

A METHODICAL SYSTEM OF UNIVERSAL LAW:
OR, THE LAWS OF NATURE AND NATIONS,
WITH SUPPLEMENTS AND A DISCOURSE
BY GEORGE TURNBULL

NATURAL LAW AND
ENLIGHTENMENT CLASSICS

Knud Haakonssen

General Editor

NATURAL LAW AND
ENLIGHTENMENT CLASSICS

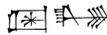
*A Methodical System
of Universal Law:*

Or, the Laws of Nature and
Nations, with Supplements
and a Discourse
by George Turnbull

Johann Gottlieb Heineccius

Translated from the Latin by George Turnbull

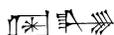
Edited and with an Introduction by
Thomas Ahnert and Peter Schröder



LIBERTY FUND

Indianapolis

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Printed in the United States of America

C I 2 3 4 5 6 7 8 9 10
P I 2 3 4 5 6 7 8 9 10

Frontispiece: Copper engraving of Johann Gottlieb Heineccius by
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Landesbibliothek Sachsen-Anhalt in Halle (Saale).

Library of Congress Cataloging-in-Publication Data

Heineccius, Johann Gottlieb, 1681–1741.

A methodical system of universal law: or, The laws of nature and nations:
with supplements and a discourse/by Johann Gottlieb Heineccius, George Turnbull;
translated from the Latin by George Turnbull;
edited and with an introduction by Thomas Ahnert and Peter Schröder.

v. cm.—(Natural law and enlightenment classics)

Originally published: London, Printed for G. Keith [etc.], 1763.

Includes bibliographical references and index.

Contents: v. 1. Of the law of nature—v. 2. Of the law of nations.

ISBN-13: 978-0-86597-478-4 (hb: alk. paper) ISBN-13: 0-86597-479-1 (pbk.: alk. paper)

1. Natural law—Early works to 1800. 2. Natural law. 3. International law.

I. Turnbull, George, 1698–1748. II. Ahnert, Thomas. III. Schröder, Peter.

IV. Title. V. Title: Methodical system of universal law.

VI. Title: Law of nature and nations.

KZ23I4.A3H45 2008

340'.112—dc22

2007031757

LIBERTY FUND, INC.

8335 Allison Pointe Trail, Suite 300
Indianapolis, Indiana 46250-1684

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INTRODUCTION

The development of early modern natural law theories is an integral part of the Enlightenment,¹ and the writings of Johann Gottlieb Heineccius (1681–1741) are an important example of this close relationship. Heineccius wrote when the modern European natural law tradition was already long established, especially through the important works of Hugo Grotius (1583–1645), Samuel Pufendorf (1632–94), and Christian Thomasius (1655–1728). Notably the works of Grotius and Pufendorf had gained significant influence throughout Europe, assisted by congenial translations and annotations from the Huguenot refugee Jean Barbeyrac (1674–1744).²

Heineccius drew on the works of these theorists and responded to them, but his *Methodical System of Universal Law: Or, the Laws of Nature and Nations* was far more than a synthesis and a commentary on the salient writings of the previous generations. It was a distinctive system of natural jurisprudence, which, together with his writings on Roman law, helped to secure Heineccius a certain international fame already in his lifetime. In the Netherlands, where he taught for several years, he enjoyed a considerable academic reputation, which was reinforced by his personal acquaintance with the house of Orange. He held prestigious positions at two leading German universities of the early Enlightenment, Frankfurt an der Oder and Halle. In England and Scotland,

1. This link is best accounted for in Hochstrasser, *Natural Law Theories in the Early Enlightenment*. See also Tuck, *Natural Rights Theories*, especially p. 174. This view is restated in Tuck's *The Rights of War and Peace*.

2. On Jean Barbeyrac, see Rathlef, *Geschichte jetzlebender Gelehrten, Johan Barbeirak*, 1–65; Othmer, *Berlin und die Verbreitung des Naturrechts in Europa*; and Hochstrasser, "Conscience and Reason," pp. 289–308.

