

THE NATURAL LAW

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NO philosophical concept, perhaps, has been subjected to more varying and even contradictory interpretations, than the concept of natural law. Confining his attention exclusively to American legal thought, Professor Benjamin F. Wright analyzes eight conflicting interpretations of it, and in despair he concludes that "natural law, in its essence, is the attempt to solve the insolvable."¹ Tracing the long history of the concept of natural law from its dim inceptions with the Greeks down to our times, we find many other conflicting interpretations, used either to justify the existing social order or to subvert it for a new one.

Against Plato's 'form of justice' which conceived society as composed of three social 'castes' united into an organic ideal *polis*, and against the Aristotelian 'entelechy' of man as fully realizable within the enclosure of an omniscient Greek *politeia*, the Stoic philosophers propounded the concept of a *civitas maxima*, of a *cosmopolis* to which all men, Greeks, Romans and Barbarians, belonged with equal right as fellow-citizens, entitled to the same dignity and freedom in virtue of the 'natural law' emanating from the *World-Logos*. While this noble dream was never realized in the ancient world, it survived in the Christian mind, purified of all fatalism, and transformed in the writings of the Fathers into a *providential* concept of the natural law, which only Christianity could bring forth.

When St. Paul spoke to the Greeks of the Unknown

¹ Benjamin F. Wright, *American Interpretations of Natural Law*, Cambridge, Harvard University Press, 1931, p. 345.

God "who hath made of one, all mankind, to dwell upon the face of the earth . . . that they may seek Him . . . although He be not far from every one of us. For in Him we live and move and have our being;"² and when he wrote to the Romans that "the Gentiles, who have not the law, do by nature the things that are of the law . . . (showing) the work of the law written in their hearts, their conscience bearing witness to them . . . in the day when God shall judge the secrets of men by Jesus Christ . . .,"³ St. Paul was speaking in a manner in which no Stoic philosopher, not Seneca, nor Marcus Aurelius, could have spoken, if he was to remain consistent with the Stoic idea of an impersonal World-Logos, the Primal Fire, out of which all things were born, and into which all things will again return, by the inexorable will of Destiny. Between Seneca's "*ducant volentem fata, nolentem trahunt*," and St. Augustine's "*qui fecit te sine te non justificabit te sine te*," lies the whole theology of the Christian revelation. This, too, is the measure of the intrinsic difference between Ulpian's definition of the natural law as "that which nature has taught all animals," and St. Augustine's concept of it as man's participation through reason in the "*ratio et voluntas Dei ordinem naturalem conservari jubens et perturbari vetans*."⁴

For the most part, it is true, the Fathers availed themselves of the terms and expressions used by the Stoic philosophers and Roman lawyers of their day. They did not coin new words for new ideas, but by their insertion into the inner logic of Christian thought, old words developed new meanings, just as the Roman institutions of slavery and property acquired a new ethos when the Christian spirit of charity moved into them. No man who believed in a personal God, the Creator of all things, could long continue to look on the law of nature, as the irrational, inexorable unfolding of destiny; rather he would begin to look upon it as the wisdom and providence of God in action. Likewise, no Christian could believe in man's redemption by the Incarnate Son of God, and continue to look upon his slave as a chattel and nothing more; rather he would

² Acts, 17, 26.

³ Rom., 2, 14.

⁴ *Contra Faustum*, XXII, 27.

unconsciously begin to consider him as his equal and brother in Christ. It is true, his outward treatment of the slave did not change radically overnight, and that the institution of slavery continued to exist for centuries to come; but the Christian's inward attitude towards the slave was no longer the same. Unable to deny the universality of slavery and hence its seeming 'naturalness,' the Christians, unlike his Stoic neighbor, did not retreat into an ideal world of his own creation, refusing at all cost to believe that there was anything wrong with 'nature.' Instead, the Christian tried to explain slavery as a consequence of original sin, and hence, as something 'natural' to man *only* in the hypothesis, and in itself an 'evil' which had to be mitigated, if not wholly abolished. The way in which the Church strove to abolish the institution of slavery gradually is well described by the eminent English legal historian, Sir William Holdsworth:

But in a Christian state it was impossible to regard the slave as a chattel and nothing more. The Church secured to the slave certain holidays, and if the master compelled the slave to work on these days, he became free . . . It was probably due also to the Church that the slave was enabled to acquire property with which he could purchase his liberty, or save his skin if convicted of wrong-doing. The Church also by example and by precept encouraged manumissions, and we thus get a class of freedmen . . . The Church encouraged manumissions by will, and the charters show that slaves were bought and manumitted at the door of the Church. Sometimes in these cases the only record of transaction would be a memorandum in the book of the Gospels.⁵

It is clear then that the Christian concept of natural law and natural equality cannot be reduced to the old Stoic concept. The early Fathers of the Church used the old Stoic terms, but they put a new meaning into them. They purged those old terms of the monistic fatalism, inherent in them in the Stoic system. The impersonal World-Logos, immanent in the evolving cosmos, became, for the Christian, the personal, transcendent Creator, who made all things *ex nihilo*, and who governs them, not by the inexorable necessity of Fate, but by the wise dispositions

⁵ Sir William Holdsworth, *History of English Law*, Vol. II, p. 40.

of His divine providence, imposed as physical laws on irrational creation, but proposed to man through reason as moral laws of his being.

