Spring 1957

Philosophy Of The Natural Moral Law

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PHILOSOPHY OF THE
NATURAL MORAL LAW

by

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Submitted in partial fulfillment
of the requirements for
"Magna Cum Laude"
Recognition

Carroll College
Helena, Montana

1957
This Thesis has been approved and accepted by the Department of Philosophy, Carroll College, Helena, Montana

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Introduction

In order to understand the problem of the natural law as it confronts us today, and to arrive at any solution or conclusion to this problem, one must first understand the essence of the natural law. Jacques Maritain describes the natural law as,

"an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being." 1

And, since all law had a religious character, in primitive cultures law was intrusted to priests and religious judges. However, man soon realized that human law is mutable; different laws were observed by different peoples and in different places. Realizing that a law from the intellect of the supreme law giver would be immutable and that law, as he knew it, was continuously changing, man was forced to conclude that a difference exists between human and divine law. Human law had authority and was binding in conscience; therefore it must have a moral basis. Human reason demanded to know the source of law and the justification of its obedience to human law. This justification could not be based merely in human will, for if it were so based it would have no moral
obligation of loyalty to conscience or reason. Therefore, we conclude that underlying all positive law there is an idea of an eternal, immutable law set forth by an omniscient lawgiver. Should we deny the existence of this eternal law we are faced with either anarchy or positivism with its offshoot materialism. The former denies all law and recognizes only the ego and self-interest. The latter holds that there exists no source or unchangeable basis of positive or human law, and that law is gradually developed through environment, race interests, economic conditions, class struggles and the like. Anarchy and positivism cannot stand the criticism of reason seeking ultimate principles, thus we are forced to admit the existence of a natural law which is the basis of the validity and moral obligation of human law. The world has possessed the idea of a natural law from very early Greek philosophical history and this idea was more clearly crystallized during the era of Platonic and Aristotelian philosophy. Down through the ages erroneous theories have occasionally overshadowed this idea but today we are living in an era of the restoration of the true concept of the natural law to its rightful position of pre-eminence.

"In the last analysis our whole argumentation for the inalienable rights of man, for the subordination of politics to moral law, for the rights of small nations, for independence, liberty, and security, rests firmly on the
idea of natural law as does the argumentation of the papal encyclicals for social justice against communism and for the natural rights of the individual person above the state, against Nazism.
HISTORY OF THE NATURAL LAW FROM EARLY GREEK
PHILOSOPHERS TO, AND INCLUDING
SAINT THOMAS AQUINAS
Chapter I

In as much as law was, in primitive times, closely associated with religious culture, it is quite understandable that the concept of the natural law should have first appeared in ancient Greece. This nation was the first in recorded history to have developed an elaborate and extensive system of gods and to have delved into philosophical problems. The Greek mind was free from all influence of supernatural revelation and therefore, the resulting theories and conclusions were based on pure reasoning. The earliest Greek thinkers were concerned with the problem of change and permanence. They saw continual change and yet realized that a permanent basis was present. Their philosophy dealt with nature. Therefore when, in the middle of the fifth century B.C. philosophical thought turned to practical problems of state, the philosophy maintained its basis in nature. Politics and law having become the center of Greek concern, it followed that much emphasis was placed on political philosophy. From their philosophical speculation arose two concepts of natural law which still exist in modern times. The first is the positivistic natural law closely tied up with the contract theory of state origin. In this theory the natural law is arbitrary and artificial; it is determined by utility and
pleasure. The second idea was that of a metaphysical natural law which is of divine origin and the basis of human law. The latter intrinsically contains the idea of a God who is the supreme lawgiver and, though in theory a vague form of the latter was prevalent, in practice the positive law was considered almost divine. To the ancient Greek, freedom was paramount, and to him freedom was observance of law, not the arbitrary law of the tyrant but the law supported by a basic natural law. Sophicles' tragedy "Antigone" is an excellent representation of the Greek theory of law. Antigone upheld the idea of a natural law which was above the law of the polis. Creon was the advocate of positive law.

One of the first of the ancient Greek thinkers to develop a theory of the basic natural law was Heraclitus, (cir. 536-470 B.C.). His theory was that all material things are in a "state of flux". From this he was led to believe in the existence of a permanent principle; this he called harmony. Harmony is the manifestation of the divine logos. The logos, that is the divine reason, is the ultimate source of law and all human law must conform to it. "For all human laws are fed by one divine law." With Heraclitus, 'the Obscure Philosopher'...the idea of the natural law for the first time emerged as a natural, unchangeable law from which all human laws draw their force."
It was Heraclitus' purpose to emphasize the divine element of the law of the polis, setting this law up as inviolable. He hoped thus to discredit the philosophy of the Sophists which was beginning to influence the thinking of the masses. The Sophists held that the natural law was that law which governed man before the origin of the state, in the pure state of nature. They preached that there is nothing sacred in human law, and used this as a basis for their attacks against the positive law of the polis, representing it as serving class interests: they declared the equality of all men thus condemning the institution of slavery and the distinction between barbarian and Greek. The Sophist theory that the state is the result of a contract between individuals developed into a positivistic theory of law which later deteriorated into skepticism and subjectivism.

Callicles, one of the Sophists, contended that natural law was "might makes right". For him positive law emerged from this and was the will of the strong imposed upon the weak. These theories were to be revived by later materialists such as Rousseau, Hobbes, Pufendorf, Thomasius and other followers of the historical school. Thus we see that the Sophists were not uniform in their philosophy but held a diversity of ideas.

The doctrines of Epicurus,(342-270 B.C.), the first
legal positivist, evolved from deteriorating Sophism. He believed that there could be no objective or natural rights and that utility and pleasure are the ultimate criteria of justice. Therefore justice is purely positivistic. Epicurus was an advocate of the contract theory of state origin. His belief was that before this contract, in the state of nature, men lived like wild animals: he interpreted the natural law in a pessimistic sense. He denied the existence of a natural law of divine origin.

"There never was an absolute justice but only a convention made in mutual intercourse, in whatever region, from time to time, providing against the infliction or suffering of harm." 5

Socrates, (469-399 B.C.), perhaps the first great mind in the Greek philosophy of natural law, taught that there exists a world of ideas in which abstract entities such as goodness, beauty, justice etc. reside. He then concluded that a human law is just if it is based on this idea of justice. However in opposition to the Sophists, he held that the law of the polis was absolute and he condemned disobedience to positive law even though it may at times be unjust.

