

NATURAL RIGHTS ON THE THRESHOLD
OF THE SCOTTISH ENLIGHTENMENT

NATURAL LAW AND
ENLIGHTENMENT CLASSICS

Knud Haakonssen
General Editor

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ENLIGHTENMENT CLASSICS

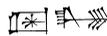
*Natural Rights
on the Threshold of the
Scottish Enlightenment*

The Writings of
Gershom Carmichael

Edited by James Moore
and Michael Silverthorne

Texts translated from the Latin
by Michael Silverthorne

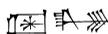
Foreword by James Moore



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FOREWORD

It is a remarkable feature of the enlightenment in eighteenth-century Scotland that many of the most distinguished moral philosophers of that era assigned to their students texts based upon the writings of the early modern natural jurists. The works of Grotius, Pufendorf, and Locke were commented upon, supplemented, annotated, and adapted for the use of students at the universities of Glasgow, Edinburgh, and Aberdeen—only St. Andrews seems to have been the exception—from the end of the seventeenth century to the late eighteenth century. The professors who lectured on natural rights theories included Francis Hutcheson, Adam Smith, and Thomas Reid at the University of Glasgow; William Law, William Scott, John Pringle, and James Balfour at the University of Edinburgh; and George Turnbull and David Verner at the University of Aberdeen. What prompted these professors, civic authorities, and noble patrons of universities to insist upon instruction of pupils in the language and literature of natural rights?

The attractions of the natural rights tradition for the political and academic leadership of post-revolutionary Scotland were many. It was a body of writing consistent with the principles of the Revolution of 1688. In the writings of Grotius, Pufendorf, and, especially, Locke, students would find exposed the errors of the political thinking of the pre-revolutionary era: of patriarchalism, the divine right of kings, and indefeasible hereditary right. They would learn instead that men have a natural right to life, liberty, and property; that they have a natural right to defend themselves and others; that there is a natural obligation to keep promises; that governments have their origin in the consent, express or tacit, of the people. The derivation of rights and obligations from the law or laws of nature appealed to Scottish legislators and professors for another reason. Scottish civil law, par-

ticularly in the seventeenth and eighteenth centuries, was much indebted to Roman law. Grotius, Pufendorf, and the many commentators on their writings who taught in universities in Europe illustrated their moral and political principles by rules and cases drawn from Roman civil jurisprudence. Scottish students of law frequently completed or supplemented their legal studies abroad; study of the writings of the natural jurists prepared them for those studies and for the practice of law in Scotland. Further, the moral philosophy courses offered in Scottish universities in the seventeenth century had been systems of scholastic ethics which exhorted students to cultivate a way of life which would lead to beatitude, or lasting happiness. The difficulty with these systems, as identified by representatives of the Scottish universities in the 1690s, was not the end or objective of these studies; longing for beatitude was acknowledged to be the law of nature; the weakness of those systems was the method proposed for the attainment of this end, the method of scholastic Aristotelianism. Natural jurisprudence set before the student a different method and agenda for the attainment of happiness; the systems of Grotius, Pufendorf, and Locke were all of them explicitly opposed to scholastic Aristotelianism. Their systems offered instead an understanding of the law or laws of nature attended by rights and obligations which comprised a new ordering of the duties of men and citizens.

It was Gershom Carmichael (1672–1729), the first Professor of Moral Philosophy at the University of Glasgow, where he taught from 1694 until his death, who introduced the natural rights tradition to the universities of Scotland. He did so in a manner which reconciled the natural rights theories of Grotius, Pufendorf, and Locke with Roman law and with the law of nature understood in the scholastic manner as longing for beatitude or lasting happiness.