Freed from the iron laws of Fate, man now stood in a personal relation to God, as a creature to his Creator, as a son to his Father, answerable to no man, except in so far as he was first answerable to God. Human equality was put on a firm foundation. Man, in Seneca's happy phrase, became a sacred thing to man, "*Homo sacra res homini*," but no longer for the purely Stoic reason that all men belong to the same human species, but for the Christian reason that every man belongs to God, that is to say, because every man is made to the image and likeness of God. As St. Augustine put it: "This is prescribed by the order of nature . . . it is thus God created man . . . He did not intend that His rational creature, who was made in His image, should have dominion over anything but the irrational creation—not man over man, but man over beasts . . . (for) by nature, as God first created us, no one is the slave either of man or sin."⁶ From this fact of human equality, deriving not from nature as created by God, and destined for God Himself, St. Augustine drew the fundamental principle that no man, however great or powerful or wise, has, of himself, the right to rule over other men. Whoever rules, therefore, rules in virtue of a power given to him by God, to be exercised only for the purpose intended by God, which is '*ut omnia fiant ordinatissima*,'⁷ that there be order, justice and peace. No man therefore may be subjected to another man's arbitrary rule. This principle of 'immunity from the arbitrary,' which can be derived validly only from the Christian concept of the natural law, is, to my mind, the revolutionary common denominator, underlying all the various notions of natural law appealed to by mankind in its everlasting struggle for freedom. For it is incontrovertible that man has an innate sense of justice,⁸ an innate conviction that

⁶ *De civ. Dei*, XIX, 15.

⁷ *De libero arbitrio*, I, 4, 15.

⁸ Edmond N. Cahñ, professor of law at New York University, in a book which in many ways is an effort to discover the natural law principles of justice, without using these terms, prefers to call this conviction as the "sense of injustice," rather than the "sense of justice." For, says he, ". . . justice" has been so beclouded by natural-law writings that it almost inevitably brings

there are certain things no one has a right to take away from him; that might does not make right, and that both the strong and the weak are equally subject to a law that comes from above, a 'higher law' that must prevail over man-made law.

Does this conviction of mankind rest on a mere illusion? Does it have any objectivity other than what Justice Holmes calls 'the demand in all men for the superlative?' If it be not a mere illusion, what is its reality? What is the nature of this 'higher law,' or, as we prefer to call it, this *natural law*? And how do we get to know it? These are the questions we shall attempt to answer in terms of St. Thomas' concept of the natural law, as we find that concept delineated in his works, especially in his treatise on law in the *Summa Theologica*.

St. Thomas does not give us in any one place the full concept of the natural law, so as to make us see in one definition: (1) its formal nature as law (what it is), (2) its material object (in what human acts it is found), (3) its final cause (what it is for), (4) its efficient cause (by what authority it is binding). It is not difficult, however, to construct a full definition of the natural law by putting together the various partial aspects of it that he gives us. In one place he calls the natural law "a rule and measure of acts, whereby man is induced to act or is restrained from acting;"⁹ in another place he tells us, that man "has a share of the eternal reason, whereby (he) has a natural inclination to (his) proper act and end; and this participation of the eternal law in the rational creature is called the natural law;"¹⁰ in another place he says: ". . . the natural law is not a habit . . . (it) is something appointed by reason (*a ratione constitutum*), just as a proposition is a work of reason."¹¹ As to the manner it is appointed, he tells us: ". . . all those things to which man has a natural inclination are naturally apprehended

to mind some ideal relation or static condition or set of perceptual standards, while we are concerned, on the contrary, with what is active, vital, and experiential in the reactions of human beings . . . (in the context of the approach adopted) "Justice" . . . means the *active process* of remedying or preventing what would arouse the sense of injustice." *The Sense of Injustice*, New York, New York University Press, 1949, p. 13.

⁹ *Summa theol.*, I-II, q. 90, a. 1.

¹⁰ *Ibid.*, q. 91, a. 2.

¹¹ *Ibid.*, q. 94, a. 1.

by reason as being good, and consequently as object of pursuit, and their contraries as evil, and objects of avoidance. Therefore, the order of the precepts of the natural law is according to the order of natural inclinations."¹²

Hence, according to St. Thomas, *what* is the natural law? It is a dictate or command framed by reason, as a measure and rule. *Of what?* Of human acts to which man is spontaneously impelled by his inborn inclinations. *For what purpose?* So that in these acts he may do good and avoid evil, and thus attain his end. But why ought man to follow this dictate? Ultimately, because this dictate is a participation of God's eternal law. Hence we may define natural law as: "a dictate of reason commanding what man ought to do or ought not to do, derived in a necessary manner from the order of ends discoverable in the inborn inclinations of human nature".

