NATURAL LAW REVISITED

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There is now a noticeable trend back to natural law thinking after almost two centuries of neglect. While one might say that it is quite an old idea yet it has certain charms that excite revisit. It has always been a concept of considerable significance for both ethical and legal philosophers, and, in the connection last put, has influenced the major juristic schools of thought and, thereby, the legal ordering. The new-found interest then in the natural law theory is not merely historical but juristic, especially in the light of two recent decisions of the Supreme Court of the Philippines in which the natural law theory played quite an important role: *Rutter v. Esteban* and *de la Cruz v. Sosing*.

A. HISTORICAL ACCOUNT

Great thinkers have laid down the basis of the classical theory of the natural law and developed its distinctive characteristics as a responsible discipline. But the conception or idea of the natural law did not originally mean in the sense it is now known and accepted.

Heraclitus[1] referred to it as the rational *order* of divergent events, *i.e.*, the unwritten laws pervading and ruling nature, without which the universe would be plunged into chaos. Thus, the beginning of the concept of the natural law was originally bound with the notion of the laws of nature in accordance with which everything happens.

It was Plato[2] who made straight the highway for the development of the natural doctrine by providing it with philosophical or rational foundation. It seems that thinkers before Plato did not think in terms of the pure idea of natural law but Plato insisted upon a rigid distinction between the natural idea, the pure or just form,[3] and the positive enactments of legislative bodies. By this he meant that there is a contrast between the "natural" and the "legal." In the former there is an ideal (just) element that must be considered and fulfilled in the art or science of legislation and government. This is based on the traditional Greek distinction between the unwritten and written law which was advocated by the great dramatist Sophocles.[4] Thus it was that the notion of the eternal unwritten law was treated as the natural law.

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[1] CIRCA, 540-475 B.C. A Greek philosopher whose work "On Nature" has survived only in fragments. Both Plato and Aristotle give accounts of his philosophy.

[2] CIRCA, 427-347 B.C.

[3] WILD, J., *Plato's Modern Enemies and the Theory of Natural Law*, 140.

[4] In Sophocles' (CIRCA, 496-406 B.C.) tragedy *Antigone*, we are told that when

Aristotle made a clearer distinction between *natural* justice and *legal* justice.[5] The former is absolute and universal while the latter is indifferent and relative. Legal justice may even be contrary to natural justice. For him natural justice is absolute and universal. It is absolute because it has a fixed postulate (justice) existing independently of the people's will or wish. It is universal because it has the same force and effect everywhere. Thus, Plato and Aristotle were the first to regard it as a discipline to which human acts and volition might conform to in order to realize the good.

Later, the Stoics,[6] surveying the collapse and disintegration of the familiar forms of Greek and Roman governments, turned their attention to the discovery of some doctrine in order to buttress or support the worsening conditions of life in their crumbling society. In this task they followed the philosophic lead of Plato and Aristotle.

Their attention was inevitably attracted by the rhythm of nature, *i.e.*, the regularity and uniformity of its active tendencies. The early Stoics noted that nature is the very order of things since the happening of the divergent phenomena or events of nature are permeated with order and perfection. Thus, nature provided them with the clue for their idea of a well ordered society. The early Stoics therefore sought comfort and encouragement in the abiding character and stability of nature, utilizing its rhythm in positing their great teaching, which is briefly: live consistently with nature, or live "naturally," or live with order and stability. Insofar as individual and societal living are concerned, the early Stoics were convinced that order and perfection were the "natural" forces constraining men to live and act naturally. Otherwise, there would be no peace and order in the community. Thus, for the early Stoics, human acts and conduct should be brought into agreement with order and perfection, that is to say, with the natural law.

It was in the time of Epictetus,[7] a latter Greek Stoic philosopher, that the term "natural law" acquired the metaphysical meaning attached

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Creon, regent of Thebes, forbade Antigone to bury her brother, Polynices, she defied the regent's command by appealing to the "immutable unwritten law," as well as to the "irrefragable law ordained from above," and performed the funeral service for her brother. For that Creon buried her alive.

[5] ARISTOTLE, *Nicomachean Ethics*, Bk. I, ch. 7.