George Turnbull's translation of Heineccius's *System* was issued twice, in 1741 and 1763, making Heineccius's natural jurisprudence more accessible to English-speaking audiences. Turnbull expressed great admiration for Heineccius in the preface to his translation, saying that "[t]he author of this system of the law of nature and nations is so well known, and in so high esteem in the republic of letters, that it would be arrogance in me to say any thing in recommendation of his works. Nor need I make any apology for translating into our language so excellent a book upon a subject of such universal importance."³ As late as 1799 the Scottish lawyer Sir James Mackintosh paid Heineccius a slightly backhanded compliment by describing him as "the best writer of elementary books with whom I am acquainted on any subject."⁴ Heineccius even played an important and lasting role in the Spanish, South American, and Italian academic worlds, where purified editions (*editiones castigatae*) suppressed those quotations and statements that could be seen as challenging the Catholic Church but where his divine voluntarism was welcome.⁵

Heineccius's Life

Heineccius began his academic career by studying theology in Leipzig and then law in Halle, where he became a pupil of the controversial jurist and philosopher Christian Thomasius. The University of Halle was newly founded (1694) and one of the most important centers of the early Enlightenment in Germany. It was an intellectually thriving institution, which Heineccius took advantage of by attending lectures on a variety of subjects, including philosophy and rhetoric, taught by Samuel Stryck (1640–1710) and Johannes Franz Budde (1667–1729). His intellectual curiosity clearly was stimulated, as was his talent for free oration and

3. Turnbull, preface, p. 5.

4. Quoted in Haakonssen, *Natural Law and Moral Philosophy*, p. 88.

5. There were no fewer than five editions of the collected works: 18 volumes, Venice 1743, 2nd edition 1761; 8 volumes, Geneva 1744–48, 2nd edition 1768–71; 12 volumes, Naples 1759. See Luig, "Gli elementa iuris civilis di J. G. Heineccius," pp. 259–74.

lecturing, which his son later praised in a laudatory biography. In 1723 Heineccius accepted a professorship at the Frisian University of Franeker. From this small but distinguished university Heineccius's reputation quickly spread to most of Europe, especially because of his textbooks on Roman law, which was his main area of research and teaching at Franeker. Despite all attempts to keep him in Franeker, Heineccius changed to a professorship at the University of Frankfurt an der Oder in 1727.⁶

Two years later he declined a position at the University of Utrecht, but a royal order forced him to return to Halle in 1733 because the Brandenburg-Prussian government hoped to reestablish the reputation of this university. Halle had suffered severely from the disputes between theologians at the university and the philosopher Christian Wolff (1679–1754), who had been forced to leave Halle in 1723 after he had been accused of denying the existence of free will. Heineccius spent the rest of his career in Halle and developed an impressive range of lectures. One of the products of these was his *System*, which was first published in 1738 as *Elementa iuris naturae et gentium* and which saw at least four further editions.

Heineccius's Natural Jurisprudence

In the original preface, which Turnbull did not translate, Heineccius modestly explained that he wanted to provide a short commentary on the law of nature and nations for his students and pupils. In fact, Heineccius in the *System* developed a distinctive theory of natural law. He disagreed, for example, with the view of the state of nature which had been put forward by Samuel Pufendorf, whose *De officio hominis et civis*

6. All biographical accounts rely on the information provided by Heineccius's son, J. C. G. Heineccius, in *De vita, factis et scriptis Jo. Gottlieb Heineccii iuriconsulti*. The most recent biographical account of Heineccius with detailed information about the dissemination of his writings is to be found in Bergfeld, "Johann Gottlieb Heineccius und die Grundlagen seines Natur- und Völkerrechts." On Heineccius's critique of Grotius see Reibstein, "Johann Gottlieb Heineccius als Kritiker des grotianischen Systems."

