Schopenhauer's theory of justice and its implication to natural law.*

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Abstract
In this article arguments will be given to demonstrate the weakness of Schopenhauer's position towards natural law.

Keywords
Causality, character, civil rights, conception of right and wrong,criminal code, determinism, ethical law, freedom of the will, morality, natural law, property rights, state.

I Introduction
Schopenhauer, well known as the writer of the "World as will and Representation" was a controversial thinker, not in the least in the field of the theory of justice or legal doctrine. It was not by virtue of his profession, that he wrote about constitutional law. If he occupied himself with questions about constitutional law and the Rule of Law or politics, it was because he could not omit them without leaving gaps in his metaphysical and ethical doctrine. Schopenhauer was in fact a layman in the field of law. And he solved legal problems in a philosophical way. He said so himself in his correspondence (Brinkmann 1958, p. 100)[1]. At least he did not write a closed, complete legal doctrine.
In this article considerations will be made about the legal doctrine of Schopenhauer and the evaluation of his natural-law theory (see also Schopenhauer 1979, p.115).
With his metaphysics of the will[2] Schopenhauer ascribes the source of the world and life not to an all-good being, but to “something just as evil (as the devil)-the will manifested in the world” (Atwell 1995, p.16). In fact, Schopenhauer gave a non-religious account of the misery of the world (Atwell 1995, p.16).
In order to describe and find a solution of this misery of the world, he made the following distinctions concerning justice:

1) Eternal justice
2) Voluntary Justice
3) Temporal justice or pure legal doctrine

ad 1) "Eternal justice rules not the state, but the world; this is not dependent on human institutions, not subject to change and deception, not uncertain, wavering and erring, but infallible, firm and certain"(Schopenhauer 1969 I, p.350). One of the consequences of eternal justice according to Schopenhauer is, that eternal justice cannot be a retributive justice, because the concept of retaliation implies time: ”balancing the evil deed against the evil consequence only by means of time".
Here the punishment must be so, "that the two are one" (Schopenhauer 1969

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I, p.350-351). According to Schaefer it can only be a punishing justice (Schaefer 1984, p.104).
Schopenhauer had the opinion, that evil and wickedness are only two different aspects of the phenomenon of the will-to-live, whilst the uncultured individual regards them as very different (Schopenhauer 1969 l, p.352). This uncultured individual sees "that the wicked man {...} can quit the world undisturbed. It sees the oppressed person drag out to the end a life full of suffering without the appearance of an avenger or vindicator" (Schopenhauer 1969 l, p.353-354) and he asks, where the compensation is.
Schopenhauer proposes in fact two ways to comprehend this phenomenon of unjust suffering by

a) describing and explaining it as an eternal justice
b) or how this suffering should be solved.

Ad a : aeternal justice then will be grasped and comprehended "by the man who rises above that knowledge".[3] And they are "les artistes, les philosophes, les saints{...}" (Pernin 1999, p.84). In fact the eternal justice is according to Schopenhauer the balance inseperably uniting the malum culpae with the malum poenae. "Tormenter and tormented are one". (Schopenhauer 1969 l, p. 354-355) According to Malter könnte man "Schopenhauer den Vorwurf machen, die Konzeption einer ewigen Gerechtigkeit, wie sie sich aus der Willensmetaphysik ergibt und - weil die Vernunft hier leitend ist - durch den Transzendentalismus des *begriffenen* Wesens ermöglicht wird, laufe in ihrer praktischen Konsequenz auf eine Schuld-Enthebung des Unrechttuenden-"Der Quäler und der Gequälte sind eines"- hinaus. Nichts liegt Schopenhauer ferner, als diese Konsequenz zu ziehen". (Malter 1991, p.375)
Nor does he want to make a secret analogy between his theory of eternal justice and the by him taunted Theodizee.
Ad b : The second possibility to reach eternal justice is that of reincarnation or "transmigration of the souls". Eternal justice will remain inaccessible to the majority of men, but the "wise ancestors of the Indian people have directly expressed it in the Vedas.." (Schopenhauer 1969 1, p.355-356). By this transmigration of the souls "all sufferings inflicted in life by man on other beings must be expediated in a following life in this world by precisely the same sufferings." On the other hand it promises as reward rebirth in better and nobler forms and in the end by not being reborn. "You shall attain to Nirvana". (Schopenhauer 1969 l, p.356)
Eternal justice cannot be understood by the uncultured individual. "The boundless world is strange to him". (Schopenhauer 1969 l, p.353) Or as Malter put it: "Für den Philosophen genügt die Willensmetaphysik, um in abstracto die Bedeutung der ewigen Gerechtigkeit zu erfassen". (Malter 1991, p.373)

Ad 2) Voluntary justice is another form of justice. It has its innermost origin in a certain degree of seeing through the principium individuationis. It means, that a person does not use another person for his own purpose, and does so not out of fear for punishment or selfish thought, but out of free will (cf.Schopenhauer 1969 l, p.370 and cf.Malter 1991, p.383). This "seeing through can take place not only in the degree required for justice, but also in the higher degree, that urges a man to positive benevolence and well-being, to philanthropy."(Schopenhauer 1969 l, p.371) Schopenhauer makes a specification about philanthropy, because he does not think, that a man wants to exert voluntary justice, when "he makes donations to the destitute, firmly persuaded that he will receive everything back tenfold in a future life, or spends the same

sum on improving an estate, that will bear interest, late certainly, but all the more secure and substantial". (Schopenhauer 1969 1, p. 368-369) Voluntary justice means, that "he makes less distinction than is usually made between himself and others". (Schopenhauer 1969 1, p.372)
It means in fact, that he feels every service, every luxury as a reproach, and finally resorts to voluntary poverty. He is even capable of "denying himself pleasures, undergoing privations, in order to alleviate suffering". (Schopenhauer 1969 1, p.371-372) This point of view of Schopenhauer is - according to me - rather remarkable. Instead of charity, he wants to help by showing sympathy or should I say: compassion by suffering?
Janaway points out the difference in that respect between Schopenhauer and Kant: "Kant's ethics is egoistic, because it is only by a promise of a reward or the threat of punishment that a person would follow its laws or prescriptions" (Janaway1998, p.124). The explanation of Kant's thinking concerning voluntary justice is based on the concept of duty and the categorical imperative and he declares "felt sympathy to be weakness, and by no means virtue". (Schopenhauer 1969 1, p. 376)

Ad 3).Temporal justice.
Temporal justice is mentioned here only for the sake of completeness of classification.
According to Schopenhauer "temporal justice has its seat in the state" (Schopenhauer 1969 l, p.350) as requiting or punishing and this becomes justice with regard only to the future. Time determination is important for temporal justice: the unfree subject takes temporal justice as an absolute fact. According to the unfree subject the tormented person and the tormentor are two different persons. And in order to compensate his own suffering gets into the danger to do injustice himself (cf.Malter 1991, p.370). The role of the state is to prevent wrongdoing and suffering and that is the subject of Schopenhauers political science. That is "the" definition of a state contract (Schopenhauer 1969 l, p.343). Schopenhauer also gives an overview of the gradation of wrongdoing: from cannibalism as the worst form to theft as the lightest (cf.Schopenhauer1969 l, p.335-336). If the subject of Schopenhauers theory of the state is the prevention from suffering, then on the contrary the removal of wrongdoing by moral law, or natural law is the subject of ethics in the strict sense, or of morals. "The pure *doctrine of right* is therefore a chapter of *morality*, and is related to *doing*, not to *suffering*" (Schopenhauer 1969 l, p.342).

ll. Schopenhauer's natural law theory.

