Although there is a wide consensus that the 19th century was the high tide of positivism in international law, there has been much less of a consensus as to what this much-vaulted positivism really was—or even whether there can coherently be said to have been any such thing as “the” positivist philosophy of international law. These misgivings are, in many respects, well taken. What came to be called “positivism”—and what will here be termed “state positivism”—was actually an amalgamation of three theories. It might be tempting to say, employing a musical analogy, that the three theories were blended together into the single grand symphony of 19th-century state positivism. But it might be more accurate to see the combination in terms of polyphony, with each of the three versions of positivism contributing a distinct theme. In the amalgamation, sometimes one theme was to the fore, sometimes another.

Over the course of time, these three underlying theories have been largely forgotten, with only their amalgamation remaining in the collective memory with any vividness. The present discussion will go behind the state-positivist synthesis to explore these three underlying variations of the positivist theme. In the first section, the common ground will be set out, as the core belief of the positive philosophy itself: the discarding of natural law as a source of the law of nations. The second section will briefly delineate each of the three versions of positivism. In the third section, there will be a necessarily brief look at some of the ways in which the synthesis of the three occurred.

1. The Origins: Positive Law Becomes a Doctrine

There was certainly nothing new about the concept of positive law in the 19th century. The term was a venerable one, devised by canon lawyers in
the 13th century to refer to man-made law, in contrast to divine law or natural law.\textsuperscript{1} It was only in the 19th century, though, that the expression was transformed from a mere description or classification label into an “ism”, or philosophical doctrine.

The term “positive philosophy” was coined by the French writer Auguste Comte. He employed this expression to highlight a contrast to two ways of thinking which had preceded the positive one and which were now (in his strong view) justly discredited: theological and metaphysical. Theological reasoning was the preserve of priesthoods and religious-based systems generally. Metaphysical reasoning was the hallmark, most outstandingly, of lawyers—i.e., of natural lawyers, who were seen to be dealing with abstract, quasi-mystical principles rather than with concrete reality. Both of these ways of thought, Comte asserted, were now being thankfully superseded by the positive philosophy. This new approach was asserted to be firmly in the spirit of the natural sciences—taking the world as it found it, in all its concreteness and richness, and investigating it with an open mind, divested of the mystical philosophical baggage of the theologians and the metaphysicians.\textsuperscript{2}

Positivism exerted a powerful hold in European thought, as well as in the Americas North and South, in the 19th century, although it is difficult to trace a debt by positivist lawyers to the writing of Comte specifically. Be that as it may, the basic defining feature of the positive philosophy as applied to law was a negative one: a principled rejection of natural law in favour of man-made (or positive law) as the basis of jurisprudential thought.

One of the earliest figures to bring the positivist ethos into the legal sphere was the British legal philosopher John Austin, who was a Professor of jurisprudence at the newly founded University of London in 1826–1832. Austin’s central thesis, concerning law in general, was that law properly speaking was the command of a sovereign to its subjects, backed up by a sanction (i.e., by some form of punishment) in the event of disobedience.\textsuperscript{3} “[E]very law simply and strictly so called”, Austin insisted, “is set by a sov-

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\item \textsuperscript{1} J.A. Brundage, \textit{Medieval Canon Law}, London, Longmans, 1995, 157–158.
\item \textsuperscript{3} On Austin, see generally C.E. Merriam, Jr., \textit{History of the Theory of Sovereignty since Rousseau}, New York, Columbia University Press, 1900, 130–157.
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