

## THE NATURAL LAW

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The right and the duty of the Church to play an active role in the social-economic sphere of life and to develop a Catholic tradition of social action were plainly taught by Pope Pius XI in his famous Encyclical Letter *Divini Redemptoris*:

*'The Church,' he wrote, 'does not separate a proper regard for temporal welfare from her solicitude for the Eternal. She subordinates the former to the latter, according to the words of her Divine Founder: "Seek ye first the Kingdom of God and His Justice, and all these things will be added to you." Yet, she is so far from being unconcerned with human affairs, so far from hindering civil progress and material advancement, that she actually fosters and promotes them in the most obvious and efficacious manner. In the sphere of social-economics the Church has never proposed a definite technical system, since this is not her field. Nevertheless, she has clearly outlined the guiding principles which, while susceptible of varied concrete applications according to the different conditions of times, places and peoples, indicates the safe way of securing the happy progress of society.'*

### The Social Encyclicals

The Luminous Encyclical Letters and allocutions on social problems in which the modern Popes have outlined a theory of social justice have made a profound impression on the whole world. The general principles which successive Pontiffs have laid down have always been the same. But in the changing political conditions of succeeding generations the Papal teaching placed an emphasis on contemporary problems which varied with each epoch.

Pope Leo XIII, for example, was confronted with a pitiless exploitation of the worker by industrial capitalism and a refusal of governments to intervene. He trenchantly attacked the idol of the age – economic liberalism - and vigorously condemned the do-nothing attitude of the governments of the day. At the same time in noble sentiment and language he vindicated the dignity and the personal rights of the worker.

Forty years later Pope Pius XI was faced with a changed political situation by the rise and strength of communist tyranny. He clearly saw that something more radical was required in the world than mere organised efforts to protect the exploited worker. In one of the most remarkable documents of modern times he boldly called for a reconstruction of the whole social order based on co-operation by all for the common good.

In the reign of Pope Pius XII still another political pattern was influencing the world. The world-wide economic depression had created a strong reaction of reform in the social structures of most Western countries, but it was also being used as an excuse for national regimentation and the introduction of various forms of the total state. Consequently, one can see running through the lofty pronouncements of Pope Pius XII a constant emphasis on the freedom and dignity of the human person with reference to the power of governments.

Throughout the whole of this long and illuminating guidance of the Holy See on the vexing social problems of the modern world the Pontiffs have constantly appealed to the Natural Law as the basis of sound social relations. They have never, of course, failed to emphasise the law of

Christian charity, but as their appeals were addressed to a world-wide audience, a great section of which either denied or ignored the Gospel of Jesus Christ, the Pontiffs based their doctrine broadly on the Natural Law or morality. For this reason we have considered it useful to devote the present Social Justice Statement to an instruction on the Natural Law.

### **Natural Physical Law**

The concept of Natural Law is one that has been grossly misrepresented in our time. It is customary to dismiss it as something mysterious, eerie and unreal. It is none of these things.

There are two aspects of Natural Law, the physical and the moral, and each of them is far from being unreal.

In the physical order scientists accept as an unquestionable truth that all nature is controlled by universal and constant laws, which experts are ceaselessly endeavouring to discover, formulate and put to use. Indeed, the tireless investigation into the operation of the laws of physical nature is one of the predominant passions of the modern mind.

However, the formulae in which experts express these physical laws can be called '*laws*' only in a metaphorical sense. The formulated '*laws*' of nature are no more than tentative summaries of the tendencies of things to act in a fixed and constant manner in particular circumstances. They can always be amended on the discovery of further facts. Indeed, science has advanced to its present eminence over a stairway of discarded hypotheses and '*laws*.' Its formulated '*laws*' do not define the innermost natures of the things under observation, nor do they exert any influence on the things themselves. They are scientific tabulations of the constant behaviour detected in nature by the experts. That is as far as the scientist desires to go.

