rules would be only summary rules, rules we follow in those cases in which there is insufficient time to calculate the public good. If one follows a summary rule in such a case, one might have a moral *excuse* if a careful calculation of utility showed that the situation posed an exception to the general rule, but following a summary rule cannot show that one's action is right.

God's establishment of moral laws.⁴⁴ Theological utilitarianism and Christian natural law theories agree that God exists and that acts of God's will ground moral law. The natural lawyer claims that moral laws are part of the natural order, in that one can discover the means to human happiness in much the same way that one discovers physical laws concerning the means to an end (e.g., the gardener's discovery of the best means for raising flowers). The theological utilitarian holds that God's will establishes the principle of utility and, if there are determinate moral rules, God wills determinate moral rules based on the principle of utility.

Do we find anything like theological utilitarianism in Sections 6 and 7? Having discussed happiness at the temporal level in Section 5, Berkeley turns to the eternal. He writes:

But as the whole Earth, and the entire duration of those perishing things contained in it, is altogether inconsiderable, or, in the prophet's expressive style, 'less than nothing' in respect of Eternity, who sees not that every reasonable man ought so to frame his actions as that they may most effectually contribute to promote his eternal interest? And since it is a truth evident by the light of nature, that there is a sovereign omniscient Spirit, who alone can make us for ever happy, or for ever miserable; it plainly follows that a conformity to His will, and not any prospect of temporal advantage, is the sole rule whereby every man who acts up to the principles of reason must govern and square his actions. The same conclusion doth likewise evidently result from the relation which God bears to his creatures. God alone is maker and preserver of all things. He is, therefore, with the most undoubted right, the great legislator of the world; and mankind are, by all the ties of duty, no less than interest, bound to obey His laws. (*PO* §6)

This is an interesting passage, and we must attend to both what Berkeley says and what he doesn't say.

If Section 5 was concerned with temporal happiness, the shift to eternal interests *suggests* that one might obey God's laws simply out of a sense of long-term self-interest, since God "alone *can* [my emphasis] make us for ever happy, or for ever miserable."⁴⁵ Let us assume that God is a moral legislator and we have a duty to obey God's laws. Has Berkeley shown that "mankind are, by all the ties of duty, no less than interest, bound to obey His laws"? No. In particular, he has not shown that we have eternal interests in obeying God's laws.

Locke argued that rumors of eternal bliss and hell-fire are above reason (*Essay* IV.18.7, 694). Berkeley was committed to determining moral rules by reason alone (*PO* §2). So, if he was a theological utilitarian, it was incumbent upon him to show that God not only *can* but *will* make us forever happy or miserable based on complying with his laws. A conservative ethical egoist doesn't face that problem; she can say, with Pascal, that on the outside chance that there are eternal punishments, it's in her interest to obey God's

⁴⁴ The classical utilitarians are agnostic in the sense that God plays no role in the theory, even though the existence of God is said to be compatible with the theory. See Mill, *Utilitarianism*, 218–19.

⁴⁵ Cf. Locke, *Essay* 2.28.8, 352.

laws.⁴⁶ A natural lawyer need not be committed to eternal rewards and punishments.⁴⁷ But the theological utilitarian doesn't have that option. If there can be an inconsistency in divine intentions between God's designing humans so that the end of each human is her happiness and establishing moral rules that, if followed, require that some humans be unhappy, then eternal rewards appear to be the only way God can ultimately balance the happiness scales. What is missing in Section 6 is any *argument* that God will do so; that God *could* do so is insufficient. So, the *absence* of such an argument is a reason to believe that Berkeley should not be construed as a theological utilitarian.⁴⁸ Berkeley's remarks in Section 7 can only strengthen one's doubts regarding a utilitarian interpretation.⁴⁹

⁴⁶ Cf. Berkeley, Sermon "Of Immortality," W 7:12–13.

⁴⁷ Recall that ancient natural law theories do not ground natural law in divine decrees, nor do they assume divinely instituted rewards and punishments.

