

NATURAL LAW BEFORE THE BAR

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It is not mere courtesy which prompts me to say, it is indeed a privilege to speak at the College of Law of this distinguished University of the Philippines. I had heard in the United States that this University was one worthy of the name. My one-year stay in your Islands has confirmed this impression.

The subject of natural law, about which I am asked to speak, is a happy choice for several reasons. First, the idea of law, analogous though it be, provides a common idiom for intelligible communication between law and philosophy. It is basic to jurisprudence, where law and philosophy meet. Secondly, the role of reason in natural law strikes a familiar note. The reasonable man of the law is a very close relative to reason in man of the philosopher. Thirdly, both law and natural law, two autonomous disciplines, share concern for the human person and for the precious freedom which are man's cherished possessions. Lastly, natural law is an interesting topic because it holds in common with law that there is such a thing as duty, that man has obligations to fulfill. Though the explanations of duty differ, the fact of a consensus as to its existence is clear.

THE FUNCTION OF NATURAL LAW

Let us first situate natural law. What is its place in the philosophical enterprise? Natural law is a philosophical formulation of moral duty. It seeks first to articulate what moral obligation is in general, then to express what man's duties are in the concrete, e.g., in the family situation or in the world of business. As such, it is in the same class as Kant's ethical philosophy with its well known categorical imperative, to mention one of a number of philosophies presenting an ethic of duty.

Taking a broader view, natural law seeks to do what every moral philosopher in the history of human thought has sought, to explain the moral ought, the given of moral science, namely the persuasion that there are certain actions which man ought to do or ought not to do. We need not belabor the point. It is accepted by the lawyer and jurist. At the basis of criminal law is the stated principle: *nulla poena sine culpa*. Freely translated this dictum reads:

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a sanction is not to be imposed where there has been no *mens rea*. This doctrine of law takes for granted the existence of the moral ought.

How well has natural law fulfilled this function? This question can best be answered by explaining natural law itself, which I shall now try to do. By way of prelude let me make a disclaimer. Natural law cannot boast that it is perfect, that it has said the last word. Like all philosophical systems, it is a reasoned explanation of human reality, of man's experience, but like all of them, it is limited, imperfect. This is so because human reason is finite and human language limited. No words, no categories of thought can say: "I have grasped the whole of reality and crystalized it in an expression that exhausts all its meaning." Reality is unlimited. It resists capture in any set of categories. It is characterized by constant change. In like manner no formulation of law can say: "I am valid for all times. Touch me not." Moreover, in every age of mankind, philosophy must rethink and reformulate its propositions, in order to make reality intelligible to the men of the age.

ONTOLOGICAL BASIS OF NATURAL LAW

With these observations from the epistemology of philosophy in mind, let us proceed to an exposition of natural law. Here a choice is necessary. There are many formulations of the doctrine in the history of philosophy. Let me select that of Thomas Aquinas, one form of natural law recognized by the historians of philosophy. We could, of course, take its expression as found in Cicero and the Stoics of Ancient Rome, the natural law of Edmund Burke, the great English Jurist, or that of the Chancery Courts, where clerics occupied the bench and read natural law propositions into the body of English Law. Time does not allow considerations of these or others of the many formulations of natural law.

The ontological basis of natural law is the nature of man. Various forms of the doctrine whether Stoic, Greek or Scholastic, find in nature a starting point and a foundation for the elaboration of this law of man's nature. Though their concept of nature differs, they are fairly agreed that the thing called the nature of man is that which is common to men of all cultures and times. It is composed of spirit and matter. In virtue of the material element in man he is thrust into the world of time and space. Here he finds himself a co-inhabitant of the cosmos with other beings who are his equals as spirit-in-matter. By reason of his material component man experiences cold, hunger and deterioration. To assuage these needs he seeks food, clothing and medicine.

Spirit that he is, man experiences the enjoyment of beauty, is open to unlimited truth, feels a dynamism within to seek the good, needs to love and be loved. Very importantly, man is endowed with reason, which is both a faculty and a vital force to perceive the meaning of his existence. All of these possessions of his nature he has in virtue of his existence in community and by communication with other men, the family community, the body politic, the religious group to which he gives allegiance.

Thus far, I have but given philosophical expression to what empiric science, history, psychology, anthropology, tell us of man and of mankind. This informs us what man is, his ontological status. It has said nothing about the moral dimension of man, what he ought to be and to do. This latter aspect is what natural law, as every ethic, seeks to elucidate. What man is provides the ontological basic from which moral truth about man arises.

The moral dimension of man is a matter of the ethical ought. It answers the question, ought man be true to his nature, true to human reality, to himself? The answer, of course, is yes. Yes, it must be, for moral philosophy tries to explain man's experience of actions he feels he must do or avoid, an experience which empiric psychology has not explained away in terms of compulsions and guilt feelings. Nor has sociological analysis adequately accounted for this experience by social approbation and disapproval.

NATURAL LAW IN THOMAS AQUINAS

" . . . this is the first precept of (natural) law, that good is to be done and sought after and evil is to be avoided." (*Summa Theologica* I-II, 94, 2).^{*} Why is this first principle of natural law true according to Aquinas? It is self-evident, he replies, found in the very idea of the good. For the good is that which all natures seek after as something which perfects them, leads them to their proper fulfillment. Therefore, the good is to be done.