The theory of the natural law involves three problems:

- (1) the *ontological*, that is to say, the existence of an objective order of ends in human nature;
- (2) the *noetical*, that is, the faculty of human reason to know human nature and the order of its essential ends;
- (3) the *deontological*, that is to say, the problem as to whether reason sees in the order of ends ingrained in human nature an order of reason willed by God, and hence, imposing itself on man, not only as a *duty* (i.e., something due in reason) that *should* be done, but also as a *moral obligation* that *ought* to be done. We shall not deal with the deontological problem in this article.

With regard to the ontological problem, St. Thomas' doctrine is a *dualistic realism*, involving as it does the reciprocal action of reason and inclination; and his noetical approach to the problem is an *a posteriori* method, for it starts with the observation and evaluation of the facts of fundamental human experience, from which it then deduces the natural law principles of human conduct, which reason, tempered by experience, is to apply to the concrete situations and contingencies of human life.

The Noetical Problem

St. Thomas starts with an analysis of all the observable

¹² *Ibid.*, q. 94, a. 2.

facts of human experience. What are these facts? *Firstly*, he observes that there is in all men an abiding, inescapable desire for happiness: an instinctive tendency to seek in their every action a good to be possessed, a need to be satisfied, a goal to be achieved.¹³

Secondly, this dynamism is in all men instinctively oriented towards certain predetermined goods or ends. There is in man, says St. Thomas, "first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature."¹⁴ This instinct of self-preservation is natural to man. He will instinctively fight for his life, and for the life of his wife and children, who are, so to speak, the prolongation of himself. This instinct, too, is at the root of man's struggle for a job, and of his quest for economic security. "Secondly, there is in man an inclination to things that pertain to him more especially, according to that nature which he has in common with other animals."¹⁵ Man, in other words, is endowed with a natural sex instinct. He seeks to found a family, and thus, to perpetuate the human race and himself in his children. "Thirdly, there is in man, an inclination to good, according to the nature of his reason, which is proper to him: thus man has a natural inclination to know the truth about God and to live in society."¹⁶ This inclination is specifically human. Man as a rational being has a natural desire to know truth, to inquire into the nature of things, their causes, their ends; hence, to know the ultimate cause of all things: God. And because he is a 'knowing' rational being, he also has a natural desire to live in the society of his fellow human beings, to share with them what he knows, and to partake of their knowledge in turn, and thus in this mutual sharing achieve the fulfillment of his personality.

Thirdly, along with these predetermined goals, which provide the initial ontological direction to human life, there are two other facts of experience which we must take into account: the 'voice' of *conscience* and our consciousness

¹³ *Ibid.*, q. 1, a. 4-a. 8.

¹⁴ *Ibid.*, 94, 2.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

of *freedom*. There is in us something which commands us categorically to do good and to avoid evil. And yet although we know we *ought* to do our duty, we know, too, that we *can* disregard it, if we wish. A theory, then, that will explain the phenomenon of the natural law in man must come to grips with these antinomies that lie at the root of man's being: of unity in multiplicity, of freedom under predetermined ends, of permanence in the midst of change. Such a theory, in other words, must be built on the very dualism of man.

The Ontological Problem

How does St. Thomas explain the genesis and the nature of the moral imperative: "do good and avoid evil," which is undeniably found in the conscience of any normal person? As his *point de depart*, St. Thomas takes his theory of knowledge and by analogy applies it to the problem of human action.

Now as *being* is the first thing that falls under the apprehension simply, so *good* is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good.¹⁷

We get our first idea of *good* in the same way we get our first idea of *being*: by directly and immediately apprehending it from reality. A material object is thrust into the field of our consciousness, our attention is focused on it, and our intellect, set in motion by the sensible image, produces the idea (*species intelligibilis*) of the object, by which it *knows* the object, because it is assimilated to that object, that is to say, the intellect without ceasing to be its own immaterial self '*becomes*' that object, "it becomes another, insofar as it is another, *aliud in quantum aliud*."¹⁸ Now the first thing the intellect knows is *being*. *Being* is the immediate natural object of the intellect, just as color is the immediate natural object of sight.

The process by which man arrives at the supreme

¹⁷ *Ibid.*

¹⁸ Jacques Maritain, "On human knowledge," 24 *Thought* 236 (June, 1949); "Thus from the outset Thomas Aquinas makes knowledge *absolutely dependent* upon what is. To know, in fact, is essentially to know *something*, and something which, as specifier of my act of knowing, is not produced by my knowledge, but on the contrary measures and governs it, and thus possesses its own being, independent of my knowledge . . ." p. 236.

principle of action, "Do good and avoid evil" is similar to this. As we said above, man is impelled into action by the inborn exigencies of his nature. It is from these inborn exigencies, which he must somehow realize if he is to be happy, that man derives his idea of *good*. For, as Aristotle says, "good is that which everyone desires."¹⁹ Good always connotes a desired end. "The good," says St. Thomas, "is being (*ens*) as perfective of another as an end."²⁰

Now just as from the apprehension of *being as being*; our speculative intellect immediately formulated the principle of contradiction, so too from the apprehension of *being as good*, as something desired, that is to say, from the immediate experience of *our being* as ontologically tending toward certain definite ends: our practical intellect formulates immediately and in a fashion all but innate, the first principle in the practical order: "do good and avoid evil." Which is to say, follow the inclinations of your nature, for there lies your good; act according to your being; act so as to become fully that which you are meant to be, in a word, be your own true self.

