

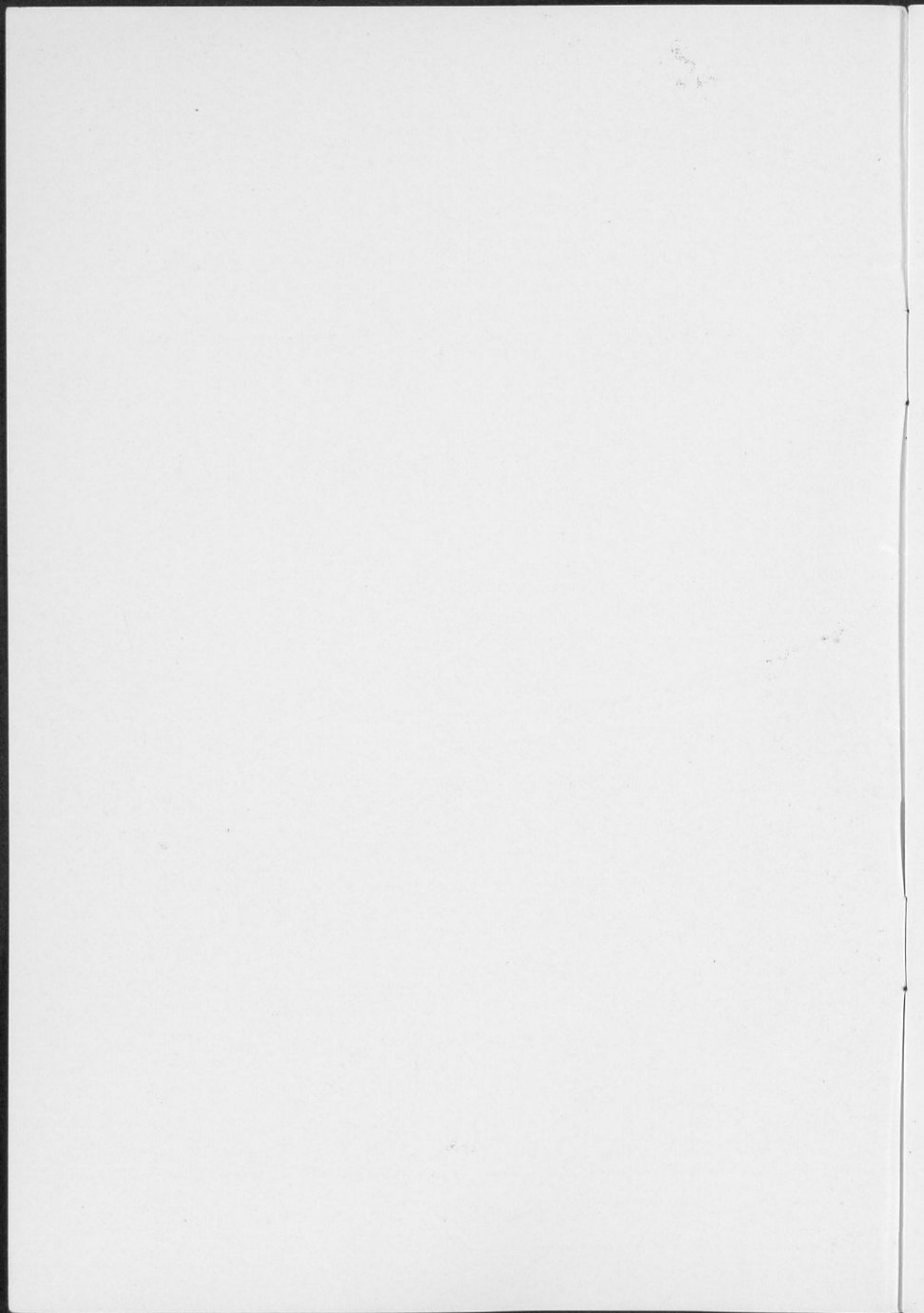
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Rights and duties
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RIGHTS AND DUTIES— THEIR FOUNDATION



REV. JOHN A. DRISCOLL, O.P., S.T.Lr., Ph.D.



RIGHTS AND DUTIES—THEIR FOUNDATION

by

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INTRODUCTION

WE hear a great deal of talk today about the "rights" and "duties" of labor and the "rights" and "duties" of management. We talk about labor's "right" to a family living wage and its corresponding "duty" to give a fair day's work in return. We talk about the "right" to private property and the corresponding "duty" to use private property in the best interests of the general welfare. And so it goes through the whole range of economic relationships. We talk always about "rights" and "duties."

This emphasis on the ethical aspects of economic and industrial life is wholesome and encouraging. It indicates that in spite of all our failures and imperfections we are still living in the Christian tradition and that we still think, unconsciously and habitually at least, in terms of a higher moral law. It indicates that there is still hope that we may be able to reconstruct the social and economic order according to the requirements of justice and charity. We still hold before ourselves, however imperfectly and remotely at times, an objective standard of morality by which we can judge the actions of others and by which, in turn, we must expect our own actions to be judged.