The philosopher takes over here from the physical scientist and he claims that the unvarying tendencies displayed by physical things have been implanted in their natures by the Creator. Thus the constant modes of activity observed in irrational things can be truly called '*laws*' of Nature because they are the expression and the effect of a Supreme Law-giving Mind. They are an order embodied in nature by the Creator which irrational things follow with unflinching obedience. This supreme law by which God designed to bind His creatures to certain lines of action is called the Eternal Law. It is the one primeval Law of the universe antecedent to all creation, co-eternal with God and determining that every created thing should behave in a mode of activity proper to its kind. The Natural Law implanted in the natures of things is therefore the creatures' participation in the Eternal Law. Every truth of nature uncovered by the scientist is a further unveiling of the beauty of Eternal Law. This concept does not present great difficulty to a mind that admits the existence of the Creator.

### **Natural Moral Law**

Many moderns are unwilling to include man in this universal subjection to an immanent Natural Law, or, at any rate, they refuse to admit that the law of his nature has any *moral* binding force. This is not a logical attitude. Man is not a freak of the universe. He is an integral part of universal nature, created like the rest of the universe with a purpose and a goal, and endowed with inherent tendencies and inclinations to pursue his natural end.

However, this ordination of man to his particular end is such that it is consistent with his rational and free nature. He is guided by Natural Law in accordance with, not in violation of, his free nature. He is always able to pick his own path, to progress toward his goal or to go away from it. So, whilst the Natural Law of all subrational beings is identical with the physical laws of their natures, for man the Natural Law becomes a *moral* law because his actions are free, self-determined and consciously self-directed. Of course, many of man's actions are not completely

freely chosen, but that does not alter the principle we have stated. It merely alters the degree of his moral responsibility.

We are able to forecast the normal reactions of irrational beings, and to say that they *should* act in this way or that. We say, for example, if this thing is a piece of iron it *should* contract and expand under changes of temperature; if this animal is a koala it *should* eat eucalyptus leaves; and so on. But in these examples the word *should* has only a philosophical meaning, nor a moral meaning. However, in the case of man the word *should* takes on a moral sense. Endowed with intelligence and free-will, he is under no compulsion to follow the inclination he feels within himself. He must use the human faculties which distinguish him from the brute beasts to adjust his actions to an end that befits a rational being. We cannot therefore excuse our actions by pointing to parallel actions in animals and saying '*it is natural*'. What is natural for an irrational beast is not necessarily natural to a rational man. For us an action is natural only if it harmonises with the law of reason.

*The Natural Law of morality for man is therefore an order of action, grounded on the nature of man, which human reason can discover, and according to which the human will should act if it is to attune itself to the essential nature and goals of a human being.*

### **A Legacy from the Greeks**

This Natural Law is not a written code, except in the sense employed by St. Paul, who using a figure of speech, says it is written in the heart of man (Rom II.15). It was recognized and expounded by the great philosophers of Greece — Plato, Aristotle and the Stoics. Aristotle had a very clear concept of the distinction between actions which correspond with nature, and are thus naturally good, and those which are merely legally just because they correspond with positive human law. The Latins took over this concept of Natural Law from Aristotle and the Stoics. It was developed with fine eloquence by Cicero, and ultimately it became the basis of Roman Law. Later, the Byzantine jurists who composed the famous *CORPUS JURIS CIVILIS* - the Code of Roman Civil Law - gave to the world a book that has made an impression on Western civilization almost as profound as that produced by the Bible.

But it was under the enlightened influence of St. Thomas Aquinas and the later Catholic theologians that the Graeco-Roman concept of Natural Law received an interpretation in harmony with the Christian tradition of Divine Providence and the Christian virtues of justice and charity. The Christian theory of Natural Law is thus a very different thing from its pagan sources.

For over two thousand years this concept of Natural Law has been accepted by pagan and Christian thinkers as the basis of human morality and the source of human rights.