Gershom Carmichael was born in London. He was the son of Alexander Carmichael, a Scottish Presbyterian clergyman, who died in 1677. His mother, Christian Inglis, later married the Scottish theologian and mystic James Fraser of Brae. Gershom Carmichael was educated at the University of Edinburgh, 1687–91. He taught briefly at the University of St. Andrews, 1693–94. In 1694 he was appointed at the University of Glasgow through the good offices of the family of the Duke and Duchess of

Hamilton and their son, to whom he dedicated the first of his *Philosophical Theses* (printed below), and his relative, John Carmichael, Earl of Hyndford, to whom he dedicated a second set of *Philosophical Theses*, 1707 (also printed below). In 1727, when the regenting system at the University of Glasgow was terminated, he was appointed Professor of Moral Philosophy.

He was reputed to be a demanding teacher. Robert Wodrow, one of his students in the 1690s, described him as “a hard student, a thinking, poring man . . . singularly religious. . . . A little warm in his temper, but a most affectionate, friendly man.”¹ Some years later he was considered by another of his students to be the “best Philosopher here.”² As a regent he was responsible for teaching all parts of the philosophy curriculum: logic, metaphysics (ontology and pneumatology, or science of the mind or soul, which was taken to include natural theology), moral philosophy, and natural philosophy. He composed his own introduction to logic (printed below) which was designed as a commentary on the Port Royal logic, or *The Art of Thinking*. He also composed a short system of natural theology (also printed below) which provides a succinct exposition of Reformed scholastic, or dogmatic, theology. It was written originally to supplement, and in part replace, the texts he assigned his students in metaphysics, the *Pneumatological and Ontological Determinations* of the Dutch metaphysician Gerard de Vries. His particular specialty was moral philosophy. The extended exposition of natural rights (printed below) derives from a commentary on Samuel Pufendorf’s shorter work *On the Duty of Man and Citizen*. The main outlines are present in lectures delivered at the University of Glasgow in 1702–3; the details, as they appear below, were worked out over many years of reflection and debated with the outstanding moral philosophers and natural jurists of Europe. In the fourth and final year, he taught physics; his texts were the *Physica* of Jean Le Clerc and the physics of Newton adumbrated by David Gregory and later by Willem Jacob’s Gravesande.

1. Wodrow, *Analecta*, IV, p. 96.

2. Letter of 21 August 1715 from Jonathan Woodworth to the Rev. Peter Walkden, in Bromley, “Correspondence of the Rev. Peter Walkden,” p. 27.

In his selection of texts for students and in his manner of commenting upon them, Carmichael was careful to exclude from consideration the canonical texts of Aristotle. He described “the forms of speaking of the Aristotelian School” as “obscure, ambiguous and, as it were, deliberately fashioned for deception.”³ He maintained, however, that the scholastic ethics taught in Reformed or Presbyterian universities in the seventeenth century had propounded a truth of fundamental importance. It was that all human beings long for lasting happiness, or beatitude. We can never achieve lasting happiness in this life, given the fallen, imperfect condition of mankind. But longing for happiness is an inescapable condition of life. And this longing is most appropriately expressed in veneration of God.

This was the first law of nature in Carmichael’s natural jurisprudence, that every man signify his longing for lasting happiness in reverence for God. One may signify such reverence directly, in worship of God, or indirectly, in respect for God’s creation: in self-respect and in respect for others. These were the second and third laws of nature, that one respect oneself and that one be sociable, or have respect for others. And there was no more appropriate way of signifying respect for persons, in Carmichael’s view, than to acknowledge that every individual should be considered to enjoy certain natural rights. And it was the proper vocation of the moral philosopher to specify those rights and indicate how they apply to oneself and to others in various conditions of life.

Carmichael’s understanding of the laws of nature permitted him an appreciably different perspective on social life from that of Pufendorf. Pufendorf had argued that the cultivation and preservation of sociable living obliged all members of society to obey superior powers: husbands, fathers, masters, rulers. Carmichael thought otherwise. He maintained (with Grotius and Locke and against Pufendorf) that every individual has a natural right of self-defense. He concurred with Locke’s reasoning that in the state of nature (in a world not yet occupied or appropriated, a negative community, as Pufendorf had conceived it) every man may have a right to property in things on which he has labored (without waiting upon the agreement of others, as Pufendorf had maintained). He argued further,

3. See below, p. 229.

again on the authority of Locke, but putting the matter more unequivocally than Locke had ever done, that no man has the right to enslave another, “for men are not among the objects which God has allowed the human race to enjoy dominion over.”⁴ He defended the theory, common to all the early modern natural jurists, that civil or political societies have their origin in an original contract, a theory which appealed to post-revolutionary Scottish thinkers, inasmuch as it excluded (particularly in Locke’s formulation) any claim to political power on the grounds of hereditary right.

