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Enlightened conservatism: John Galt on law, morality and human nature[☆]

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Abstract

The Scottish historical novelist, John Galt assumed that the origins of law rested on the anarchistic and primitive nature of human beings, who formed a society on a contractual basis out of the need for security. Although generally agreeing with enlightenment thinkers on the formation of society, law and human nature a divergence in Galt's thought appeared in the secular treatment of crimes. Adhering to prevalent Christian notions about sin and crime, Galt rejected a clear distinction between the two, and between morality and law, such as were upheld by such enlightenment figures as Cesare Beccaria. Such a clear distinction failed in its analysis of the phenomena. He was at one with Enlightenment-influenced thought in its criticism of cruel punishments and advocated a humanitarian approach to the criminal, but he also emphasised education in Christian morality as the most appropriate means of deterrence. This divergence from more radical enlightenment views sprang from his lack of confidence in the capacities of human reason. Nevertheless, a fundamentally humanist philosophy and a belief in the importance of learning linked his conservatism with an enlightenment belief in human progress.

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In early 19th-century Britain, along with the strong ideologies that had been built up, especially after the French Revolution to defend the status-quo,¹ individual convictions were likely to draw also on the legacy of the enlightenment. In the Scottish context, Ned Landsman and others have pointed to the intermingling of

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¹For a detailed analysis of this see, J.C.D. Clark, *English Society, 1688–1832: Religion, Ideology and Political Practice During the Ancien Regime* (Cambridge, 2000).

conservative and enlightenment ideas.² The Scottish novelist John Galt (1779–1839) is a good example of this. He was born into a middle class family in Irvine. His father was involved in ship-building and commerce. Galt tried to establish himself as a merchant for most of his life and also became a publicist and government agent for the Upper Canada Company opening up land for settlement. However, his literary works were perhaps his most successful enterprise.

Galt has been described variously as a conservative and as an enlightenment figure. The present essay illustrates his unification of early 19th-century intellectual stances with 18th-century intellectual attitudes. This unification may be seen as part of the formation and development of the 19th-century conservative mind.³ The illustration of Galt's thoughts comes from his little explored notions about law in particular and human nature in general, as can be found in his rather neglected articles in magazines and in his novel *The Majolo*.

As Galt explained in his *Autobiography* (1833), his thinking about these topics, was initiated by a discussion on crime, punishment and law reform that had been stimulated by the enlightenment thinkers Cesare Beccaria and Gaetano Filangieri, but which had been surely filtered through the events of the period between 1810 and 1830 in Britain. The 18th-century discussions on law reform were mostly concerned with a humanitarian and secular approach, when new legal codifications were demanded that would constitute a development in civilisation.⁴ Punishment, it was proposed, would correspond to crimes and, severe punishment, such as torture, would be abolished. Galt also witnessed the pragmatic attempts at law reform initiated by the British government and politicians like Robert Peel. These reforms were made, not in response to humanitarian demands, but to a concern for the preservation of order as crime rates rose.⁵ Although Galt wrote no single tract on

²Ned. C. Landsman, "Presbyterians and Provincial Society: The Evangelical Enlightenment in the West of Scotland, 1740–1775," in John Dwyer and Richard Sher, *Sociability and Society in Eighteenth Century Scotland* (Edinburgh, 1993), 194; Ronald Hamowy, *The Scottish Enlightenment and the Theory of Spontaneous Order* (Carbondale, 1987), ix. See also, Duncan Forbes, "'Scientific' Whiggism: Adam Smith and John Millar," *Cambridge Journal* 7 (1954): 643–670. Beyond Scotland, one might consider the various essays by J.G.A. Pocock, notably "Clergy and Commerce: The Conservative Enlightenment in England," in R. Ajello, Massimo, Guerci, Luciano and Ricuperati, Guisepppe (eds.), *L'Età Dei Lumi: Studi Storici sul Settecento Europeo in Onore di Franco Venturi*, I (Naples, 1985) 523–562 and *Barbarism and Religion: The Enlightenment of Edward Gibbon, 1737–1764*, I (Cambridge, 1999).

³Here I deal with the legacy of the enlightenment to early 19th-century conservatism as an overall intellectual and social outlook, rather than as a specifically political stance. This should also be clearly distinguished from notions of a 'conservative enlightenment' in the 18th century.

⁴Beccaria's ideas were adopted in Britain, especially by lawyers and the middle classes, who saw his penal sanctions as part of the underlying principles of an improved civilisation. On Beccaria's influence on English thought, see Anthony J. Draper, "Cesare Beccaria's Influence on English Discussions of Punishment, 1764–1789," *History of European Ideas* 26 (2000): 177–199; D. Young, "Cesare Beccaria: Utilitarian or Retributivist?" *Journal of Criminal Justice* 11 (1983): 317–326; H.L.A. Hart, "Bentham and Beccaria," in *Essays on Bentham* (Oxford, 1982) 40–52.