(1673) had become *the* textbook on natural law throughout much of northern Europe.⁷ Humans, Heineccius wrote, were subject to natural law in the state of nature. It was not enough to say, as Pufendorf did, that the law of nature was derived from the obligation to cultivate sociality, to which men were compelled by necessity. The law of nature included duties of humans toward themselves and toward God—duties which would be applicable even to a solitary human being.⁸ Heineccius’s tripartite division of the duties of humans into those toward self, others, and God had its roots in a long intellectual tradition, and it is likely that Heineccius encountered it in the writings and lectures of his teacher Christian Thomasius in Halle.⁹ Heineccius’s definition of the morally good as “whatever tends to preserve and perfect man” and of a “good action” as that “which contributes to human preservation and perfection”¹⁰ is also very similar to Thomasius’s definition of the morally good in his second work on natural law, the *Foundations of the Law of Nature and Nations* of 1705: “Do that which makes human life as long-lasting and happy as possible, and avoid that which makes life unhappy and hastens death”;¹¹ so is Heineccius’s definition of love as the central principle of natural law: “Love in us is the desire of good, joined with delight in its perfection and happiness.”¹² There are only three possible objects

7. Hutcheson suggested that “the learned will at once discern how much of this compend [his *Philosophiae moralis institutio compendiaria*] is taken from the writings of others, from Cicero and Aristotle, and to name no other moderns, from Puffendorf’s smaller work, *de officio hominis et civis*” (p. i of the 1747 translation, *A Short Introduction to Moral Philosophy*). For Hutcheson’s “struggle with the Puffendorffian legacy” as Haakonssen puts it on p. 90 of his *Natural Law and Moral Philosophy*, see also Schröder, “Natural Law and Enlightenment in Comparative Perspective.” For the widespread influence of Pufendorf throughout the eighteenth century, see Luig, “Zur Verbreitung des Naturrechts in Europa,” and Dufour, “Die école romande du droit naturel—ihre deutschen Wurzeln.”

8. Heineccius, *System*, p. 327.

9. See, for example, Thomasius’s *Institutiones jurisprudentiae divinae*, bk. II, chaps. 1–3.

10. Heineccius, *System*, p. 11.

11. “Facienda esse, quae vitam hominum reddunt & maxime diuturnam & felicissimam: & evitanda, quae vitam reddunt infelicem & mortem accelerant” (Thomasius, *Fundamenta juris naturae et gentium*, p. 21.

12. Heineccius, *System*, p. 68.

of the offices of love, which correspond to the tripartite division of duties: “God, the creator of all things; ourselves, who are certainly the nearest to ourselves; and other men, whom we plainly perceive to be by nature equal to us.”¹³

Love, as a motive, created an “internal” obligation to perform moral actions, which, Heineccius is suggesting, are generally also to the advantage of the agent. But this internal obligation was insufficient, because mankind was often mistaken about the nature of moral goods and, like Ixion in ancient mythology, who tried to seduce a cloud in the shape of the goddess Juno, often embraced false goods. Immorality could be a reflection of mistaken beliefs, rather than vicious intentions. Heineccius thereby modified the ideas of Christian Thomasius, who had argued that the desire for the true good was prior to any beliefs in the intellect. Once the desire for good, which Thomasius identified with the love for God, had established itself in human nature, true beliefs about the nature of the morally good followed spontaneously.¹⁴ Heineccius, however, argued that the general desire for what was morally good was not enough. It was necessary to have a prior rule or standard, which defined what was to be considered morally good and which directed the abstract desire for morality toward the right ends. This rule constituted the external obligation arising from the will of some “Being whose authority we are obliged to acknowledge.”¹⁵ In the case of the law of nature this Being was God: “The law of nature, or the natural rule of rectitude, is a system of laws promulgated by the eternal God to the whole human race by reason.”¹⁶ Heineccius’s notion of a “rule of rectitude” may well have been motivated by the desire to correct the radical anti-intellectualism of Christian Thomasius’s moral theory. Thomasius’s emphasis on the pre-intellectual guidance of the heart, rather than the understanding, in moral actions was a position many contemporaries

13. *Ibid.*, p. 68.