There is reason to believe, however, that not all of us would agree on the definition or the meaning of some of the ethical terms which we are accustomed to use so casually in our ordinary conversation. Some of us mean one thing by "rights" and "duties"; others mean something else again.

The present pamphlet is intended, therefore, to serve as the basis of a truly intelligent discussion of "rights" and "duties"—their origin and their essential meaning. The pamphlet obviously applies with equal force to the whole range of human life and human relationships: family life,



economic life, race relations, international life, etc. Nevertheless, because of the current interest in the specific "rights" and "duties" of labor and management, it is felt that the discussion fits with special appropriateness into the *Social Action Series* of pamphlets. It is presented, therefore, with the hope that it may serve as a general introduction to the entire series—an introduction against which the other pamphlets in the series may be read the more intelligently.

EDITOR.

Rights and Duties—Their Foundation

IF a motorist, scrupulously observing a speed limit of forty miles an hour, is curbed by an overzealous policeman, the driver of the car will immediately protest that he has a *right* to drive at that rate of speed because the *law* says that he may do so. And if a game warden arrests a man for shooting a deer during the month of July, the warden will inform the unfortunate hunter that he has no *right* to kill deer at that season of the year because the *law* forbids it. The point is that we appeal to law to vindicate both rights and obligations. We recognize law as their ground and foundation. It is evident, then, that to justify our claim to the existence of rights and duties, and indeed, to really understand them, we must have a clear concept of the meaning of law.

Definition of Law

Law is a norm of action, a rule of movement. In an applied sense, we speak of laws even in the physical order—for example, the law of gravity, which governs the movement of bodies toward the earth's center. But primarily and essentially, a law is a rule of free, moral, human action. It directs and guides men to use proper means so as to attain a definite end. Traffic laws are made so that all motorists and pedestrians, conforming their actions to these rules, will be protected in life, limb and property. Law, then, is something which pertains to reason, for

reason alone can direct and regulate human action.

A law not only guides and directs. It also implies obligation. We *can* break a law, but we *may* not. Law obliges those subject to it to do, or to allow others to do, what is prescribed by law. In this it differs, for example, from a counsel which we are free either to follow or not to follow. "Thou shalt not kill" is a law. But to become a member of a religious institute is merely counseled, not commanded. We may follow a counsel. We must, in conscience, observe a moral law.

Law is frequently regarded as something irksome and unpleasant—and as a matter of fact, the line of action demanded by law is not always easy to follow. And yet, law is essentially and inseparably connected with happiness. The very end and purpose of law is to direct human action in a way that will bring about and protect the happiness both of the community and of the individuals who go to make up the community. Primarily, however, law directs and commands actions for the common, general good—to secure the happiness of the entire group or community. This follows from the relationship which exists between the community and the individual man. St. Thomas says: "Since every part is ordained to the whole, as imperfect to perfect, and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness" (1a2ae, Q. 90, a. 2). It would be an inversion of the right order of things if the perfect were ordained to the imperfect or the whole were ordained to the part. It would be unreasonable to sacrifice the lives of an entire people for the good of a private citizen; but an individual may, indeed, should, when necessary, give his life for his fatherland. Law, then, is principally concerned with the attainment of the general good, the happiness of all.

Since laws are guides and rules of human action, it is necessary that they be promulgated. However excellent a road map may be, it is absolutely worthless to a man who

is ignorant of its existence. And no matter how good a law may be, it cannot direct human action unless it is known. The manner in which a law is to be promulgated is determined by the author of the law. But if the purpose for which laws are enacted is to be attained, all laws must in some way be brought to the attention of those who are to be bound by them.

Finally, not every man can make a law. If a group of private individuals were to meet in solemn conclave to draw up rules of conduct for the citizens of the United States, the only serious aspect of such a situation would be the question of the pseudo-legislators' sanity. We would not look upon their enactments as laws of our country. The reason for this is that since laws are ordained to the common good of the community, only those who have charge of the community are empowered to make and promulgate laws.

From what has been said, we can, with St. Thomas, define law as an "ordination of reason, for the common good and promulgated by him who has care of the community" (1a2ae, Q. 90, a. 4).¹

Kinds of Law

There are, however, as we shall see, many kinds of laws. This being the case, when we say that rights and duties are founded upon law, just what law have we in mind? For example, does a man have the right to defend himself against a highwayman merely because Civil Law grants him that right? Or is Civil Law itself grounded upon another, more basic law? Is each type of law autonomous? Or is there one fundamental rule of action which forms the ground-

¹ Law, even in the strict sense, can be considered in three ways: as it is in the legislator who makes the law; as it is in the subject who is ruled by the law; and as it is contained in some book of laws. As is evident, Aquinas is speaking here of law as it is in the legislator.

work of all others and which is, in consequence, the ultimate foundation of all rights and duties? If we are going to explain and justify our rights and duties by appealing to law, it is evident that a mere general definition of law will not suffice. We must proceed further and examine the nature of the various laws, their mutual relationships, and the manner in which rights and duties depend upon each of the several types of law.