Hence this is the first precept of law, that good is to be done and promoted, and evil is to be avoided. All other precepts of the natural law are based upon this: so that whatever the practical reason naturally apprehends as man's good belongs to the precepts of the natural law under the forms of things to be done or avoided.²¹

What are these things to be done or avoided? Obviously, they are those things or actions which help or hinder us in the attainment of those ends which, as we said above, are designed in the spontaneous inclinations and exigencies of our nature. These ends we call *existential*, for they are not mere intentional ends, made by the free choice of man, but are ends engrained in the very fabric of his nature, ends to which he is instinctively drawn even before he is rationally conscious of them by the very fact that he exists at all.

Self-preservation, family, society, state—these are

¹⁹ Aristotle, *Nicomachean Ethics*, I, 1, 1094a 1.

²⁰ *De veritate*, 21, 1.

²¹ *Summa theol.*, I-II, q. 94, a. 2.

among the existential ends of man. They impose themselves on him as goods to be desired, realities to be achieved. In the light of his speculative reason, he sees them as ends towards which his whole nature is ordained. He must, therefore, set the practical intellect in motion, and decide on the necessary means to achieve those ends. To spell out the necessary means in terms of principles (e.g. "do good and avoid evil," "thou shalt not kill," etc.) is to express the natural law. Hence, we may fully define natural law as understood in St. Thomas' philosophy, as: "The dictate of reason commanding those things which man ought to do or ought not to do, derived in a necessary manner from the order of ends which reason discovers in the inborn inclinations of man." Under this definition, we can readily see why the moral law which governs our human actions is rightly called *natural law*. For as Fr. Farrell aptly puts it:

Like all other animals, man has natural inclinations; unlike all others he has the faculty of reason which recognizes these natural inclinations naturally; and the result of these two is a natural dictate or command of reason . . . Separately the inclinations of man or the light of reason do not answer to the description of *law*; separately the dictate of reason does not answer to the qualifications of the *natural*, for it is not born with us. With the three elements taken together, all difficulties of the Natural Law vanish. This dictate is natural, necessary as flowing immediately and inevitably from the two preceding elements, dependent upon them.²²

Formally, then, the natural law is neither the ensemble of our natural inclinations, nor the faculty of reason itself, nor the habit of reason called *synderesis*.²³ According to

²² Walter Farrell, *A companion to the summa*, Vol. II, New York, Sheed and Ward, 1945, pp. 379-380.

²³ ". . . properly and essentially . . . the natural law is not a habit. For it has been stated above (I-II, q. 90, a. 1 ad 2) that the natural law is something appointed by reason, just as a proposition is a work of reason. Now that which a man does is not the same as that whereby he does it, for he makes a becoming speech by the habit of grammar . . . (Whoever) . . . since the precepts of the natural law are sometimes considered by reason actually, while sometimes they are in the reason only habitually, in this way the natural law may be called a habit. So, too, in speculative matters, the indemonstrable principles are not the habit itself whereby we hold these principles; they are rather the principles of which we possess the habit . . . *Synderesis* is said to be the law of our intellect because it is a habit containing the precepts of the natural law, which are the first principles of human actions." *Summa theol.*, I-II, q. 94, a. 1; Cf. q. 90, a. 1, ad 2.

St. Thomas, "the natural law is something appointed (*constitutum*) by reason, just as a proposition is a work of reason." It is a dictate or a practical proposition formulated by reason in the light of the essential reality of human nature, which reveals itself in the ensemble of our natural inclinations. Neither through reason alone, nor through his natural inclinations alone, does man partake of the eternal law. The participation "in the eternal law, in which the natural law consists, is a product of both reason and inclination: of inclination materially, of reason formally. If man were like the animals, devoid of reason and free will, he would participate of the eternal law only in a material way, through his natural inclinations. He would be directed toward his goal by a principle of reason working in him but without him. He would be, as it were, "flying blind," with his natural inclinations delicately set by God as an automatic pilot, which would carry him to his goal unerringly, but also, unknowingly. He would never partake in the formal knowledge of the eternal law.