One of the persistent themes in Carmichael’s commentary was his insistence, against Pufendorf, that individuals and peoples have a right to resist governments which invade their rights and liberties. Carmichael considered such a right of resistance to be a corollary of the respect for oneself and for others required by the law of nature. The same concern for the rights of individuals and of peoples led him to challenge Pufendorf’s theory that subjects may be forced to consent to a government imposed by a conqueror for the sake of peace and sociable living. Carmichael’s concern was again the loss of liberty and self-respect of individuals and peoples. He insisted, against Pufendorf, on the continuity of the Scottish people and, against George Mackenzie, on the limited government of Scotland in ancient times. He believed that the liberty and dignity of the Scottish people had been well secured by the limitations insisted upon in the Act of Union of 1707 and by the accession of the House of Hanover, “a family which has given us the most Serene King George, today happily ruling over us, and which will continue to afford a line of pious Kings, who will endure, if Britain’s prayers prevail, as long as the sun and the moon.”⁵

The academic world which Carmichael inhabited included moral philosophers and natural jurists beyond the boundaries of Scotland and Great Britain. Pufendorf’s texts on moral philosophy and the law of nature were required reading for university students across Protestant Europe. The common language of academic life, Latin, facilitated direct exchange, mu-

4. See below, p. 140.

5. See below, p. 187.

tual assistance in the clarification of ideas, and debate. Carmichael referred frequently in his observations on the law of nature to Gottlieb Gerhard Titius (1661–1714), author of a commentary on Pufendorf, and a distinguished professor of Roman law at the University of Leipzig. Titius was particularly critical of Pufendorf’s depiction of the state of nature as a condition of indigence, weakness, and malice. Titius described the state of nature as a condition of natural sociability and moderate self-love. He was also critical of Pufendorf’s account of the pretended advantages of civil society. Titius reminded readers that in society subjects often suffer from persecution and cruelly conducted wars. He described slavery, in language noted by Carmichael, as “a sure sign of the death of sociability.”⁶

The outstanding authority on natural jurisprudence in the early eighteenth century was Jean Barbeyrac (1672–1744). His translations and voluminous commentaries on the writings of Grotius, Pufendorf, and Cumberland were remarkable for their erudition. He considered the early modern natural law tradition the most effective antidote to skepticism in morals and politics. But he also acknowledged the validity of many of the insights of Pierre Bayle and others. He corresponded with Locke and shared many of Locke’s theological convictions. He quarreled with orthodox members of the Reformed Church in the cities where he taught: in Berlin, Lausanne, and Groningen, where he spent the latter part of his life (1717–44).

Carmichael wrote to Barbeyrac and sent him a copy of the first edition of his *Supplements and Observations* on Pufendorf’s work *On the Duty of Man and Citizen*. Barbeyrac responded in kind,⁷ sending Carmichael the fourth edition of the same work, which contained Barbeyrac’s long rejoinder to criticisms of Pufendorf that had been made by Leibniz. He subsequently acknowledged assistance he had received from Carmichael in interpreting Pufendorf and on points of translation.⁸ The two men agreed that Pufendorf had made insufficient provision for the natural right of self-defense. They agreed that Locke’s explanation of the right of property as

6. See below, p. 145.

7. Letter of 3 February 1720 from Jean Barbeyrac to Patrick Simson, in Glasgow University Archives MSS Murray 660, fol. 1.