The greatest student of Socrates was Plato, (427-347 B.C.), who extolled the theory of a supermundane or heavenly abode for ideas, and taught that the things
of this world are or exist only insofar as they agree with these existing ideas. He held that the chief aim of justice was order and not necessarily freedom, therefore, a law was just if it produced order. He over-emphasized the divine element in the law of the polis and like his teacher Socrates, he taught the necessity of obedience to it. He did this largely in opposition to the Sophist contention that justice aims at the freedom of man. Plato distinguished between what is naturally just and what is legally just. Natural justice is that which conforms with the idea of justice. Legal justice is that which produces order. Positive laws change but the idea of just law is constant. The world of ideas is one of order and is the pattern after which this world should be fashioned in respect to moral and legal conduct. The Sophists had emphasized the freedom of the individual and minimized the necessity of the state. Plato, however, reversed this and sang the glories of the state as the greatest pedagogue of mankind.

Aristotle, (384-322 B.C.), too, distinguished between the natural law and positive law. He developed the idea that the essence of man is his "oughtness", man, therefore, must act in accord with his essence. Such action is then considered morally good. His norm
can be expressed, "Realize your essential form, your nature". Thus, as an action corresponds to nature it is good, and as it is repugnant it is evil.

He makes a distinction between natural justice and legal justice. Natural justice is that which has its basis directly in the natural law, while legal justice can have its basis in the will of man. Natural justice has its source in the essence of the universal idea of justice. That which is naturally right is unalterable and universal. Positive law is alterable and local but should be based on natural justice. For Aristotle the idea of justice was not a separate entity with extramundane existence but was a universal idea expressed in positive law.

Aristotle had such a high regard for the law of the polis and felt it realized so well the natural law, that he used the arguments for the natural law to justify the positive law. He recognized that man is a rational being, his highest happiness lies in reason, and reason is the yardstick of all law. He believed that in the case of the law of the polis, positive law was expressing the natural law very well. Therefore he felt that the Greeks were bound to obey all positive law. "The goodness or badness, justice or injustice, of laws is of necessity relative to the constitutions of states." To him the right of the
state was superior to that of the individual.

"Thus the state is by nature clearly prior to the family and to the individual, since the whole is of necessity prior to the part;... The proof that the state is a creation of nature and prior to the individual is that the individual, when isolated, is not self-sufficing; and therefore he is like a part in relation to the whole." 7

The Platonic and Aristotelian doctrines tended toward state socialism.

During this period of Greek political philosophy there arose a school of thinkers known as Skeptics. They taught that man was the measure of all things and that the senses cannot convey true knowledge. Law was arbitrary and based on agreement among individuals. Since man could not perceive essences or natures, perception of the natural law was impossible. This was a period of Greek philosophical and moral decay.

Out of this era arose a new school holding knowledge as the basis of ethics. This new Stoic school based its philosophy on reason, on the agreement of human action with man's nature. Law emanates from divine reason and thus is immutable. In Stoicism some of the Sophist ideas were revived. Slavery was condemned and the equality of man upheld. This philosophy became the form into which the Church Fathers were to
pour Christian ideas.

Stoic philosophy became the basis of Roman law under which the individual was recognized as possessing certain inalienable, original rights. To the Roman Jurist slavery was against the natural law and the idea of human rights must be admitted. These jurists tried to impress the concept of their ideal world on the positive law of the Roman state. They denied that despots and tyrants could be rightful rulers because the ruler must be subject to the natural law and positive law must conform to it.

"There is in fact a true law—namely, right reason—which is in accordance with nature, applies to all men, and is unchangeable and eternal. By its commands this law summons men to the performance of their duties; by its prohibitions it restrains them from doing wrong. Its commands and prohibitions always influence good men, but are without effect upon the bad. To invalidate this law by human legislation is never morally right, nor is it permissible ever to restrict its operation, and to annul it wholly is impossible. Neither the senate nor the people can absolve us from our obligation to obey this law,.....It will not lay down one rule at Rome and another at Athens, nor will it be one rule today and another to-morrow. But there will be one law, eternal and unchangeable, binding at all times upon all peoples; and there will be, as it were, one common master and
ruler of men, namely God, who is the author of this law, its interpreter, and its sponsor. 8

This philosophy of the Stoics and the Roman Jurists was a great mile-stone in the history of human political thought but still it remained vague.

"A satisfying solution could be found only when the natural law, paramount to the will of the state, would be founded on the idea of a personal God, who is at the same time supreme intellect and omnipotent will, perfect wisdom and supreme authority, perfect justice and supreme power.

This new idea was given to the world by Christianity. God, perfect intellect, supreme will, is the Lawmaker of the world. Human reason is the light by which this law is seen. This law is engraved in Man's heart; its basic principles are self-evident; its conclusions can be found by the human mind from the knowledge of the created world in which the Creator and supreme Lawmaker reveals His will." 9

At this point, the dawn of the Christian concept of the Natural Law, it would be well to discuss briefly the nature and division of that law. In a wide sense of the word the natural law can be extended to include all laws in the universe. However, in our sense of the term, we take it as the "Natural Moral Law". This is well defined as that part of the divine law which applies to human conduct. The Natural Moral Law, taken as a whole, is called the "lex naturalis". It can be
divided into three major subdivisions. The first section deals with our obligations and duties to God. The main topic dealt with here is worship expressed by man's love, giving of honor and obedience to his creator. The second division deals with our duties to ourselves. This can be summarized by reasonable care of soul, mind, and body. The third and last major division is our duty to our neighbor. This is expressed in justice and charity. Part of our duty to neighbor can be set forth in positive law; this is called the "ius naturale". It can bind only in external acts. The basis of the juridical natural law is justice and is manifested in positive law in three groups: commutative justice, the relations between individuals; distributive justice, the relations between the individual and the state; and legal justice, the relations between states.

Christian political theory disregarded the idea of the absolute state and emphasized the right of the individual and the brotherhood of man. The ideal "civitas maxima" of Stoic philosophy was realized in Christian society. Might was subject to right. Natural law, not the state, was supreme and positive law must conform to the juridical natural law. The Christian duties to God and those to the state need not conflict. They Christianized pagan philosophy and set forth the following basic principles; the extramundane
author of the natural law is a personal God; man's final destiny is not in the state but in God; the Church is responsible for souls and in matters of faith is superior to the state. Since Epicurianism was the predominant philosophy of the Romans at this time, the early Christian arguments were directed against this positivism.

Saint Augustine (354-430 A.D.), Christianised many of the old pagan ideas. He replaced the imperson God of the Stoics with the personal God of the Christians and held that the ideal world of Plato was really the mind of God. He taught that the natural law was established to maintain order and had its origin in the intellect of God which is immutable. He distinguished between the natural law applied to all creation and the natural moral law applied to human conduct.