⁵See for Robert Peel's ideas his "Consolidation of the Criminal Laws," *The Speeches of the Later Right Honourable Sir Robert Peel: Delivered in the House of Commons* (London, 1853), "Mr Peel to Rev. Sydney Smith, March 24, 1826," in *Robert Peel From His Private Papers*, ed. Charles S. Parker (London, 1899) 401–402; about law reforms in general and their motivations see Ian Gilmour, *Riots, Risings and*

these issues, he frequently inserted some reflection on law and its relationship to human nature into his writings.⁶

Galt was a self-professed Tory for whom the status quo was the essence of social peace and liberty.⁷ He declared that he was not very political, but always opposed radical, revolutionary or even reforming politics, and added that he would call himself “by the recently assumed term of Conservative.”⁸ He was completely convinced that for any achievable progress, man must accept the wisdom of the past, but he also advocated the “practical anticipation of public opinion.”⁹ His conservatism was of a Burkean type that regarded society as a natural, organic product of slow historical growth, where institutions embodied the lessons learned by previous generations and developed in response to immediate needs.¹⁰ Existing practices could be perfected by minor reforms, and this in itself assumed the possibility and desirability of progress that had been summed up in the famous declaration of Burke:

People will not look forward to posterity, who never look backward to their ancestors. Besides, the people of England well know that the idea of inheritance furnishes a sure principle of conservation and a sure principle of transmission, without at all excluding a principle of improvement. It leaves acquisition free, but it secures what it acquires.¹¹

Again, similarly to Burke, Galt held the notion that the origin of civil society and any progress and tendency to perfection was the consequence of God’s will. Both

(footnote continued)

Revolution: Governance and Violence in Eighteenth-Century England (London, 1993) and D.W. Howell and K.O. Morgan, *Crime, Protest and Police in Modern British Society: Essays in Memory of David J.V. Jones* (Cardiff, 1999) 73–96.

⁶Some of his works which have implications for this attitude are: Galt, *The Autobiography of John Galt* (2 vols.; London, 1833), I, 494–496; Galt, “The Free Trade Question: Letter I to Oliver Yorke, Esq.,” *Fraser’s Magazine*, I (November 1830); Galt, “An Essay on Commercial Policy,” *Philosophical Magazine* (1806): 104–112; Galt, “Seven Principles of Political Science” together with the “Seven Principles of the British Constitution” in *The Monthly Magazine* 48 (1819): 400; Galt, *Majolo: a Tale* (2 vols.; London, 1816).

⁷Galt, *Autobiography*, I, 21. This idealisation of the status quo was a very important aspect of the conservatism of the nineteenth century: for 18th- and 19th-century conservatisms which include Burkean conservatism, see Samuel Huntington, “Conservatism as an Ideology,” *American Political Science Review* 51 (1957): 455, 468; Suvanto, *Conservatism from the French Revolution to the 1990s* (London, 1997), chapter 1; D. Watts, *Tories, Conservatives and Unionists 1815–1914* (London, 1994) and Viereck, *Conservatism Revisited: the Revolt Against Revolt 1815–1949* (London, 1950); on the reactionary politics of this time, see N. O’Sullivan, *Conservatism* (London, 1976).

⁸Galt, *Autobiography*, I, 21, 28 and *ibid.*, II, 7. Nevertheless, he was greatly interested in daily politics as he reveals in his correspondence: see Galt to Blackwood, NLS, Blackwood Papers, MSS 4006, ff 219–20v; Galt to Blackwood, NLS, Blackwood Papers, MSS 4008, ff 172–173v, 192–193v; NLS, Blackwood Papers, MSS 4010, ff 149–150.

⁹Galt, *Autobiography*, I, 28, 95.

¹⁰E. Burke, *Reflections on the Revolution in France*, ed. J.C.D. Clark (Stanford, 2001) 184, 328, 412.

¹¹Burke, *Reflections*, 184. Frykman relates Galt to Burke. See E. Frykman, *John Galt’s Scottish Stories* (Uppsala, 1959) 133, 198. For Galt’s stadialist-gradualist attitude, see *Autobiography*, I, 94–96 and, “Free Trade Question,” 593–594.

dependence on the past and progress were inherent in the natural system created by God, unalterable by any measure of human legislation.¹² This type of conservatism revealed itself in Galt's thoughts about crime and punishment where he reached back to a long established tradition of Christian morality and insisted on a better teaching of it, rather than advocating something new, such as a penal law separated from any religious conceptions of sin.