⁴⁸ I believe that the young Berkeley was a careful philosopher, particularly regarding matters of religion. I have argued elsewhere, for example, that Berkeley the *philosopher* seemed hesitant to attribute omnipotence to God, even though Berkeley the *religionist* had no such qualms. [See Daniel E. Flage, "Is Berkeley's God Omnipotent?" *The Review of Metaphysics* 71 (June 2018), 703–21.] It is consistent with such a careful approach for Berkeley to argue from the power of God that God *could* institute eternal rewards and punishments without concluding that God does reward and punish. Of course, this does not preclude us from viewing Berkeley as rhetorically sly. In the *Principles*, he does not explicitly distinguish between his careful philosophical remarks and those that might keep him in good graces with the religious establishment. Similarly, in *Passive Obedience* his remarks might inspire his audience to *infer* that he intended something beyond what he explicitly says. Just as in his argument for the existence of God in the *Principles* §146, where he does not ascribe omnipotence to God and yet seems to do so later (*PHK* §152; cf. §155), so the argument in *Passive Obedience* §6 does not commit Berkeley to the actual occurrence of divine rewards and punishments, even though he is later willing to write as if there would be such (*PO* §42).

⁴⁹ I do not contend that this is a discussion of all the issues raised in Section 6. One issue with which Rickless is concerned is Berkeley's implicit argument to establish that we are obligated to follow God's laws. Rickless suggests given Berkeley's contention that a perfectly good God causes us and preserves our being, "Berkeley's argument can (without, I believe, distorting the relevant text) be read as relying on the following general moral principle: If X is perfectly good and X created and sustains Y, then Y has a duty of gratitude towards X that is best discharged by following X's will in respect of Y's conduct" (10).

I find this puzzling. As Rickless acknowledges (10), this is not justified by the utilitarian principle. But if Berkeley was a utilitarian, that *normally* would entail that the principle of utility is the highest moral principle. Here one would have to claim that God chooses the principle of utility as the highest moral principle that applies to relations among humans, even though there is different moral principle that applies to the relation between every human and God, namely, the principle of gratitude: we owe God an "existential debt" (10), which can be discharged only by obedience. But what grounds that principle as a moral principle? It cannot be natural law since God is said to be prior to natural law, and it is not a relationship between two or more natural (created) entities (the domain of natural laws). It cannot be self-evidence, since that would blur epistemic and metaphysical issues. Further, if self-evidence were a sufficient ground, it's open to the utilitarian to claim that the principle of utility is self-evident, and if that were so, God would be superfluous. So, what is it?

Tracing back principles to their roots is always fun, but it assumes that there are roots. I tend to believe that the early eighteenth century British philosophers tended to say, "Ah! We've hit God. So, we're done," whether one is concerned with sources of existence, or sources of obligation, or anything else. To be fairer, they built lots of stuff into the concept of God which supposedly warranted such a move. That move might not be acceptable to a twenty-first century philosopher, but our interests *here*

In Section 7, Berkeley begins by calling us “to trace out the Divine will, or the general design of Providence with regard to mankind, and the methods most directly tending to the accomplishment of that design.” He continues to use a legislative model. Laws express the intended ends of a legislator. Since God is perfect, his intended end cannot be his own goodness; rather, it must be the good of his creatures. Since human actions cannot affect higher intelligent beings, God’s laws for humans apply only to human ends (human goodness, happiness). Then Berkeley writes:

But, as nothing in a natural state can entitle one man more than another to the favour of God, except only moral goodness; which, consisting in a conformity to the laws of God, doth presuppose the being of such laws, and law ever supposing an end, to which it guides our actions, it follows that, antecedent to the end proposed by God, no distinction can be conceived between men; that end therefore itself, or general design of Providence, is not determined or limited by any respect of persons. (*PO* §7)

Notice the conditions Berkeley sets up for his conclusion. The sole ground for obtaining divine favor is compliance with God’s laws. These laws pertain to interactions among human beings. *If* Berkeley was a natural lawyer, this suggests he was in the tradition of Pufendorf, who distinguished between natural law, which pertains to temporal relationships, and moral theology (“moral divinity”), which pertains to the eternal.⁵⁰ We should notice that neither in this passage, nor anywhere in Section 7, does Berkeley explicitly allude to the eternal. God’s favor arises from moral goodness. The moral goodness of an action is a consequence of complying with a moral rule.⁵¹ So, if the moral goodness of an action is dependent upon following moral laws, there must be moral laws.⁵²