"In Saint Augustine, therefore, are formed all the decisive ideas for a philosophy of law and of the state. There is an eternal law ruling the universe. It originates in God's very essence and creates the order of the universe, the logic in all being. This eternal law becomes for free rational beings the rule of their acts, the natural law. And this law again is the source and the standard for all human law. Human law can bind in conscience because and in so far as it is derived from natural law."

10
The next great Christian thinker was Alexander of Hales (1174–1245). At first he held to the immutability of the natural law as set forth by St. Augustine. However, being unable to justify certain laws of the Old Testament with these immutable principles he slipped into the belief that the natural law had its basis in God's will rather than in His intellect.

Saint Thomas was the greatest thinker of the Middle Ages. For him the eternal law is God's wisdom directing and governing the world as the first cause of all acts of rational creatures and the cause of all movements of irrational beings. "Accordingly the eternal concept of the Divine Law bears the character of an eternal law, in so far as it is ordained by God to the government of things foreknown by Him." The eternal law is composed of several elements; the laws governing the natural sciences; the laws governing plant and animal life; and the laws of the theoretical and practical reason of man. This third part is the natural moral law.

Wherefore, since all things subject to Divine providence are ruled and measured by the eternal law, ...; it is evident that all things partake somewhat of the eternal law, in so far as, namely, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends. Now
among all others, the rational creature is subject to Divine providence in the most excellent way, in so far as it partakes of a share of providence, by being provident both for itself and for others. Wherefore it has a share of the Eternal Reason, whereby it has a natural inclination to its proper act and end; and this participation of the eternal law in the rational creature is called the natural law." 12

"Furthermore, this natural moral law in the proper sense: a norm which ought to be obeyed, not one that must be blindly obeyed." "Law, indeed, is a norm and measure for acts which rational creatures alone are capable of. 13

The supreme commandment of the natural moral law is, "good must be done". Therefore, the basic norm is, justice must be done. Saint Thomas firmly held that the intellect and not the will is superior in both God and man. The natural law, being an ordinance of reason, proceeds from the intellect and thus is immutable. It has its basis in the essence of God. Since the law is based upon the essence of God which is unchangeable, the law itself must be unchangeable, otherwise God would be at variance with Himself.

Saint Thomas held that the natural moral law, "do good and avoid evil", is expressed fully in the Ten Commandments. He called these the primary con-
clusions of the natural law. These are self-evident to every people even though in most cases they are not set forth in these ten rules. The first three, he believed, need special promulgation since they are not as evident as the last seven. Still every people recognizes a duty to a supreme being. The secondary conclusions, those which pertain to particular incidents, are less evident to the majority and therefore require special law. This is the positive law.

"Hence a positive law must determine, must decide with greater exactness for concrete cases, what the correct application and conclusions are." Furthermore, it is precisely the object of the positive law to render the citizen virtuous. It is not merely a question of maintaining order, or external peace; the law should rather act as a medium of popular education to transform those who live under common legal institutions into perfect citizens." 1

Saint Thomas saw the connection of the positive law with the lex naturalis and concluded that the two therefore should not conflict. In so far as positive law conflicts with the natural moral law it is not law and cannot be binding in conscience. Occasionally, however, he says, a law which is unjust to a few is binding in conscience for all when it is required by the common good, e.g. levying of taxes in war-time. The essential
Element of positive law is reason.

"Accordingly we conclude that just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the essential conditions of law be observed;..." 15

For St. Thomas these conditions were that the law be directed toward the common good, that it be issued by one in authority and that it be promulgated clearly. 16
Foot Notes —— Chapter I


4 Loc. Cit.


7 Ibid. p. 57.

8 Cicero, Republic, III. 22, as quoted in George H. Sabine, op. cit., p. 164.

9 Rommen, The State in Catholic Thought, op. cit., p. 163.

10 Ibid. p. 164.


12 Ibid. a. 2, p. 997.

13 Rommen, The Natural Law, op. cit. p. 46.

14 Ibid. p. 94.

15 St. Thomas, Summa Theologica, op. cit., q. 91, a. 3, p. 997.

16 Ibid. q. 90, aa. 2, 3, 4, pp. 994-995.
CONTINUATION OF THE HISTORY OF THE NATURAL LAW EXTENDING FROM DUNS SCOTUS TO THE PRESENT ERA
Chapter II

With John Duns Scotus, (1266/70-1309), and his principle of the primacy of the will over the intellect, there began a division of the Scholastic philosophy which would reappear a few centuries later in the field of political philosophy. Legal positivism would revert to this theory of will and go a step farther than Scotus by applying it to the will of man rather than to the will of God. Scotus threw out the idea of an immutable natural moral law and replaced it with the will of God. An action was no longer wrong because it was opposed to a natural law which could be found in the essence of God but rather because God willed that the particular action be morally wrong. What is today morally right could become morally wrong tomorrow if God so willed. For Scotus then, the will was the nobler of the two faculties; he held that it was more important than the intellect. Thus it is with Scotus that the trend of philosophy split and the first seeds of modern positivism were sown. God's will was the natural law and since God can change his will the natural law cannot be immutable. From this error sprang many of the modern and contemporary philosophical systems which exercise so great an influence on the world today.
Occam carried the idea of the supremacy of the will a little farther and concluded that sin was not intrinsically wrong but was a sin only because it was an external offence against the will of God. An offence against a positive law is a crime not because it is a wrong in itself but because it is against God's will. Occam saw no unity in the "being, the true and the good," because the true and the good were not dependent upon the essence or being of a thing but upon will. There was no unchangeable "lex naturalis"; all law was positive law.

The later scholastics were forced to study and represent Thomism to the people. It was shown that the will is a blind faculty and can function only when a good is presented to it by the intellect. Therefore law is not merely will but it is the result of a combination of both will and intellect. Thinkers such as Bellarmino, Suarez and Victoria concerned themselves with the application of the "ius naturale" to the Indians of the New World. The Late Scholastics brought forth what they called the "ius gentium," it is the "quasi-positive law" of the international community; it is based upon custom as well as upon treaties.

Hugo Grotius (1583-1645) might be considered the link between the metaphysical natural law and the
rationalistic natural law. He tried to reconcile the definitions of the natural law held by Suarez and Vasques. His famous definition goes as follows,

"Natural right (ius natural) is the dictate of right reason, showing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature." 1

At first Grotius held to the Scholastic belief that God by His intellect is the author of the natural law but introduced some rationalistic ideas. Later because of political affiliations he upheld the primacy of the will. The religious unity of Europe had been destroyed by the Reformation and therefore Grotius set about to rebuild this unity on an intellectual basis. He replaced solidarity based upon faith with intellectual solidarity based upon reason. His greatest contribution to political philosophy was his development of international law based on the natural law.