Galt's interest in law started off, like Adam Smith's, as a practical need to understand the legal aspects of mercantile issues, and he was concerned to develop his skill in this area. He even considered becoming a lawyer at one stage.¹³ He explained, "I made myself master very early of the *Lex Mercatoria*, not merely by reading it through, but by studying it as necessary to my progress in the world."¹⁴ Later on, his readings led him to more abstract issues in the field of law: how and why it emerged and developed. In 1819, he wrote two columns in *The Monthly Magazine* describing his seven principles of political science and the British Constitution. These columns also presented his perception of the development of law.¹⁵ In common with most enlightenment thinkers he believed that all social relations were based on the principle of power, and that any social rule was aimed at order and peace in society and in commercial conduct. As Hume and others had argued, freedom and security of property could only subsist in a state of lawfulness.¹⁶

The development of law was a demand of societal life. Galt's ideas on the formation of society and its functioning were a blend of a simple variation of contractarian theory and an organic society. According to him, society was composed of individuals who, when created, had the same rights and powers; and each individual was endowed with a natural selfishness to accomplish his own will. People were automatically tempted to maximise their own pleasure and increase their own power over others. Human beings, left to themselves, would tend to achieve only their own interests. To avert such a chaos, individuals handed over only the amount of freedom necessary to a leader or state to ensure protection. The main unit of society was the family, with its own structure and a patriarchal hierarchy. These families then formed small communities that chose magistrates to preserve a certain order. Governments were thus created to limit the "natural despotisms" of humankind. However, governments also needed some checks so as not to develop into despotism. To control power and preserve peace, some "laws have been invented to regulate the administration of their authority." Thus, laws were

¹²"Commercial Policy," 104–112; and *Autobiography*, I, 94; "Free Trade Question," 593–594; Burke, *Reflections*, 262.

¹³Galt, *Autobiography*, I, 112–113.

¹⁴*Ibid.*, 85.

¹⁵"Political Science" together with the "British Constitution," 400.

¹⁶M. Elosegui, "Revolution, Freedom, and Law in David Hume," in *Law and Enlightenment*, 45–46. For an example of the popularity of this idea, see Barrister, *The Grammar of Law: Containing the First Principles of Natural, Religious, Political, and Civil Law, Together with a Synopsis of the Common and Statute Law. To which is added the Royal Prerogatives, and An Explanation of Law Terms in general Use* (London, 1839) iii–iv.

perceived as a check on inherently selfish human beings and on governments; they were for readjusting the natural character of individuals to certain rules that would facilitate the functioning of an organic society.¹⁷

Galt's analysis of laws was similar to that of most of the continental thinkers. He believed that these laws had firstly a general quality, as Montesquieu, Beccaria and Filangieri had pointed out. This general quality referred to laws that adhered to natural law and that were universal and applicable to all societies. Besides this general or universal nature of laws, there was that which sprang from the individuality of nations, their cultures and local traditions. These were particular and circumstantial laws of countries which should be in agreement with universal principles, as well as with the "character of a people," their belief and the country's climate.¹⁸ According to Galt, the diversity of nations made for the relativity of some laws. Hence, the legislator had to consider that there were diversities among communities "in the constitution of their government[s]" and in "customs and religion... their climate, their position." In short, Galt believed that diversity in laws resulted from different cultural backgrounds as well as governmental differences.

In his article, about the British constitution, Galt exemplified a localised approach to law. The article showed how an institutionalised state constitution attempted to secure natural rights by paying attention to the specificity of British society. The British constitution ensured property and individual rights and preserved the existing hierarchy of society, according to needs imposed by Britain's climate and local traditions.¹⁹ Furthermore, it was not an entire stable entity, but developed and changed as expediency demanded; it was an organic entity that adapted itself to changing conditions. Galt was not against all reforms. Against the accusations of foreigners of the clumsiness of the constitution, he wrote in his *Letters from the Levant*:

They have no idea of the continual effect arising from the nature of that multifarious tendency to revolution observed in the frame of our government—that which is continually repairing what is decaying, and supplying by suitable expedients whatever deficiency is found. The British constitution ... adapts itself to the immediate occasions of the people.²⁰

His explanation of feudal laws expands on this more clearly. Galt held that a reform-mindedness should be the attitude towards older methods of ordering things. Rules that had ceased in their efficacy should be changed and adapted to the new state of the society. Feudal laws in their time had been efficacious and had worked to good effect. However, they proved to be "oppressive bondage" for succeeding ages. When the feudal system declined, "usages and customs under it were deemed

¹⁷ Galt, "Political Science," 400. Galt's description of human nature and of the formation of society has some resemblance to Hobbesian and Lockian descriptions.

¹⁸ Marcello Maestro, "Gaetano Filangieri and His Laws of Relative Goodness," *Journal of the History of Ideas* 44 (1983): 688.

¹⁹ Galt, "British Constitution," 400.

