



Natural Law

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ITS ESSENCE

In English this term is frequently employed as equivalent to the laws of nature, meaning the order which governs the activities of the material universe. Among the Roman jurists natural law designated those instincts and emotions common to man and the lower animals, such as the instinct of self-preservation and love of offspring. In its strictly ethical application—the sense in which this article treats it—the natural law is the rule of conduct which is prescribed to us by the Creator in the constitution of the nature with which He has endowed us.

According to St. Thomas, the natural law is “nothing else than the rational creature’s participation in the eternal law” (I-II.91.2). The eternal law is God’s wisdom, inasmuch as it is the directive norm of all movement and action. When God willed to give existence to creatures, He willed to ordain and direct them to an end. In the case of inanimate things, this Divine direction is provided for in the nature which God has given to each; in them determinism reigns. Like all the rest of creation, man is destined by God to an end, and receives from Him a direction towards this end. This ordination is of a character in harmony with his free intelligent nature. In virtue of his intelligence and free will, man is master of his conduct. Unlike the things of the mere material world he can vary his action, act, or abstain from action, as he pleases. Yet he is not a lawless being in an ordered universe. In the very constitution of his nature, he too has a law laid down for him, reflecting that ordination and direction of all things, which is the eternal law. The rule, then, which God has prescribed for our conduct, is found in our nature itself. Those actions which conform with its tendencies, lead to our destined end, and are thereby constituted right and morally good; those at variance with our nature are wrong and immoral. The norm, however, of conduct is not some particular element or aspect of our nature. The standard is our whole human nature with its manifold relationships, considered as a creature destined to a special end. Actions are wrong if, though subserving the satisfaction of some particular need or tendency, they are at the same time incompatible with that rational harmonious subordination of the lower to the higher which reason should maintain among our conflicting tendencies and desires (see GOOD). For example, to nourish our bodies is right; but to indulge our appetite for food to the detriment of our corporal or spiritual life is wrong. Self-preservation is right, but to refuse to expose our life when the well-being of society requires it, is wrong. It is wrong to drink to intoxication, for, besides being injurious to health, such indulgence deprives one of the use of reason, which is intended by God to be the guide and dictator of conduct. Theft is wrong, because it subverts the basis of social life; and man’s nature requires for its proper development that he live in a state of society. There is, then, a double reason for calling this law of conduct natural: first, because it is set up concretely in our very nature itself, and second, because it is manifested to us by the purely natural medium of reason. In both respects it is distinguished from the Divine positive law, which contains precepts not arising from the nature of things as God has constituted them by the creative act, but from the arbitrary will of God. This law we learn not through the unaided operation of reason, but through the light of supernatural revelation.

We may now analyse the natural law into three constituents: the discriminating norm, the

binding norm (*norma obligans*), and the manifesting norm. The discriminating norm is, as we have just seen, human nature itself, objectively considered. It is, so to speak, the book in which is written the text of the law, and the classification of human actions into good and bad. Strictly speaking, our nature is the proximate discriminating norm or standard. The remote and ultimate norm, of which it is the partial reflection and application, is the Divine nature itself, the ultimate groundwork of the created order. The binding or obligatory norm is the Divine authority, imposing upon the rational creature the obligation of living in conformity with his nature, and thus with the universal order established by the Creator. Contrary to the Kantian theory that we must not acknowledge any other lawgiver than conscience, the truth is that reason as conscience is only immediate moral authority which we are called upon to obey, and conscience itself owes its authority to the fact that it is the mouthpiece of the Divine will and imperium. The manifesting norm (*norma denuntians*), which determines the moral quality of actions tried by the discriminating norm, is reason. Through this faculty we perceive what is the moral constitution of our nature, what kind of action it calls for, and whether a particular action possesses this requisite character.

THE CONTENTS OF THE NATURAL LAW

Radically, the natural law consists of one supreme and universal principle, from which are derived all our natural moral obligations or duties. We cannot discuss here the many erroneous opinions regarding the fundamental rule of life. Some of them are utterly false—for instance, that of Bentham, who made the pursuit of utility or temporal pleasure the foundation of the moral code, and that of Fichte, who taught that the supreme obligation is to love self above everything and all others on account of self. Others present the true idea in an imperfect or one-sided fashion. Epicurus, for example, held the supreme principle to be, “Follow nature”; the Stoics inculcated living according to reason. But these philosophers interpreted their principles in a manner less in conformity with our doctrine than the tenor of their words suggests. Catholic moralists, though agreeing upon the underlying conception of the Natural Law, have differed more or less in their expression of its fundamental formula. Among many others we find the following: “Love God as the end and everything on account of Him”; “Live conformably to human nature considered in all its essential respects”; “Observe the rational order established and sanctioned by God”; “Manifest in your life the image of God impressed on your rational nature.” The exposition of St. Thomas is at once the most simple and philosophic. Starting from the premise that good is what primarily falls under the apprehension of the practical reason—that is of reason acting as the dictator of conduct—and that, consequently, the supreme principle of moral action must have the good as its central idea, he holds that the supreme principle, from which all the other principles and precepts are derived, is that good is to be done, and evil avoided (I-II, Q, xciv, a. 2).