"As we have said, legislation borrows the pure doctrine of right, or the theory of nature and limits of right and wrong, from morality in order to apply this from the reverse side to its own ends which are foreign to morality, and according to set up positive legislation and the means for maintaining it, in other words the State". (Schopenhauer 1969 l, p.346). So every element discussed below belongs -according to Schopenhauer- to his natural law theory.
Though he described almost all of the aspects of the legal doctrine (cf.Brinkmann, 1958), only the following aspects will be described in this article, because they are the most important one's:
1) The explanation of the origin and object of the State.
2) The derivation of the right to punish (the criminal code) and
3) The derivation of the right to property.

Phenomena of public law.(the State)
This will be divided in: the state, criminal law and procedural law.

II.1. The state and its origin.
The origin of the state is by state contract or law. The reason why a state has to come into being is to prevent disorder and anarchy or "to diminish the suffering spread over all, as well as to distribute it as uniformly as possible",...(Schopenhauer 1969 I, p. 343)[4]
To Schopenhauer's opinion there is no question of a state in the case of anarchy or despotism (cf.Schopenhauer 1969 I, p. 343).
The state comes into being by a convention between the monarch and his subjects. Schopenhauer's point of view is contradictory to that of Hobbes. Because the latter wanted to eliminate the right to resistance (and natural law), he saw the state as a convention between citizens. That way the most important reason for resistance would be eliminated and that would be in favour of the third: namely the monarch (cf.Neidert 1966, p.133).

II.2. The purpose of the state and its realization
The state is *not* the condition of freedom in the moral sense. As Schopenhauer says: "The state is set up in the correct assumption that pure morality (i.e. right conduct from moral grounds), is not to be expected; otherwise it would be superfluous" (Schopenhauer 1969 I, p. 345).
Schopenhauer sees the realization of the purpose of the state (the well being of everyone) only in the negative that is to say as an institute that guarantees protection (the state as a night watchman).
Aims of the state are:
a. First of all protection directed outwards; this is *international law*.
b. Protection directed inwards, that is, protection of the members of state against one another, and consequently the safeguarding of *private right*. But the granting of this twofold protection brings about the need for a third:
c. Protection against the protector and thus a guarantee of *public right*. (Schopenhauer 1958 II, p. 594-595). Here Schopenhauer refers to the Trias politica theory. As Brinkmann puts it: "Dies bedeutet Sicherung des öffentlichen Rechts, die am vollkommensten durch die Trennung der schützenden Macht in die drei voneinder unabhängichen Gewalten der Legislative, Jurisdiktion und Exekutive erreichbar scheint" (Brinkmann 1958, p. 51-52).

ll.3. The relation of the state to morality
The difference of morality and the theory of legislation is: "morality is concerned exclusively with the *doing* of right and wrong, {...} political science, the theory of legislation, on the other hand is concerned solely with the *suffering* of wrong" (Schopenhauer 1969 I, p.344). "In morality it is the will that counts, in the State the deed". (Schopenhauer 1969 I, p. 344) That is why the *thought* of murder will never be punishable, only when the murder (or the attempt to it) has really been committed.
This distinction between morality and legal theory implies three conclusions:
1) If the state attains its object completely, (the well-being of all), then it will achieve the same as if perfect justice was everywhere (cf.Schopenhauer

1969 I, p. 345).

2) Though the State would gladly see to it that everyone experienced benevolence "only the negative, which is just the right, not the positive, which is understood by the name of charitable duties, can be *enforced*". (Schopenhauer 1969 I, p. 346)
3 The legislation thus coming into being is a positive one and the State a ju - ridical association (cf.Schopenhauer 1969 l, p.346).

But shouldn't we separate law or right from morality? Or should the role of the State be one of a moral agent? First both morality and civil legislation are concerned with the actions of men, and secondly they are both concerned with such actions as the welfare of other human beings.
The difference between ethics and (civil) legislation is that in ethics "we are above everything interested in what a man does from the point of view of its inner significance {...} From the standpoint of politics and the State on the other hand, this sort of consideration is irrelevant. Here the sole concern is with preventing men from suffering harm at the hands of others". (Gardiner 1997, p. 268-269). The state then is no moral agent, neither should religion play a role (Philatheles in: Schopenhauer 1974 b II, p. 331).
Another point concerning morality and the state is:
Schopenhauer rejects the idea of Hegel and his pupils to see morality as the pure order to an adequate state and family life. He also rejects that morality is aiming at the acting of a great mass of people and not of the individual person (cf.Hübscher 1973, p. 205). In the same way Schopenhauer opposes to the "Romantische Schule" and agrees with Heine who compared the adherents of this school with the Jesuists, who want to confirm the existing order and want to protect religion and the state (cf.Lütkehaus1980, p.43 with reference to Schopenhauer 1966-1975, 4-1, p.217)[5].

The second Phenomenon of public law is:

III.1. The criminal code.
Schopenhauer's basic assumption in his theories – whether it be the criminal code or morality is that of pessimism and determinism[6]. This conception was the point of departure (and determining for the criminal law theories) and already described in his first book, his thesis "On the Fourfold Root of the Principle of Sufficient Reason" (Schopenhauer (1813) 1974 a). This principle of sufficient reason has been formulated for the first time by Leibniz and this principle knows, according to Schopenhauer, a fourfold root of which the fourth is the most important one nl. that of acting (cf.Cliteur 1985, p. 150). Our acting finds his reason in our character, which is determined and so is our will. That is to say: the individual will. Schopenhauer distinguishes two kinds of will: the will as such, as the thing – in – itself, is *free* (Schopenhauer 1969 I, p. 286 etc.), but the individual will is strictly determined. Because his theory of the Sufficient Reason "rules the world of the phenomena" (and the individual will is part of it) how can there be freedom? Because Schopenhauer's concept of freedom is a negative one, nl. the denial of necessity (cf.Cliteur 1985, p. 151). Schopenhauer likes to ring changes on the Judeo-Christian view that our *esse* is determined, while our *posse* is free: "no, he says, on the contrary, it is our *esse* that is free and our *posse,* that is determined". (Magee 1997, p.206-207) It fits the point of view of the ancient classics. In fact "Schopenhauer mocks with scorn the Judaeo-Christian idea, that a God made us and gave us a free

will".(Magee 1997, p.206) It also fits with Schopenhauer's ideas of and association with Eastern religions.
Because the individual will is not free according to Schopenhauer, his view on criminal law is definitely different from that of (let us say) Kant's. First there will be a description of Schopenhauer's criminal law theory and then a refutation of his theory concerning the free will and determinism.

III.2. The purpose of the law.
Because the citizens from Schopenhauer's point of view cannot *choose* to obey the law (because of his determined character) they can only be more strongly motivated to keep the law rather than to break it (cf.Magee 1997, p. 204). Schopenhauer states that "the law i.e., the threat of punishment, aims at being the countermotive to crimes not yet committed" (Schopenhauer 1985, p.101). That means that punishment is necessary and that the state must exercise his power to punish. The immediate *object of punishment* is *fulfilment of the law as a contract.* It refers to deterrence: "Therefore that the object of punishment, or more precisely of the penal law, is deterrence from crime is a truth so generally recognized and indeed self-evident{...}" (Schopenhauer 1969 I, p. 347-348).