²⁰ Galt, *Letters from the Levant; Containing Views of the State of Society, Manners, Opinions and Commerce in Greece and Several of the Principal Islands of the Archipelago* (London, 1813) 50–51.

detrimental to mankind.” The fact that it had once been beneficial was not a sufficient reason to uphold it.²¹

However, it was also foolish to create a system for which an existing society was not ready. Each social system had its own way and span of life, eventually consuming itself. After finishing a stage, society would take on a new form; but it had to continue to the end at its natural pace. For this reason, if rights were granted that did not fit with the natural life of that stage of that society, harmony would be shattered, producing confusion and anarchy, as a natural consequence of an unnatural development.²²

As mentioned above, Galt’s thoughts on social relations rested on contractarian arguments that had been posited, especially by the Whigs, as the justification for the need for popular consent during the 18th century.²³ Individuals formed a contract with their rulers, handing over some of their rights for the sake of an orderly and secure environment. Thus, the sovereigns owed their right of rule to this popular consent. According to Galt, legal rules functioned mainly in the public sphere to regulate social interaction, leaving much liberty in private affairs, not concerning themselves, however, with any moral aspects. Keeping society in order and peace was the foremost role of the state. Galt thus adhered on matters of the formation of law and society to the general notions of eighteenth and early 19th-century thinkers, many of which derived from enlightenment argumentation. He similarly articulated his belief that national, traditional and climatic differences should be taken into account in making and evaluating the constitution and legislation of a country. He observed that the state aimed to secure the greatest possible freedom to individuals as long as individual actions were not anti-social or criminal in their results.²⁴

Galt’s interest in the questions of penal legislation and crime and punishment, as he explains in his *Autobiography* of 1833, was peaked by some articles written in the *Edinburgh Review*. In 1805, 1806 and 1807, some translations had been published of important continental thinkers on this subject: Montesquieu, Voltaire, Beccaria and Filangieri among others. Galt, who read a review in 1807 of Filangieri’s book, *The Science of Legislation*, was particularly struck by his ideas.²⁵ The review made Galt think about control and deterrence, as well as the moral and religious basis of laws.

Galt was convinced that the contemporary discussions of law reform and punishment were not being handled with the right conceptions. On the theoretical level, throughout Europe, discussions about reforms in the penal law were conducted with humane approaches in mind. The severity of punishment and the use of torture had been criticised, and the principle of equality before the law was demanded.

²¹ Galt, “Free Trade Question,” 593–4.

²² Ibid.

²³ Murray G.H. Pittock, *Inventing and Resisting Britain: Cultural Identities in Britain and Ireland, 1685–1789* (London, 1997) 33, 38, 101.

²⁴ Galt, *Autobiography*, I, 89. For notions of the relationship between state, law and crime, see W.C. De Pauley, “Beccaria and Punishment,” *International Journal of Ethics* 35 (1925); 404–412.

²⁵ Galt’s first impressions of Filangieri’s ideas originated from this review, but he must have read later the original work: “Review of *The Science of Legislation* from the Italian of Gaetano Filangieri, by R. Clayton,” *The Edinburgh Review* (January 1807) 354–373.

Voltaire, Condillac, Montesquieu, Beccaria and Filangieri were among the well-known critics of the existing practices of the 18th century. In the 18th and early 19th century, the individual victim and offender were no longer the focus, but emphasis was put on the possibility that the rest of society was at risk of becoming a victim or offender. As a consequence, the discussions about reforms in law revolved around the question of control for the state's sake and of deterrence for society's sake. Attempts were aimed at making laws more understandable to the people, that is, making punishment appropriate to the crime. This was important in order to make punishment effective according to thinkers such as Montesquieu, Beccaria and Bentham.²⁶ In Britain, such theories, very much influenced by Beccaria's *On Crimes and Punishment*, were expressed either in contractarian, humanitarian terms, as exemplified in the work of William Eden, or in utilitarian terms, as in Jeremy Bentham's works.²⁷

Galt developed his own interpretation of the humane approaches of 18th-century thinkers in which he attributed more importance to orthodox Christian morality.²⁸ He appeared to be especially against contemporary utilitarian notions of social and governmental reform. Contemporary Tories opposed Benthamites whom they saw as unfeeling and over-rational and had rather a vision of an organic, benevolent society, which would eventually develop into one without crime, ugliness and neglect.²⁹ According to Galt, firstly these utilitarian theories and their accompanying social-moral ideals had an anti-Christian connotation; they mistakenly saw religion as an obstacle to effective reform. For Galt, religious morality and principles did not entail a departure from humaneness. He saw religion as the root of humaneness. Secondly, the deterrent system, created in order to establish peace and security for society and the state, could not work. Importance had to be given to the rehabilitation of the criminal and the newfangled penitentiaries were certainly not the way to achieve this.³⁰ Rehabilitation was to be in accordance with (Christian) morality, which would establish a system of checks within the individual.