Subsequent Scholastics add to Aquinas' analysis of the first principle as follows. If the principle is not true as stated, then some alternative formulation of it is true. A first alternative would be: evil is to be done, good avoided, an inversion of the statement by Thomas. Or, as a second alternative, simply deny the presupposition of the first principle, deny there is any such thing as moral good or evil. Let us take each of these substitutes in turn: First, evil is to be done, good avoided. This is experientially and metaphysically nonsense. Our experience of the good is that of something which attracts us, elicits from us a response of approval and

pursuit, while evil is experienced as repelling us. Metaphysically, the good is that which perfects us. To say that such is to be avoided is reason gone awry.

Our second alternative: there is no such thing as moral good or evil. This proposition contradicts the given of moral science, the assumption which natural law and every ethic seeks to explain. Let us make two comments about beginning with assumptions. Every science begins thus and must do so. Law, for example, assumes that there are people, that each person is endowed with freedom for the use of which he is held accountable, that life in society is a value worth protecting by law. Secondly, assuming the existence of moral good and evil is not a weakness. One may assume something whose reality is established. Thus, the law and literature of all peoples attest to the existence of good and evil.

Let us leave the first principle and continue with Aquinas' exposition of natural law. "All other precepts of natural law," he says, "are based upon this (first principle): so that whatever natural reason apprehends as man's good (or evil) belongs to the precepts of natural law as something to be done or avoided." What he is saying is that the remaining principles of natural law: love, honor and obey your parents, do not kill, respect the property of your neighbor, etc., are so many applications of the first principle, are more concrete expressions of the good to be pursued and the evil to be avoided.

Thomas elaborates what these further principles are. Make your start with the natural inclinations of man, he suggests, the inclination, or instinct, to self-preservation, the dynamism in man to propagate his kind, to rear his children, the felt human need to discover knowledge and to live in community with other men. Reason, he continues, perceives that the fulfillment of these natural inclinations are so many ends or goals for human striving. But to say that something is a goal worth striving for is the very definition of the good. Therefore, he concludes, man's reason demands that he pursue these goals.

Similarly, reason condemns the behavior contrary to these inclinations of nature: self-destruction, refusal to propagate the family and the race, neglect of one's children, ignorance and living a solitary existence. Why are these supplementary rules of natural law true? Because they are specific applications of the first principle, specific goods to be done and evils to be avoided. They find their validation in the first principle.

Aquinas has achieved what he set out to do, established the existence of a law which reason discovers in man's nature. He has only set down, however, the basic structure of natural law in this one article of his *Summa* which I have been citing. There remains, of course, the further elaboration of natural law precepts throughout the entire range of human conduct. To pursue this aspect of our subject farther would take us through the whole of his *Summa*, that great historical synthesis of medieval learning. Let us rather point out several characteristics of his natural law presentation which we have just seen.

REASON AND ABSOLUTES IN NATURAL LAW

First, note that Aquinas does not say that man's nature is the source of the moral obligation inherent in these natural law precepts. It is what reason declares to be good for nature that constitutes the rules of natural law, says this greatest philosopher of the Scholastic philosophic tradition. Human nature is not an absolute for Thomas. Hence, rules of conduct based solely on nature, for him, cannot bind absolutely, can impose no obligation in the proper sense. But reason can. For reason makes her judgments in the light of, guided by, the absolute. To explain what the absolute is for Aquinas, as the source of strict obligation, would take us still deeper into his metaphysics, too deep for a warm afternoon. Suffice it to say that for Aquinas, as for Plato and Kant, existing nature is contingent, limited, the opposite of something absolute. To find the latter one must transcend nature and rise to a Platonic absolute form, a Kantian antonomous reason or to Thomistic *synderesis*.

The importance of reason, rather than simply nature, as the source of moral imperatives can be seen by contrasting Thomas' view of natural law with that of subsequent—and in some respects decadent—Scholastic theories of this same law. Francis Suarez, for example, defined the moral good as that which is in accord with man's nature, not in accord with reason. Moral evil for him is an action against nature. This has been a source of strong difference of opinion in the present controversy on birth control in Catholic circles. Following the Suarezian definition one must logically conclude that mechanical devices and chemicals used to impede the fertility of nature are against nature. Hence, they are morally evil. Following Thomas' definition that moral evil is what *reason* perceives as contrary to nature, one might reach an opposite conclusion. Depending on the concrete situation of a given family, it might be rea-

sonable to inhibit the fertility of nature. If reasonable, then it is normally good.

A second observation, not all is relative in morals according to Aquinas. There are moral absolutes. In these days of delinquency and crime in every land, the need for absolute principles of human conduct is, I think, everywhere felt. I note the interest in the Cuenco Bill here in the Philippines. This experience of the need for absolutes in education is extrinsic evidence of a basic inadequacy of any ethic of pure relativity in morals. I hasten to add, this comment should not be construed as necessarily an endorsement of the Cuenco Bill. It merely points out one value in the cluster of values present in the actual situation. I am aware that there is a constitutional question at issue here as well as an educational one.