The purposes of the criminal code is twofold.
1. If the criminal law aims at the *past*, then Schopenhauer sees the criminal code as a deterrent and not as a means of retribution, because of the same idea of determinism. Brinkmanns objection is as follows: if the criminal code is not retribution but deterrence, how could that work, because the act (of wrongdoing*), had* to take place because of the criminals determined character and motivation? How could the criminal code become a countermotive? "Kurz, Schopenhauers Strafzweck ist gerade das, was der Vergeltung vorwirft: Unrecht". (Brinkmann 1958, p.151)
2. But the criminal law aims at the *future*, not at the past: in that case retribution is also denied by Schopenhauer: he does not believe in punishment "tout court". Brinkmann agrees with Schopenhauer, but he has the following objections:
First: the criminal will be rendered harmless for a while or forever by imprisonment or death penalty. Second, it compensates the violation of the law, which is based on justice (cf.Brinkmann 1958, p. 151 - 152 with reference to Schopenhauer, 1898 p. 176).That is what justice is all about. Brinkmann does not agree with Schopenhauer's polemics against this. Retribution is not the same as revenge. It has to do with *justice.* That and safety is the straight aim of the criminal code. It is even a duty of the state to punish this injustice (cf Brinkmann 1958, p. 151-152).

IV Schopenhauer's theory concerning the property.

IV.1. Definition of property.

Also in respect of the theory of property Schopenhauer's ideas differ from those of Kant (and perhaps from other theories concerning property). The starting point of his theory of property is that it can only be based on elaboration and cultivation. Schopenhauer continues as follows: ”Kant's whole theory of law is a strange tangle of errors, one leading to another, and he attempts to establish the right to property through first occupation. I can explain this only by Kant's feebleness through old age. For how could the mere declaration of my will to

exclude others from the use of a thing give me at once a right to it?". (Schopenhauer 1969 1, p.336)[7] Warschauer rejects this theory of property. He has the opinion, that Schopenhauer's theory about property has three failures:
1 he considers the theory of Locke as the only basis of property,
2. he misjudges the notion of labour and
3. his ethical –natural-law way of thinking (cf.Warschauer 1911, p.47-50).

IV.2. The extent of the right to property and its use.
Schopenhauer's idea about property is one of unlimited power and free disposal. "From this it follows that he can hand over his property to others by exchange or donation". (Schopenhauer 1969 I, p.337) Nowadays we still agree, that a possessor can hand over his property freely, but unlimited power, is that possible with the now existing restricting laws concerning property? It also follows, according to Schopenhauer, that "one of the grounds of right (to property) nl. based on formation, is always sufficient". (Schopenhauer 1969 I, p. 336 note 39) The subject of the transfer and unlimited power concerning property will not be discussed here, nor Schopenhauers idea of property and the origin of poverty.

lV.3. The moral notion of property.
Property can also exist outside the state (cf.Lütkehaus 1980, p.28 and 30). Warschauer criticised Schopenhauer's theory of property because he wanted to give it a foundation on moral grounds. "Es gibt keinen moralischen Begriff des Eigentums. Wir sehen daher im Eigentum einmal eine sozial-rechtliche-keine naturrechtliche-Tatsache". (Warschauer 1911, p.52-53)

V. The natural law theory.
After having described Schopenhauer's natural law theory , a short survey will be given of the classical Natural Law Theory.
The Natural Law Theory has a history as long and extensive as the history of philosophy itself (Porter 1999, p.29). Almost every great philosopher has his ideas about it.
A univoqual objective definition is impossible, but the concept of natural law has been used over the centuries to designate a remarkable persistent doctrine concerning the moral basis of law.

V.1. Elements of classical natural law.
The most dominant elements of classic natural law are:
1. *An eternal code and unchangeable law.*
   That means that such a law is practiced by all mankind, is binding over all the globe in all countries, and at all times (cf.Cliteur 2000, p. 16 with reference to Blackstone 1973, p. 29). It could also be defined as "ein übergeordnetes, vorstaatliches Recht"(Neidert 1966, p.132).
2. *Nature and Reason*
   "The Theory of Natural law holds, that moral judgements are "dictates of reason" (Rachels,1986 p.45).That implies the following:
   In the Middle Ages natural law was connected with the concept of God, but in the time after the Reformation the element of reason became the most important one. Nature of man was now identified with the possession of reason. "Natural law sounds like a theory that divorces morality from religion and in a way it is - it associates morality not with religion but with reason" (Rachels 1986, p.45).__
3 *Natural law is used as a standard*

Divine law, or natural law, is used as a standard to measure positive law.

4. *Positive law that contradicts natural law is no law.*
   According to legal positivists, adherents of natural law do not honour the separation of law and morals.
   One of the most controversial thesis of natural law-thinking is the conviction that any law that contradicts natural law is considered null and void: "It is declared not that such a sentence was *bad* law, but that it was *not* law". (cf.Cliteur 2000, p. 17, quoting Blackstone 1973, p. 51)
5 *The governing body must be limited* and respect for this limitation should be guaranteed. The political authority has to recognize and respect the natural rights of man. [8]

Natural law theory has suffered several criticisms:[9]

a) "Since the time of the Reformation, Protestant theologicans, have tended to view the doctrine of the natural law as an expression of human pride, an effort to establish human righteousness apart from God's law and God's grace".(Porter, 1999 p. 30) Porter does not mention names, but it is most likely, that she meant Luther and Calvin. This line of criticism is powerfully expressed in this century (20th) by Karl Barth, Reinhold Niebuhr and Stanley Hauerwas (cf.Porter1999, p.30). In fact the Calvinists maintained, "that human nature, as we find it, is so corrupt, that it cannot form a sound basis for ethical reflection". (Devine 1994, p.143) Luther gave up the traditional three step phases in the law: the divine law is unattainable for the sinful people.

b) Legal Positivism:

Legal Positivism observes "accurately that it is on the basis of actual practice and knowledgement within the legal system, not moral judgement, that we regard a law as valid and recognize an entitlement under it". (Weinreb1987, p.261)

In the 19th century, after a long period of acceptance, the idea of the law of nature was heavily attacked, especially by Legal Positivism.

According to the Positivists there was nothing in common between human beings, nor a common rule, not from the moral point of view and not from the legal point of view (cf.Leclercq 1963, no 65, p. 283). In Germany the Historical School refuted, that law could be a product of reason. Instead it was the expression of the soul of a people whose law is latent in its manners and expressed in its customs. "German Positivism not only banned from legal science any consideration of the moral ends of law, but it was also indifferent to what I have called the inner morality of law itself". (Fuller 2003, p. 106 and cf.Fenck 1933, p.47). In England it was Bentham, who refuted the idea of Natural Law. And also in France, the idea about Natural Law changed.[10] But there has been a revival of the doctrine of natural law in the late 19th and early 20th century. After the Second World War, especially in the former Third Reich the interest in natural law grew.