8. Pufendorf, *Of the Law of Nature and Nations*, p. 437.

the product of labor was more satisfactory than Pufendorf's account, which made proprietorship dependent on consent. They further agreed that a people must be allowed a right of resistance to a government that attempts to deprive its subjects of their rights. But they frequently differed: on the interpretation of contracts; on quasi contracts, or obligations arising from the circumstances of life; on the rights of slaves; on whether societies, as distinct from governments, had their beginnings in a contract; and on the rights of conquerors. Their differences turned ultimately on whether considerations of humanity, of a disposition of reverence for the deity, of the relevance of the divine court or forum should have a place in natural jurisprudence. Barbeyrac was skeptical of the appropriateness of such considerations in natural law. In Carmichael's understanding of the law of nature, reverence for God and for God's creation were matters of fundamental importance.

Carmichael was succeeded as Professor of Moral Philosophy at the University of Glasgow by Francis Hutcheson, who generously acknowledged his debt to Carmichael in his own work prepared for the instruction of students, *A Short Introduction to Moral Philosophy*:

The learned will at once discern how much of this compend is taken from the writings of others, . . . to name no other moderns, from Pufendorf's smaller work, *de officio hominis et civis*, which that worthy and ingenious man the late Professor Gershom Carmichael of Glasgow, by far the best commentator on that work, has so supplied and corrected that the notes are of much more value than the text.⁹

Hutcheson's relationship with Carmichael is complicated by the fact that the distinctive feature of Hutcheson's moral philosophy, as expressed in his English language writings directed to adult readers—his theory of a moral sense which brings ideas of virtue and vice before the mind—has no parallel in Carmichael's work. Hutcheson was also concerned to emphasize that moral distinctions did not depend upon whether or not one might be judged to have acted in a spirit of reverence for the deity. Insofar as the enlightenment in Scotland may be considered to have been a repu-

9. Hutcheson, *A Short Introduction to Moral Philosophy*, p. i.

diation of Reformed or Presbyterian scholasticism, Carmichael must be perceived to have been a figure of a pre-enlightened era. But in his closely argued, often inspired celebration of the natural rights of individuals and of peoples, Carmichael's work may be seen to have marked an enduring moment in moral and political speculation. It contributed, very fundamentally, to shape the agenda of instruction in moral philosophy in eighteenth-century Scotland. It may also be found to be relevant today.

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Our appreciation of the contexts and significance of Carmichael's thinking has been enhanced by discussions at many seminars and colloquia where we have presented our interpretations of the texts. The scholars who have assisted us in our understanding of his writings are too numerous to be mentioned here. We are grateful for the encouragement and support we have received from colleagues and friends.

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We must also record our indebtedness to Leszek Wysocki, who transcribed some of Carmichael's dictates and reviewed an early draft of the translation.

Our wives, finally, have been tolerant of our enthusiasm and of the time we have spent on this project. We are gratified by the opportunity this series of books affords to make Carmichael's writings available to a wider public.

Natural Rights

From *Supplements and Observations upon Samuel Pufendorf's
On the Duty of Man and Citizen according to the Law of
Nature, composed for the use of students in the Universities,*
by Gershom Carmichael, Professor of Philosophy in the
University of Glasgow:
the second edition with additions and amendments
(Edinburgh, 1724)

Supplements and Observations
upon The Two Books of Samuel Pufendorf's
On the Duty of Man and Citizen
according to the Law of Nature
composed for the use of students in the Universities
by Gershom Carmichael
Professor of Philosophy in the University of Glasgow
the second edition with additions and amendments

What is true and fitting is the aim of my careful inquiry
—Horace

Edinburgh

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1724

*To the Most Noble and Illustrious Lord
Whose ample Merits have Deserved So Well of his Country*

JAMES

*Earl of Hyndford, Viscount Nemphear,
Lord Carmichael of the same,
Head of the Name and family of Carmichael, &c. &c.
Together with
his First-Born Son and Heir, the Noble Youth,*

JOHN

*Lord Carmichael
Who gloriously emulates the Virtues
of his Father and Grandfather:
I, Gershom Carmichael,
in gratitude and ready obedience,
Give and dedicate
This my humble service of adding supplements and
observations to
an outstanding work of a most noble author*