### **Good must be done, evil avoided**

As we have said, the Natural Law is not an explicitly written code, and all men have not a clear concept of what the Law of Nature defines. If man had not fallen from his original condition of righteousness he would have had much clearer notions of the obligations imposed upon him by his human nature. But since the Fall he is subject to passion, prejudice and ignorance, and the unaided light of human reason is not always a clear and sure guide to human action.

Theologians have laboured to discover some basic principle of the Natural Law that is so obvious that all reasonable men can recognise it as the basis of their moral duties, and from which other positive precepts can easily be deduced. There has been a great diversity of opinion on this matter, but the opinion of St Thomas has been accepted as the simplest and the most soundly philosophical. It is his view that the supreme principle from which all other precepts of the Natural Law are derived is that '*good must be done and evil avoided*'. The '*good*' in this context means that which right reason judges to be in harmony with the perfection of our human nature. The '*evil*' is

that which is in conflict with the dictates of reason.

### **Obvious conclusions**

From this basic principle of the Natural Law, which is easily discernible by all men, other principles flow directly, as human reason discovers more about the basic purpose and tendencies of our human nature. The need to live in society, the preservation of one's own life, the perpetuation of the race, parental and filial ties of respect, precepts forbidding murder, adultery and theft are all easily recognized as morally good directions because they correspond with the abiding tendencies that man naturally feels within him, and which reason assures us lead to the perfection of our human nature.

These conclusions from the first principle of morality are not however as clear-cut and definite as are conclusions that follow from the first principles of, say, geometry, because of the obscuring influence which passion and ignorance exercise in the moral order. Hence God willed to define some of man's more important basic obligations in the Ten Commandments, the moral precepts of which are simple declarations of what the Natural Law imposes upon man. Yet, even primitive social communities, that had no knowledge of the Ten Commandments, did not fail to work out codes and regulations governing the conduct of their members and required by the common good. In other words, they had a knowledge of some fundamental principles of right and wrong, based on the law of Nature as they apprehended it.

### **Clarification required**

Besides those conclusions which follow immediately from the first principles of the Law of Nature there is a host of other rules of natural moral conduct which can be recognized only by a more or less complex process of reasoning. Hence there is the absolute need of positive human law to supplement the Natural Law by applying it in detail to the complexities of daily life. (It must be kept in view that in this Statement we are not treating with the function of either Divine Law or any form of supernatural law as guides to human conduct.)

Concerning positive human law it is our contention that it is based on the Natural Law, and apart from this has no foundation. This statement follows from the fact that the law of Nature ordains that man shall live in Society. Social life cannot exist without an authority which shall possess the moral power to control the members and direct them towards the common good. Therefore human laws are valid and binding only in so far as they correspond with, enforce or supplement the basic law of man's nature from which they received their origin. They are null and void if they are in conflict with the Natural Law of man's being. Hence the individual citizen, or any group of citizens, has the duty of scrutinizing enactments of positive law to see whether or not they are in conformity with the principles of Natural Law.

### **Positivism in law**

In this contention we differ fundamentally from the current Positivist School of Law. This School holds that law is not radically a precept of our nature, but is a product of social convention, depending solely on the will of the legislator. The positivist attitude to law, which has ousted Natural Law from modern jurisprudence, is a child of rationalism. Dismissing the concept of an all-embracing obligation imposed upon man by the Creator of his nature, and rejecting the deeply-rooted conviction of centuries that law is subordinated to morality, the Positivist maintains that the will of the sovereign, or of the legislative authority, is the sole source of law and the only criterion of its obligation.

Today legal theory has been stripped of practically all its Natural Law implications. The conformity of actions to the legal pattern set out by the legislature is the sole standard of social morality demanded. The Positivist would claim that even a poor law and its enforcement are more in the

interest of the general welfare than attempts to riddle the enactments of positive law by appeals to Natural Law or moral principles. So the judge sitting in his court has not the duty of worrying whether or not the positive law he administers is in conformity with moral principles or rooted in man's nature. He leaves that problem to the lawmaker, who, as we know, often fails lamentably in his task.