There is an explanation for this: "After a revolution or major upheavals,{....} it may then appear tempting to say that enactments which joined or permitted iniquity should not be recognized as valid, or have the quality of law, even if the system in which they were enacted acknowledged no restriction upon the legislative competence of its legislature. It is in this form that Natural Law arguments were revived in Germany after the last war in response to the acute social problems left by the iniquities of Nazi Rule and its defeat".(H. Hart 1994, p. 208-209).After having described the general content of natural law theory we

should sum up the natural rights, which are by definition invioable and inalienable (Voegelin 1999, p.226-227):

a) Freedom
b) Civil or human rights
c) Equality and equal treatment before the law

Schopenhauer refers rather frequently to natural law and its implications, but it is questionable whether he really embraces natural law as such, in the classical way of thinking. In any case he opposes to Kant in different ways.

V.2.1. Freedom

This is one of the most important elements of the natural law theory. "Human dignity was grounded in the capacity for moral discernment and self-direction enjoyed by each adult. By the same token, they value human freedom, seen as the capacity for self-direction on the basis of the individual's own moral discernment, and some, ... , express this through a defence of natural rights". (Porter, 1999 p.316-317) Schopenhauer discerns three kinds of freedom (Schopenhauer 1972 lV, p.3 ev)[11]:

Physical freedom, the intellectual freedom and the moral freedom. The first two kinds of freedom are simple: if there is no physical obstacle, there is freedom. Schopenhauer's concept of moral freedom is a negative one. It means “without sufficient reason, without necessity” (cf.Cliteur 1985, p.151). Schopenhauer's ideas about moral freedom is one of determinism and fatalism (cf.Cliteur 1985, p.150 - 151 and Schopenhauer 1985 p.7-8). In order to explain this, I would like to refer to Schopenhauer himself: "After reading my prize-essay on *moral freedom*, no thinking man can be left in any doubt, that such freedom is not to be sought anywhere within nature, but only without. It is something metaphysical, but in the physical world something that is impossible. Accordingly, our individual deeds are by no means free". (Schopenhauer 1974 b 11, p.226) And later he speaks of "the illusion of a complete freedom of will {....} has in that essay been reduced by me to its true significance and origin". He also notes, that "the course of life is precisely determined from A to Z" [12] (Schopenhauer 1974 b 11, p.234).

According to Schopenhauer the human character is a datum and unchangeable, but not the motive (cf.Cliteur 1985, p. 155).This means, that Schopenhauer agrees with the Natural Law concept on the concept of the character. This in contrast to – let us say – the positivists and socialists, who think that a character of a human being is changeable and thus “make-able” and natural law "presupposes a human nature, which is the same everywhere". (Porter 1999, p.29) But it does not mean, that his concept about the motive is in accord with the natural law concept.

There are writers who make their objections to this negative concept of reasoning, especially when applied to the phenomenon of guilt (Coppleston 1946, p.147-150)[13].

V.2.1.1 The freedom of religion (and speech).

Schopenhauer's attitude towards religion is rather complex.

He was not a theist, nor an agnost or a pantheist. He simply was also influenced by another religion than Christianity, nl. Buddhism.[14] He is very opposed to all those religious wars with its "fanaticism, the endless persecutions ... that bloody madness of which the ancients had no conception" (Schopenhauer 1974 b II, p. 356). Which means, that he must have been a proponent of the freedom of religion (Schopenhauer 1974 b II, p. 344). If he

fulminates against the “Judaeism”, it is more that he thinks the Christian faith an heir of the Jewish religion. He also mentions the Jewish theism and its denial of metempsychosis (reincarnation) (Schopenhauer 1974 b II, p. 365-366).
One of the other consequences of this Buddhist theory is, that he opposed to the separation of man and animals as non-human beings (cf.Schopenhauer 1974 b II, p. 370).
That has had as a consequence that in our days human rights are not restricted to human beings, but that animals should not be excluded from them. "The question is not, Can they *reason*, nor Can they *talk* ?, but Can they *suffer*? That is the common mark between animals and human beings" (Rachels 1986, p. 86 referring to Bentham and Cliteur en van Wissen 1998, p. 33)

V.2.2. Civil or human rights.
That includes (individual rights, like) freedom of the press, freedom of opinion, freedom of association and of assembly, freedom of religion, equality before the law, the rule of the nulla poena, equality of opportunity for public services, the right to vote, the right to petition.
Those rights are more or less incorporated in the constitutions of our western world.[15] In any case Schopenhauer accepted the rights of men as equal (cf.Schopenhauer 1974 b II, p 241). This right is only applied to original and abstract rights, and excludes possession and honour. Though Schopenhauer accepts some equal rights for the citizen, he opposes to the application of *English civil* rights to the German law, because "these forms are natural and appropriate to the English people, this in contrast to the German people. The English … have this system of parliament because such things have come gradually from the force of circumstances and the wisdom of life itself" [16] (Schopenhauer 1974 b II, p 256-257).
One of the civil rights is the freedom of the press. This right was not very much supported by Schopenhauer. His attitude was ambiguous. "In this respect the freedom of the press is certainly for the state machine what the safety-valve is for the steam-engine. On the other hand the freedom of the press may nevertheless be regarded as a permission to sell poison, poison for the heart and mind. For what is there that cannot be put into the head of the masses?". (Schopenhauer 1974 b II, p 251)
But one civil or human right is not regulated and that is obvious: the right to resistance.

V.2.2.1.The right to resistance.
This right is one of the features of natural law (and civil rights). According to Neidert Schopenhauer did not have a decisive point of view for this problem (cf.Neidert 1966, p. 115).
In fact – and that is obvious from his conversation with Frédéric Morin in 1858 – Schopenhauer rejected the revolution of 1848 as being rather silly and “bourgoise” (cf.Schopenhauer 1971, p.332), this in contrast to the French Revolution[17]. But he did oppose someone like Napoleon vehemently (cf.Neidert 1966, 135). He added also as an argument that the character of individual persons never changes, so how could that (character) of a whole people change? (cf.Schopenhauer 1971, p.332). In fact because of his experiences during the revolution year 1848 in his hometown Frankfurt, he was more known as a "Democratenfresser"[18].
He even left his seemingly large fortune to the “invalide gewordenen preussischen Soldaten” of 1848/1849. Meant here were the Prussian soldiers,

who became invalid during those revolutions! He was hated because of that (cf.Neidert 1966, p 119 with reference to Gutzkows).[19]
Perhaps, as Neidert postulates, the reason of Schopenhauer's silence [20] about the right of resistance was the censorship in those days. He might have lacked (civil) courage (cf.Neidert 1966, p. 138). He had not an open, clear opinion of this right to resistance, though he was more an opponent than a supporter of those revolutions [21]. He had not the elevated ideas like for example Althusius who could reason his support to the right of resistance, because Althusius believed that the sovereignty belonged to the people (cf.Althusius (1603)1948, p. 38-41).