Passing from the primary principle to the subordinate principles and conclusions, moralists divide these into two classes: (1) those dictates of reason which flow so directly from the primary principle that they hold in practical reason the same place as evident propositions in the speculative sphere, or are at least easily deducible from the primary principle. Such, for instance, are “Adore God”; “Honour your parents”; “Do not steal”; (2) those other conclusions and precepts which are reached only through a more or less complex course of inference. It is this difficulty and uncertainty that requires the natural law to be supplemented by positive law, human and Divine. As regards the vigour and binding force of these precepts and conclusions, theologians divide them into two classes, primary and secondary. To the first class belong those which must, under all circumstances, be observed if the essential moral order is to be maintained. The secondary precepts are those whose observance contributes to the public and private good and is required for the perfection of moral development, but is not so absolutely necessary to the rationality of conduct that it may not be lawfully omitted under some special conditions. For example, under no circumstances is polyandry compatible with the moral order,

while polygamy, though inconsistent with human relations in their proper moral and social development, is not absolutely incompatible with them under less civilized conditions.

THE QUALITIES OF THE NATURAL LAW

(a) The natural law is universal, that is to say, it applies to the entire human race, and is in itself the same for all. Every man, because he is a man, is bound, if he will conform to the universal order willed by the Creator, to live conformably to his own rational nature, and to be guided by reason. However, infants and insane persons, who have not the actual use of their reason and cannot therefore know the law, are not responsible for that failure to comply with its demands.

(b) The natural law is immutable in itself and also extrinsically. Since it is founded in the very nature of man and his destination to his end—two bases which rest upon the immutable ground of the eternal law—it follows that, assuming the continued existence of human nature, it cannot cease to exist. The natural law commands and forbids in the same tenor everywhere and always. We must, however, remember that this immutability pertains not to those abstract imperfect formulæ in which the law is commonly expressed, but to the moral standard as it applies to action in the concrete, surrounded with all its determinate conditions. We enunciate, for instance, one of the leading precepts in the words: “Thou shalt not kill”; yet the taking of human life is sometimes a lawful, and even an obligatory act. Herein exists no variation in the law; what the law forbids is not all taking of life, but all unjust taking of life.

With regard to the possibility of any change by abrogation or dispensation, there can be no question of such being introduced by any authority except that of God Himself. But reason forbids us to think that even He could exercise such power, because, given the hypothesis that He wills man to exist, He wills him necessarily to live conformably to the eternal law, by observing in his conduct the law of reason. The Almighty, then, cannot be conceived as willing this and simultaneously willing the contradictory, that man should be set free from the law entirely through its abrogation, or partially through dispensation from it. It is true that some of the older theologians, followed or copied by some later ones, hold that God can dispense, and, in fact in some instances, has dispensed from the secondary precepts of the natural law, while others maintain that the bearing of the natural law is changed by the operation of positive law. However, an examination of the arguments offered in support of these opinions shows that the alleged examples of dispensation are: (a) cases where a change of conditions modifies the application of the law, or (b) cases concerning obligations not imposed as absolutely essential to the moral order, though their fulfillment is necessary for the full perfection of conduct, or (c) instances of addition made to the law.

As examples of the first category are cited God’s permission to the Hebrews to despoil the Egyptians, and His command to Abraham to sacrifice Isaac. But it is not necessary to see in these cases a dispensation from the precepts forbidding theft and murder. As the Sovereign Lord of all things, He could withdraw from Isaac his right to life, and from the Egyptians their right of ownership, with the result that neither would the killing of Isaac be an unjust destruction of life, nor the appropriation of the Egyptians’ goods the unjust taking of another’s property. The classic instance alleged as an example of (b) is the legalization of polygamy among the Hebrews. Polygamy, however, is not under all circumstances incompatible with the essential principles of a rationally ordered life, since the chief ends prescribed by nature for the marital union—the propagation of the race and the due care and education of offspring—may, in certain states of society, be attained in a polygamous union. The theory that God can dispense from any part of the law, even from the secondary precepts, is scarcely compatible with the doctrine, which is the common teaching of the School, that the natural law is founded on the eternal law, and, therefore, has for its ultimate ground the immutable essence of God himself. As regards (c), when positive law, human or Divine, imposes obligations which only modify the bearing of the natural law, it cannot correctly be said to change it. Positive law may not ordain anything contrary to the natural law, from which it draws its authority; but it may—

and this is one of its functions—determine with more precision the bearing of the natural law, and for good reasons, supplement its conclusions. For example, in the eyes of the natural law mutual verbal agreement to a contract is sufficient; yet, in many kinds of contract, the civil law declares that no agreement shall be valid, unless it be expressed in writing and signed by the parties before witnesses. In establishing this rule the civil authority merely exercises the power which it derives from the natural law to add to the operation of the natural law such conditions as the common good may call for. Contrary to the almost universally received doctrine, a few theologians held erroneously that the natural law depends not on the essential necessary will of God, but upon His arbitrary positive will, and taught consistently with this view, that the natural law may be dispensed from or even abrogated by God. The conception, however, that the moral law is but an arbitrary enactment of the Creator, involves the denial of any absolute distinction between right and wrong—a denial which, of course, sweeps away the very foundation of the entire moral order.