To understand Galt's emphasis on the connection of morality and crime the discussions in Europe lead by Beccaria, especially, becomes important. By the 1770s Beccaria and Filangieri had both become celebrated writers on the subject of the

²⁶ Colman Phillipson, *Three Criminal Law Reformers: Beccaria, Bentham, Romilly* (London, Toronto, 1923) 191.

²⁷ In the nineteenth century Jeremy Bentham influenced reforms on a wider scale, such as penal and poor law reforms. Brougham called Bentham "the father of law reform," Ross Harrison, *Bentham* (London, 1999), 2; see also Peter Mandler, "The Making of the New Poor Law Redivivus," *Past and Present*, 117 (1987) 131–157; idem., "Tories and Paupers: Christian Political Economy and the Making of the New Poor Law," *Historical Journal* 33 (1990): 81–103; Draper, "Discussions of Punishment," 178, 192–196; John Dimwiddy, *Bentham* (Oxford and New York, 1989).

²⁸ Frykman, *John Galt's Scottish Stories*, 205.

²⁹ David Roberts, "Tory Paternalism and Social Reform in Early Victorian England," *American Historical Review* 63 (1968): 324.

³⁰ Galt, *Majolo*, I, 154 and *Autobiography*, I, 89. For example, in the *Majolo* he wrote "I have no faith in the system of penitentiaries, ... I regard vice as a moral disease; ... the constitution may have virtue enough in the end to overcome".

reform of the criminal law in Europe. Beccaria, especially, exerted great influence on many enlightenment thinkers but was, at the same time, heavily criticised by traditionalist jurists and churchmen.³¹ Both thinkers, Beccaria and Filangieri, attempted to make law as logical and reasonable to everyone as possible. They emphasised prevention rather than punishment. Public awareness of laws was the key to the prevention of crimes. Punishment was needed as a deterrent system, that is, as a means of preventing others from committing the same crime. Legal power was to be used to avoid injury to society rather than to the individual victim. Punishment was necessary for the welfare of society and for setting an example to potential criminals. However, as with all of the humanitarian thinkers of the time, Beccaria and Filangieri were not convinced that torture and overly severe punishment served the ends of retribution or expiation.³²

Beccaria went as far as advocating the abolition of capital punishment.³³ He was convinced that a system with moderate laws would be more didactic to people and could result in making them more kind and gentle, and less prone to commit crimes. Human beings tended to avoid pain—characteristically it was the prospect of pain rather than pleasure that moved man to act—so that they would refrain from crime.³⁴

The key idea in Beccaria, however, was his resolution to distinguish between crime and sin and he sought uniformity, irrespective of person, in the application of law. Similarly to Montesquieu, Beccaria held that religious laws should be of no concern to secular justice.³⁵ The only possible action against any religious offence could be the exclusion of the offender from religious services. Thus, according to this point of view, the concept of sin became, in general, irrelevant to legal systems. To such criticisms Beccaria replied:

Some men have thought that the gravity of the sin plays a role in measuring the degree of criminality of an action.... The gravity of a sin depends on the inscrutable malice of the heart, which finite beings cannot know without special revelation. How, then could it be used as a guide for the punishment of crimes? If such a thing were tried, men could punish when God pardons and pardon when God punishes.³⁶

³¹ M. Maestro, *Voltaire and Beccaria As Reformers of Criminal Law* (New York, 1942) 63. See also on his influences and how his ideas spread among the enlightenment philosophers in Phillipson, *Three Criminal Law Reformers*.

³² See, for Filangieri, Maestro, "Relative Goodness", 687–691; Marcello Maestro, "Benjamin Franklin and the Penal Laws," *Journal of the History of Ideas* 36 (1975): 551–562; Marcello Maestro, "A Pioneer for the Abolition of Capital Punishment: Cesare Beccaria," *Journal of the History of Ideas* 34 (1973): 463–468.

³³ Maestro, "Capital Punishment," 465.

³⁴ In his emphasis on utility rather than on the considerations of justice, Beccaria was often referred to as the forerunner of Jeremy Bentham. David Young, however, argues in his article that Beccaria should be seen as one who blended utilitarianism with retributivism: David B. Young "Utilitarian or Retributivist?" 317–326.

³⁵ Likewise Benjamin Franklin had expressed his ideas already in the 1747. See Maestro, "Benjamin Franklin," 551–562.

³⁶ Beccaria, *Crimes and Punishments*, 22–23.