Pufendorf expounded the doctrines of Grotius and helped to give rise to the so-called "age of the natural law". The natural law was no longer applied merely to general problems but rather the individualistic and rationalistic philosophers developed systems of natural law which were complete down to minute details. The
Metaphysical natural law held by the Scholastics resulted from man studying his own nature and seeing that God was reflected therein. It considered first man’s nature and second God as the author of law. The Rationalistic natural law on the other hand attempted to formulate a system of natural law considering human reason as autonomous, disregarding God as the creator of man and the author of law, and disregarding human experience. The individualists and rationalists proposed a state of nature which existed before the state and formulated their natural law from their concepts of that law which governed man in this state of nature.

The doctrines of the state of nature became the basis for these philosophers to build their schemes. The interpretation they gave to this state determined what their systems of law would be and the purpose for which it was devised. Hobbes was laying the foundation of state absolutism. Fufendorf developed his idea of an enlightened despotism which denied the traditional right of the people to assert basic rights. Rousseau used it to support the French Revolution and the rise to power of the middle class.

Thomas Hobbes conceived of a state of nature where man was no better than beast; there was no society and no set of laws. Man, because of the desire for self-
preservation, contracted with his fellow men to form the "status civilis", and in this contract, a set of laws was devised which is mistakenly considered by many to be the natural law. For Hobbes law depended solely upon the authority of the state; even church law was subject to the state. Thus he was able to justify the position of the British monarchs by asserting strict individualism and by the same token oppose social organizations such as guilds.

"As sharers in the absolute power of the sovereign or limitations upon it, he considered such bodies directly opposed to the natural law: they are 'like worms in the entrayles of a naturall man'." 2

Nature for Hobbes was not the same as our concept. It was governed by passion and opposed to reason. The "status naturalis" is that state in which might is right. It is opposed to the "status civilis".

"The state, together with its law which has its source in the absolute will of the sovereign, is the savior of man from the natural law of 'might makes right'; it affords security and protection by monopolizing all power; and it demands as a price strict obedience and subordination through identification of natural law with positive law." 3

Hence we have the basis for absolutism—natural law was no longer a moral basis for positive law.

Descartes, with his philosophy of innate ideas,
became the father of the individualistic concept of human nature. The mind became the measure of reality. A system of natural law could be devised by the human intellect without considering the exterior world. Kant carried the teachings of Descartes on the natural law to extreme idealism and thus prepared the way for a reaction which was to present man merely as a high type of animal.

The next British Empiricist to consider the problem of a natural law was John Locke (1632-1704). He, too, conceived of a state of nature but one in which man was naturally peaceful and thus his "status civilis" was a contract made not by wild beasts but by men who desired to guarantee their rights. Government and society are indispensable. The function of government is to protect and preserve the natural rights of the individual. It is set up for the self-interest of its citizens. Man by nature possesses certain rights and the laws of the state are to see that he is able to keep these. The right is prior to the law.

"According to this philosopher the natural rights of man consist of life, liberty, and property." "In order to protect and preserve life, liberty, and property, Locke claims that man forms a political community by social contract. Government comes into being as an instrument through which the law of nature is enforced."
The innate rights of the individuals are the criterion for government and law. Thus government is basically utilitarian, clothed in the language of the traditional philosophy of natural law. Locke's natural law was nominalistic. The common good is merely a collection of individual goods. Hence we have a natural law degenerated from the objective metaphysical idea into a political theory to be used in justifying the promotion of political revolution. Locke received many of his ideas from scholastic sources and thus in his theory, one can detect principles which are in accord with scholastic teaching, however, in many cases they are shrouded by empiricism.

It might be well here to note that many people held that the philosophy of Locke had a great influence upon the founding fathers of our nation and thus our government is based on his principles.

"The Declaration falls into three parts: the first sets forth principles which are said to be self-evident—that men are by nature endowed with certain inalienable rights;.... These principles, stated in language which is transparently a paraphrase of Locke, were the familiar doctrines which Americans had cherished from the earliest days in the New World, broadcast and intensified by the arguments addressed to the English government since 1763." 5

However, this theory has as yet not been positively
proven and need not be considered here.

From the philosophies expounded by such men as Rousseau who postulated a state of nature based on happiness, through Pufendorf with his theory of sociality and Kant who held liberty as the basis of human nature, evolved a system of philosophy known as Rationalism. These men separated the law from ethics claiming that the former was external and therefore could not bind in conscience. They divorced the natural law from the eternal law of God and credited man with its authorship. This philosophy gave rise to a system of speculation through which men believed that, without considering the nature of man, his immediate circumstances and his relationship to his creator, they could work out a complete system of law merely by the use of human reason. For them the mind was the measure of things and they were capable of devising a system of law complete to every individual circumstance. This Rationalistic natural law was set up in theory but was completely inadequate when it was applied to reality. And thus it was that, when the positivistic school attacked and destroyed it, they claimed to have destroyed the Natural Law when actually they had merely overcome a false theory which claimed to be authentic.

The materialistic theory that morality was merely
social convention and is based on passions, and that the basic norms of law are utility, workability, and liberty, struck a strong blow to the Rationalistic theory. The Romantic movement which based law on emotions set forth the sources of law as customs of the people, statutes, and jursits. These started the movement which was to become known as the "triumph of positivism".

The Positivistic philosophy of law was that it should rest entirely upon external experience. Since external experience could give no basic principles these philosophers were forced to resort to relativism and even skepticism. The will of the citizens and thus the will of the state became the source of law. There could be no natural law but only the positive law of the state. The positivists denied that law was in any way an ordinance of reason, and attributed it entirely to will. The extreme branch of positivism concluded that force was of the essence when seeking a norm upon which to base civil law. "Therefore real force, whether physical or psychical, is of necessity the essential note of law. Law is merely what is actually enforced, not what is enforceable." The moderate division contended that the constitution of a state was the basic norm.
"Law is the will of the state that is expressly declared to be such, is enacted in conformity with constitutional provisions, and is then duly promulgated. Any further criterion, as, e.g., the inherent justice or the moral lawfulness of the action commanded by the positive law, is rejected as irrelevant for the sphere of law." 7

Positivism as a method existed from ancient Greek times. It became a philosophy of law when it attempted to separate positive law from ethics by basing it on the natural sciences and completely disregarding the moral law of God. The jurisprudence of materialism found its basis in positivism. The personal God was replaced by an impersonal material force. The idea of a natural and eternal justice was thrown out and morals became relative to existing conditions.