[6] Stoicism is a school of philosophy founded by Zeno of Citium near the end of the fourth century B.C. He taught in the Painted Porch (*Stoa poecile*) at Athens. Zeno adopted and built on the ideas of Plato and Aristotle and Xenophon. But the organization and development of Zeno's teachings into a great system of metaphysics was the work of Chrysippus (280-207 B.C.) successor to Cleanthes, who was the first disciple of Zeno. It is interesting to note that it was Cleanthes' own work, *Hymn to Zeus* that St. Paul, the apostle of Jesus Christ, utilized at Mars Hill or the Council of the Areopagus in Athens (*Acts* xvii: 16-31) after certain philosophers of the Stoics questioned him about Jesus Christ and the resurrection from the dead (*Acts* xvii: 18). A familiar maxim of the Stoics is: *All men are created equal by divine right since all men are of divine origin.* This is an echo from Cleanthes' *Hymn to Zeus*: "For we are also Thy offspring, and alone of living creatures possess a voice which is the image of reason."

[7] CIRCA, 60 B.C. We are told that he was a slave.

to it as the responsible discipline which is engraved in a sense by the finger of the Almighty in the heart and mind of man. Epictetus taught and emphasized that the real good, *i.e.*, the natural, is really an integral and essential part of one's being. There are some things that man knows deep down in his heart and mind as true, right and decent. The only thing to be feared is the false and selfish traits in one's self that tend to frustrate or retard the fulfillment of the good. He believed that there is a possibility that what is naturally good in man may be defeated by the evil. Thus, the early Stoic concept of the natural law assumed a very different meaning. In the hands of Epictetus, the natural law is not merely the objective type related to the outward order of things but truly the subjective or inward type related to the moral nature of man, *i.e.*, his capacity for righteousness, justice, fairness, and equity.

In the *New Testament* there is an express recognition and deepening of the classic idea of the natural law. St. Paul, the apostle and theologian, speaks of those persons who "do by nature the things of the law" which is "the law written in their hearts, their conscience witnessing with them and their thoughts."[8] St. Paul might be thought as emphasizing conscience here. But in this and other passages he is really talking of the law rooted in the heart and mind of men. It would then appear that, for him, justice means more than the still, small voice. This is made quite clear when St. Paul spoke of the demands and dictates of the law set in the minds and written in the hearts of men,[9] which is an echo from the great prophet Jeremiah who declared the promised covenant or agreement of God: "I will put my Law into their minds and write it in their hearts."[10] St. Paul then is in agreement with the early Greek thinkers and with the Stoics when he said that all men are equal by nature because there is an identical human, *i.e.*, ethical or moral, nature in all men everywhere,[11] inasmuch as they are endowed with the same sense of righteousness, justice, fairness, and equity. But it was St. Paul's assessment of the essential part in man that cleared the Stoic doctrine of its impersonal (apartness from God) abstractions and gave it its really penetrative force as a great personal (connection with God or God-given) discipline.

Referring to the Stoic-Christian concept, St. Augustine reiterated that the essential part in man, *i.e.*, his ethical or moral nature, is true and present in all men, including the perverted and the depraved, regardless of race, creed, station in life. Thus, no one can really plead

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[8] ROMANS ii: 14-15. Following Goodspeed's modern translation, there are those who "instinctively obey what the Law demands, even though they have no law they are a law to themselves, for they show that what the Law demands is written in their hearts."

[9] HEBREWS viii: 10.

[10] JEREMIAH xxxi: 33.

[11] GALATIANS iii: 26-28. See last sentence of n. 13, *supra*.

ignorance of the natural law since their moral conscience, which is never silenced, is their law.[12]

B. Concept and Postulates

In the light of these historical facts and metaphysical bases, we can venture to advance a definition of natural law. It is the discipline composed of righteousness, justice, fairness, and equity inspired as the dictates of man's moral nature by inward impression or implantation in his heart and mind thereby becoming a guiding factor in the proper observance and performance of human acts and volition for the maintenance and preservation of order and unity.