Berkeley continues with an ambiguous remark: “law ever supposing an end, to which it guides our actions.” Should we take this to imply (1) that there is an end that is common to all moral law—individual or collective human happiness—or (2) that there is a more determinate end to be obtained by any given law, for example, abstention from murder, theft, etc.? It initially appears to be the latter since he claims that it follows from what he already said that “antecedent to the end proposed by God, no distinction can be conceived between men.” If, as he said earlier in the sentence, the sole ground for God to distinguish between human beings is moral goodness—compliance to law—then the end has to be the end of each law. Such a reading is consistent with the assumption that the imposition of moral law is an act distinct from God’s creation of humankind; no

are historical. So, if we can’t find eighteenth-century answers to questions the eighteenth-century folks didn’t ask, we shouldn’t be terribly surprised.

⁵⁰ See Pufendorf, *Whole Duty of Man*, 15–20. I wish to thank Marta Szymańska-Lewoszewska for bringing this to my attention.

⁵¹ This was a common view at the time. See Cumberland, *Treatise of the Laws of Nature*, 463; Locke, *Essay*, 2.28.10–11, 353–56.

⁵² If, as Rickless suggests, Berkeley was an act utilitarian, this implies that God properly legislated only one moral law, namely, the principle of utility.

creationist (whether natural lawyer or utilitarian) could coherently claim that the imposition of an end on humans is a distinct act from the creation of humans.⁵³

But the last clause of the sentence—“that end therefore itself, or general design of Providence, is not determined or limited by any respect of persons”—suggests a different reading. If we are concerned with the “general design of Providence”—as Berkeley said in the first sentence of the section—then one might reasonably assume that we are concerned with the end of each human, namely, happiness. If (1) happiness is the end of each human being, if (2) God’s laws are intended, if followed, to yield happiness, and if (3) moral laws are concerned with the temporal realm, then it would seem that if God’s laws are “not determined or limited by any respect of persons,” God cannot be a utilitarian. If God were a utilitarian, then divine laws could favor some persons over others so long as they yielded the greatest happiness overall. This would not be a matter of *moral* discrimination: it would be the *de facto* results of a utilitarian lottery. Sean, Deirdre, Ivan, and Isadora might “win” human happiness by complying with some laws but “lose” by complying with others. But if God shows no favorites, it would seem that everyone should gain by following God’s moral laws. This is certainly consistent with the penultimate sentence of the section, “It is not therefore the private good of this or that man, nation, or age, but the general well-being of all men, of all nations, of all ages of the world, which God designs should be procured by the concurring actions of each individual” (*PO* §7).⁵⁴

So, if my reading of Sections 6 and 7 is correct, it implies that, all things being equal, each individual gains happiness by following God’s laws. Berkeley’s reasoning implies that his *primarily* concern with the universality of moral law was distributive. Of course, it is only by the collective following the laws—if the majority, perhaps, the overwhelming majority of humans following the law—that the *secondary* benefits (the benefits of civilization) are distributed. The utilitarian’s *primary* concern is with the collective good.

Of course, the “all things being equal” is important, since, obviously, sometimes individuals do not gain happiness by following moral laws.⁵⁵ As Berkeley acknowledges in Section 14, “from casual⁵⁶ combinations of events, and what from the voluntary motions of animals, it often falls out, that the natural good not only of private men but of entire cities and nations would be better promoted by a particular suspension, or contradiction, than an exact observation of those laws” (cf. *PO* §§26, 27, 41). Nonetheless, the system as a whole promotes more happiness than humans individually

⁵³ If God exists outside of time, it makes no sense to claim that one of God’s acts is temporally subsequent to the other. It also makes no sense to suggest that God creates humans and at a subsequent time imposes moral law. In both cases, the most one could claim is a distinction of reason between the two “acts.”

⁵⁴ The final sentence of the section is transitional.

⁵⁵ His discussion of loyalty at *PO* §4 acknowledges that by following the general law that “Thou shalt not resist the supreme power,” some people suffer—namely, those who are unwilling to follow a positive law on grounds of conscience but passively accept punishments for disobeying the positive law.

⁵⁶ Or accidental; see *PO* §26.

and collectively would have in its absence. The advantages to moral laws are comparable to physical natural laws (*PO* §14; cf. *PHK* §§30, 62, 151–53): they allow one to conduct a relatively predictable life. I believe his point is that moral laws are comparable to physical natural laws in the sense that everyone gains by following them.