The moderate school of positivism upheld the positive law as proceeding from the will of the majority. However, unlike the extremists they did admit the existence of a basic norm which they referred to as an ethical standard. They recognized a difference between right and wrong, justice and injustice, and morality and immorality, but they denied that this had any connection with the positive law. The so-called "victory of the positive law" in the nineteenth century was actually a triumph over the rationalistic philosophy
of law which was prevalent during the proceeding century. The metaphysical natural law of Aristotle and St. Thomas, though overshadowed by these false theories since the fifteenth century, was still preserved intact in the "philosophia perennis". These erroneous philosophies had continually encountered problems which they could not solve by their purely rational or purely material theories and thus it was to be the part of the metaphysical natural law to reappear and once again set man and society on the path of truth.

The Neo-Kantian philosophers denied that law was based merely on the will of the legislator and postulated a higher norm which positive law must conform with. They distinguished between the content of law and the form which directed law making. Others such as Leon Duguit, though claiming to be positivists, insisted upon a rule of law which imposes itself upon rulers and which exists completely independent of the state. When the problem arose as to how to distinguish between a right and a wrong end in a society, Duguit proposed the theory of social solidarity as the universal end. Right strengthens social solidarity and wrong weakens it. Realizing the inadequacy of this he added to social solidarity the element of justice. Thus a society is right and good when it conforms to just principles and wrong or bad when it does not.
Here he had approached the metaphysical theory of the natural law but he claimed to be a positivist and refused to recognize God as the author of a moral law. He had, however, resurrected the idea of justice as the basis of law and opened the door to further investigation.

With growing interest in international law the positivistic philosophy found its theories inadequate to cope with such problems. In as much as their theories demanded the will of a law maker to enact laws, and since they did not admit a basic natural law authored by God, they could find no source of an international law. This factor gave incentive to philosophers to seek a norm for positive law.

The final attempt of the positivistic theory to maintain its hold took shape in the form of totalitarian governments such as those in Germany and Italy in the thirties and early forties, and that existing in the Soviet Union today. During the nineteenth century Italy and Germany were strong-holds for positivistic philosophy. Many of its most ardent supporters were in those two nations. Conditions were such therefore, that, when in the thirties a political vacuum was created in these two nations, Nazism and Fascism found fertile soil for growth and development. The victims
and adversaries of these totalitarian regimes were forced to turn to the metaphysical natural law to oppose such tyranny, since positivism offered no grounds of resistance to governments which had legally attained control and were imposing their wills as law. Thus even the last effort of the positivistic system helped to destroy the one time predominant position of its philosophy.

The world is at the point now where it is beginning to recognize the existence of a basic natural law which is the norm according to which the positive law must conform. Civil law can no longer be looked upon as originating in the will of the law maker, but must be considered as a determination or an expression of the natural law. There is an eternal law of God which governs the universe. Part of this applies to the moral actions of men. This is commonly referred to as the Natural Moral Law, the "Lex naturalis". The natural moral law can be divided into our duties toward God, ourselves and our neighbors. Our duties toward our neighbors are binding in justice and in charity. Those binding in justice are referred to as the "ius naturale". The "ius naturale" is that part of the Natural Moral Law which can be set forth in positive law. Thus positive law must conform to the eternal law of God. In so
far as a positive law does conform it is a good and just law, and in so far as it does not it is unjust and therefore, strictly speaking, not law.


3. Ibid., pp. 85-86.


7. Loc. cit.
APPLICATION OF THE NATURAL LAW TO THE
INDIVIDUAL AND TO THE STATE IN ITS
RELATION TO THE INDIVIDUAL
Chapter III

Thus far we have traced the development of the idea of the natural law from the earliest Greek thinkers through the theories and writings of Socrates, Plato and Aristotle, who first set forth the principle of a basic norm in the form which was later to be adopted by the Scholastics. We traced it to its fuller development in the Stoics and down through the early Christian writers such as St. Augustine, and then saw the clarification of it in the writings and teachings of St. Thomas. We observed the decline of the idea of a basic natural law based upon the essence of God, followed the process of the rise and fall of the rationalistic and positivistic schools, and finally the reappearance of the scholastic concept which had been overshadowed but continued to exist in the "philosophia perennis". We will now examine the nature of man seeing that he is a rational creature composed of body and soul, that he is a social creature by nature and as such he has the right and duty to form necessary societies. We will then consider the "ius naturale" as based upon reason and justice, and conclude that the civil or positive law, since it is an expression of the "ius naturale", must likewise be based on reason and justice. We will conclude by pointing out that the
state is a necessary society, and consider its rights and duties for the promotion of the common good, thus enabling man to attain human perfection in this life and finally to attain eternal and perfect happiness with his creator.

The Dictionary of Scholastic Philosophy gives a physical and a metaphysical definition of man. Physically considered man is "a living substance composed of a material body and a spiritual soul as its form. Made to the image of God and for the glory of God and His own beatitude." Metaphysically: "a rational animal." Man's body is his material make-up. His soul is his vital principle. Man's soul is a simple, spiritual and immortal substance by which he thinks, wills and acts, in short it is the source of his vital activity. Add to this the note "rational" and we have man as a reasoning composition of body and soul. This is comprehended in the idea "person". Every created being was so created that it might give glory to God. Each creature possesses its own nature and thus to attain its end, namely giving glory to God, it must act in accordance with its nature. Man was created by God to know, love and serve Him in this world and to be happy with Him in the next. Man's purpose in this
life then, is to perfect himself, that is, act in accordance with his nature, his essence, and thus give God His due and arrive at this final end, happiness with God. Because of his dignity as a human being made to the image and likeness of God, man is endowed with certain prerogatives or natural rights by which he will be able to attain his end.

"If man is morally bound to the things which are necessary to the fulfillment of his destiny, obviously, then, he has the right to fulfill his destiny, and if he has the right to fulfill his destiny he has the right to the things necessary for this purpose." 2

The rights in themselves are not the end of man but rather a means to the end. They are natural; by his very nature man possesses them. They are necessary; without them man cannot lead a reasonable life here. Man is a rational creature and therefore the laws governing him should be rational. The eternal law is based on the essence or reason of God and is manifested to man through his reason. It follows, therefore, that the positive law, based upon a reasonable natural law, should itself be reasonable, and thus we have the definition of a positive law as an "ordinance of reason, promulgated by one in authority, for the promotion of the common good". The final purpose of law is the maintenance of order, for it is through
order that the common good is best promoted and man can most easily and reasonably attain his end. The natural law is

"simply nature moving us to those real goods without which we cannot be happy; forbidding those apparent goods which destroy happiness. The particular contents of this law flow directly from human nature, ultimately from the divine nature of which ours is a reflection. Its obligatory character comes from the will of God commanding that every creature shall act according to its kind."