The fundamental constituents are its continuing protective postulates. They are everywhere found to be the same. Thus, they are general and accepted by all men. The first two are the more comprehensive postulates which transcends human notion or change. While the last two are the narrower postulates confined to the rendering to every man his due. Their generality, however, does not mean that they are ineffective. They are made effective in the community by legal institutions and legal method, *i.e.*, by having the legal ordering in the community to conform and give effect to those continuing protective postulates.[13] There are written constitutions, codes and laws based in large measure on the natural law that consist of generalizations but they are by no means rendered useless thereby. For illustrations, the following may be cited: the declaration of principles contained in Article II of the Constitution of the Philippines, the catalogue of rights and freedoms contained in Article III, and the provisions on natural litigations embodied in Articles 1423-1430 of the Civil Code of the Philippines. It is noteworthy that constitutions and codes have never pretended to be the authors or sources of rights and ligations but that they only give positive recognition and expressions to those pre-existing rights and ligations,[14] which are reasonable and just by nature and not merely by convention or enactment.

Thus, the natural law is present in and binding on all men everywhere and at all times. As such it is authoritative and paramount to all, even if separated from its theological connection. The natural law is then a constant general principle that holds for every human society and becomes the perfection of laws. It may, however, be that different peoples do not have the same degree of understanding of the continuing protective postulates of the natural law. This means that the manner of expressing them is variable. But this does not minimize the

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[12] The passage where this view is stated is to be found in *De sermone Dei in monte*, 34 Patrologia Latina, col. 1283, cited by Anton-Hermann Chroust in *St. Augustine's Philosophical Theory of Law*, 25 Norte Dame Lawyer, 285 (1950).

[13] Pound, R. Interpretations of Legal History, 148.

[14] LeBuffe, F. and Hayes, J., The American Philosophy of Law, 49.

reality and validity of the natural law itself because different peoples may truly or "naturally" not possess the same level of intelligence and ethical concepts. Nevertheless, the postulates of the natural law are present in all peoples though, as already stated, in varying degrees of comprehension and award. The Universal Declaration of Human Rights,[15] approved on December 10, 1948, by the United Nations Assembly, and the European Convention on Human Rights,[16] in effect since September 3, 1953, are the latest and the most adequate modern expressions that illustrate the point rather well. They certainly contain the harmony of ideas and agreement of views of many different nations as well as European representatives of widely different *oblutiacs*[17] and philosophies. It has been said that these agreements are not accidents of political agitation, propaganda, or rhetoric. They are rather the result of the presence in all men of the natural law. Consequently, right reason demands the recognition and validation of the natural law and its continuing protective postulates in the legal ordering of a community as norms of or guides to human acts and volition. Therefore, the failure to observe the demands of the natural law and its continuing protective postulates is a derogation or perversion of the natural law.

C. Relation to Divine Law

Natural law is closely related to divine law. It is an implantation in man of divine reason. In other words, divine law is the law of God while the natural law is the participation of man in the divine law. Since there is a communion of divine law and natural law, the postulates of the natural law rest their validity on their inherent or native goodness, that is to say they are intelligible in themselves. But while divine law and the natural law are similar, they are not exactly the same. The former holds an exalted position in the hierarchy of norms. This cannot be said of the natural law. The former is revealed or divulged to mankind, as much of it as is necessary for the conduct of human actions and volition, through the various means of divine revelation, such as, vision, mystic dream, or deep religious experience. The latter is implanted or impressed in man as the core of his moral nature, attained by the gift of a sense or instinct for righteousness, justice, fairness, and equity. At the very moment of being, and in a way even before that, there is inspired in man this unique and distinctive sense.

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[15] Text found in *Yearbook of the United Nations*, 1948-49, 535-537 (1950).

[16] Text found in 45, *American Journal of International Law*, 24-39 (1951).

[17] The term "oblutiacs" is a new word the writer has coined for the mass of socio-legal material of a people. Perhaps this should be explained further. The historical school of jurisprudence talks of the *volksgeist* or *diwa* as the basis of the law. However, the folksoul cannot be fully expressed or uttered until language came into being. Having achieved a language, the people then began to express or articulate itself in its opinions, beliefs, longings, usages, traditions, idiosyncracies, arts, customs, and even superstitions. This huge mass of *oblutiacs* constitutes the traditional socio-legal material of a people.

Another difference is that divine law is the written while the natural law is the unwritten exposition of God's eternal purpose and reason for man.