The Eternal Law

In the Apocalypse we read: "I am the Alpha and the Omega, the beginning and the end" says the Lord God . . ." (1, 8). These words of Holy Writ implicitly contain all of the essential notions of the Eternal Law, which, as we shall see, is the source of all law (and rights and duties) among men. God is the Creator, the First Cause of all things—everything in the universe is absolutely and utterly dependent upon Him in being and activity. Since He is God, He is Infinite Intelligence, and so before the creation of the universe there existed in His Divine Mind an idea of the beings He was to create, and a plan of government by which He would direct these beings to their proper ends. Even an intelligent *man* does not begin to erect a building before he has a pattern or exemplar of the edifice in mind; nor does he initiate a charity drive until he has decided upon a plan of action for those who are to be engaged in the project. And what is true of a reasonable creature is assuredly true of Infinite Intelligence. The ultimate goal God had in His Mind before He began the work of creation was Himself. It could not be otherwise. He could not ordain creatures to an end other than Himself, because this would imply dependence upon others—an impossibility for One Who is Infinite Perfection. God is the first beginning and last end of all creation. In the words of St. Thomas: "as the plan of Divine Wisdom has the character of an exemplar, pattern, or idea, inasmuch as by it all things are created, so

the plan of Divine Wisdom moving all things to their due end has the character of law. And thus the Eternal Law is nothing else than the plan of Divine Wisdom as directing all acts and movements" (1a2ae, Q. 93, a. 1).

Briefly, since God is the First Cause of all things and Intelligence Itself, He had from all eternity a plan by which every creature He would call into existence would be directed back to Himself as to the Supreme Good and Ultimate End of creation. This plan of Divine Reason is called the Eternal Law.

It follows from the above that the Eternal Law fulfills all of the requirements of a true law—that it is "an ordination of reason for the common good and promulgated by him who has care of the community." The Eternal Law is an ordination of reason, because it is the plan of Divine Reason directing all things to their proper end. It is ordained to the common good, because it is directed to the Supreme Good of every created being—to God Himself. It was promulgated from all eternity, because the acts of God are independent of time. Hence it is called the Eternal Law, although it is known only in time by the intelligent creatures subject to it. Finally, it is from him who has care of the community, because all things in the universe are subject to God's Divine rule and guidance. God has care of all.

The Eternal Law, then, exists. But, since in the present life we cannot directly know the Mind of God, how is it possible for us to determine the exact content of the Eternal Law, the precise nature of this "plan of Divine Wisdom directing all acts and movements"? When we see a completed building, we know the ideas the architect had in mind before the structure was erected. And we come to a knowledge of a military strategist's secret plan of action, when the plan is unfolded in actual combat. In a similar manner we arrive at a knowledge of the Eternal Law—from the fulfillment of the Divine Plan, from the actual carrying out, in time, of the law which was promulgated from all

eternity. "The invisible things of God . . . are clearly seen, being understood by the things that are made" (Rom. i. 20). As the Angelic Doctor points out (1a2ae, Q. 91, a. 2), since law is a rule and measure of action, it exists in a two-fold manner: in him who rules, and in that which is ruled. In the former sense, that is, as it exists in God the Supreme Ruler, the Divine Directive Plan is called the Eternal Law; in the latter sense, as it exists in creatures ruled and directed, it is called the Natural Law. And so we know the Eternal Law through its effects in nature, through the Natural Law, by which creatures participate, in time, in the Divine Eternal Plan.

The Natural Law

All creatures, then, are ruled and directed by God. From this it follows that they must in some way participate in the Eternal Law—because to be ruled, a thing must in some manner partake of the rule.

And all creatures do partake of the Eternal Law in that they receive from the Creator natural inclinations to their proper acts and ends by which they fulfill the Divine Eternal Plan. Fire naturally tends to give light and to burn; a flower is naturally inclined to take nutrition from the soil, to grow and to blossom; an animal is naturally inclined to acts which sustain its own life and the existence of its species. Man, however, partakes of the Eternal Law in a special manner, because the rules of guidance, the manner in which creatures are directed to their end must be adapted to their natures—and man is a special, superior kind of creature. He has a body, but he is not body alone. He is a creature composed of body and soul. He is endowed with reason, and it is reason which makes him what he is, sets him apart from and above non-rational beings. Man is a rational animal.

And precisely because he is a rational animal, man must be guided to his goal through the medium of his reason, that is, in a manner conformable to his nature. Through

the medium of his reason man knows the end for which he was created; he knows his own nature and natural tendencies which he has received from his Creator, the Author of his nature; he knows what actions are in conformity with these natural tendencies, and hence are good because they are means to the attainment of his perfection, his final end—just as he knows what actions are contrary to his natural tendencies and hence are evil because they will divert him from his ultimate goal. Possessing this knowledge, reason dictates, commands that man should perform these good actions and abstain from actions that are evil.