Consider the principle that Berkeley argued was a law of nature: Thou shalt not resist the supreme power. Assume I'm living under a repressive regime, so that I cannot in good conscience follow the laws of the regime, and therefore regularly suffer the painful consequences of disobeying the laws. Why should I deem "Thou shalt not resist the supreme power" a moral law? According to Berkeley, the alternative is a state of anarchy, either the anarchy of civil war or the anarchy of a state of nature. In either case life is less predictable, less secure, and presumably less happy than a life under a sovereign, even a sovereign out of whose favor one might be.⁵⁷

Two other elements that tend to speak against a utilitarian interpretation of *Passive Obedience*. First, Berkeley argues that all exceptionless moral principles are negative (*PO* §26). The principle of utility is positive. So, on Berkeley's principles, the principle of utility is not an exceptionless moral rule. But if the principle of utility is the highest moral rule—the rule that determines the rightness or wrongness of actions or kinds of actions—it must be exceptionless. This is a point that Rickless, and, as far as I know, all utilitarian interpreters overlook.⁵⁸

Second, if Berkeleian moral laws are laws in the natural law tradition, one would expect his descriptions of physical natural laws and moral laws to parallel one another. This is precisely what one finds. In the *Principles* Berkeley contends that (physical) laws of nature allow us to conduct our lives in an orderly way (*PHK* §§31 and 62), even though the laws sometimes result in what humans deem disasters (cf. *PHK* §§151–52). He discusses moral laws in much the same way (*PO* §§8, 10, 26, 31). Indeed, he makes an explicit comparison between physical laws and moral law:

⁵⁷ This also suggests a solution to the puzzle that the principle of sovereignty does not apply to madmen who present themselves as sovereigns (*PO* §52). A mad sovereign is at least irrational. Such a one might impose inconsistent laws, require inconsistent enforcements of laws, and so on. In such a situation, no one could predict what would need to be done to follow the laws: there effectively are no laws. As in the case of a usurper who has not established her claim to sovereignty, the "state" is effectively reduced to a state of nature: there is no one to obey. Cf. Rickless, 18.

⁵⁸ The champion of utilitarianism might counter that at least the utilitarian has a single criterion for determining the rightness or wrongness of an action, a criterion that provides clear guidance in judging the morality of an action. She might continue that if the Christian natural lawyer has a criterion it seems to be, "A moral law is any law that God wills." This criterion does not allow us to clearly know what laws are moral laws. In reply, the natural lawyer will contend that there appears to be a criterion that follows from the remarks in Section 7, namely, "Thou shalt not accept any principle as a moral law whose application reduces the total happiness available to any individual." By "available happiness" I refer strictly to the happiness that arises from the institution of the law. This criterion might be problematic insofar as one might never be able to judge with certainty that no one will lose happiness by the institution of a law; but the utilitarian calculation is no less problematic insofar as it is often uncertain, and its certainty decreases as one's calculations concern remote consequences.

it is evident that those actions are not adapted to particular views, but all conformed to certain general rules, which, being collected from observation, are by philosophers termed laws of nature. And these indeed are excellently suited to promote the general well-being of the creation: but, what from casual combinations of events, and what from the voluntary motions of animals, it often falls out, that the natural good not only of private men but of entire cities and nations would be better promoted by a particular suspension, or contradiction, than an exact observation of those laws. Yet, for all that, nature still takes its course; nay, it is plain that plagues, famines, inundations, earthquakes, with an infinite variety of pains and sorrows; in a word, all kinds of calamities public and private, do arise from a uniform steady observation of those general laws, which are once established by the Author of Nature, and which He will not change or deviate from upon any of those accounts, how wise or benevolent soever it may be thought by foolish men to do so. (*PO* §14; cf. *PO* §§41–42)

Insofar as the consequences of the operation of physical natural laws sometimes leads to disasters, and insofar as Berkeley identifies moral law with natural law and the consequences of following a moral law can have undesirable consequences—often from the wickedness of other humans—it is not unreasonable to identify Berkeley’s moral theory with the natural law tradition.⁵⁹

But some might object that, as I have sketched Berkeley’s natural law theory, it cannot be a *moral* theory. If I’m right, Berkeley’s secondary natural moral laws are of the general form, “If you’re a human and want to be happy, then don’t do *x*.” These, I have said, are comparable to the laws a gardener’s laws for growing plants: “If you want a seed to grow into a healthy plant, do this ... and don’t do that.” Laws of both kinds might be discoverable by reasoning from experience, but laws of both kinds are strictly factual claims. As such, they cannot bridge Hume’s “is–ought” gap, and, therefore, they cannot be *moral* laws.