D. Basic Characteristics

On the basis of the discussion given above and narrowing down its operation in the socio-legal order, the following appear to be the basic characteristics of the natural law doctrine:

a) The world is a rhythm of divergent phenomena or events which tend to a well-ordered unity or society.

b) All men everywhere are endowed with the same or identical sense and perception of righteousness, justice, fairness, and equity, which are the dictates of their human (moral) nature.

c) Goodness of human conduct which everyone desires is capable of realization in the socio-legal order and productive of actual as well as potential, present as well as remote consequences.

d) There is a tendency in human beings to retard or even frustrate, whether consciously or unconsciously, the fulfillment or realization of human (moral) nature.

e) If goodness of human conduct or the common good is to be realized properly, human acts and volition must accomplish or closely approximate the continuing protective postulates of righteousness, justice, fairness, and equity, which are not impossible because they are intelligible in themselves aside from the universality and truth of human (moral) nature.[18]

f) The natural law is not a competitive force or power in the legal order but only a juristic criterion or standard guiding the development and regulating the application of positive law.

E. Role and Function

While the natural law should not be considered as a complete legal system and should not also be considered as a competitive force since that would run counter to the concept of the sovereignty of the polity, there are several striking and valid uses of the natural law theory in both legal history and the legal order. Among them are the justificatory use, the oppositive use, the regulatory use, and the interpretative use.

(a) *The justificatory use.*

The natural law theory has been invoked many times in order to support some legal innovations or claimed authority. With the revival of learning in Europe in the 11th and 12th centuries, the natural law theory was utilized by the jurist-theologians of the medieval church to support its authority. About three centuries later the Reformation movement used the natural law theory in order to justify and advance its cause, contributing to the rapid rise of national states in Europe.

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[18] Wild, J., *op. cit.*, III.

In Roman law, the praetors utilized the natural law to justify the acceptance and development of the *jus gentium* as the law applicable to the foreigners in the Roman empire in lieu of the older *jus civile*.

Alberico Gentili, commonly known as Gentilis, and Hugo de Groot, or Grotius used the natural law theory to justify the development and acceptance of their innovation in jurisprudence which they called the law of nations or, as Jeremy Bentham later called it, international law. Grotius, in particular, well realized that states and nations would never tolerate any system of international law based on the law of any one country. He, therefore, utilized principles deduced by or from right reason and justice, which he believed to be common to all peoples everywhere. Grotius thus produced a system of international law rules derived from the natural law dealing with the relations of states with one another.

In later juristic growth, the natural law theory played an outstanding role. Bentham justified his reforms in English law by the natural law theory. John Locke used it as the basis of his "inalienable rights" concept, which the founding fathers of the constitutional democracy of the United States and later the Philippines utilized. Locke also used the natural law theory to warrant the people's right to withdraw the grant of authority to the government whenever the latter persistently and deliberately fails or flouts the wishes of the people. If sovereignty resides in and remains with the people then they have both the right and the duty to withdraw their support and to recover by revolution the grant of governmental powers and revest it in a new one.

(b) *The oppositive use.*

Ordinarily, the natural law does not advance the idea of disobedience to unjust statutes or orders. In fact, even this kind of positive law is, under the natural law theory, to be obeyed. It does not release the individual from his ligation of obeying the unjust statutes or orders. The obedience to such kind of laws or orders, however, is not premised on the idea that they are laws but because disobedience would be in derogation of the natural law itself, since disobedience would endanger the social interests and unity of the community. The point is that the natural law does not countenance blind obedience, which is extremely bad and undesirable, since that would likewise endanger the community and its system of order and peace by carrying those laws further. Since a statute or a law which is contrary to the natural law and its continuing protective postulates is not a legal law but a deceased law it becomes both the right and the duty of the individual to protest and reveal an unjust, unfair, unequal, or unrighteous statute or governmental act.[19] This should, however, be pursued within constitutional limits.

[19] WILD, J., INTRODUCTION TO REALISTIC PHILOSOPHY, 199, citing Plato, Augustine and Aquinas. In particular, the right and ligation to disobey unjust, unfair,

Thus, for instance, the protest and revelation may be carried to the courts of the State. Accordingly, positive or human laws must conform to the natural law and its continuing protective postulates in order to be really valid and binding.[20] In other words, a piece of legislation would be free from protest or opposition only when it is enacted "naturally." The statute itself must be in accordance with the absolute standards of righteousness, justice, fairness, and equity.[21] Otherwise, the least that should happen is to suffer such unnatural statutes and orders to stay unenforced or unobserved[22] until sooner repealed or bettered.