Moreover, because man is a rational animal, his will is free. He is not moved necessarily to his goal as non-rational creatures are moved to their ends. The goal, indeed, has been set by God, but man can act or refuse to act in accordance with the natural tendencies that will lead to that goal. Fire cannot refuse to burn. But man can follow or refuse to follow the guidance of his reason. And so, he is directed by moral, not by physical force. He is morally obligated, bound by his reason, to use the means that will carry him to his true goal; but he is not, he cannot be, physically compelled to do so. This is why the Natural Law in man is called the Natural *Moral* Law. It is the manifestation of the Eternal Law in a rational creature who is capable of performing moral, free, self-directed actions; it is the Eternal Law impressed by God upon the mind of man; it is the ordination of man to his final end, grounded upon his nature and perceived by the natural light of reason; it is the dictate of reason commanding man to act in conformity with his nature—to do what is good, to do what will carry him on to happiness, and to avoid what is evil, to avoid what will deprive him of the bliss for which he was created.

There are, therefore, three essential elements in the Natural Moral Law: first, man's natural inclinations towards the good, the end of his being; second, the light of reason

by which he knows himself, his end and the things that will lead him to or away from that end; and, finally, the dictate of reason which commands man to act in a reasonable manner, in conformity with his nature, for his end—the dictate, namely, “Do what is good and avoid what is evil.”

That the Natural Moral Law fulfills all of the requirements of a true law follows from the fact that it is nothing more than the Eternal Law (a true law) as it exists in man. However, it is important to note that man does not participate in the Eternal Law in a purely passive manner as non-rational creatures do. Because he is a rational being, man's reason, enlightened by Divine Reason, dictates what is to be done and what is to be avoided to attain his end, and he freely directs his actions to that end. Man thus actively partakes in the execution of the Divine Eternal Plan.

The dictate, the proposition of reason, “Do good, avoid evil,” is the first principle of the Natural Moral Law; it forms the basis of all other precepts. This becomes clear from a comparison of the speculative and practical orders. In the speculative order (in which human reason is limited to knowing without any immediate relationship to action) the first thing apprehended is “being,” because the notion of being is contained in everything known by the intellect. And so the first principle in the speculative order, the first principle of knowledge, is based upon the notion of being—“A thing cannot be what it is and be something else at the same time and under the same aspect.” Bread cannot at the same time be bread and wheat in the farmer's field.

In the practical order of action (in which reason applies knowledge to operation) the first thing that is apprehended is the “good,” because in this order the notion of good is included in everything known by man. This is so because in his actions, man always seeks some end and it is this end, as good, as desirable, that first moves him to act. Consequently, reason commands only those things which it apprehends as good and it forbids only those things which it apprehends as evil. And thus the first principle of the prac-

tical order of action, the first principle upon which all other precepts are based, is founded upon the notion of good—"Good is to be done and evil is to be avoided."

This first principle of the practical order of action is naturally known. That is, it is self-evident, it is understood as soon as man attains the use of reason—just as the first principle of the speculative order, the principle of contradiction, is naturally known as soon as the human mind grasps the meaning of its terms. In other words, men do not have to reason to be persuaded that "a thing cannot be and not be"; neither do they have to reason to be convinced of the truth that "good is to be done and evil avoided." This is explained by the fact that "being" and "good" are, as we have seen, the basic notions, the points of departure in their respective orders, and, consequently, the principles immediately based upon these notions are self-evident, indemonstrable truths.

Classification of Moral Precepts

A. ACCORDING TO NATURAL INCLINATIONS

Because the basis of the notion of good and evil is conformity or lack of conformity to those natural inclinations which will perfect man, lead him to his true final end and carry out the Divine Eternal Plan, the precept to do what is good and avoid what is evil may be applied and classified in accordance with the natural inclinations themselves. Now, as St. Thomas points out, there are in man three fundamental, natural inclinations, insofar, namely, as he is a substance, an animal and a rational being.

As he is a substance: "In man there is 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 . . . and by

reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the Natural Law" (1a2ae, Q. 94, a. 2).

Secondly, insofar as he is an animal: "There is in man an inclination to things that pertain to him more specifically, according to that nature which he has in common with other animals, and in virtue of this inclination, those things are said to belong to the Natural Law which nature has taught to all animals, such as sexual intercourse, education of offspring and so forth" (*Ibid.*).

Finally, as he is a rational being: "There is in man an inclination to good, according to the nature of his reason, which nature is proper to him; thus man has a natural inclination to know the truth about God, and to live in society, and in this respect whatever pertains to this inclination belongs to the Natural Law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things" (*Ibid.*).