Were we to leave Aquinas at this juncture we would be left with an impression of natural law as a body of moral precepts of universal validity for every man in every culture, fixed and unchanging in their application to the human situation is, as we know, constantly evolving, always in flux. This would be to misrepresent Aquinas. Lesser thinkers who followed him were not so successful in handling this problem of a fixed yet changing law. Indeed existentialism with its emphasis on relativity in morals has sent present day Scholastics scurrying back to the *Summa* to rediscover the elasticity, the element of change, in natural law, which Thomas expressed remarkably well for his day.

An example in point is the following:

"... goods entrusted to another should be restored to their owner. Now this is true for the majority of cases: but it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust; for instance, if they are claimed for the purpose of fighting against one's country. And this principle will be found to fail the more, according as we descend further into detail, e.g., if one were to say that goods held in trust should be restored with such and such a guarantee, or in such a way; because the greater the number of conditions added, the greater the number of ways in which the principle may fail, so that it be not right to restore or not to restore." (*Summa* I-II, 92, 4).

He treats this question generically also. "Consequently, we may say that the natural law as to general principles is the same for all (men)..." By general principles he means those precepts which express the basic duties of man stated very broadly, e.g., pay homage to God, respect innocent life, public authority must be obeyed and the like. These principles approximate the Ten Commandments. They are relatively few in number.

"But as to conclusions of those general principles," he continues, "(the natural law) is the same for all in the majority of cases; and yet it is deficient in some cases." To paraphrase, he is saying that once we move beyond the basic principles of natural law, we formulate precepts which are general rules of conduct but which have exceptions. Aquinas does not specify in the passage cited what these more particular rules are. The following would be examples: pay taxes, divorce is wrong, marriage should be monogamous, etc., in short the majority of moral rules. These, he holds, have exceptions. They are, therefore, not universal.

This treatment needs to be supplemented by his theory of prudence, elsewhere elaborated in the writings. Prudence is not for Thomas that cautious abstaining from action which is its present connotation. It is more accurately described as the ability to make reasonable decisions. The role he assigns to prudence is that of applying natural law principles to the concrete choices facing man, to cases. Here he is well aware that reason is fallible and that reality is infinitely diverse, unique and contingent. This makes it impossible to formulate general rules of conduct valid for every moral situation.

DEFICIENCY OF NATURAL LAW

I mentioned at the beginning of this paper that natural law is but one of a number of ethical systems expressive of moral duty and that, like any philosophical construct, it has limitations. Its foremost deficiency is its inability to express a morality of love. I do not mean that it lacks a set of propositions inculcating man's duty to love God, his fellowmen and himself. Rather, there is a question here of an ethic whose starting point, middle and end is charity, whose motivation is love. An ethic in terms of law can convey only the minimal elements of love, for love far exceeds the bounds of law and duty. The morality of the New Testament is a prime example of what I mean: "Love the Lord, your God, with your whole heart... and your neighbor as yourself. This is the whole law and the prophets." The ethic of Augustine is another: "Love and do what you will." Love and you have no need of law.

Morality is primarily a matter of the heart, of interiority. Law is primarily a matter of external conduct, of exteriority. This brings me to my second point. Moral science in Catholic centers of learning has in recent years been undergoing a process of re-examination. In part this rethinking involves a "de-legalizing" of morality. Let me explain what I mean. For several centuries

Catholic moral writing has, with some exceptions, been largely expressed in juridical terms. Historically, this was due in large measure to the fact that morality was taught in close conjunction with Canon Law, the law of the Church. The authors of moral works were either canon lawyers themselves or moralists well-versed in Canon Law. The two disciplines of law and morals were wedded in a synthesis that overemphasized the external dimension of morality to the detriment of its interior pole.

A product of this union was an illegitimate child, a misconception of natural law in its relationship to law. I refer to that exaggeration of natural law which represented the role of law as simply to inculcate natural law, or to further explicitate it. Natural law drew up the blueprint which law was expected faithfully to follow. The autonomy of law as a discipline in its own right, with its own functions to fulfill, was not properly recognized. The present on-going process then of de-emphasizing the legal element in morals is moving in the direction of authentic morality.

In the process, natural law no longer holds the eminence it once possessed. This is not to say that it has lost all relevance to man today. It is still a valid expression of moral duty. It stands yet as an articulate exponent of absolutes in an age overly conscious of relativity in morals.

CONCLUSION

The central position in Scholasticism occupied by nature is now being taken over by the concept of person. The idea of person in current philosophy connotes a unique being, resisting conceptualization. To conceptualize is to objectify. But something that can be objectified is an object, a thing, the very antithesis of person, who is a subject thinking, feeling and loving in his own unique individuality.

The ethic we are currently working out at the Ateneo de Manila, Fordham University and similar institutions is also more open to the concrete situation in which the person finds himself. Moral conclusions formerly sought by deduction from the nature of man are now looked for in empiric reality. In nature, however, we still find a pattern of human conduct which reason is not free to ignore.

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