(c) *The regulatory use.*

It is a well-known fact that there are positive laws which are derogatory to or are not in conformity with the real and true law. Because of this the natural law theory has also been used in the construction or application of such kind of positive law. The connection between the natural law and positive law is so indispensable and vital that any provision of the latter that is at variance with or in derogation of the former is not considered as law but an invalidation or corruption of law. In other words, the natural law and its continuing protective postulates can be employed as a juristic criterion or standard for testing the validity of the application of positive enactments or laws. Indeed, it is the creative foundation of all positive legislation for "all true law is based on the natural law."[23] If a statute is to be set aside because it is not in accordance with this criterion or standard, that is a matter peculiar to the legal ordering of a community.

Thus, an enactment of the legislature of a State is not applicable and can be set aside if and when it deflects from the natural law and its continuing protective postulates. The view that a law which is passed

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unequal, and unrighteous tax laws are recognized by the American Bar Association in a report to the Real Property, Probate and Trust Section, under date June 15, 1948, by the Committee on State and Federal Taxation, which unequivocally declared that the continuing protective postulates of the natural law are limitations to which tax laws should be subject. "The Moral Issue," 27 Taxes, 9 (1949).

[20] For Cicero the natural law has definitely this function: "It is not allowable to alter this law nor deviate from it nor can it be abrogated. Nor can we be released from this law either by the Senate or by the people." *De Republic*, Bk. III, ch. xxii. Cf. Blackstone's proposition, I *Commentaries*, 27 (1865).

[21] LEBUFFE AND HAYES, *op. cit.*, 10.

[22] In *Goshen v. Stonington*, 4 Conn. 209 (1822), Hosmer, C.J., in disposing of the issue of whether a retroactive statute may be held void even though there was no constitutional prohibition against such kind of a statute, said: "Should there exist . . . a case of direct infraction of vested rights too palpable to be questioned and too unjust to admit of vindication I could not avoid considering it as a violation of the social compact, and within the control of the judiciary. If, for example a law were passed without any case to deprive a person of his property or to subject him to imprisonment, who would not question its illegality and who would aid in carrying it into effect?"

[23] *Omnes leges in lege naturae fundatae nisi sunt, bonae esse haudquaquam possunt.* ZWINGLI, WORKS, 6.

with constitutional authority or is indisputably legal in terms of positive law remains applicable even though it violates the natural law and its continuing protective postulates is rather incorrect and might even be dangerous.

There are at least two reasons why this is so.

First, no positive or human law can flagrantly violate the natural law and its continuing protective postulates without producing a decidedly adverse reaction on the community itself.

In the classic *Dr. Bonham's Case*,[24] Lord Chief Justice Coke, in striking down an act of Parliament which had given the College of Physicians, a London corporation, the authority to license or not to license physicians and the power to prosecute anyone who practised without a license before the College itself as the tribunal and the College to get half of any fine imposed, wrote: "For when an act of Parliament is against common right and reason, the law will control it and adjudge such an act to be void." From 1606 to 1932 is a long time, but in the latter year the echo of the doctrine of Dr. Bonham's case was audibly heard in the American case of *Powell v. Alabama*.[25] Powell was a Negro who was sentenced to be hanged for violating an Alabama statute. But he was tried in a hostile community for a capital offense without benefit of counsel in its true sense. This occured in a State whose statute law required the appointment of counsel for indigent defendants. The trial was conducted in disregard of every principle of fairness. The Supreme Court of the United States voided his conviction saying: "That is not due process of law which conflicts with those immutable principles of justice which inhere in the very idea of free government." In 1939 the Supreme Court of the Philippines in the case case of *Goseco v. Court of Industrial Relations*,[26] reacted to the contention that the rules of procedure are paramount and should be applied regardless. Such a contention, said the Court, countenances the mischief of subjecting the respondent Court of Industrial Relations to the technicalities of procedure which the statute creating it seeks to avoid. Thus, the Supreme Court disregarded the rigid rules of positive (procedural) law to give due regard to the dictates of justice and equity.