B. PRECEPTS ACCORDING TO THEIR KNOWABILITY

Primary Precepts

Besides the first moral precept to do good and to avoid evil, there are other principles, for example, the Golden Rule, which are also self-evident truths—though less general in form than the basic dictate of reason. These, together with the first principle, constitute the primary precepts of the Natural Moral Law. Primary precepts, just as our natural inclinations and the light of reason, are a necessary part of nature itself and consequently, nature being one and unchangeable, such precepts are the same for all, are known equally well by all, they cannot be erased from the hearts of men, and they are immutable.

Secondary Precepts

Not all moral precepts, however are immediately evident. There are commands, called secondary precepts, which require some, albeit very little, thought, before they are recognized as following directly and necessarily from the first precepts—as, for instance, the subject-matter of the Ten Commandments. One does not have to be a mental giant to come to the conclusion after very little thought that to kill a man unjustly is contrary to the Golden Rule of treating others as we would have them treat ourselves. Thus, secondary precepts are conclusions immediately deduced by reason from the primary precepts of the Natural Law.

Knowledge of these secondary precepts, however, is only relatively universal. That is, although no precept is unknown everywhere, a small minority of men may fail to recognize the truth of some particular principle. St. Thomas says that such precepts “can be blotted out from the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions, or by vicious customs and corrupt habits, as among some men, theft, and even unnatural vice . . . were not considered sinful” (1a2ae, Q. 94, a. 6).

In themselves, the secondary precepts are immutable in their binding force because, being immediately derived as conclusions from the primary principles, they partake of the unchangeableness of the principles themselves. They are, however, variable in the sense that circumstances may so change the subject-matter of the precepts that it no longer constitutes the proper material of the precepts. For instance, to use an example of Aquinas, the precept of justice demands that a weapon held in keeping for another be given to him when he requests its return—but not when the owner is insane and there is danger of his harming himself or others. The precept remains immutable but the subject-matter, due to circumstances, is no longer governed by the precept.

Remote Conclusions from Natural Law

Finally, there are remote conclusions which are based upon the primary and secondary principles of the Natural Law. For example, the amount of knowledge one is bound to acquire. These conclusions are, of course, more difficult to understand than their principles. There is room for much error in their regard. Moreover, because circumstances differ widely in various times and places we shall naturally find great variation in these remote conclusions. And because of the diversity of intellectual gifts among men, these remote precepts are not known equally well by all. "Some matters cannot be the subject of judgment without much consideration of the various circumstances, which all are not competent to do carefully, but only those who are wise" (1a2ae, Q. 100, a. 1).

Positive Law

The Angelic Doctor says of the precepts which guide human action: "Although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects" (1a2ae, Q. 94, a. 4). It is self-evident that good is to be done and evil is to be avoided; it is also clear, with very little thought, that it is evil to harm one's fellow man; but it is not so evident to all, that parking a car in front of a water-hydrant might well be the indirect cause of doing injury to others. The Natural Law gives us general principles of conduct but it does not extend, of itself, to all of the details of human living. Thus, there is need of another law to direct man in the many particulars of daily life—to instruct him, in a word, in the remote conclusions of Natural Law, and to bind him to their observance. It is called Positive Law—an ordination of reason for the common good, in conformity with the Natural Law, and promulgated, by him who has care of the community.

Positive Law is Divine, when its immediate author is God, directing men back to Himself as the Common Good of all, through the medium of divine revelation. His enactments must be, of course, in harmony with the Natural Law because God is the Author of both laws and He cannot contradict Himself.

The necessity of Divine Positive Law (over and above Human Positive Law) is abundantly clear. Man has been raised to the supernatural order, he is ordained to a supernatural end which exceeds his natural powers, and so he must be instructed by God in the things that pertain to his high estate and destiny. Moreover, human legislators can easily fall into error, and they can direct only external actions. Consequently, there is need of a law given by God, Who cannot err and Who is capable of directing the interior movements of mind and will upon which the very humanity of our actions depends.

At times, the Divine Positive Law is merely a special revelation of those things which are already contained in the Natural Law. For example, the divine command: "Thou shalt not steal" re-enunciates the Law of Nature which forbids the unjust taking of another's goods. The purpose of this special revelation is to aid man's reason so that he can more easily and surely arrive at a knowledge of fundamentally important precepts. Such laws are positive only in a broad sense. Primarily, they are principles of Natural Law. When, however, divine revelation embraces enactments which are not contained in a definite manner in the Natural Law, for instance, the divine institution of the Church,² such precepts constitute, in a strict sense, Divine Positive Law.

Human Positive Law, as we have noted, has to do with the direction of man's external actions alone. Let us examine Human Law in the light of the definition we have given above.

² The Law of the Church, Ecclesiastical Law, constitutes another type of Human Law. We are concerned with it here.

Since it is a directive norm, it is, like all laws, a work of reason. It is not something which depends upon the whims and moods of legislators. The norm which law-makers must keep in mind is the common good, for this is the end of all law. What is this common good which is the end of Human Law? Or, putting the question in another way, what is the end of the State? In general, it is the same as the end of man. As Aquinas observes: "The end of a whole multitude must be judged in the same way as the end of one man" (De Reg. Princip. 1, c. 14). The reason for this is that men become part of a multitude, they form societies, to secure what alone they cannot obtain. And so the end of any society is the end of those who come together to form the society.