He explained that legal power was not to be misunderstood as justice or right or God-given. He said:

We must be careful not to attach any notion of something real to this word justice, such as a physical force or an actual entity. It is simply a way whereby humans conceive of things, a way which influences beyond measure the happiness of all. Nor do I speak here of that justice which flows from God and whose direct bearing is on the punishments and rewards of the after-life.³⁷

Filangieri, however synthesising the traditional and the new ideas about the nature of law stressed that laws had to be constructed or reformed in such a way that people, who would be required to adhere to them, would think of them as enacted and enforced in accordance with justice conceived as a universal good in itself. The 1807 review of the latest translation of Filangieri's book, *La Scienza della Legislazione*, started, correctly so, by explaining the two natures of law of Filangieri. Namely, these were universal qualities that referred to absolute goodness; and local qualities that could be assigned only relative goodness.³⁸ He started with the general principles of legislation, which related to the preservation of the peace and security of society. These indeed were, according to Filangieri, the great objects of civil society. However, against the attempts of many thinkers to divide sin from crime and the concept of law, Filangieri argued that the absolute goodness of a law consisted in its conformity to common principles of morality and the precepts of revelation; the law's relative goodness, its appropriateness to a specific time and space, should not contradict these principles and precepts: "God and nature protect the rights of mankind, and no transitory expediency can justify their infringement." The Edinburgh reviewer emphasised Filangieri's distinctiveness:

He lived as virtuously as he wrote; and his abhorrence of spiritual abuses seems (which is rare in a continental philosopher) to have stopped short of irreligion. Hence, perhaps, the zealous friends of revolution spoke of him with coldness. 'Before we read Filangieri's book,' said one of them, with the foolish intolerance so usual in that school, 'it will be necessary to determine, whether a lord of the court, and a nephew of the Archbishop of Naples, is capable of rendering any service to philosophy.'³⁹

Filangieri observed that laws in individual countries could stand opposed to common morality and religious virtues and thus "violate institutions more sacred than themselves, and resist an authority paramount to that by which they are prescribed."⁴⁰ So, accordingly, some of the problems arose due to the gap between human laws and general rules of morality, derived from revealed religion and nature. He agreed with most enlightenment thinkers that punishment had to be more

³⁷ Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. R. Bellamy (Cambridge, 1995) 11.

³⁸ "Review of *Science of Legislation*," 354–373. Galt's first impressions of Filangieri's ideas originated from this review, but he must have read later the original work.

³⁹ "Review of *Science of Legislation*," 357, 355.

⁴⁰ Filangieri quoted in *ibid.*, 358.

humane, but his concern was more with the difficulties that a legislator confronted in enacting the laws of relative goodness without violating any principle of absolute goodness.

Reading about Filangieri's idea of absolute goodness Galt commented: "Without any previous consideration, excepting the work of Beccaria on *Crimes and Punishments*, always to me unsatisfactory, I stumbled by a sort of accident on the enquiries of Filangieri."⁴¹ Galt agreed with Beccaria that there could not be any objective justice on earth but he disagreed with Beccaria's careful distinction between divine justice and secular penal law.⁴²

Filangieri's ideas about absolute and relative goodness led Galt to think about the connection between sin and crime. He agreed with Filangieri that laws did not always conform to absolute goodness. However, by insisting on relating crime to sin Galt made, in contrary to the contemporary desires, the definition of both more complex.

Galt explained that what he liked in Filangieri was that he had constructed his work "on the basis of historical precedents" and was observant of moral convictions.⁴³ He argued in his *Autobiography* that "[s]ins seemed the basis of crimes, although there were crimes of a very deep die, of which the original sins were comparatively not deemed heinous." Although he would have agreed with the premise that the seriousness of crimes and their underlying sins could not be equated, he did not want to abandon the link between them. In his moral interpretations, Galt went further than Filangieri, saying that the connection between absolute and relative goodness should be emphasised more.

Filangieri's connection of universal principles with the Ten Commandments made an impression on Galt. The Ten Commandments were, according to Filangieri, a perfect model for the absolute goodness that had to agree with universal principles of moral conduct with which the particular and circumstantial laws of countries had to be in agreement.⁴⁴ Galt thought Filangieri had discovered the right road to truth about the relationship between sin and crime, but had not been bold enough to pursue it. "He seemed afraid of committing himself by stating what he thought of crimes and sins."⁴⁵

Galt's universal principle of moral conduct was nothing less than the providential universal system. He sought a tighter connection between a moral-religious tradition and the laws. This system was revealed to human beings through scripture. The universal system might be conceived, Galt explains, as a machine consisting of many small parts each having an influence on one another. Each part in this universe was subject to certain "principles or laws of its own particular organisation, as well as to those of the universe." All these parts and their

⁴¹ Galt, *Autobiography*, I, 91.

⁴² R. Gillies, *Memoirs of a Literary Veteran: Including Sketches and Anecdotes of the Most Distinguished Characters, from 1794–1849* (London, 1851) 59–60.

⁴³ Maestro, "Relative Goodness," 687–691.

⁴⁴ Maestro, "Relative Goodness," 688.