Morality arises from our essence; human acts and positive law, therefore, must be in accord with strict moral ethics. "The acts of man, whether of a social or political character, must conform to the natural law which has been implanted in his nature by Divine Providence if they are to have moral validity and sanction." The highest aim of man's social life is human perfection and thus all phases of life should be conducive toward this end. That is, the various phases such as economics, education and politics must be based on moral ethics. False theories such as individualism, socialism, and stateism maintain that his end is in economics or in the state and thus would propose law which is conducive to these false ends. Such laws would be against the nature of man and consequently not just. The natural law demands duties of each
man toward God, himself and his neighbor. These duties are moral obligations and binding in conscience through either justice or charity. Only those binding in justice, however, can be set forth in the positive law.

The basic principle which the natural law sets forth is "good must be done and evil avoided" or "give to everyone his due". The first conclusions drawn from this are the fourth through the tenth Commandments. This basic principle and the first conclusions are given directly to all men through reason by God. The positive law is the application of this principle and the first conclusions to the concrete circumstance in which man exists.

The natural moral law deals with social beings and man by nature is a social creature. As a social creature he can best be perfected through society. A society is an organization of individuals and, or, groups of individuals united in will, under one authority, in a co-operative effort to attain common ends and objectives. A society results from the free union of mind and will; it is a moral union.

Every form of society, to be a good society, must be based on justice, better yet, on justice intermingled with charity. The objective basis of justice is in the will of God. Subjectively considered, justice is in the mind of men, it is that virtue, or habit of
mind, possessed by those who are just. Justice then exists in the mind of God, as it were, as a cause, and in the mind of men as the effect. Men recognize that the same basic norm of justice which binds them also binds their fellow men. The basic principle of the natural law, "good must be done and evil avoided", expresses the basic principle of justice. "Justice requires that all be dealt with impartially and without favor, because before the moral law no one person is of more essential importance than any other." 

It assumes that the basic rights of all men, women, and children are identical and that there is a basic equality of human dignity among all men. Justice operates through civil of positive law and through the consciences of individuals in society to promote the common good. It works as a check in society to guarantee each individual of his natural rights.

"It is, in addition, a moral force residing ultimately in the will of God and imposing itself on human society as the guardian of the social order. Moreover, it should not be forgotten that justice needs the supporting arm of charity." 

The state is a juridical society whose bedrock is justice. Thus the primary function of the state is to promote the common good by establishing conditions necessary for reasonable living, by protecting the just
rights of the citizens, and by enforcing justice. A right may be defined as an inviolable moral power to do, have or acquire something. It is a moral, and not a physical power, and it is based on justice. The obligation to yield to a legitimate right of an individual is called a duty. When one person has a certain right there is a corresponding duty in all other individuals to respect this right. All rights originate in the moral law which is that part of the eternal law applicable to man's rational actions. Even those rights which seem to flow from one's status as a citizen, e.g. to vote, can be traced to the moral law because it is from the moral law that civil governments receive their authority to govern. "The same natural law which lays down our most fundamental duties, and by virtue of which every law is binding, is the very law which assigns to us our fundamental rights." 7

Natural rights are given to all men by God. They are not restricted to certain groups, races of nationalities, but rather are natural to every person, that is, every individual who possesses intellect and free will; they apply to all men. They have their foundation in the nature of man as a "person".

The state is a perfect society, thus a society which possesses the means of attaining its end. In
examining various states it is at once evident that a material element exists in every case. This material element includes people, territory, and government. The number of people, or size of the territory does not matter. Sparsely settled Brazil is as much a state as thickly populated Japan; and small Monaco is as much a state as enormous Russia. The government is merely the agency through which the functions and duties of the state are carried on and the objectives are formulated. The state as a society has the unifying element of free will of the individuals who compose it. In the words of Wilfrid Parsons the state is "composed of many individually free persons, each of whom has his own particular ultimate and immediate ends, yet each of whom has united his own will with those of all the others in the community in search of a further end which is common to all of them. The moral unity which results from this union of wills is the State itself." 8 The state then is a "moral unity" and as such must be distinguished from the "government" which is one of the material elements of the state. The state is not a moral being in itself. The rightness and wrongness of the actions of the state must be accredited to the government which formulates its actions and in turn to the individuals who control the government. Thus the atrocities committed in Russia today
cannot be blamed on the state "Russia" but rather on the Communist government and those who control it.

In accordance with Aristotelian philosophy the state may be said to have four causes. The efficient cause is the political and social nature of man which forces him toward social life and the formation of a state; the material cause consists of the material elements which compose the body politic, people, territory and government; the formal cause is the essence, the union of minds and wills directed toward a common objective; the final cause is the end which it seeks to attain; the common good of the social whole.

"The common good," according to Roger J. Kiley, "means the good human life of the community, the negation of all community evils which interfere with the temporal welfare of the members of the community." 9

To this point we have established the concept of a political society but with no characteristic to completely distinguish it from any other society. When we add to this political society the note of sovereignty we have the actual state. Sovereignty is the supreme power or authority with which the state is endowed for the performance of its functions of promoting the common good and guarding the social order. It is the final power by which the state governs the people and sets up the conditions for reasonable living. However,
sovereignty involves two factors: the right to make ultimate decisions and the physical power to insure their being obeyed. The former depends upon its compliance with natural law norms in its law making, while the latter depends upon the individuals who compose the state, the existence of other states, and the dependency of one state upon another in the international community. The state then is a political society composed of people, territory, government, united by the minds and wills of the citizens, and possessing sovereignty. The state is the highest natural society but recognition must be given to the fact that lesser societies are also necessary and must therefore exist. The state is a political society, and as such must perform its functions for the common good, but it is limited in a certain sense by the existence and the functioning of other rightful societies.