The final end of man is to attain, by a virtuous life, the vision and love of God in the next world. The State is not directly concerned with this end of man because it is something supernatural and hence it is outside of the State's jurisdiction. To obtain a supernatural end is above the natural power of an individual man and consequently it is beyond the power of a group of men united in society. It is only with the help of God, working through His Church (Ecclesiastical Law) that man is directed to his true final end.

The common good of the State comprises many things. In fact, it is composed of all those things toward which man is naturally inclined but which he cannot secure by his own individual efforts—the precise reason why nature impels him to enter society. As we have seen, these natural inclinations fall into three general classes, insofar, namely, as man is a living being, an animal, and a rational being.

As a living being man must have all those things which are necessary for the preservation of life—the protection of life itself, sufficient material goods for a "good life" (he could *survive* alone), and protection of these goods.

As an animal with a natural inclination to propagate his species man must have all those things which are re-

quired for the family—for the generation and education of his children, and all the material and moral aids which are necessary for a full family life.

Finally, as a rational being man has need of all those things which are necessary for the perfection of his rational nature—the intellectual virtues, and the moral virtues which dispose him to follow the dictates of reason. It is in the fact of man's rational nature that we find the very explanation of his formation of the State—because his reason tells him that in society alone can he find the natural means of his perfection as a living, rational animal. Since it is through a life of virtue that man attains his ultimate end, the principle good of man is the perfection of his rational nature by which he is capable of performing acts of virtue and of contemplating divine truth. All other goods are meant as aids to this life of virtue. Aquinas sums all of this up when he says: "The common good consists principally in life according to virtue and instrumentally in the sufficiency of temporal goods" (De Reg. Princip. 1, c. 15).

These then are the various things which constitute the common good of Civil Society; consequently, it is to secure these goods that Human Laws should be made. Human Law should repress vices which militate against these goods and it should command those virtues which are necessary for their attainment; for men will thus be enabled to lead lives of virtue, which is the "proper effect of law," and push on to their final goal, which is the vision and love of God.

To return, after this necessarily lengthy digression, to the definition of Human Law. We said that it must be in harmony with the Natural Law. This follows from the fact that it is derived, in a twofold manner, from the Law of Nature. At times, Human Law is merely a special promulgation or reiteration of the necessary conclusions or secondary precepts of the Natural Law, as, for example, the law forbidding calumny. A precept of this type is in reality a law of Nature and retains all of the force of Natural Law. But Human Law, in a strict sense, is a more accurate deter-

mination of those things which are not definitely expressed in the Natural Law. For instance, Natural Law demands that crime be punished, but it does not dictate the manner of punishment. This is done by Human Law. It should be noted that although Human Law, in this strict sense, does not directly possess the force of Natural Law, it does have the force of the Law of Nature indirectly, in virtue, namely, of the natural precept that legitimate authority must be obeyed.

Human Law of this latter type is by its very nature variable. Its role is to adapt the Natural Law to particular circumstances of time and place in a manner best suited to the attainment of the common good. Treason has always been and will always be an evil thing, contrary to the common good and the Law of Nature. But in the course of history laws enacted to curb it have differed greatly. Centuries ago, those guilty of treason were burned alive; in our day a more humane but equally effective penalty is inflicted. Thus, while the Natural Law remains unchanged, Human Law is mutable.

Finally, Human Law must be framed by him who has care of the community. However, merely because one has charge of the community it does not follow that all his enactments are truly just laws. From what we have seen it is clear that if laws are to be just they must be in conformity with Natural Law, ordained to the common good and all that this implies, and, of course, they must not exceed the power committed to the legislator. If they do not fulfill these conditions they are, as the Angelic Doctor says, "acts of violence rather than laws."

There is another, and important, type of law called the Law of Nations. It is not International Law as we understand that term today and yet it is a norm of action found among men of all nations. It is not Natural Law in the sense that it arises immediately and entirely from nature for it also depends upon a universal contingent fact. Neither is it Human Law in the senses described above. It consists

in the application of the Natural Law by human reason independently of the State or of any other human institution. The right of private property is an instance of a dictate of the Law of Nations. There is nothing intrinsically wrong in the concept of common ownership of property. All that the Natural Law demands is that property be held in such a way that neither the common good nor individual happiness will suffer. But the sad fact is that Adam ate the apple and as a result of the weakness of human nature community ownership of goods just does not work out in practice. Human reason recognizing this universal fact, compares it with the demands of the Natural Law and dictates private ownership of property. The Law of Nations, because it is an application of the principles of Natural Law by human reason, possesses the binding force of Natural Law itself.

Finally, there is International Law, i.e., the Law of Nations in the modern acceptance of the term as a norm of action governing the relationship of States among themselves. It is either natural or positive according as it is based immediately upon Natural Law or on positive pacts and customs.