In a certain measure Positivism may satisfy the demands of legal justice within the boundaries of a particular country in times of peace. But it is quite inadequate to deal with problems that extend beyond the limits of individual countries. For example, the frightful atrocities that were perpetrated during the last war induced the nations to undertake the task of formulating a Universal Declaration of Human Rights. The member States of the United Nations Organisation completed the task, but with only qualified success. At best, the Declaration is but a compromise of ideological conflicts, openly disregarded by some of the subscribing nations, and under constant tension during the 'cold war'.

Some of those who set out to compile the draft of basic human rights agreed to accept the proposals advanced, provided they were not asked to give the reasons for their acceptance. This was inevitable, for the only rational basis of human rights is the Law of man's Nature, which they had long ago discarded as obsolete.

It is significant that the United Nations did not claim to *grant* these rights to men, but merely to *recognize* them. It was therefore not a matter of Positivist legislation. It was rather another instance of the inconsistency of Positivism which professes to have thrown Natural Law out the front door, but surreptitiously brings it in by a back door.

### **The role of Justice**

Many of the most illustrious minds of Western civilization in ancient and modern times - Cicero, Aquinas, Suarez, Vittoria, Grotius and others - had accepted the Natural Law not merely as the permanent foundation of social living, but also the most solid bulwark of Human Rights. These human rights, which are rooted in the Law of our nature, are protected by the natural virtue of justice, which plays a dominant role in regulating man's relations with his fellow men.

Justice may be defined as that rule of conduct which ensures that each and every man will receive what is due to him by natural right. Three species of justice were enumerated by Aristotle: *Individual, Legal and Distributive*:

- a) The justice that rules between man and man is called *individual* or *commutative* justice, because it is chiefly concerned with contracts and exchange and the debts involved.
- b) *Legal* justice is based on the right which the State, or any legal society, has to exact from its members the services and tributes due to it from the members, to be employed for the common good. Hence citizens have the strict duty to pay their taxes and render the services due to civil authority, since these tributes from the citizens are to be employed in the common interest.
- c) On the other hand, those who undertake to administer the affairs of public authority have a strict obligation to distribute to the members of society the benefits and services of their administration with unprejudiced fairness. This is called *distributive* justice, and is based on the Natural Law of an ordered society, whose rulers normally distribute to the people nothing that they have not already exacted from them in taxes or dues.

In our days a new term '*social justice*' has figured largely in the statements of the Popes and in the writings of sociologists. This term can be very usefully applied to many of the modern problems in social life, though they fall within the framework of the traditional threefold division of justice,

especially those which involve the exact obligations of legal and distributive justice.

### **Fundamental human rights**

The Natural Law enjoins that the rights which belong to every human being because he is a *person* are absolute and indestructible and are protected by one or other of the species of natural justice. The right to life and limb, the essential freedom to serve God, the right to marry or to remain single, and other such fundamental rights of the *human person* cannot be infringed by any human authority.

The human person is the subject of rights even before he is brought forth into the world. The unborn child has a right to life. Murder in the womb does not differ specifically from the murder of a grown person. The unborn child can also be the subject of property rights, and justice is violated if these rights are infringed without warrant. Minors also have their natural rights, but it is granted that the positive law may regulate their property rights for the common good; it cannot however abrogate them.

### **The right to private ownership of property**

The right to acquire property in private ownership is something that is useful and even necessary for an orderly human life, and is thus regarded as a human right based on the law of nature. Indeed, without the right of private ownership, at least of some goods, men would be reduced to the condition of the jungle, where the beast of prey has to defend its bone while it is gnawing at it. Pope Leo XIII taught this doctrine of the natural right to private property in his immortal Encyclical *Rerum Novarum*:

*The practice of all ages has considered the principle of private ownership as pre-eminently in conformity with human nature, and as conducing in the most unmistakable manner to the peace and tranquillity of human existence.'*

Pope Pius XII taught the same doctrine, but he placed the emphasis on the dignity of the human person, which demands the use of this world's goods as a natural foundation of its physical and spiritual life.