⁴⁵ Galt, *Autobiography*, I, 91.

movements, led “to the accomplishment of the object for which the whole was formed” by God.⁴⁶ Now this system created by God and revealed to human beings, besides being the rules of universal motion, also included the rules of human conduct that were part of the goal of the whole universe.

This system was not a static entity but encompassed progress. Human nature, although not to be trusted in origin, was able to change, and government, as well as the laws of society, evolved in time. As Galt said, “It is the object and nature of society to refine itself by science and the arts which reflection and genius suggest for improvement.”⁴⁷ It is clear that he was strongly of the opinion that progress and development were natural and necessary occurrences. On the other hand, he believed “mankind was regulated by the character of existing circumstances.”⁴⁸ Therefore, although he stated with deep conviction that there would be a time when the principles of Christian morality would rule societies, this seemed impossible for the near future:

Why, the Christian religion is in its nineteenth century, and though there can be no doubt of the excellence of its morality, mankind are not yet arrived at such a state of improvement as to be practically ruled by it.⁴⁹

In order to achieve progress one had to hold on to the laws established by providence. Galt’s absolute goodness was an extension of providential natural laws. As mentioned before, all motion in the universe was designed according to a providential order and aimed at harmony. As every part in the universe acted according to this divinely established order and to the accomplishment of the providential objective, so human beings were to adapt to this harmony which would provide their ultimate peace and happiness. And this whole system, although impossible to be grasped *in toto* by human beings, was revealed in scripture to human minds.⁵⁰ This, according to Galt, should be the absolute basis of rule and law in the society and state.

Galt’s ideas on penal law similarly rested on this assumption of the inseparability of morality and law. Most probably, Galt was drawing here a connection between these two in terms of an act of the will, and its relation to morality based on religious injunction. In that sense any criminal act could be perceived as a willful rebellion against Divine Law. Galt did recognise that there were two elements in a crime, one worldly and the other to be described in Christian terms. They overlapped and both had an impact on society. Nevertheless, the penal system punished only the mundane aspect, whereas the offence against religion would be left to the providential, natural system: “I inferred that crimes were proscribed by the laws of society, but that sins were things against the system of nature, and that legislatures

⁴⁶ Galt, *Literary Life and Miscellanies of John Galt* (2 vols; Edinburgh, 1834), I, 287–288. This system of causes and effects was close to the central enlightenment conception of the universe see, D.W. Bebbington, *Evangelicalism in Modern Britain: A History from the 1730s to the 1980s* (London, 1989) 60–61.

⁴⁷ Galt, “Free Trade Question,” 593.

⁴⁸ Galt, “Commercial Policy,” 107, see also *Majolo*, I, 106.

⁴⁹ Galt, *Autobiography*, I, 95–96.

⁵⁰ Galt, *Literary Life*, I, 287–288.

never thought of interfering with them, but left their punishments to the re-action of nature.”⁵¹

Galt’s connection between sin and crime resembled 16th and 17th-century Presbyterian perceptions.⁵² Crime and sin were similar entities; sometimes they were identical or inclusive of each other.⁵³ However, when it came to punishment, on which the contemporary discussions mainly rested, Galt’s argument was somewhat weak. Although Galt would agree that punishment was necessary for crime, he was not convinced that punishment could deter others from committing a similar offence.⁵⁴ Against Filangieri’s and Beccaria’s conviction that “the object of punishments is simply to prevent the criminal from injuring anew his fellow-citizens, and to deter others from committing similar injuries,”⁵⁵ Galt developed the idea that punishment was really not useful in the cure of crime, abstracted from the criminal. In Galt’s opinion it was wrongly assumed that crimes were contagious and that punishment of a criminal served to deter other vicious minds. He tried to make it clear with an analogy to diseases. He was convinced that, as one cannot cure a diseased person by curing another infected patient, likewise it was impossible to cure crime by a penitentiary system:

In a word, that punishment for example, showed but a shallow knowledge of human nature, and that it would be just as wise to expect a man could be cured of the scrofula by punishing another more afflicted with that malady, as to hope that a criminal could be won from his propensities by showing him another in curing the penalty of malpractices.⁵⁶

It is not that Galt did not agree with his contemporaries that reform was needed; on the contrary, he thought that “culprits must be reformed, jails should not continue to be the seminaries of vice.” However, an attempt had to be made to check the first symptoms of criminality.⁵⁷

Galt concluded that, “the influence of the doctrine [of punishment as envisaged by Beccaria] has had a surprising effect, in at once softening pity for the guilty, and increasing sternness for the infliction of punishment.” Thus, this inefficient system that included imprisonment (“As we confine madmen, we incarcerate delinquents”), which had been designed on humanitarian principles, diverged from its main object and made punishment even more severe.⁵⁸ According to Galt, Christianity already

⁵¹ Galt, *Autobiography*, I, 89.