V.2.3. The equality before the law.
Because Schopenhauer starts from the concept of right as a negative one and of the concept of wrong as a positive one, his concept of human rights is simple: "everyone has the right to do that which injures no one" (Schopenhauer 1974 b II, p 241). "Although the powers of man are different, their rights are nevertheless equal "(cf.Schopenhauer 1974 b II, p.241).
But there are exceptions: women and Jews. It concerns only oath, inheritance and property and equality of opportunity for public services. Though the exclusion of women was not really exceptional in those days, it was especially his vehement way of putting his theories about women (mostly), that made it an exception[22] (cf.Schopenhauer 1974 b II, p 618). Also the *right to inheritance and* property should be restricted, when women are involved, which should be because of their extravagancy (Schopenhauer 1974 b II, p. 260). The only exception is there, when she has earned the money or capital herself (cf.Schopenhauer 1974 II, p. 626). They should not be given equal rights, "because *injustice* is the fundamental failing of the female character" (Schopenhauer 1974 b ll, p. 617).
Also Jews were excluded from some natural rights. Schopenhauer does not speak of properties or oath. Schopenhauer thought that since the Jews did not have a country of their own at those times, "the rest of the Jews are the fatherland of the Jew. It follows from this that it is absurd to want to concede to them a share in the government or administration of any country" (Schopenhauer 1974 b II, p. 262). But: “justice demands that they should enjoy with others equal civil rights” (Schopenhauer 1974 b II, p. 264).
In the Second World War the antisemist and the Nazi writer J. Denner used the writings of Schopenhauer (cf.Brann 1975 p.1 with reference to Denner 1943). H. Brann has a more differentiated approach to this aspect of Schopenhauer. In reality Schopenhauer admired the Jews (though he was not aware of that himself) and he was in fact attracted to them. Schopenhauer had many jewish friends like Frauenstädt, Lindner, Emden and he admired Spinoza and Heine (cf.Brann, 1975 p.2-5, 39 and 111).[23] He rejected the theism, monotheism and optimist Jewish God, - he a thorough pessimist! – but in fact he was a little bit afraid of them.

VI. Conclusion.

VI.I Schopenhauer's natural law theory and its denial
As has been described already, natural law theory has its components that reach back to and has its roots in the Greek-Latin tradition (cf.Leclercq 1963, no. 65 p. 271).

Now if we see what Schopenhauer describes as natural law doctrine, he does not sum up the earlier-mentioned criteria of an eternal and unchanging law, that rules the world (cf.Schopenhauer 1969 l, p.347). He uses this term for eternal justice, while on the contrary the natural law doctrine belongs to temporal justice.
But would the classical natural law theories fit in Schopenhauer's theories?

1. Classical natural law is a concept of western philosophy.[24] Schopenhauer is in fact an adherent of Buddhism and this religion does not tolerate that the human race feels superior to nature or the other way round. The Buddhist human being is part of nature. This is in contrast with the western philosophical way of thinking until the 20th century. Kant for example would not exactly torture animals, but they have no rights in his opinion (cf.Rachels 1986, p.114 etc).
2. The ideal of (eternal) unchangeable law. Schopenhauer says that the state constitution of the USA, that embodies *abstract* right, "would be excellent for natures other than human". So he does not accept that the citizens would submit themselves to abstract right. On the contrary: he speaks of "the necessity of power, which is concentrated in one man, is itself above all law and right, and is wholly irresponsible" (Schopenhauer 1974 b II, p252-253).So he does not respect a limited authority.

It is perhaps a little early to come to a conclusion, but one or two things can be said:

1. There is no exact definition of natural law in Schopenhauer's writings (cf.Damm 1901, p. 30, 14-15).
2. Though he does not mention the struggle between Thibaut and von Savigny, he might have tried to reconcile the Historical School and natural law theory (cf.Damm 1901, p. 30)[25].
3. Hence the fact that his natural law theory deviates from the classical natural law theory (see Schopenhauer 1969 I, p. 347).
4. And also his features of the natural law suffer criticism: Fenck, Oscar Damm, Brinkmann and others considered his ideas about natural law wrong. (see also Schopenhauer 1969 l, p 347).

VI.2. There is no exact definition of natural law in Schopenhauer's writings.

That is not only the idea of Oscar Damm (Damm 1901, p. 14-15), but also of Neidert and Brinkmann.[26] "Bei ihm, dem Virtuosen des Stils und Freunde klaren Denkens, ist dieser Mangel wohl kein bloss zufälliger". (Damm 1901, p. 14-15) But instead of contending that Schopenhauer is more a natural law thinker than an adherent of the Historical School (according to Neidert 1966, p. 125), I want to prove that he is more removed from natural law thinking than from the Historical School (see also Damm 1901 p.43).

VI.3. The struggle between natural law adherents (Thibaut) and adherents of the Historical School (von Savigny).

It all started with a book of Thibaut called "Uber die Notwendigkeit eines allgemeinen bürgerlichen Rechts" (1814). In those days the German civil law consisted of Roman, German and French law and Thibaut based this theory on natural law, which was very understandable in those circumstances. On that von Savigny answered with the pamphlet "Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft" 1815. Their difference of opinion consisted of two points of struggle:

1) In that article Savigny introduced the *inductive* method instead of the deductive method, a method used by natural law thinkers. The point was, that von Savigny did not attack the theory of Thibaut as such, but only the existence of the Rule of Reason or Natural Law (cf.Damm 1901, p.10). According to von Savigny, law could not be rational, it was on the contrary the expression of the soul (of the people). This was a historical and romantic approach.[27] Though Schopenhauer wrote his first great work in 1819, he did not mention either Thibaut or Savigny (cf.Neidert 1966, p.125), but it can be of no doubt that Schopenhauer must have known about this struggle (cf.Damm 1901, p.12)
2) According to the traditional natural law thinker, natural law is not only a law, but it is absolute law and its source stems from God or from pure natural relations. The way by which we can know natural law, is only by human reason, that can display the principle of law and its consequences (cf.Damm 1901, p. 12). Rachels speaks of "dictates of reason" (Rachels 1986, p.45). The adherents of the Historical School on the contrary deny an absolute law, given by God or nature. According to them that law is relative, a law of this people and this time and this place (cf.Damm 1901, p.12).
J. Leclercq describes this "positivist" movement as a "tempête positiviste", which grew stronger and stronger. But the natural law thinkers had a strong position, nay the official position. They did not notice this movement at the beginning (cf.Leclercq 1963 no. 65, p. 276).
It might be possible, like has been said before, that Schopenhauer wanted to reconcile those two movements.

VI.4. Schopenhauers natural law deviates from the classical natural law.
Hence the result of Schopenhauer's doctrine of law is neither a "pure" natural law theory nor a positivist one. Gardiner says that there is an important inconsistency in his writings. As an adherent of the Historical School he was not supposed to adhere the theory of natural law and yet he himself says that he is. There is so to speak an "air of paradox" in his writings (cf.Gardiner 1997, p. 252).
And one more argument can be added: natural law theory is a western concept and Schopenhauer as an admirer of Buddhism could therefore not adhere to natural law. Or as Gardiner put it: "And it is unquestionably true, that several of the leading ideas upon which Schopenhauer lays most stress in his system have analogues in the belief that are integral to much of the religious thought in India"(see also Gardiner 1971, p.293-296).

VI.5. The elements of Schopenhauer's natural law theory.
Schopenhauer's approach to the *conception of right and wrong* can be called at least different from the usual approach. While most of the jurists or philosophers would call justice the positive factor, and injustice as the derivative, Schopenhauer has the opinion that *injustice* is the positive and justice the derivative (cf.Schopenhauer 1969 I, p. 345). This subdivision surely was not applauded by everyone. Not only Brinkmann, but also Fenck, Warschauer, Bovensiepen, they all tried to refute Schopenhauer's theory (Brinkmann 1958, p. 100,104-105). Warschauer speaks of a "Grundfehler seiner Lehre" (Warschauer 1911, p. 42). Warschauer (and he is not the only one) says: "man mag das Wesen des Rechtes fassen, wie man will{....}, immer zeigt es sich uns als hervorragend, positiver Begriff, als Grundlage des Staats-und Völkerdaseins, als unerschüterliche Basis aller Kultur" (Warschauer 1911, p. 42-44).