OUR KNOWLEDGE OF THE LAW

Founded in our nature and revealed to us by our reason, the moral law is known to us in the measure that reason brings a knowledge of it home to our understanding. The question arises: How far can man be ignorant of the natural law, which, as St. Paul says, is written in the human heart (Romans 2:14)? The general teaching of theologians is that the supreme and primary principles are necessarily known to every one having the actual use of reason. These principles are really reducible to the primary principle which is expressed by St. Thomas in the form: “Do good and avoid evil”. Wherever we find man we find him with a moral code, which is founded on the first principle that good is to be done and evil avoided. When we pass from the universal to more particular conclusions, the case is different. Some follow immediately from the primary, and are so self-evident that they are reached without any complex course of reasoning. Such are, for example: “Do not commit adultery”; “Honour your parents”. No person whose reason and moral nature is ever so little developed can remain in ignorance of such precepts except through his own fault. Another class of conclusions comprises those which are reached only by a more or less complex course of reasoning. These may remain unknown to, or be misinterpreted even by persons whose intellectual development is considerable. To reach these more remote precepts, many facts and minor conclusions must be correctly appreciated, and, in estimating their value, a person may easily err, and consequently, without moral fault, come to a false conclusion.

A few theologians of the seventeenth and eighteenth centuries, following some older ones, maintained that there cannot exist in anyone practical ignorance of the natural law. This opinion however has no weight (for the controversy see Bouquillon, “Theologia Fundamentalis”, n. 74). Theoretically speaking, man is capable of acquiring a full knowledge of the moral law, which is, as we have seen, nothing but the dictates of reason properly exercised. Actually, taking into consideration the power of passion, prejudice, and other influences which cloud the understanding or pervert the will, one can safely say that man, unaided by supernatural revelation, would not acquire a full and correct knowledge of the contents of the natural law (cf. Vatican Council, Sess. III, cap. ii). In proof we need but recall that the noblest ethical teaching of pagans, such as the systems of Plato, Aristotle, and the Stoics, was disfigured by its approbation of shockingly immoral actions and practices.

As the fundamental and all-embracing obligation imposed upon man by the Creator, the natural law is the one to which all his other obligations are attached. The duties imposed on us in the supernatural law come home to us, because the natural law and its exponent, conscience, tell us that, if God has vouchsafed to us a supernatural revelation with a series of precepts, we are bound to accept and obey it. The natural law is the foundation of all human law inasmuch as it ordains that man shall live in society, and society for its constitution requires the existence of an authority, which shall possess the moral power necessary to control the members and

direct them to the common good. Human laws are valid and equitable only in so far as they correspond with, and enforce or supplement the natural law; they are null and void when they conflict with it. The United States system of equity courts, as distinguished from those engaged in the administration of the common law, are founded on the principle that, when the law of the legislator is not in harmony with the dictates of the natural law, equity (*æquitas*, *epikeia*) demands that it be set aside or corrected. St. Thomas explains the lawfulness of this procedure. Because human actions, which are the subject of laws are individual and innumerable, it is not possible to establish any law that may not sometimes work out unjustly. Legislators, however, in passing laws attend to what commonly happens, though to apply the common rule will sometimes work injustice and defeat the intention of the law itself. In such cases it is bad to follow the law; it is good to set aside its letter and follow the dictates of justice and the common good (II-II.120.1). Logically, chronologically, and ontologically antecedent to all human society for which it provides the indispensable basis, the natural or moral law is neither—as Hobbes, in anticipation of the modern positivistic school, taught—a product of social agreement or convention, nor a mere congeries of the actions, customs, and ways of man, as claimed by the ethicists who, refusing to acknowledge the First Cause as a Personality with whom one entertains personal relations, deprive the law of its obligatory basis. It is a true law, for through it the Divine Mind imposes on the subject minds of His rational creatures their obligations and prescribes their duties.

SOURCES

On this subject consult ETHICS; CONSCIENCE; GOOD; DUTY; Summa Theol., I-II.91, I-II.94, I.79.12; SUAREZ, *De Legibus*, II, v-xvii; MEYER, *Institutiones Juris Naturalis*, II. The natural law is treated in all Catholic text-books of ethics. A good exposition in English will be found in RICKABY, *Moral Philosophy* (London, 1888); HILL, *Ethics or Moral Philosophy* (Baltimore, 1888). Consult also: ROBINSON, *Elements of American Jurisprudence* (Boston, 1900); LILLY, *Right and Wrong* (London, 1890); MING, *The Data of Modern Ethics Examined* (New York, 1897); BOUQUILLON, *Theologia Moralis Fundamental* (Ratisbon and New York, 1890); BLACKSTONE, *Commentaries*, I, introd., sec. i.

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