By nature man is a social animal and can be perfected only through society. Man is dependent upon fellow human beings for his existence by his physical and mental nature. According to St. Thomas, "for all other animals nature has prepared food, hair as a covering, teeth, horns, claws as a means of defense, or at least speed in flight. Man on the other hand was created without any natural provisions." 10 To provide
for reasonable and prosperous living man depends upon the skills of his fellow men. True, man can live by himself or in a small family unit, but under these conditions he cannot have a normal existence. Even more important than his physical needs man has intellectual needs which cannot be satisfied in solitary life or even in a small family circle. It is only in society that man can develop and transmit ideas, accumulate knowledge and wisdom, progress in art, science, philosophy and culture, and develop his ideas on morality and justice.

"Thus society is born, as something required by nature, and (because this nature is human nature) as something accomplished through a work of reason and will, and freely consented to. Man is a political animal, which means that the human person craves political life, communal life, not only with regard to the family community, but with regard to the civil community." 11

It is quite evident that man needs society to attain his final end, namely, self perfection, and therefore his only alternative is to form societies and live in them and according to them. The formation of such societies as the family, community, unions, and educational and professional associations are all in accord with man's nature because these societies are fulfilling a purpose by ministering to certain needs.
of men. These societies, however, though beneficial, are not sufficient to satisfy all of man's needs. For his perfection man must live in a state of order. None of the societies referred to above have within their nature the authority to maintain order applicable to every sphere of life. Aristotle refers to man as a "political animal", and St. Thomas goes a bit farther by referring to him as a "social and a political animal". These two great philosophers could not conceive of man living outside of a political society. Aristotle says "the state comes into existence, originating in the bare needs of life, and continuing in existence for the sake of a good life." 12

Man is a fallen creature; by sin his intellect has been clouded and his passions often reign and dictate his actions. This being true, man, though recognizing the rights of his fellows, often transcends these rights for his own self interest. With man living, as he does, in a society, there is a serious need for some agency which has the power to set up those conditions whereby man can live in and perfect himself in society and at the same time have assurance that his rights will be respected by his fellow men. It must not be concluded that the state arises merely as a protective agency for the rights of individuals; protection
of rights is a secondary issue. The primary purpose of the state is to set up the conditions whereby man can best perfect himself. This necessitates regulated order in society to promote the common good, and the protection of rights is a means to this. The need for the state then rises out of the nature of man as a means to his perfection. Even if every individual within the state complied completely with reasonable and just principles, there would still be need of a state to regulate the order in society.

It is true that the natural law can be known by all men through reason alone, but this is only in its first principle and the first conclusions.

"Natural law is not a written law. Men know it with greater or less degrees, running the risk of error here as elsewhere. The only practical knowledge all men have naturally and infallibly in common is that we must do good and avoid evil. This is the preamble and the principle of natural law; it is not the law itself. Natural law is the ensemble of things to do and not to do which follow therefrom in necessary fashion and from the simple fact that man is man, nothing else being taken into account."

It is necessary that further determination of the basic principle be made in the form of positive law. All men are not able to apply the principle of the natural law to each particular incident because passions and self-interest tend to cloud and interfere with the
activity of the intellect, and environment and education often make it physically impossible. Therefore, the natural law, in order that it be properly applied to existing circumstances, demands a competent interpreter. We have the need of a law maker who can take into consideration first of all human nature, man as composed of body and soul and destined for eternal happiness in heaven. He must also consider with prudence the conditions of culture, customs, and adaptability of the law. Human or civil law demands sanctions in many cases in order to insure enforcement. The sanction must, however, be just, that is, proportionate to the infraction.

The historical origin of the state may have been a gradual evolution from the family, but philosophically considered the state is demanded by human nature. The foundation, therefore, of the state is based on the natural law, and the governing power and authority of the state also finds its philosophical foundation in the law of nature.

As has been stated, man, as a creature composed of body and soul and endowed with free will and intellect, possesses by nature certain rights such as life, ownership of property, liberty, and the right to seek and attain happiness. The basic end of the state is to promote the common good and maintain the "social whole"
by preserving a properly ordered and functioning human society. While performing these functions the state must always keep before it the realization that its citizens are rational and moral individuals. Therefore to promote the good of these individuals it must guard them against such political heresies as individualism and socialism, the former would have the government leave too much to private initiative at the expense of the other members of society; the latter would give the state a free hand in every operation of every society.

Just as man, having as his purpose the perfection of his essence, has the right to the means to attain this end, so also the state, having as its end the promotion of the common good, has need of, and a right to, the means. One of these means is authority, the need of which flows directly from the nature of the state.

False theories place the origin of the state in either the contracts which men supposedly drew up to establish the "status civilis", or in the will of the ruler in the positivistic system.

"Hence, by a new species of impiety, unheard of even among the heathen nations, states have been constituted without any count at all of God or of the order established
by him, it has been given out that public authority neither derives its principles, nor its majesty, nor its power of governing from God, but rather from the multitude, which, thinking itself absolved from all divine sanction, bows only to such laws as it shall have made at its own will. 14

The scholastic position, however, recognizing that God is the author of all law and that authority is merely the right of the state to issue and enforce law, holds that all authority must necessarily come from God. All men are essentially equal since they are all rational beings possessing immortal souls. In order for one to become the ruler and the others the subjects, since this quality cannot arise from the nature of the ruler, he must be designated as ruler. The source of his power or authority, therefore, cannot be his particular essence but must have an extrinsic origin. The Christian concept of the origin of civil authority is set forth by Leo XIII in his encyclical, "Immortale Dei".

"But as no society can hold together unless some one be over all, directing all to strive earnestly for the common good, every body politic must have a ruling authority, and this authority, no less than society itself, has its source in nature, and has, consequently, God for its Author." 15
"Lawmakers are God's agents in the framing of Human Laws. Their authority, although it proceeds through the members of the community, is, primarily, from Him." There is a problem, however, as to the manner in which the lawmaker obtains this authority. There are two theories which try to explain this. The first is the "Translation Theory" which states that authority is vested in the state by God, using the people as the medium. In other words, God gives the authority to the social whole and the social whole in turn passes it on to the state. This theory was held by such men as St. Thomas, Suarez, Bellarmine and in our own political history, Thomas Jefferson. In these theories we are discussing moral authority, authority by right, and not necessarily physical force. The second theory is the "Designation Theory" which claims that God gives the authority directly to the ruler. In this case the people designate the ruler and then God gives the authority directly to the designated person without using the social whole as the medium. The majority of the great scholastic philosophers held to the translation theory which tends to emphasize the individual and personal element in political philosophy, and support the capacity of self-government in human beings.
Having considered from a philosophical viewpoint the nature of a state, the fact that it is a necessary society, and the source of its authority, we will now consider the purpose and functions of a state. We have said that man by nature has duties toward, first of all, his creator; these he fulfills by worship of God: second, towards himself; he must regard his spiritual, mental and physical welfare: and third, he has duties toward his neighbor binding in charity and justice. It is only by fulfilling his duties that man can truly perfect himself, for in so far as he omits his duties he is acting against his nature and thus is imperfect. The purpose of the state, as we have seen, is the promotion of the common good. But the common good is the perfection of society which in turn is the perfection of the individuals which compose society. Therefore, the purpose of the state is to set up those conditions whereby individuals can perfect themselves. St. Thomas, in his Summa Theologica and much later our own Declaration of Independence sets forth certain inalienable rights of "life, liberty and the pursuit of happiness." Thus the state has a two-fold purpose, to establish the conditions whereby man can perfect himself, and to insure his natural rights. According
"The political task towards which all this must tend is the good human life of the multitude, the betterment of the conditions of human life itself, the internal improvement and the progress—material, of course, but also and principally moral and spiritual—thanks to which man's attributes are to be realized and made manifest in history, the essential and primordial objective for which men assemble within the political community, is to procure the common good of the multitude, in such a manner that each concrete person, not only in a privileged class, but throughout the whole mass, may truly reach that measure of independence which is proper to civilized life and which is insured alike by the economic guarantees of work and property, political rights, civil virtues and the cultivation of the mind.