Fenck's objection is more concise: he only asks himself why Schopenhauer does not give the reason why something is right or wrong anyway (cf.Fenck 1933, p. 50).
As we have seen, the derivation of the *right to property* according to Schopenhauer differs from that of Kant's. Also his concept of the origin of poverty was quite original. But his theory of property was not that spectacular or revolutionary and could fit in natural-law theories.
Schopenhauer's conception about *contracts* is not "revolutionary". He opposes to a broken contract "as a complete lie, since all the stipulations mentioned are here found completely and clearly together". (Schopenhauer 1969 I, p. 338)
As we have seen before, Schopenhauer sees the origin of the *state* as a contract between the monarch and his subjects. His theory differs from that of Hobbes, who wanted to eliminate the right to resistance (a natural right). But there are other aspects to be discussed nl. the state constitution. Schopenhauer does not believe in a state constitution that embodies abstract right (cf.Schopenhauer 1974 b II, p. 252-253).
In this respect he refers to the constitution of the USA. This has as a consequence the following two aspects:
1) He does not accept abstract right in a constitution and especially the American constitution includes - as we know - natural law doctrine. Does that imply that Schopenhauer is against the natural law doctrine?
2) In consequence he sees the necessity to put in charge one man or *one* family in which the whole power will be concentrated and even raised above the law, a king with the mercy of God (Schopenhauer 1974 b II, p. 249 and Schopenhauer 1969 1, p.343-344). That means a refutation of the separation of powers. Neidert even speaks about Schopenhauer's vision of the state as of a "Staatlichen Absolutismus" (Neidert 1966, p.128 with reference to O. Damm). But Schopenhauer also said: "the question concerning the sovereignty of the people turns at bottom on whether anyone can originally have the right to rule a nation against its will. I do not see how this can be reasonably maintained" (Schopenhauer 1974 b11, p.248).

As has been described before Schopenhauer's theory on *criminal law* was quite different from the classical natural law point of view. It deviated from Kant's theory and as we have seen, it was quite modern in those days.
Schopenhauer's definition of *freedom*- the most difficult part of his theory- has been explained earlier (cf.Schopenhauer 1974 b 11, p.226). He divides freedom into the three categories. But which kind of freedom is required for the application of natural law or natural rights? Considering the freedom of speech or of the press and even of resistance, it can be said, that only political freedom is required and that belongs to physical freedom (cf.Schopenhauer 1985, p.4). The question will be more complicated, when there is a possible collision between positive law and natural law. Here we can speak of moral judgement. About which kind of freedom are we speaking then? If moral freedom is involved, then Schopenhauers concept of freedom is totally different from the usual concept of liberty, used by adherents of the natural law theory. They use the concept of liberum arbitrium indifferentiae. And if Schopenhauer claims, hat our *esse* is free, but that our *posse* is determined by our esse, would that concept converge with the valid concept of natural law? A second question would be: to whom applies the natural law theory? If natural law concerns subjects of individual will and those subjects are determined- in opposition to classical natural law theory (see Smilansky in Kane 2002, p.490-491)- and they possess natural rights all the same, then

natural law is compatible with determinism. When Schopenhauer's determinism does not contradict natural law, that would be a new kind of natural law position.
Civil or human rights are accepted by Schopenhauer, but only in a limited way. But that was not an exception to the rule in those days.
One of the elements of natural law is *reason.*
As Atwell puts it:" Growing up during and maturing just after the Age of Reason, he demoted reason from its erstwhile predominance in human life and placed will in its stead". (Atwell 1995, p.IX) The implication is then, that, if Schopenhauer replaces reason by will (especially his metaphysics of the will) the meaning or impact of his concept of natural law is different from the standard conception. But the basis of Schopenhauers ethics is sympathy, (cf.Bobko 2001, p.68 ev) and if not "an all-good being rules the world, nor the devil, but something just as evil-the will" (Atwell 1995, p.16), is then the concept of natural law changing?
As has been said in the beginning: Schopenhauer did not consider the theory of justice or natural law theory as the most important element of his writings. I only wanted to show, that Schopenhauer thought that he was a (classical) natural law thinker, but in reality was not. Or that on the one hand his theory lacked the classical principles and on the other hand added new ideas to natural law theory, like his metaphysics of the will and his concept of freedom. For how can one say to be an adherent of the natural law doctrine, if he is denied the right to resistance (according to Schopenhauer)?
In the first case: (like Passerin d'Entrèves puts it) is it possible to refuse to obey to a law, which is valid according to a juridical point of view but unjust from the moral point of view and to whom we have to address ourselves? It can be addressed to citizens and in that case we confirm ourselves to an appeal to resistance. It can also be addressed to officials. But the most important question will be: what will the judge do in case of an unjust law? Far more than the simple citizens, the judge can contribute to this. Passerin does not understand the argument of Hart nl. that there is a difference between declaring that a law is not valid and not applying him. Must there not be a criterium of validity that has to be superior to the system? (cf.Passerin d' Entrèves, 1963, no. 65 p. 332). As Hannah Arendt words it so precisely: "Practically speaking, however, orders to be disobeyed must be "manifestly unlawful" and unlawfulness must fly like a black flag above [them] as a warning reading "Prohibited!" - as the judgement pointed out. And in a criminal regime this "black flag" with its "warning sign" flies as "manifestly" above what normally is a lawful order - for instance, not to kill innocent people just because they happen to be Jews - as it flies above a criminal order under normal circumstances". (Arendt 1984, p. 148) All those questions are not to be found in Schopenhauer's theory of Natural Law (and resistance).
But natural law can be a help (much more than positivists think) nl. to make a contribution to the definition of the rules of positive law and if there are gaps in civil law, the judge can create new justice (he has then a real normative power) (cf.Foriers 1963 no. 65, p. 345-347). It is simply all about certain human values.

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What Brinkman refers to is not quite correct. Schopenhauer says indeed that he is a layman, but that concerns a specific juridical question (see Schopenhauer 1978, p. 325). That question was about the rent given by a certain mrs. M. and Schopenhauer considered that as a gift. But in my opinion Schopenhauer did not doubt his capacity concerning the theory of justice and natural law.

[2] He was not the first philosopher, who occupied himself with this problem: also in Antiquity philosophers made the misery of life as their first priority. "The Hellenistic Schools in Greece and Rome-Epicureans, Skeptics, and Stoics-all conceived of philosophy as a way of addressing the most painful problems of human life. They saw the philosopher as a compassionate physician". (Nussbaum 1994, p.3)

[3] Pernin describes this as follows:"Schopenhauer trace une ligne de démarcation entre le génie et les autres hommes". (Pernin 1999, p.115)

[4] See also Malters reference to the Willensmetaphysik in relation to the state (Malter 1991, p.361).