⁵² Although Galt’s line of thought seems to have progressed towards the new approaches to law, as is apparent in his description of the British Constitution and mechanistic explanation of natural law, it is clear that the traces of a Presbyterian attitude to crime were still existent in his thoughts. J. Macqueen, “Ringan Gilhaize and Particular Providence”, in *John Galt 1779–1979*, ed. Christopher A. Whatley (Edinburgh, 1979), 108; see on the 17th-century connections of sin and crime in J. Cameron, *Prison and Punishment in Scotland From the Middle Ages to the Present* (Edinburgh, 1983) 18.

⁵³ Galt, *Autobiography*, 89. See also, Galt, *Majolo*, II, 59.

⁵⁴ Galt, *Autobiography*, I, 92; idem, *Majolo*, I, 153.

⁵⁵ Maestro, *Voltaire and Beccaria*, 63.

⁵⁶ Galt, *Autobiography*, I, 91.

⁵⁷ Frykman, *John Galt’s Scottish Stories*, 204.

⁵⁸ Galt, *Autobiography*, I, 90.

comprehended humanitarian principles: “Christianity...was neither enlarged nor bettered by being baptised with the Greek name of philanthropy.”⁵⁹ It was to Christian values that Galt referred when he wrote, “Humanity is more consulted in the mitigation of punishment than a wise policy derived from the nature of man.”⁶⁰

His rather skeptical approach to the idea of the deterrence of people other than the actual criminal rested on his distrust of human nature. The nature of man was not to be trusted too much, since “Our diseases or offences are manifold.” On the one hand, he was aware of the fact that some punishments were brutal and senseless. On the other hand, there was the brutal and selfish nature of human beings that had to be kept in control. Galt disagreed with Beccaria not about the formation of society, but about the necessity of separating crimes and their punishment from the principles of religion and morality.

Human beings would refuse to give more of their freedom and be bound by the burden of a moral law; indeed, a corrupt human nature sought more liberty than already existed. Humans were incompetent in the matter of dealing with crimes, sins and punishments because their societies (actually made up of these selfish individuals) were unwilling to cure these thoroughly. “Society is not willing to touch more of them than is requisite for keeping the social community in order; we are in society, held together by ties more slender than we are willing to believe.” The French Revolution was a good example of this.⁶¹

The infected were certainly not to be abandoned.⁶² Punishment or control over crime was a complicated issue in need of some correction. However, to try to deter others from further crime was not the right way of approaching the issue of reform. It was the offender himself who should be reformed for his own sake. One of the right ways of approaching this, in Galt’s opinion, was to ensure a proper education where individuals learned to respect other social beings. Certainly, this education partly consisted of the development of a religious conscience and morality. Since Christian morality walked hand in hand with social norms and laws, it was right for society to impose it on its members. This would set the individual on the right road because it would teach the individual about the eternal laws and that human beings existed in a society created and developing according to a divine plan.

The remedy for crime was not punishment but an increased inculcation of morality in society which would turn the individual away from any evil doing. He was of the opinion that, just as it was possible to increase one’s ability in aesthetics by appreciation and the study of art, likewise bad inclinations could be increased by dexterous usage. Thus, it was important that individuals *learn* to resist any temptation that led them to sin and crime. Although he was suspicious about the nature of human beings, Galt formulated a crucial link between the revival of Christian morality and an enlightened belief in human progress.

⁵⁹ Galt, *Annals of the Parish* (Edinburgh: Mercat Press, 1978) 134.

⁶⁰ Galt, *Autobiography*, I, 90–91.

⁶¹ *Ibid.*, 93.

⁶² Galt, *Majolo*, I, 155, 154.

Although his thought might be read in a purely Christian way, his humanitarian conclusion and emphasis on education was a significant departure from traditional Christian conceptions. His disagreement with Beccaria emerged from his belief that Christian morality was, surely, the best and purest of all possible laws (since it was part of the perfectly created universe) and for this reason it ought not to be set aside. He agreed with Filangieri that a deficiency of morality in the nation created an atmosphere of violence and facilitated crime; the contemporary ideas of punishment prevented the true and proper analysis of the origins and nature of crime.

Although the better known thinker was Beccaria, and although Filangieri and Beccaria were often cited together, Galt takes sides with Filangieri who, he thinks, relates more to morality. He was suspicious of reform and the nature of man, and his views on law reforms rested both on enlightenment humanitarianism and on his acceptance of the preordained sinfulness of human nature. He pondered about questions of the shaping of a social order and law, moving on to think about the questions of the control of crime and deterrence. In doing this he always referred back to a detrimental human nature set against a divine law as the source of ultimate happiness, creating a connection between an enlightenment idea of human progress and the revival of religious morality.