But private ownership is not an '*absolute*' right. In case of utter need, for example, if a man were starving, he would be justified in ignoring the private ownership of food which he here and now needs for human life. Human life is more precious than material goods.

Private property is also a right that must be limited by the social destiny of man's nature, and is always subjected to the common good and the moral law. So Catholic social teaching, while strenuously defending the inherent right of ownership which each person enjoys, justifies its restriction whenever its abuse conflicts with the good of the community.

### **Rights of societies**

Not only individual persons but the family, which is the most basic natural group, and other societies of men are also subjects of natural rights. The Natural Law implies that man cannot singly and by his own unaided exertions do everything that is necessary for the security and dignity of human existence. He requires the cooperation of his fellows. Consequently, he has the natural right to associate himself with others in societies and unions founded for a lawful purpose. Societies of this kind are *moral persons* and have rights similar to those of individual persons. The State cannot abrogate these rights, but may justly regulate them in the interests of the common good.

### **Some modern claims to natural justice**

It is not the function of this Statement to draw up a list of human rights that are based on the Natural Law. The list is constantly growing as the complexity of modern life introduces new hazards to man's personal dignity, and adds new difficulties to his pursuit of human destiny. For example, those employed in the function of manual labour have had to engage in a long and bitter struggle to ensure that the employee/employer relation shall not become the subordination of a 'hand' to a person, and that the worker shall secure a just share in the fruits and responsibilities of modern economic life. So, the sociologists of our time have invoked a number of human rights which have come into the spotlight only during the long industrial struggle. The right to a job, the right freely to choose one's job, the right to strike, the right to a just wage sufficient to secure the welfare of the worker and his family, the right of the workless to unemployment relief, and many other similar claims have been emphasised in our time as rights that are natural to man in modern social conditions.

It is not easy to decide whether some of the rights claimed in modern society are inherent natural rights of justice, or merely vague claims against society as it is at present constituted. It is commonly said that the needy have the right to relief, and the workless have the right to employment and so on. These expressions are doubtless correct in so far as they are understood to be claims in charity. The underprivileged members of society have not normally a claim in strict justice against any other member of society. But as brethren in distress they have a strong claim on our sympathy and help from motives of natural compassion, and especially from motives of Christian charity. Of course, the positive law sometimes gives such people a legal right to relief, and in this case their claim is one of justice.

In this Statement we have been concerned solely with the Natural Law as a basis of social justice. We have not considered the irreplaceable role which Christian charity must play in the realm of social relations. Divine help is necessary to enable the Christian man to arrive at a clear knowledge of the Natural Moral Law, and actual grace is even more necessary for its due observance. As grace was not meant to destroy nature but to perfect it, so the Supernatural Law, especially the Christian Law of Charity, is the perfection of the Natural Law. It ennobles all man's best instincts and inclinations in his relations with his fellow men. Justice must go hand in hand with charity. The two do go hand in hand in the sublime treatise on the Natural Law which was constructed by the great thinkers like Aquinas, Lessuis, Suarez and other bright lights in the theological firmament. Justice and charity are also inseparably linked in the great Encyclicals and addresses of the modern Popes on the social question. If the sacred and binding character of these two ennobling virtues fails to be impressed on the minds of modern men, brute force and might will inevitably prevail in the world. In the very first Encyclical of his Pontificate Pope Pius XII warned the nations that natural justice, combined with charity, the brightest gem of the Christian revelation, must be the twin foundations on which any enduring peace can be built.

*'The new order,' he said, 'must rest on the unshakable foundations on the solid rock of Natural Law and of Divine Revelation. There the human legislator must attain to that balance, that keen sense of moral responsibility, without which it is easy to mistake the boundary between the legitimate use and the abuse of power.' ■*