14. Thomas Ahnert, *Religion and the Origins of the German Enlightenment*, chap. 7.

15. Heineccius, *System*, pp. 16–17.

16. *Ibid.*, p. 19.

associated with “enthusiasm,” a label Heineccius would have been keen to avoid.¹⁷

Turnbull’s Life and His Response to Heineccius

George Turnbull (1698–1748) was one of the key figures of the Scottish Enlightenment who was familiar with contemporary developments in European theories of natural law. His education and intellectual formation took place in Edinburgh, where he graduated from the university there in 1721.¹⁸ In 1721 he became a regent at Marischal College, Aberdeen, where Thomas Reid was among his students.¹⁹ Leaving the university in 1727, he traveled as tutor of young aristocrats in Europe. After joining the Anglican Church (bachelor of civil law, Oxford University, 1733) he was ordained in 1739, became chaplain to the Prince of Wales, and, finally, served as a minister in County Derry. During this period he started to draw his experiences together in a wide range of different writings, including his translation of Heineccius.²⁰ His extensive notes surveyed modern natural law and introduced his readers to significant authors, such as Johann Franz Budde, who were barely known in Britain. At the same time, Turnbull’s notes added substantially to the ideas he found in Heineccius’s work. Often Turnbull developed Heineccius’s theory to his own liking, telling the reader what the latter really should have said.

17. On enthusiasm and the Enlightenment see Pocock, “Enthusiasm: The Anti-Self of Enlightenment,” pp. 7–28; Ahnert, “Enthusiasm and Enlightenment”; and Ahnert, *Religion and the Origins of the German Enlightenment*, especially chap. 2.

18. On Turnbull’s biography and intellectual development see Norton, “George Turnbull and the Furniture of the Mind,” and Stewart, “George Turnbull and Educational Reform.”

19. See the introduction by Knud Haakonssen in Reid, *Practical Ethics*, especially pp. 7ff.

20. Apart from the work we are concerned with, the most important writings by Turnbull include *A Treatise on Ancient Painting* (1740), in part in *Education for Life*, edited by Stewart and Wood; *Principles of Moral Philosophy* (1740) and *Christian Philosophy* (1740), which were joined to become *The Principles of Moral and Christian Philosophy* (1740), new edition by Broadie; and *Observations upon Liberal Education* (1742), new edition by Moore.

Turnbull accepted Heineccius's definition of love, for example, as the central ethical principle of natural law, but criticized his distinction between internal and external obligation, a distinction which he regarded as artificial and unnecessary. There was no need for an external obligation in the sense of a rule imposed by a superior. The obligation of natural law was reinforced externally by the natural connection between virtue and temporal happiness or prosperity. There were exceptions, but on the whole "the far greater part of the evils and miseries complained of in human life, are the effects and consequences of vicious passions, and their pursuits. Whence else is it that honesty is so universally pronounced the best policy, and dishonesty folly?"²¹ Punishments for immorality and rewards for morally good actions were part of the natural order created by God, not imposed in individual cases by particular acts of the divine will. There was no need to add another, "external" obligation, a "rule of rectitude," to this,²² because the existing, natural connection between morality and happiness was already a sufficient indication of God's providential will for humanity. Moral philosophy, therefore, involved the study of natural causes and effects, in the same way as natural philosophy.²³ The consequence of this natural connection or tendency in human affairs was that the actual distribution of goods, such as happiness or wealth in this world, on the whole reflected the virtue and merit of those who owned or enjoyed them. It is important to note, however, that although morality was also advantageous, of course not every self-interested action was automatically virtuous. Turnbull distinguished the advantages of morality from vulgar notions of self-interest, which were attributed to Epicureans and the followers of Mandeville and which implied that actions were morally justified because they were self-interested. Turnbull's emphasis on the advantageousness of morality was intended to prove the existence of a theodicy, in a loose sense, a belief that tem-

21. Turnbull, *Principles*, ed. Broadie, p. 383. See also Ahnert, "Pleasure, Pain, and Punishment in the Early Enlightenment."

22. See Heineccius, *System*, Turnbull's comments following bk. I, chap. III (pp. 71–74).

23. Turnbull, *Principles*, vol. I, "Preface."

poral affairs reflected the benevolent influence of a divine justice and providence.

The rewards for virtue in this life included property. Although the truly virtuous person knew how to be happy without material goods, only he or she could “have true happiness from them.”²⁴ It was “a fact too evident to be called into question” that “man is made to purchase every thing by industry, and industry only, every good, internal or external.”²⁵ The actual distribution of property, in general, reflected the merit of its owners, for if “we own a blind fortuitous dispensation of goods, and much more, if we own a malignant dispensation of them, or a dispensation of them more in favour of vice than of virtue, we deny a providence, or assert bad administration.”²⁶ In fact, however, “the universe is governed by excellent general laws, among which this is one, ‘That industry shall be the purchaser of goods, and shall be generally successful.’”