[5]{..}"bescheinigt er Heine, wenn er in der Romantische Schule die deutschen jetzigen Staatsphilosophen den Jesuiten vergleiche, indem sie die Justifikatoren des Bestehenden und Vorhandenen seien, Religion und Staat schützen zu wollen"(Schopenhauer 1966-1975, 4-1, p.217).

[6] Though Schopenhauers pessimism was an essential part of his theories, it will not be fully discussed in this article, but he was not the only one in his time (See Petrachek, 1929 and Hübscher 1973, p.176).
See also P.Sipriot" Le pessimisme des forts ou la force de l'optimisme" Editions du Rocher , 1988 Chatillon-sous-Bagneux, p. 179-201 and 21-39.Also A.Dörpinghaus "Mundus pessimismus". Untersuchungen zum philosophischen Pessimismus A. Schopenhauers", Königshausen und Neumann, Würzburg 1997. See also Pernin, who describes the concept of Schopenhauer about the predestination.

[7] In order to illustrate this, Schopenhauer gives an extreme example:"Therefore, although a family has hunted over a district alone even for a century without having done anything to improve it, it cannot without moral injustice prevent a newcomer from hunting there, if he wants to. Thus morally the so-called right of pre-occupation is entirely without foundation" (Schopenhauer 1969 1, p.336-337 with reference to the Laws of Manu 1X,44).

[8] This general definition of natural law is not the definition of Hannah Arendt, who described natural laws as "the nazi's belief in race laws as the expression of the law of nature in man" (Arendt 1979, p. 463).

[9] Devine mentions more forms of criticism:
1)Post-modernists, 2) Positivists and 3) Calvinists, (Devine, 1994 p.143)

[10] In England Bentham denounced the theory of of natural law as arbitrary. In France the reactionary movements were not so much against natural law as against natural rights. The utopian socialists like St.Simon and Fourier emphasized society rather than the individual person and gave no value to law itself, whereas A.Comte set natural law aside for the sake of social physics. Marx' and Engels' point of view was expressed in the Communist Manifest (1847), where they took a firm stand against the idea of objective immutable or eternal truths. Communism would abolish eternal truths. In any case this

theory even disappeared from the higher and secondary schools and universities (cf.Wollheim 1967, p.561-562 and Voegelin 1999, p.219 ev).

[11] Not every thinker would agree with Schopenhauer: according to F.A.Hayek, "freedom is one, varying in degree but, not in kind" (Hayek 1960 p.12 etc).

[12] Referring to the notion of predestination, Pernin speaks about "La séparation des élus et des non élus" (Pernin 1999, p.118).

[13] Concerning this idea of Schopenhauer about (moral) freedom, Gardiner could say: "a number of his ideas seem to bear the imprint of a familiar theological creed: in this case the calvinist doctrine of predestination". (Gardiner 1997, p. 263)

[14] Hartmann even says that Schopenhauer has started a new epoch in the European philosophy of religion and culture. He has shown, that (someone as) an European can be religious, without being Christian (cf.Hartmann 1900 B XLL, second part p.205), but Malter said about Schopenhauer "der atheistische Soteriologe, Schopenhauer, kann trotz Bekenntnissen zu den gottlosen religionen des Ostens seine Christlichen Ursprünge kaum verdecken" (Malter, 1991 p. 369).

[15] Especially in the German Basic Law these rights are heavily protected (Karpen (ed) 1988, p.38).

[16] "On the other hand, the German Fritz "("Der Deutsche Fritz" in the original text. See Schopenhauer 1974 b ll p.274 and Neidert 1966 p. 38),"allows himself to be persuaded by his schoolmaster that he must go about in an English tailcoat and that nothing else will do" (Schopenhauer 1974 b ll, p. 256-257).

[17] Neidert says that Schopenhauer thought revolutions to be a big lie (Neidert 1966, p. 115 with reference to the "Gespräche"(1971)), but in fact when that was said it was said by Morin nl. that reason … is the theatre of an eternal revolution and Schopenhauer answered: “Oui, d’une éternelle révolution, par conséquent d’un éternel mensonge”. (Schopenhauer 1971, p. 336) So Schopenhauer is not all referring to a revolution like in 1789 or 1848!

[18] " Der Himmel befreie uns von aller Freiheit." (Which means litterally : may heaven liberate us from freedom) he wrote to von Quandt (Schopenhauer 1978 p.232).

[19] But in Schopenhauers view those soldiers had saved his financial independence (he was a person of private means), which was threatened by the Revolution of 1848 (cf.Neidert 1966, p.123 with reference to Lukacs).

[20] Schopenhauer seems to have used the word "Tyrannicidium", but did not apply it in his book "Die Welt als Wille und Vorstellung". The explanation for this behaviour was given by Neidert (cf.Neidert 1966, p.138)

[21] He wrote: " I have passed and suffered for 4 terrible months, because of fear and worries: all property, even the whole legal situation threatened " (Schopenhauer to Frauenstädt in the letter of 11-7-1848. Schopenhauer 1978, p.231).

[22] When he wants to exclude women from the unrestricted possession of wealth and property or wants to exclude them from the oath, the roots of this opinion are biographical. Because he could not support the elegant, extravagant style of his mother giving beautiful parties in Weimar. He simply was afraid, that he would lose his money, like he was afraid during the revolution of 1848 for the loss of his money. He was a product of the 19th century and his mother of the 18th. In any case he said "women are much more often guilty of perjury than

men; and in general it might be questioned whether they should be allowed to take the oath" (Schopenhauer 1974 b ll p.618).
[23] Referring to the statue of the King Friedrich 11, Schopenhauer said: "Auch Moses Mendelsohn sollte darauf stehen" (Brann 1975 p.39 with reference to the correspondence of Schopenhauer).
[24] This can be deduced indirectly from Rachel's remark (Rachels 1986 p.41).
[25] O. Damm counts Schopenhauer among the adherents of Natural Law, though (Damm 1901, p.27-28).
[26] "Eine Definition dessen, was er unter "Naturrecht" nun eigentlich verstanden wissen will, findet sich jedoch bei ihm nirgends; er arbeitet mit dem "Naturrecht" wohl vielfach, {....}aber er geht jeder Erklärung des Begriffes mit peinlicher Sorgfalt aus dem Wege" (Damm 1901, p.15).
[27] That struggle continued ever since, with nowadays Hart and Dworkin. See also "Philosophy of law and legal theory" edited by Patterson, Oxford 2003.

List of references.

Althusius, J.: "Grundbegriffe der Politik" aus "Politica methodica digesta et exemplis sacris et profanis illustrata" (1603 zu Herborn bei Christoph Convincius erschienen) Frankfurt am Main: Klostermann 1948, p. 36 ev.

Arendt, H.: "The origins of totalitarianism", Harcourt Brace and Company London 1979.

Arendt, H.: "Eichmann in Jerusalem; a report on the Banality of Evil", New York 1984(revised and enlarged edition).

Atwell, J.E.: "Schopenhauer on the Character of the World. The Metaphysics of the Will", University of California Press, Berkely USA 1995.

Blackstone, W.: "The sovereignty of the Law, Selections from Blackstone's " Commentaries on the Laws of England", edited with an introduction by Garreth Jones, MacMillan, London and Basingstone 1973.

Bobko, A.: "Non Multa.Schopenhauers Philosophie des Leidens", Königshausen und Neumann, Würzburg 2001.

Brann, H.: "Schopenhauer und das Judentum", Bouvier Verlag, Herbert Grundmann, Bonn 1975.