Man, however, is endowed with reason and free will. He is not flying blind. He is, in all his deliberate actions, his own pilot. And he has in the ensemble of his natural inclinations a chart, so to speak, which tells him where his destination lies. He can read in this chart an objective order of existential ends, and when he formulates the necessary means to those ends, he formulates the natural law. Thus because man is naturally inclined to live in society, reason concludes that whatsoever is an indispensable means to social existence—to order, justice, peace and progress, is commanded by the natural law. My natural inclination to live in society is not in itself the natural law—it is merely an instinct; neither is my reason—which is conscious of this natural inclination—the natural law; but my reason, which perceives this natural inclination, perceives also the necessary means to society, and hence it commands: thou shalt not lie, thou shalt not steal, thou shalt not kill, and so forth. These practical dictates of reason which follow in *necessary manner* from the existential ends of man are the natural law.

We say "in necessary manner," for two reasons: first, because the precepts of the natural law are like conclusions flowing from self-evident principles, hence, derived

necessarily. They are not derived merely by way of a determination of the particular manner in which a general principle is to be applied to a concrete case. As St. Thomas says:

The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details: thus the craftsman needs to determine the general form of a house to some particular shape. Some things are therefore derived from the general principles of the natural law, by way of conclusions; e.g., that *one must not kill* may be derived as a conclusion from the principle that *one should do harm to no man*: while some are derived therefrom by way of determination; e.g., the law of nature has it that the evil-doer would be punished; but that he be punished in this or that way, is a determination of the law of nature.²⁴

In other words, human nature, since it demands society, demands also the right of society to coerce by force, if necessary, those who would destroy peace and order. Hence that society should have the right to punish criminals is a natural law—it is a dictate of reason flowing necessarily from men's existential end. However, that society should punish criminals by fine, life imprisonment or by electrocution—this is not a natural law, but only a human determination of the natural law. For it is obvious that while society could not survive without the right to coerce and punish, it need not collapse for lack of an electric chair.

Secondly, the precepts of the natural law are said to be derived in necessary manner, because, as Maritain puts it:

When (St. Thomas) says that human reason discovers the regulations of natural law through the guidance of the *inclinations* of human nature, he means that the very mode or manner in which human reason knows natural law is not rational knowledge, but knowledge *through inclination*. That kind of knowledge is not clear knowledge through concepts and conceptual judgments; it is obscure, unsystematic, vital knowledge by connaturality or congeniality, in which the intellect, in order to bear judgment, consults and listens to the

²⁴ *Ibid.*, q. 95, a. 2.

inner melody that the vibrating strings of abiding tendencies make present in the subject.²⁵

We *live* the natural law in concrete experience, long before we *express* it in abstract concepts. The natural law is, so to speak, lodged in our 'subconscious,' that is to say, in the spontaneous inclinations of our human nature, before it is consciously embodied in our actions by the free choice of reason. Under the prodding of these inclinations, reason awakes to life, and becomes conscious of its sovereign role of directing them towards their appropriate ends. Reason and inclination stand in mutual need of one another: without the inclinations, reason would not know the real existential ends of man; the inclinations without reason could not find the means to reach these ends.²⁶ The all but innate dictate of reason commanding the choice of a necessary means to a necessary (existential) end is natural law.

But this dictate, e.g., *one must not kill*, is more than just a logical conclusion from the evident principle that *one should do harm to no man* (which in turn is more than just a logical conclusion from the self-evident principle, *do good and avoid evil*). It is a living response, to the spontaneous inclination which urges man to seek the society and friendship of his fellowman. Before this inclination found conscious expression in abstract codes of ethics, it was a *lived* (vecue) experience in the individual and collective conduct of the people. It is true that one principle follows logically from the other. But it was not the cold abstract logic of reflection that originally inserted those principles in the texture of human life; it was the inner living logic of human inclinations. "The heart has reasons," we might say with Pascal, "that reason knows not of." A mother loves her child without being previously conscious of a duty to love him; a man seeks human society before he realizes his inevitable dependence on society. Only afterwards, as the fruit of reflection, are we able to look back, from the outside as it were, at the structure of life's inner logic, and to realize

²⁵ Maritain, *Man and the State*, Chicago, University of Chicago Press, 1951, p. 91.

²⁶ "The end is fixed for man by nature. But the means are not determined for us by nature; they are sought by reason." *Ethic.*, VI, 2, 1131.

with St. Thomas that "the precepts of the natural law are many in themselves, but they are based on one common foundation."²⁷ But reflection always lags behind life. As Kierkegaard put it: "We live looking forward, and we think looking back."

And inevitably our thought will reflect our life. We learn our first notions of morality, as of anything else, from our early associations: from our parents, brothers, teachers, etc. We do not begin life in an ethical vacuum. We cannot escape environment or history. To a large extent, then, we must admit that our conscience is shaped, for better or for worse, by the ethical climate of our social milieu. Take, for instance, our notion of *wrong*. These could be the steps by which we come to the fulness of that ethical notion. Our mother forbids a certain thing. We get punished for doing it. We find therefore that the thing is offensive to those whom we love, and that it is bad or harmful to us. We are told time and again that it is shameful, unfair, unkind, selfish, hateful to God. All this we come to understand with our intellect, but only after the sensory experience of what is seen and felt and heard.