This “general law of industry”²⁷ had important implications for Turnbull’s political theory. Turnbull believed that political society was essential for humans to reach the highest degree of happiness possible for them in this life.²⁸ As Turnbull explained in another work, “many of the goods of life are by our social constitution dependent upon the right government of society,” that is, on “a good politic constitution, and the impartial execution of good laws.”²⁹ Constitutional structures and the distribution of property were closely related because “a greater share of external goods, or of property, naturally begets power. And hence it will and must always hold as a general law, That dominion will follow property or that changes in property will beget certain proportional changes in government.”³⁰ It is this belief in the close connection between gov-

24. Turnbull, *Principles*, vol. I, part II, chap. iii, p. 390.

25. Turnbull’s remarks on Heineccius, *System*, bk. I, chap. IX, p. 200.

26. *Ibid.*

27. *Ibid.*

28. “[T]here is a perfection and happiness attainable by a rightly constituted civil state, to which mankind can no otherwise attain” (Turnbull’s remarks on bk. II, chap. VI, p. 425).

29. Turnbull, *Principles*, vol. I, part II, chap. III, p. 392.

30. *Ibid.*

ernment and property ownership which helps to explain Turnbull's strong interest in the political theory of James Harrington (1611–77), whom he often quotes at length in his comments on Heineccius's text.

Harrington's central aim had been to solve the same problem as his contemporary Thomas Hobbes (1588–1679), the threat of anarchy following from constitutional collapse. However, Turnbull's interest in Harrington was more the Englishman's view of the relationship between property and political power. Harrington, he said, "reasons from natural causes in these matters, as natural philosophers do about phenomena commonly called natural ones."³¹ Like Harrington, Turnbull argued that the ownership of property, especially of landed property, was the natural basis of power. If one man owns far more land than all others taken together, then the constitution will be that of an absolute monarchy. If a small group of people holds the greatest proportion of land, this leads either to aristocracy or a regulated monarchy. Popular government emerges when "neither one nor the few over-balance the whole people."³² This connection between political power and property meant that Turnbull made his theory of government into a part of his theory of divine providence and justice. Any form of government which did not reflect the prevailing balance of property in a society was unnatural and had to be based on violence. It was possible for humans to influence the distribution of property, but "wherever, thro' causes unforeseen by human prudence, the balance comes to be intirely changed, it is the more immediately to be attributed to divine providence: And since God cannot will the cause, but he must also will the necessary effect or consequence, what government soever is in the necessary direction of the balance, the same is of divine right."³³ Ultimately, the providential distribution of material goods determined the balance of power within the state.

Thomas Ahnert
Peter Schröder

31. Turnbull's remarks on bk. II, chap. VI, p. 438.

32. *Ibid.*, p. 430.

33. *Ibid.*, pp. 432.

A NOTE ON THE TEXT

The present edition is based on the text of the 1741 London edition, which was a translation of the first edition, published in Latin, in Halle, in 1738.

Heineccius's and Turnbull's notes are indicated by asterisks, daggers, and single square brackets; editorial notes within original notes are contained within double square brackets. All other new editorial notes and references are indicated by arabic numerals. The "Remarks" sections at the end of some chapters are by Turnbull.

The original references by Johann Gottlieb Heineccius and George Turnbull are often incomplete or inaccurate. We have therefore provided the full title when a work is first mentioned by Heineccius or Turnbull, though it is not always possible to determine the precise editions they used. In the case of classical authors we refer to modern editions, unless indicated otherwise in the notes. Full publication details for works cited in the notes are provided in the bibliography to the extent that this has been possible. The exact sources of quotations and paraphrases are identified whenever possible. References to Roman civil law and the Bible are not explained in the footnotes, unless there are specific reasons for doing so. The archaic spelling of the 1741 text has been retained, though printer's errors have been silently corrected. Page breaks in the original text are indicated by the use of angle brackets. For example, page 112 begins after <112>.