The existence of Natural International Law follows from the fact that the relationship of moral persons or societies is the same as that of physical persons or individuals. The common good of societies is the common good of the individuals who compose the societies, because as we have seen, "the end of a whole multitude must be judged in the same way as the end of one man." Consequently, he who injures or aids a society, injures or aids the individual members of that society. Natural International Law then is grounded upon the nature of individual men, that is, it is based upon the Natural Law.

Positive International Law, as expressed in various conventions and pacts, is merely a more definite determination of the natural relationship among Nations. Thus it has all the binding force of Natural International Law, and, therefore, of the Natural Law itself.

Law the Basis of Rights and Duties

We have seen that men spontaneously quote "the law" to substantiate both their claim to rights and their insistence upon the obligations of others. To show that this procedure is as a matter of fact justified, we first investigated the nature of law in general and then examined the different types of law.

Law, we found, is "an ordination of reason for the common good and promulgated by him who has care of the community"—a definition which is verified in the various kinds of law.

The Eternal Law is the foundation of all other norms of human action because it is "the plan of Divine Wisdom as directing *all acts and movements*." It is the Eternal Directive Plan of the Supreme Lawgiver. Natural Moral Law is merely the manifestation of this Divine Plan in man, the carrying out in time of the Eternal Law of God. Divine Positive Law is God's way of giving special assistance to man so that he can more easily fulfill the Natural Law, and it is of course an integral part of His own Eternal Plan. Human Positive Law is either a mere reiteration of the secondary precepts of Natural Moral Law or an application of this law to particular circumstances. Hence it has its source in the Eternal Law through the medium of the Natural Law. Lastly, the Law of Nations and International Law are grounded upon the very nature of man and so they, too, are derived from the Eternal Law upon which the Natural Law is based. St. Thomas sums this all up when he observes that "Since the Eternal Law is the plan of government in the Chief Governor, all the plans of government in the inferior governors must be derived from the Eternal Law. But these plans of inferior governors are all other laws besides the Eternal Law. Therefore all laws, insofar as they partake of right reason, are derived from the Eternal Law" (1a2ae, 93, 3).

If then rights and duties are grounded upon law, they will possess the same character as the laws from which they immediately originate—either the Natural Law or Human Positive Law.³ And since all laws have their source in the Eternal Law it follows that all rights and duties will depend ultimately upon this same Eternal Law.

Just what are rights and duties? In an objective sense right signifies the thing, person or action which belongs to or is due to someone. When a buyer pays five dollars for a hat, the hat is owed to him, due to him; it is his right. The acts or labor of an employe constitute the right of an employer. A child belongs to his parents by reason of generation.

Not in man alone but in all of nature do we find this same order of one thing to another. It belongs to or is due to minerals that they exist, to plants that they have earth and water from which to take sustenance, to animals that they have the opposite sex with which to unite to conserve their species. All things due to or owed to non-rational beings are also due to man because he is a living animal. And insofar as he is a rational being it belongs to or is due to his nature to have all of those things which perfect his intellectual and spiritual life. Things due to the nature of non-rational beings do not, however, constitute objective rights; but those things which belong to human nature do constitute rights for man. The explanation of this difference lies in the very nature of man. Non-rational beings cannot control their actions; they are not capable of applying the things due to their nature so as to obtain their end. That is, they do not properly act for an end—they are moved necessarily to it by nature. Man, on the contrary, because he is rational, knows ends as ends and the relationship or proportion of means to ends; and he freely applies the things due to him to their proper end—the perfection of his

³ We are not concerned here with Divine Positive Law which we considered merely to complete our examination of the various types of law.

nature; he is master of his actions and so the things which belong to his nature are his to dispose of. They are his right.

Subjectively, right is a moral power to do something, to possess something, to acquire something as one's own. The buyer of a hat has a subjective right over the objective hat. Right does not consist in the physical prowess to do or possess or acquire whatever one's fancy may happen to suggest—might does not make right. Right is a moral faculty, a power which man is capable of possessing because he is a rational being, able to perform free, moral actions. This is perhaps more easily seen from the viewpoint of the correlative of right, that is, duty. When our dog wanders away for a week-end instead of remaining at home to guard the house, we do not berate him for being derelict in his duties. Why? Because we recognize the fact that he cannot control his actions; and he is not master of what he does precisely because he lacks the power of reason. Reason takes actions out of the purely physical order and raises them to the moral level. And so right and obligations are things of the moral order, the order of reasonable, human, free action.

It is obvious that right and duty are correlative terms. If I have a right to vote, all other men are morally bound, morally necessitated to allow me to cast my ballot in peace. A fellow citizen may be physically able to eject me from the polling booth, but if I have a true right to vote he is not morally able to do so.