The fact that intellectual knowledge begins with the senses, and, hence, is conditioned by our early associations and environment, has fooled people into thinking that all truths are but the product of conditioning factors; that therefore there are no *a priori* absolute principles of human conduct; that what we call necessary or self-evident truths in the theoretical and practical order are not really so in themselves; they only seem to us because (to use Huxley's words, who in this is but echoing Mill and Hume), they are "propositions the negation of which implies the dissolution of some association, memory, or expectation, which is in fact indissoluble."²⁸

With his characteristic incisiveness, Holmes expresses this same brand of associationist epistemology, when he writes:

If . . . the truth may be defined as the system of my

²⁷ *Summa theol.*, I-II, q. 94, a. 2 ad 2.

²⁸ Quoted by Rickaby in *The First Principles of Knowledge*, London, Longmans, Green and Co., 1901, p. 74.

(intellectual) limitations, what gives it objectivity is the fact that I find my fellow man to a greater or less extent (never wholly) subject to the same *Can't Helps*. . . . property, friendship, and truth have a common root in time. One can not be wrenched from the rocky crevices into which one has grown for many years without feeling that one is attacked in one's life. What we most love and revere generally is determined by early associations. I love granite rocks and barberry bushes, no doubt because with them were my earliest joys that reach back to the past eternity of my life. But while one's experience thus makes certain preferences dogmatic for oneself, recognition of how they came to be so leaves one able to see that others, poor souls, may be equally dogmatic about something else. And this again means skepticism.²⁹

But are all principles in the theoretical and practical order merely our subjective *Can't Helps*, the contingent and therefore changeable product of our individual environment and association? Is the final test of truth merely what Holmes calls "a reference to either a present or an imagined future majority in favor of our view?" Am I sure, for instance, that "the sum of the angles of a triangle is equal to two right angles" merely because "if I am in a minority of one, they send for a doctor or lock me up?" Are there not propositions and principles whose truth does not depend upon a majority opinion, nor upon subjective preference, nor upon a contingent fact, but upon a necessary relation of identity between subject and predicate, or of dependence between cause and effect, or of proportionality between means and ends? For instance, once we understand the meaning of the terms 'whole' and 'part,' does not the truth of the proposition "every whole is greater than its part," become self-evident and necessarily true? So that, although we may have had to learn from our parents the meaning of 'whole' and 'part,' yet once we have understood the terms, we necessarily assent to the truth of the proposition, and we would not believe the contrary for being told so by our parents. In other words, there is something in our mind that goes along and bears out the teaching of our parents, something that says within us: "to be sure, a whole must be greater than its

²⁹ "The Natural Law," *The Mind and Faith of Justice Holmes* (Lerner, Ed.), p. 395.

part," or "a part can't be greater than its whole."³⁰ Hence we accept the truth of that proposition, not on the authority of our parents nor on the word of the majority, but because we know it to be so, we see it as self-evident, we *can't help* seeing it so.

But this *can't help* is not like Holmes' *can't helps*, which are but the expression of irrational preferences or the contingent result of early associations. This *can't help* we speak of is the necessary result of *objective evidence*, that is, of the very reality of things as intuited and necessarily understood by the mind. It is not the mind in its individual self, nor the mind as immersed in its peculiar environment or associations, that makes our *can't helps* intelligible. It is the mind in its moment of identity with the intelligible essences of things. The mind can't help *thinking so*, because at the moment of identity it can't help *being so*. A thing is what it is, and for the mind to know a thing is to 'become' that thing. As St. Thomas puts it: "*Intellectum in actu est intellectus in actu.*" For unless we point from the beginning that the mind can know, and in knowing knows, not thoughts, but *things*, we shall never break out of our unreal solipsism into the world of realities. Our mind will remain imprisoned within the walls of its subjective *can't helps*. We may have *certitudes* (subjective preferences), as Holmes says, but never *certainties* (objective truths). Instead therefore of certainty being the measure of certitude, certitude becomes the measure of certainty. In other words, the will, not reason, becomes the measure of truth. Holmes writes to Sir Pollock:

I don't understand your seeming inclination to controvert my *can't helps*. I see nothing behind the force of reason except that *ich kann nicht anders*—and I don't know whether the cosmos can or not. I do not see what more there is in your law of contradiction, except to assert that the universe can't make nonsense sense. Even to that I should simply say I don't know. I can't imagine it—but I hardly think that a measure of the possible. If there is anything that has been supposed to be compulsory upon us short of not affirming nonsense, I should think it was that every phenomenon must have a cause. Yet I find scientific men suggesting nowadays

³⁰ Cf. Rickaby, *Moral Philosophy*, London, Longmans, Green and Co., 1901, p. 142.