It is unthinkable then that the people forming a community would have yielded power to make laws or do acts which violate "common right and reason" and the immutable principles of justice. "All laws must postulate some kind of common denominator of just instinct in the community. There is no meaning in any legal system unless this foundation exists. . . It needs no subtle dialectics to demonstrate that there is in man at least an elementary perception of justice . . . which

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[24] 8 Coke (1606).
[25] 287 U.S. 45 (1932).
[26] 68 Phil. 444 at 450-451 (1939).

no law dare flagrantly transgress."[27] Besides, all positive laws get their nourishment not only from the divine law but also from the natural law. And behind the natural law thinking are the great authorities of Heraclitus, Plato, Aristotle, Cicero, St. Paul, Justinian, Aquinas, Luther, Zwingli, Coke, Brunner, so that it would be very difficult to dismiss it.[28]

The second reason is fully as significant as the first, if not more so. The members of a community, directly or through their freely authorized representatives, may have, in a solemn compact, secured for themselves and their posterity a regime of justice, fairness, equality, and righteousness. In such a situation there is no question that there is a clear as well as an immediate appeal to the natural law itself. As an example, we may give the Philippine legal order. Here the appeal to the natural law is embodied in different parts of the Constitution. There is an appeal to the due process of law. But the Preamble, though quite emotive in style, states it very clearly to be misunderstood. It provides that "the Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy, do ordain and promulgate the constitution."[29] Here is the deliberate judgment and solemn pronouncement of the soul and spirit (*diwa*) of the Filipino

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[27] ALLEN, C. K., LAW IN THE MAKING, 309 (4th Ed.); ST. AUGUSTINE, EPISTOLA, 33 Patrologia Latina, col. 398, see n. 19, *supra*.

[28] CAIRNS, H., LEGAL PHILOSOPHY FROM PLATO TO HEGEL, 282. There are several provisions or confirmatory citations in Philippine law that support this ground. Art. 10 of the Civil Code of the Philippines provides for the presumption that the lawmaking body itself intended righteousness and justice to prevail whenever it acts. Art. 19 of the same Code provides that in the exercise of one's right and in the performance of one's ligation every person must act with justice, honesty and good faith, and give everyone his due. Art. 22 of the same Code provides for recovery in case of unjust enrichment. Art. 1379 of the same Code provides that in the construction of contracts the principles stated in secs. 58 to 67 of Rule 123 of the Rules of Court in the Philippines shall be observed, where it is provided that construction in favor of natural right is to be adopted. Thus, for example, in a sale of real property to two different vendees, although a performance is expressed or created by law for the title of ownership of realty first recorded in the registry of property, this positive rule must be understood to be based on natural good faith as it cannot be conceived that the people would have yielded authority to their legislators to do away with good faith and sanction bad faith by requiring compliance only with the formality of registration. (See Sec. 50, Act No. 496, otherwise known as the Land Registration law and *Government of the Philippines v. Manuel Abusl et als.*, CA-G.R. No. L-856-R, 45 Off. Gaz. 3405). Arts. 1447-1457 of the same Code, dealing with implied trust, is based on the concept of justice and equity. Arts. 1359-1369 of the same Code, with regard to reformation of instruments is designed that justice and equity be done. In the same manner, Art. 1234 of the same Code provides for recovery upon substantial performance of a contract in good faith as though there had been a strict and complete fulfillment. Art. 1229 of the same Code provides for reduction of contractual penalty if it is iniquitous or unconscionable even when there has been no performance of the principal ligation. Finally, Art. 1423 of the same Code recognizes natural ligations which are based not on positive law but on justice and equity.

[29] The term "equality" which was inserted between the words "liberty" and

people making a clear and unmistakable appeal to the natural law, for such concepts as justice, liberty, equality, and the public weal, are but other albeit similar terms for the continuing protective postulates of the natural law.[30] It will be noted that the government itself is created primarily to secure — not to give — such blessing under the natural law. The greatest American jurists, among them Marshall, Kent, Story, Chase, Cooley, accepted the role and function of the natural law in the judicial process. They relied on it as a means to limit governmental powers in order to protect minorities as well as human rights and privileges both as to persons and to property. Holmes, with his "educated sympathy" or tolerant approach to minority views lent his prestige and authority to the useful role of the natural law in the preservation of minority rights and the prevention of great harm to them. Dean Pound also noted that "something like a resurrection of the natural law be going on the world over." Thus, right reason and consistency would require that laws which violate any of the continuing protective postulates of the natural law should, after proper constitutional resistance, be set aside.