In reply, we need to distinguish between what were considered adequate moral theories in 1712 and what are considered adequate moral theories today. In doing so, we distinguish between historical questions—the focus of this essay—and philosophical questions. It is not surprising that Berkeley did not address the “is–ought” issue, since when Berkeley published *Passive Obedience*, the publication of Hume’s infamous paragraph was nearly thirty years in the future. The natural law tradition was an ancient and, at least as they advertised themselves, on-going tradition. The *historical* question is whether Berkeley’s theory in *Passive Obedience* is more consistent with that model than the alternative moral theories. So, the philosophical adequacy of a natural law theory—whether it passes meta-ethical muster—is irrelevant to our current concerns.⁶⁰

⁵⁹ This seems to imply that Berkeleian moral laws can conflict, that there are cases in which our duties conflict, cases in which they cannot be simultaneously fulfilled.

⁶⁰ For an argument that at least Aquinas’s version of natural law is not subject to “is–ought” objections, see Lisska, *Aquinas’s Theory of Natural Law*, 188–222.

3. Conclusions

So, have I shown that Berkeley was a natural lawyer? No. I have shown that *if* Berkeley was either a utilitarian or a natural lawyer, then principles of interpretive charity imply that he should be deemed a natural lawyer. Given his numerous appeals to the role of God in his moral theory, if Berkeley were a utilitarian, he would have been a theological utilitarian. I've argued that if theological utilitarianism requires the positing of eternal rewards and punishments, the absence of an argument to support the presumption of divine justice provides a reason to question attributing theological utilitarianism to Berkeley. Further, a utilitarian God could show *de facto* favor to some persons over others in the formation of any moral law or moral judgment, which is inconsistent with the pronounced equity of divine treatment prior to the law (*PO* §7). So, if the question is whether Berkeley was a natural lawyer or utilitarianism, the scale tips in favor of natural law. But since some might consider my account of natural law esoteric, to avoid “significant disputes which grow out of the abuse of words” (Intro. §23), what I consider the most salient elements of Berkeley's theory are:

- God's acts of will ground morals; Berkeley was a voluntarist.
- The divinely instituted end of human beings is happiness.
 - The word “happiness” covers indefinitely many and, at the individual level, ever-changing desired states. Berkeley suggests that as one matures, the components of happiness—at-a-time shift from immediate to long-term interests and, in some cases, shift from sensuous to aesthetic interests (*PO* §5).
- Natural laws—both physical and moral—are part of the created world: there is only a distinction of reason between God-the-creator and God-the-legislator.
- Natural laws—both physical and moral—pertain to all things of the relevant kind: they assume the distributive sense of universality.
- Natural laws—both physical and moral—can be known by reasoning from experience.
- Secondary natural laws concern the means to an end, although they are often stated in terms of their consequent alone. For example, the law properly stated as “If you are a human and want to be happy, do not commit murder” is often stated as “Do not murder.”
- *Statements* of natural law—both physical and moral—are fundamentally descriptive. Statements of secondary and tertiary moral natural laws are often taken to be prescriptive, but, properly, they describe the means to an end, namely, happiness.

If my conditional conclusion is disappointing, I can only ask our moral theorists to do a better job of differentiating moral theories. Should we place classical and modern natural law theories under one heading despite significant differences in metaphysical assumptions? Should anyone who is concerned with the “the common good” or “the

general happiness” be deemed a utilitarian—regardless of her metaphysical assumptions, regardless whether moral goodness is prior or subsequent to calculations of utilitarian rightness, and regardless whether “the general happiness” is understood collectively or distributively? Traditionally philosophers believed they gained understanding by drawing distinctions. I’m not convinced, however, that attempts to bring seemingly diverse moral theories under the utilitarian umbrella are conceptually helpful.⁶¹

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