(e.g. Eddington) that there are phenomena of which no causes can be discovered and seemingly believing that they are outside the category of cause and effect. I am far from believing with them, but I am entirely ready to believe it on proof. Chauncey Wright, a nearly forgotten philosopher of real merit, taught me when young that I must not say necessary about the universe, that we don't know whether anything is necessary or not. So I describe myself as a *bettabilitarian*. I believe that we can bet on the behaviour of the universe in its contact with us. We bet we can know that it will be. That leaves a loophole for free will—in the miraculous sense—the creation of a new atom of force, although I don't in the least believe in it. I guess (strict sense) that you think man a more important manifestation than I do. I suppose that such differences depend a good deal in the ultimate make-up of different men and hardly can be argued about. Of course from the human point of view, he is important; he hardly would live if he didn't think so. Also I hasten to admit that I don't dare pronounce any fact unimportant that the Cosmos has produced. I only mean that when one thinks coldly I see no reason for attributing to man a significance different in kind from that which belongs to a baboon or to a grain of sand.³¹

We give this quotation in full to show how one's philosophy (consciously or unconsciously) shapes one's jurisprudence, if one is a logical thinker, as Justice Holmes undoubtedly was to the very end. As he was a "bettabilitarian" in philosophy, he was no less so in law. "For legal purposes," he says, "a right is only the hypothesis of a prophecy—the imagination of a substance supporting the fact that the public force will be brought to bear upon those who do things said to contravene it—just as we talk of the force of gravitation accounting for the conduct of bodies in space."³² It is interesting to note Sir Pollock's reaction to Holmes' system of *can't helps*, because it brings us back to a point where jurisprudence joins epistemology. "As to *can't help*," says Pollock, "I would amend *Ich kann nicht anders* into *Man kann nicht anders*. A *can't help*, not common to you and me, would not be of much use to us social animals: so the possibility of that community is fundamental. Which for me is another way of saying that the universe (or the only cosmos that can concern

³¹ Holmes-Pollock letters, Vol. II, p. 251.

³² *The Mind and Faith of Justice Holmes*, p. 397.

us) is reasonable."³³ To which Holmes answered with this rejoinder:

The philosophical remarks I shall not deal with beyond saying that the 'I can't help' is the ultimate. If we are sensible men and not crazy on *-ists* of any sort, we recognize that if we are in a minority of one, we are likely to get locked up and then find a test or qualifications by reference to some kind of majority vote actual or imagined. Of course, the fact that mankind or that part of it that we take into account are subject to most of the same can't helps as ourselves makes society possible, but what interests me is that we start with an arbitrary limit which I know no reason for believing is a limit to the cosmos of which I am only a small part. Most, if not all of our ultimates seem to me to bear the mark of the finite. Of course, you may say *de non apparentibus et de non existentibus eadem est ratio*. I do not find that a warrant for believing that this Cosmos can go no farther than I can, little as I can imagine how.³⁴

It is clear from these excerpts how impossible it is to account rationally for the existence of any laws that will hold human society together, without admitting an objective order of ends engrained in human nature, from which the mind can't help but derive, in a fashion all but innate, the first principles of practical reason. Only if our *can't helps* (innate inclinations) are rooted in our essential being, and only if our essential being is knowable and known to us such as it actually is, can we establish an ethical order of universal validity. Short of that, we would only arrive at a Holmesian system of subjective *can't helps*, which for some strange luck or reason happens to be more or less of an identical pattern in all men (thus making society possible); but which could just as easily come in conflict, in which case, since "deep-seated preferences cannot be argued about . . . when differences are sufficiently far-reaching, we try to kill the other man rather than let him have his way."³⁵ Force then becomes the *ultima ratio* in all human affairs.

All of this is ruthless logic, from the moment one denies the native power of the mind to know *being* (the essences of things), and not *thought* (subjective impres-

³³ Holmes-Pollock letters, Vol. II, p. 255.

³⁴ *Ibid.*, p. 255.

³⁵ *The Mind and Faith of Justice Holmes*, p. 396.

sions) merely. But if, as we hold, our mind is made to know being, since being is one (*unum*), our *can't helps* in the theoretical order (the principles of contradiction, causality, etc.) are identical, because they are intuitively derived from the same object of contemplation. We see the same thing, because we are looking at one and the same thing. Likewise, our *can't helps* in the practical order (the first principles of human action: "do good and avoid evil," "one should do harm to no man," etc.), are identical and of universal validity, because they are no less intuitively derived from one and the same object of desire, the *good (bonum)* to which our essential nature is ordained, and which like the truth (*verum*) is one with being (*ens*); truth being but *ens ut cognitum*, and the good being but *ens ut appetibile* or *perfectivum alterius per modum finis*.³⁶ Truth and goodness therefore are but different aspects of the same reality. In a transcendental fashion, to know the truth is to desire the good.

In the light of this, it is not difficult to see the reason why the ultimate principles of truth, as well as the ultimate principles of goodness, are universally valid and binding on all men. The ultimate being or essence of human nature is the same in all men, and being is the measure of truth as well as the measure of goodness. That is good for man, which conforms to his ultimate being, to his essential nature, and to act against it is evil.

Summing up, therefore, what we have said so far, the content of the natural law is the sum total of self-evident moral principles which our reason derives from the essential reality of human nature, as this nature is known to us in the common structure of our abiding natural inclinations and exigencies.³⁷ Or we may say with

³⁶ *De ver.*, XXI, 1.