This then is another of the useful role and function of the natural law in the legal ordering of the community. It is a genuine basis for testing the contents of positive laws in the manner set forth above. It may and does affect positive laws depending, of course, upon the common judicial personality of the court. This means that it is not only when a law or statute is unconstitutional that it can be struck down. A statute or a law may also be restrained or regulated when and if it is against the natural law and its continuing protective postulates, though there be no constitutional provision which it transgresses or to which it is contrary.[31]

"democracy" and approved twice by the Constitutional Convention, was struck out of the final draft of the preamble, which was finally approved by the Convention, because it was believed that the idea which the word "equality" signified was already embodied in the term "democracy." See ARUEGO, J., THE FRAMING OF THE PHILIPPINE CONSTITUTION, 114 (1936).

[30] It has been said that the preamble, strictly speaking, is not a part of the Constitution. Even so it serves three useful purposes or ends. Professors Tañada and Fernando, in their *Constitution of the Philippines*, Vol. I, 4th Ed., 33, give the first two: 1) it indicates that the people is the source of the Constitution and from which it derives its claim to obedience, and 2) it sets forth the ends that the Constitution and the Government established by it are intended to promote. The third is that it purports to set forth the legal ordering to be undertaken and pursued in order to promote the avowed ends must be under a regime of justice, liberty, equality, and democracy. Thus, the preamble has three elements of value in the interpretation and or construction. At the very least, these ends or purposes are the goal values of the legal order and are coequal with those contained in the Declaration of Principles of the Constitution. Justice Holmes, no less, has accepted the preamble as a policy or intention expressing device. (*Block v. Hirsh*, 256 U.S. 135, 65 L.ed. 865, 41 S.Ct. 458, 16 A.L.R. 165).

[31] It might be stated here that the doctrine of the natural law as a higher law which invalidates any inconsistent positive law is a medieval juristic theory opposed by the modern theory of the natural law which considers it only as a juristic criterion or standard regulating the application of positive law and guiding its development.

Recently, the Supreme Court of the Philippines, in the case of *Royal L. Rutter v. Placido J. Esteban*,[32] had occasion to reject the contention that of itself Republic Act No. 342, otherwise known as the Debt Moratorium Law (an extension with some modification of Executive Orders Nos. 25 and 32, dated November 18, 1944, and March 10, 1945, respectively), was unconstitutional in that it was an enactment that impaired the obligation of contracts. The Supreme Court held that it was a justified and valid exercise of the State of its police power operating in its traditional area of public welfare. Nevertheless, the Supreme Court did not hesitate to restrain such enactment, setting it aside as derogatory to the dictates or postulates of the natural law. In this case the moratorium law provided that all debts and other monetary obligations contracted before December 8, 1941 shall not be due and demandable for a period of eight years from and after the settlement of the war damage claim of the debtor. "The period," ruled the Supreme Court, speaking through Justice Felix Bautista Angelo, "seems to us unreasonable . . . . while the purpose of Congress is plausible, and should be commended, the relief accorded works injustice to creditors who are practically left at the mercy of the debtors . . . And the injustice is more patent when, under the statute, the debtors are not even required to pay interest during the operation of the relief . . . In the face of the foregoing observations, and consistent with what we believe to be as the only course dictated by justice, fairness and righteousness, we feel that the only way open to us under the present circumstances is to declare that the continued operation and enforcement of Republic Act No. 342 is unreasonable and oppressive, and should not be prolonged a minute longer, and, therefore, the same should be declared null and void and without effect."