A general note on references to Roman law: Roman civil law, the *Corpus Iuris Civilis*, includes the *Digest*, the *Code of Justinian*, and the *Institutes*. In references these texts are abbreviated as "D.," "C.," and "Inst.," respectively. The rest of the reference is to the relevant book and title of a law—"1. 24. D. de ritu nupt.," for example, refers to the laws on the rites of marriage ("de ritu nuptiarum") in book 24 of the *Digest*.

ACKNOWLEDGMENTS

We are very grateful to Knud Haakonssen for his invitation to contribute this volume to the Natural Law and Enlightenment Classics series and for his advice and support. We are also much indebted to a number of friends and colleagues for their help and encouragement and should like to thank Antony Hatzistavrou and Jenny Gibbon, in particular, for their help in identifying the sources of some Greek quotations.

BOOK I
OF THE LAW OF NATURE

A METHODICAL SYSTEM
OF
Universal Law:
OR, THE
LAWS *of* NATURE *and* NATIONS
DEDUCED
From CERTAIN PRINCIPLES, and applied
to PROPER CASES.

Written in *Latin* by the CELEBRATED
JO. GOT. HEINECCIUS,

Counsellor of State to the King of Prussia,
and Professor of PHILOSOPHY at *Hall*.

Translated, and illustrated with Notes and Supplements,

By *GEORGE TURNBULL*, LL. D.

To which is added,
A DISCOURSE upon the Nature and Origine of MORAL and CIVIL
LAWS; in which they are deduced, by an Analysis of the Human Mind in
the experimental Way, from our internal Principles and Dispositions.

*Natura enim juris ab hominis repetenda natura est.*¹ CIC.

VOL. I.

LONDON:

Printed for J. NOON, at the *White-Hart*, near *Mercer's Chapel*, *Cheapside*. MDCCXLI.

i. The nature of law has to be derived from human nature.

TO
His ROYAL HIGHNESS,
WILLIAM
Duke of *Cumberland*,

This TRANSLATION of

A System of the Law of NATURE and NATIONS, Written in
Latin by the celebrated *Jo. Got. Heineccius*, Counsellor of
State to the late King of *Prussia*, and Professor of Philosophy
at *Hall*: With the Supplements and Discourses added to it,

Is most humbly dedicated,

In Veneration of His ROYAL HIGHNESS's many great and
amiable Qualities, so becoming His high Birth and exalted
Rank, the suitable Care bestowed upon His Education, and
the Royal Example He has daily before His Eyes, of true
Greatness, and the best Use of Power,

By *His* ROYAL HIGHNESS's

most devoted and

most obedient Servant,

GEORGE TURNBULL.

P R E F A C E

The author of this system of the law of nature and nations is so well known, and in so high esteem in the republic of letters, that it would be arrogance in me to say any thing in recommendation of his works. Nor need I make any apology for translating into our language so excellent a book upon a subject of such universal importance. For the knowledge of justice and equity must be owned to be necessary in some degree to every one; but to those, in a particular manner, whose birth and fortunes afford them time and means, and call upon them to qualify themselves for the higher stations in civil society. Man, and the rights and duties of man, are certainly the most proper objects of human study in general. And surely Socrates had reason to say, "That if no man can be fit to undertake a trade, how mean and mechanical soever, without having been educated to it, and bestowed some considerable time upon the learning of it, it must be absurd to think one can be qualified for discharging public trusts and duties, without having taken great pains to instruct themselves in the principles of equity, the ends and interests of civil society, and the nature, spirit, and intention of laws." I shall only add, that every science hath its elements; and this treatise at least well deserves to be called an excellent introduction to the science of laws. As for the notes and supplements I have added, how far they are necessary, I must leave it to the reader to judge. The greater part of them relates to one question, viz. The origine of civil government, which hath not been set in its true light by any other writer besides him from whom the illustration of this point is here borrowed. The discourse upon the origine and nature of laws, is an attempt to introduce the experimental way of reasoning into morals, or to deduce human duties from internal principles and dispositions in the human mind. And hence certainly must the virtues belonging to man be deduced: hence certainly must the laws relating to the human nature and state be inferred,