³⁷ In his illuminating book, *Reflexions sur la conduite de la vie* (1950), the late Dr. Alexis Carrel, philosophizing from the point of view of a scientist who has observed impartially the physical and psychological laws and tendencies governing the life of Man The Unknown, comes to the same conclusions summarized by St. Thomas in the article of the *Summa*, I-II, 94, 2, which we have been discussing hitherto. Briefly, Dr. Carrel affirms the existence of certain definite laws of human life, among which are: "la conservation de la vie, la propagation de la race et l'ascension de l'esprit." From these laws, he claims, it is easy to deduce a whole ensemble of rules, constituting a sort of technology of existence, which would provide us with the means of thinking and acting without violating the engrained tendencies of our nature, and would teach us so to live as to conform to the basic structure of the

Maritain that the content of the natural law are "the rights and duties which follow from the first principle: "do good and avoid evil," in a necessary manner, and from the simple fact that man is man, nothing else being taken into account."³⁸

These self-evident moral principles are not innate principles or *a priori* forms of the mind, no more than the self-evident theoretical principles (e.g., of contradiction or causality) are. They are, like all human knowledge, grounded on reality, on the reality of man as understood by reason. What is innate in man is merely the *aptitude* to grasp them. Just as the mind has an innate aptitude to grasp intuitively the reality of being as *true*, and thereby it forms the first principles of demonstration, so too, the mind has an innate aptitude to grasp intuitively the reality of being as *good*, and thereby it formulates the first principles of action. "The precepts of the natural law," says St. Thomas, "are to the practical reason what the first principles of demonstrations are to the speculative reason, because both are self-evident principles."³⁹ The reason for this is clear. The *true* and the *good* are but different aspects of the same reality—the reality of *being*, which as known is the *true*, and as desired is the *good*. And since it is one and the same intellect in man which perceives both the *true* and the *good*: the *true* to be enjoyed in contemplation, the *good* to be pursued in action, it follows that contemplation and action, theory and practice, are measured by the same reality; and that what is false (i.e., lacks reality) in contemplation or theory cannot by definition be good (i.e., have reality) in action or practice.

A jurisprudence, therefore, founded on the genuine concept of the natural law, need not be afraid of the realities of modern politics or modern economics. For as truth cannot contradict truth, so neither can reality

human body and the human spirit. These laws he says: ". . . ne changent pas suivant les epoques. Comme elles sont basees sur le mode d'etre fondamentaux de la vie, c'est-a-dire sur la structure meme de notre corps et de notre ame, elles sont applicables toujours et partout. Tout etre humain, quels que soient son age et son sexe, sa couleur, sa position sociale, sa pauvreté ou sa richesse, doit se soumettre aux commandements des lois de la vie."

³⁸ Maritain, *The Rights of Man and the Natural Law*, New York, Charles Scribner's Sons, 1949, p. 69.

³⁹ *Summa theol.*, I-II, q. 94, a. 2.

contradict reality. Hence, what is morally right (i.e., in accordance with the essential reality of man), can never be politically or economically wrong (i.e., in discordance with the essential ends of politics or economics). And the converse is also true: what is in truth politically or economically right can never be morally wrong. We presuppose, of course, that both politics and economics as well as ethics, got down to the ultimate reality of their essential ends. For at rock-bottom, the demands of morality are but the demands of reality itself. As Messner puts it:

A social system, the social institutions, the forms of private property, of credit, of technology, of political government, of educational institutions, are therefore morally sound so far as they stand the test of the ends ordained in essential reality, that is, finally the test of the existential ends, to which all social institutions are ultimately related. On the other hand, from the intrinsic correlation of reality and morality, *it follows that genuine ethics does not and cannot force any moral principles upon reality, but must derive the moral principles from reality itself.* Ethics must itself get down to true reality in human relationships and social institutions in order to develop valid moral principles.⁴⁰

⁴⁰ Messner, *Social Ethics*, St. Louis, B. Herder Book Co., 1949, p. 47, underlining added.

LIQUIDATION OF PARTNERSHIPS
under
THE CIVIL CODE OF THE PHILIPPINES
JAVIER J. NEPOMUCENO *

SCOPE

THIS is a study of two aspects of the liquidation of partnerships under the new Civil Code of the Philippines, which took effect in 1950, namely:

- (1) The individual personal liability of general partners to contractual creditors of the partnership.
- (2) The liabilities and claims of general partners against the partnership in liquidation.

Each of the above questions is discussed only in its broad aspect. Only the liability of general partners is discussed, and only valid, enforceable contracts of the partnership are considered. Liability of limited partners, liability in case of torts and crimes under Arts. 1822-1824 C.C.Phil. and Art. 103 Rev. Penal Code, rights of private creditors of the individual partners, are not discussed in this study.

BACKGROUND

Before the new Civil Code of the Philippines took effect in 1950, the law on partnerships in the Philippines

* College of Law, Ateneo de Manila, Class 1953.