In the case of *Socorro de la Cruz v. Licerio Sosing*,[33] the Court of Appeals appeared to have decided an appeal from the Court of First Instance of Samar that the land in question had already been acquired by Sosing through prescription since he had usurped it from de la Cruz under color of title from March 21, 1938 up to the time of the filing of the action on February 17, 1949, a period of more than ten years. Socorro de la Cruz brought the matter to the Supreme Court disregarding the rule, supported by a long line of cases, that the findings of fact of the Court of Appeals is final. The Supreme Court in considering the appeal was greatly disturbed and surprised when it found out that an otherwise strong Court of Appeals had misstated the fact of the date of the filing of the action in the Court of First Instance of Samar. The Supreme Court found that the first pleading contained in the record on appeal was the amended complaint which was filed on February 17, 1949. But the Court found in the record of the case that the original

[32] G.R. No. L-3708 (1953).
[33] G.R. No. L-4875 (1953).

complaint was filed on November 13, 1940. The Supreme Court, following the lead in the *Rutter* case utilized the natural law theory and reversed the Court of Appeals. Thus, the Supreme Court, with confidence, sacrificed legal positivism to the continuing protective postulates of the natural law.[34]

(d) *The interpretative use.*

Lawmakers do not always express their intention or purpose properly and perfectly. They either exceed it or come short of it. The right mean is very rarely accomplished. The legislators often do not compose laws that cover all possible situations or cases for which the laws are enacted. Thus, there are always oversufficiency or insufficiency. Consequently, the necessity of expounding the statute by "natural" interpretation, *i.e.*, restraining it so as to take in less or enlarging it so as to take in more than the words indicate. Although the natural law does not wholly control the meaning to be given to positive law or statutes, it has been utilized as an interpretative criterion or device in order to express and to effectuate the legislative intention.

The natural law use in interpretation is defined by Aristotle as "the correction of that wherein the law, by reason of its universality, is deficient."[35] Since the intention of the legislature is composed of purpose and essence, the purposive and essential interpretation of statutes depend to a great extent on the natural law doctrine. However, the interpretative use of the natural law has been subjected to the criticism that it is an encroachment of the lawmaking function of the legislature.[36] Nevertheless, courts have continued to do what courts have been doing in this matter. They have continued to use the interpretative function of the natural law in order to expound the legislative intention, whenever that is vague or doubtful. The natural law itself insists that its continuing protective postulates be expressed or revealed in the hard case.

The use of the natural law theory in statutory interpretation arises in the following cases. First, when a particular situation or condition apparently within the words of a statute is not within the spirit or purpose. This is expressed in the familiar canon of interpretation that a thing which is within the letter of the statute is not within the statute unless it be within the intention of the legislature. To illustrate, let us assume that a statute was enacted enabling testators to dispose of their properties to their heirs or legatees at death. It was the intention of the legislature that the heirs or legatees in a will or testament should

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[34] For a fuller discussion of this particular aspect see Pascual, C., *The Natural Law Theory and the Philippine Supreme Court*, 19 The Lawyers Journal, Nos. 1 and 2, Jan. and Feb., respectively, (1954).

[35] *Aequitas est correctio legis generaliter latae qua parti deficit.*

[36] BLACK, INTERPRETATION OF STATUTES, 2d Ed., 62 (1911).

have the property transferred or given to them. An heir who murdered the testator to set the will or testament in operation in order to speedily get into his inheritance, while apparently within the words of the statute, is not, however, within the spirit or purpose of the statute.[37] This situation could never have been the intention of the legislators.

The second use of the natural law theory in statutory interpretation arises when a particular situation or condition apparently not within the words of the statute is within the spirit or purpose. This is signified in the familiar rule of interpretation that a thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter. To illustrate, let us assume that a statute was passed granting compensation to any parent or child who at the time of an employee's injury is dependent on the earnings of the employee. It was the intention of the legislature to lessen as much as possible the hardship of a sudden loss of income from the death or injury of the breadwinner as well as to establish a rule of descent whereby unwed mothers are made the legitimate parents of their issues. A mother of an illegitimate son who dies or is injured in the course of his employment, while apparently not within the words of the statute — since the common acceptation of the word "parent" is ordinarily used to designate a legitimate relation — is, however, within the spirit or purpose of the statute.[38] This is more in consonance with the finer sense of right and justice since it does not visit the sins of the parents upon the innocent children.

In these cases, which are suggestive of statutes which because of their generality cover too much ground or because of their particularity cover too little and hence fail to attain or give justice and equity in those situations or conditions unwittingly included or excluded, the statutes are either restrained or extended.

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[37] See *Riggs v. Palmer*, 115 N.Y. 506, 22 N.E. 188 (1889).
[38] *Marshall v. Industrial Commission*, 342 Ill. 400, 174 N.E. 534 (1930).

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