Brinkmann, H.: "Die Rechts- und Staatslehre Schopenhauers", E. van Hippel, Bonn 1958.

Cliteur, P.: "Spontaneous order, Natural Law, and Legal Positivism in the Work of F.A.Hayek" in : "Hayek revisited", E. Elgar, Cheltenham, U.K.; Northampton, MA, US. 2000 pp.14 - 32.

Cliteur, P. en van Wissen, R.G.T.: "De menselijke waardigheid als grondslag van mensenrechten", Telderstichting, Den Haag 1998.

Cliteur, P.: “Schopenhauer en het strafrecht”, Algemeen Nederlands Tijdschrift voor wijsbegeerte Antw. 773, 1985, p. 149-162.

Coppleston, F.: "Arthur Schopenhauer. Philosopher of Pessimism", The Bellamine Series XI Burns Oates, West-Bourne Ltd. 1946.

Damm, O.: "Schopenhauers Rechts- und Staatphilosophie", Halle Verlag von C.A. Kaemmeren en Co. Halle 1901.

Denner, J.: "Schopenhauer und die Juden", Archiv für die Judenfrage ", 1943.

Devine, Ph.E.: "Natural Law Ethics", Greenwood Press London, 1994

Dörpinghaus, A.: "Mundus pessimismus. Untersuchungen zum philosophischen Pessimismus A.Schopenhauers", Königshausen & Neumann, Würzburg 1997.

Fenck, K.: "Die Rechtsidee oder das Naturrecht des Menschen, unter besondere Berücksichtiging der Philosophie Schopenhauers", Brausdruck, Heidelberg 1933.

Foriers, P.: "Le juriste et le droit naturel" Essay de definition d'un droit naturel positif", Revue Internationale de Philosophie, Bruxelles Fondation universitaire de Belgique 1963 no. 65 p. 335-353.

Fuller, L.: "Positivism and Fidelity to Law: a reply to Professor Hart", in : "Philosophy of law and legal theory", edited by Patterson, Oxford 2003, p.91-116.

Gardiner, P.: "Schopenhauer", Thoemmes Press, Bristol (1963) 1997.

Hart, H.L.A.: "The concept of law", Clarendon Press, Oxford 1994.

Hartmann, E. von: "Ausgewählte Werke" Band XII. Geschichte der Metaphysik zweiter Teil: "Seit Kant", Herman Haacke, Leipzig 1900.

Hayek, F.A.: "The Constitution of Liberty" Routledge and Keagan, London 1960.

Hübscher, A.: “Denker gegen den Strom. Schopenhauer: gestern – heute – morgen”. Bouvier Verlag Herbert Grundmann, Bonn 1973.

Janaway, Ch.: "Self and the world in Schopenhauers Philosophy" Clarendon Press, Oxford 1989.

Karpen (ed), U. : "The Constitution of the Federal Republic", Nomos Verlagsgesellschaft, Baden Baden 1988.

Leclercq, J.: "Les équivoques du droit naturel" in: "Revue Internationale de Philosophie", Bruxelles, Fondation universitaire de Belgique 1963 no. 65 pp. 271-287.

Lütkehaus, L.: "Schopenhauers metaphysischer Pessimismus und die Soziale Frage", Bouvier Verlag Herbert Grundmann, Bonn 1980.

Magee, B.: "The Philosophy of Schopenhauer", Clarendon Press Oxford 1997.

Malter, R.: "Arthur Schopenhauer. Tranzendentalphilosophie und Metaphysik des Willens", fromman-holzboog, Stuttgart-Bad Cannstatt 1991.

Neidert, R.: "Die Rechtsphilosophie Schopenhauers und ihr Schweigen zum Widerstandsrecht", Mohr, Tübingen 1966.

Nussbaum, M.: "The theory of desire" Princeton University Press, 1994.

Passerin d'Entrèves, A.P.: "Un noyeau de bon sens (à propros de la théorie du droit naturel chez H. Hart)", Revue Internationale de Philosophie 1963, no. 65 pp. 312-335.

Patterson, D.(ed) "Philosophy of law and legal theory", Oxford 2003

Pernin, N-J.: "Nietzsche et Schopenhauer: encore et toujours la prédestination", L'Hermatton, Paris, 1999.

Petraschek, N.O.: "Die Rechtsphilosophie des Pessimismus", Verlag Ernst Reinhardt, München 1929.

Porter, J.: "Natural and divine Law". Reclaiming the Tradition for Christian Ethics", Cambridge U.K. W.Eerdmans, Publishing Company 1999.

Rachels, J.: “Elements of moral Philosophy.” Random House, New York 1986.

Von Savigny, C.: "Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft", Heidelberg, 1815.

Schaefer, A.: "Probleme Schopenhauers", Berlin Verlag, Arno Spitz, Berlin 1984.

Schopenhauer, A.
1898 "Neue Paralipomena, Vereinzelte gedanken über vielerlei Gegenstände" Grisebach IV
1958 The World as Will and Representation vol. II Dover Publications

New York. (1818) Translation by E.F.J. Payne.

1966-1975 "Der Handschriftliche Nachlass", hrsg. von Arthur Hübscher, 5 Bände, Im Verlag von Waldemar Kramer, Frankfurt am Main.

1969 The World as Will and Representation, vol. I, Dover Publications New York. (1818).

1971 Schopenhauer Arthur "Gespräche". Herausgegeben von A. Hübscher ,Friedrich Fromman Verlag (Günther Holzbag) Stuttgart-Bad Canstatt 1971.

1972 "Sämtliche Werke", herausgegeben von Hübscher, Brockhaus Wiesbaden IV. "Schriften zur Naturphilosophie und Ethik".

1974 a "Fourfold Root of the Principle of sufficient Reason", Frankfurt 1847 (2e ed.) Translation by E.F.J. Payne, Clarendon Press, Oxford.

1974 b "Parerga and Paralipomena" Short philosophical Essays vol. I and II, Translation by E.F.J. Payne, Clarendon Press, Oxford.

1978 Schopenhauer Arthur "Gesammelte Briefe", herausgegeben von Hübscher Bouvier Verlag. H. Grundmann Bonn 1978.

1979 "Preisschrift über das Fundament der Moral", Felix Meiner Verlag Hamburg (1840)1979.

1985 "On the feedom of the will", Basic Blackwell, New York.

Sipriot, P.: "Le pessimisme des forts ou la force de l'optimisme", Editions du Rocher, Chatillon-sous-Bagneux,1988.

Smilansky, S.:" Free will, fundamental dualism, and the centrality of illusion", in: "The Oxford book of Free Will", edited by Kane R.Oxford, University Press 2002.

Thibaut, A.F.J.: "Uber die Notwendigkeit eines allgemeinen bürgerliches Rechts", 1814.

Voegelin, E.: "The collected works", volume 31: "Hitler and the Germans", University of Missouri Press, Columbia and London 1999.

Warschauer, E.: "Schopenhauers Rechts- und Staatslehre", Verlag Gebrüder Böhm, Kattowitz 1911.

Weinreb, Ll.: "Natural law and Justice", Harvard University Press, 1987;

Wollheim, R. “Natural law”, in: The Encyclopedia of Philosophy, part 5, The-Macmillan Company and Free Press, New york 1967 pp. 450-454.