First as regards man's duties toward his creator. God created man to know, love and serve him. Since that is the purpose for which man is created it is the end for which he must strive. He has a duty and a corresponding right to study and learn about his creator and thereby learn to love and study Him. It is on this point that many governments are defective. Separation of Church and state is necessary for the welfare of both but separation does not imply discrimination against one by the other. The Church is the
perfect supernatural society and the state is the perfect natural society. There is an interdependence between these two societies because they deal with the same subjects, and the success of one is often closely linked with the success of the other. The state has two distinct duties toward religion. First it must refrain from any interference with religious freedom and practice of individuals or groups which is not directly in violation to the laws of nature. Such practices as polygamy and public demonstrations by the burning of villages, etc. are harmful to the common good and opposed to the natural law and may, therefore, be prevented by the state. The second duty of the state toward religion is the fostering and the promotion of it as an asset to the common good. The Church, in turn, must refrain from interfering with the state as long as it is in accord with the natural law and is fulfilling its duties.

"All who rule, therefore, should hold in honor the holy name of God, and one of their chief duties must be to favor religion, to protect it, to shield it under the credit and sanction of the laws, and neither to organize nor enact any measure that may compromise its safety." 19
"To wish the Church to be subject to the civil power in the exercise of her duty is a great folly and a sheer injustice. Whenever this is the case, order is disturbed, for things natural are put above things supernatural; the many benefits which the Church, if free to act, would confer on society are either prevented or at least lessened in number; and a way is prepared for enmities and contentions between the two powers, ...." 20

Man's second duty is to himself. Corresponding to this duty he has the right to care for himself. The state in this instance must make it possible for man to exercise his rights to life, liberty and property, by affording the proper conditions for spiritual, mental and physical development and perfection. First the relation of the state to the family.

"The state measures its true strength by the stability of family life among its citizenry. For the family is the social cell. It is the family that produces the citizen. No nation can be greater than its families. The State which weakens the family inflicts deep injury upon itself. Any attack of the State on family life is suicidal." 21

The family is a natural society which is necessary for the proper development of individuals and the preservation of social order. Since it is essential to the
individual, to the state and to the common good of society it is to be fostered by the state.

"The state must respect the rights of the family. It must not therefore fail to provide opportunities for the adequate housing of families, for the requisite schooling of children, for the use of common benefits supplied through the taxing of citizens." 

Under the educational aspect, again religion enters in as to the right of the individual to be educated in the school of his choice. The state must provide educational institutions where necessary, but it does not have the right to dictate to parents which schools their children may attend. The legality of parochial schools has been affirmed by the Supreme Court and therefore the state cannot deny to any citizen the right to attend such private schools. Public education is also furthered by the state by the establishing and maintaining public libraries which stock all books and not only government approved additions. The establishment of reasonable labor laws is also a duty of the state. The physical well-being of the citizens demands the abolition of sweat-shops, child-labor, hazardous working conditions, and excessively long working hours. The social aspect of man's life must also be considered by
the state. This is expressed in man's right to organize with his fellows into labor unions, political parties, civic clubs and fraternal organizations. The best policy to be followed by the state here is the "Principle of subsidiarity", the refraining from interference with lesser societies as long as these organizations are fulfilling the purpose for which they were formed, ministering to the particular need of man, and not interfering with the rights of others.

The third main division of man's duty is towards his neighbor. This can be summed up in the virtue of justice. According to St. Augustine, "Justice is that virtue which gives to everyone his due." By "due" we mean more than what is due in justice alone, but rather what is due to a fellow man as a member of the Mystical Body of Christ. Thus "due" here also means charity. The positive law, for the most part, looks out for the just due of individuals, however, duties in charity are binding in conscience only and therefore cannot be set forth in the positive law. Man is bound by charity to promote the well-being of his fellows in such matters as assistance when in time of distress, protection from error, protection from moral degeneration by pornography, and assistance in any other situation, not necessarily covered by positive law, in which
he can help a fellow to more easily attain his final end, namely, happiness in eternity with his creator.

The jurisdiction of the natural law by no means is limited to the fields here briefly discussed. It is the final basis upon which rests all relations among moral creatures. Its relation to labor, management, medicine and countless other fields has not been considered here. We were concerned in this discussion only with a general history of the natural law and a general application of it to the rights of men. Also, it is not limited at the state level. All international affairs must conform with this basic law. International justice finds its basis in the natural moral law and until this is recognized fully and endorsed in international relations there can be no hope of solving the many problems which exist in that field. However, these are not part of this thesis and therefore no more mention need be made of them here.

In conclusion therefore, we see that the natural law is that part of the eternal law which applies to human conduct and is known through human reason. It is the basis of all rights, individual, social and political, and likewise the basis of all duties. It was known in its basic principle and first conclusions by
men from earliest recorded history, and knowledge of its secondary conclusions arises and is increased through experience in concrete conditions. It is the basis of all society, and social order can be established and maintained only in so far as the natural law and its Divine Author are recognized and obeyed.
Foot Notes — Chapter III


6 Ibid., p. 74.

7 Jacques Maritain, op. cit., p. 66.


15 Ibid., p. 162.

16 R.J. Kiley, op. cit., p. 3267

18 Jacques Maritain, *op. cit.* pp. 43-44.


20 Ibid., p. 298.


22 Ibid., p. 157