Now, that this moral power of right and this moral necessity of duty are ultimately based upon the Eternal Law follows as a corollary from what we have already seen. St. Thomas sums it all up nicely when he says: "Since a precept of law is binding, it is about something to be done, and, that a thing must be done, arises from the necessity of some end. Hence, it is evident that a precept implies, in its very idea, relation to an end, insofar as a thing is commanded as being necessary or expedient to an end" (1a2ae, Q. 99, a. 1).

Let us examine these words of Aquinas. First, he says that "since a precept of law is binding, it is about something to be done." This is a truth to which we seldom if ever advert, namely, that although right and duty are correlatives, duty is ultimately the basis of right—not vice versa. And this is so because right and duty are grounded upon law. Law, as we saw, is a directive norm of action which carries with it an obligation. It binds us to do or avoid something. The Eternal, Natural and Positive Laws are ordinations, commands of reason. The fundamental notion of law then is obligation—not the concept of right. We have rights because we have duties. Since a precept of law is binding it is about something to be done.

Secondly, "that a thing must be done arises from the necessity of some end." Whenever a man does anything, *i. e.*, whenever he acts as a reasonable being, he acts for an end—to obtain some good; and so the necessity of his doing anything as a man must come from the end. However, because man is a rational being he is free and consequently the necessity exercised by any particular end or good cannot be psychological; it must be moral. That is, man's will remains free but he is obliged morally, he has a duty to seek the end—and that because a precept of law binds him to do so.

All laws, however, are not so intimately connected with man's end that their non-observance will exclude him from the attainment of his goal: "Hence, it is evident that a precept implies, in its very idea, relation to an end, insofar as a thing is commanded as being necessary or expedient to an end." The nature of the precept determines its absolute or relative necessity as a means to the end.

Man, therefore, is bound by law to seek all of those things which belong to him, which are due to him as a living rational animal. He is bound by law to seek his own final end by use of the natural and supernatural means given him by the Author of his being. Law binds him, in conjunction with others, to seek the goods of the societies of which he

forms a part—whether it be the family, the State or the family of States. Law, Natural and Positive, proximately, and the Eternal Law ultimately (because all law is based upon the Eternal Law) obliges him to all of these things. And because man has an obligation to follow the dictates of law, he has a corresponding right to be allowed by his fellowmen to do so. Rights, therefore, are founded upon duties, duties are grounded upon Natural or Positive Law, and because these laws are themselves based upon the Eternal Law all rights and duties have their ultimate source in the same Eternal Law.

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N. C. W. C. STUDY CLUB OUTLINE

DEFINITION OF LAW

1. Discuss the importance of knowing why we have rights and duties.
2. Compare the notion of law as it is found in the physical universe and in the moral order.
3. Note the importance of the role of reason in law. What would be the implications of maintaining that a legislator would be justified in enacting laws merely because he willed to do so?
4. If the common good is to be preferred to the good of the individual, how is it possible for individuals to possess rights?

THE ETERNAL LAW

1. Why is it necessary to say that from all eternity there existed in the Divine Mind a plan of government according to which all things are directed to their proper ends?
2. Explain how the Eternal Law fulfills all of the requirements of a true law.
3. Why must the Eternal Law ordain all beings to God as to their Final End?
4. Since we cannot read the Mind of God, how is it possible for us to know the content of the Eternal Law?

THE NATURAL LAW

1. Discuss the relationship that exists between the Eternal Law and the Natural Law.
2. How does man participate in the Eternal Law? How does this participation differ from that of non-rational beings?
3. Discuss man's freedom to follow or not to follow the dictates of the Natural Law. Why is the Natural Law in man called the Natural Moral Law?
4. What are the three essential elements of the Natural Law? Discuss the inter-relation of these elements.
5. Why is the precept, "Good is to be done and evil avoided," the first principle of the practical order of action?

CLASSIFICATION OF MORAL PRECEPTS

1. Explain the classification of precepts according to man's natural inclinations.
2. Discuss primary precepts; secondary precepts; remote conclusions from the Natural Law.
3. Discuss the relationship of Divine Positive Law to Natural Law.

4. What is the purpose of Human Positive Law?
5. What is the nature of the common good for which the State should strive?
6. Discuss the relationship of Human Positive Law to Natural Law.
7. What is meant by the Law of Nations?
8. Can International Law possess any moral binding force if it is not grounded upon the Natural Law?

THE BASIS OF RIGHTS AND DUTIES

1. Explain the true meaning of "right"; "duty."
2. Why is it that only rational beings can possess rights and duties?
3. Show how rights and duties are based upon law, and ultimately upon the Eternal Law.

4. What is the purpose of Human Justice Law?
 5. What is the nature of the woman's body and what are the main stages of its development?
 6. Explain the relationship of Human Justice Law to Natural Law.
 7. What is meant by the law of Nature?
 8. Can International Law possess any real binding force? If it is not grounded upon the Natural Law?
- The Basis of Rights and Duties
1. Explain the true meaning of "Right" & "Duty".
 2. Why is it that only rational beings can possess rights and duties?
 3. Show how rights and duties are derived from the law of Nature.

