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Joaquin F. Garcia, C.M.

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THOMIST NATURAL LAW

JOAQUIN F. GARCIA, C.M.*

IN THE Summer 1960 edition of *The Catholic Lawyer*, Dr. R. D. Lumb, a Lecturer in Law at the University of Queensland, had an article entitled "Natural Law — An Unchanging Standard?", in which he considered the doctrines of two thinkers, St. Thomas and Suarez. It is the opinion of this writer that as far as Thomist Natural Law is concerned, Dr. Lumb could have omitted the question mark. It is an unchanging standard.

Dr. Lumb set himself the task of ascertaining whether the traditional Thomist system takes into account the variables to be found in any system of rules or institutions. The Thomist system of law does take account of the variables but through positive law, through the application of the universal Natural Law principles to particular changing conditions. By no means does it replace positive law. Unlike 18th century rationalistic Natural Law which often ignored experience, which often contained personal, social and political programs, and which often was not Natural Law at all but positive law under a Natural Law label, Thomist Natural Law offers the widest scope for positive law and stresses the importance of experience. St. Thomas says, "The general principles of the natural law cannot be applied to all men in the same way because of the great variety of human affairs — hence arises the diversity of positive laws."¹ He says: "The [positive] law can be rightly changed because of the changed condition of man, to whom different things are expedient according to the difference of his condition."²

Some positive laws are merely "Conclusions," as St. Thomas called them, necessary conclusions from Natural Law principles and so are still part of the Natural Law, as would a law requiring parents to arrange that their infant children be fed be a conclusion from the Natural Law precept against taking human life. Other laws are what St. Thomas calls

* A.B., St. John's University; M.A., Ph.D., Fordham University; former president of the American Catholic Philosophical Association; presently chairman of the philosophy department of Niagara University.

¹ *SUMMA THEOLOGICA*, I-II, q. 92, art. 2.

² *Id.*, I-II, q. 97, art. 1.

"Determinations" or "Specifications" of the Natural Law and are the determining of precepts left undetermined by the Natural Law. The Natural Law demands the protection of human life. When a city establishes green and red traffic lights and gives a mandate on them, the ordinance is partly Natural Law and partly positive law. The colors could have been reversed. Other colors could have been used.

In the opinion of the present writer, Dr. Lumb also could have removed the question mark as far as Suarez is concerned, since his Natural Law is also an "Unchanging Standard." His doctrine allows of no change since his Natural Law concerns acts which are intrinsically good or intrinsically evil and which must be ordered or forbidden by God. Suarez says: "God cannot refrain from prohibiting those evils which human reason shows to be evil."³ He disagrees with Scotus and William of Ockham on the possibility of a dispensation from the Ten Commandments.

Law in General

To understand Thomist Natural Law and particularly these conclusions on its immutability it may be useful to consider first the teaching of St. Thomas on law in general. He defines law as "an ordination or command of reason for the common good made by one who has charge of the community and promulgated."⁴ St. Thomas used this one definition to cover various types of law, though strictly this definition pertains to civil law.

In St. Thomas the end or goal is the first principle or cause in all matters of action

³ DE LEGIBUS, Liber II, Cap. XV, 4. See especially Liber II, Cap. VI for the natural law doctrine of Suarez.

⁴ SUMMA THEOLOGICA, I-II, q. 90, art. 4.

and it determines a whole series of acts brought into existence as means for the attaining of that end or goal. So to attain certain goals, legislators make laws which are the means for obtaining those ends. Since the means-end relation belongs to reason, law is an act of reason. As St. Thomas stated it: "The end is the first principle in all matters of action but it belongs to the reason to direct to the end. Since directing to an end is the function of law — law is an act of reason."⁵

The intellect-will relation poses a difficult problem. St. Thomas is an intellectualist, not a voluntarist, and maintains that a final judgment, called the last practical judgment, must be made by the reason, which determines the will to a specific act and so renders the will-act reasonable though the free will plays a part in the formulation of that final practical judgment. In the case of voluntarists the intellect proposes a number of means or courses of action as good for a particular end, but it makes no final practical judgment. The final reason for the decision is the will's determination of itself. No reason can be given why one means was chosen over the others except the will itself. In St. Thomas will inclines a man to what is agreeable what is an end or goal, and so a good, and moves the faculties of man to that goal. The will necessarily seeks and consents to the final goal of man, and, as indicated freedom is had regarding the means.

In intellectualism the reason why one means is selected rather than the others is the last practical judgment of the intellect which determines the will-act. If in a particular town for instance, a number of persons had been killed in auto accidents and

⁵ *Id.*, I-II, q. 90, art. 1.

if lawmakers decided to protect human life, the decision to attain that end would be an act of the will. The will would move the reason to consider various means for attaining this end. Perhaps red and green lights or stop signs or the stationing of a policeman at that place or more severe penalties for reckless driving might be considered and all would be declared means. Still working under the impetus of the will, the reason continues to compare the means and in intellectualism presents a final practical judgment or command to the will. It is: "Establish red and green lights." This then becomes the act of the will. The will cannot refuse this precept, yet the free will plays a part in its formulation. The will then decides on the establishment of "stop on red and go on green lights" as the solution of that problem. A law is enacted, which, in Thomist doctrines, is an act or command of the reason following that election of the will, and it says "stop on red and go on green under such and such penalties." However, in voluntarism the intellect would present the four means, indicating the advantages and disadvantages of each, and the decision would be made by the will itself. It is true that in Thomism reason moves — moves people and faculties to an end — and that moving is a will-act — yet St. Thomas explains this by stating that will and reason work together and that the moving feature of the will-act continues in the command of the reason. Those who follow Suarez, who was a voluntarist, deny any command of reason after the election by the will — in the preceding case, "stop on red and go on green." In voluntarism the will gives the command and moves the faculties to action. In St. Thomas, the reason gives the command after the act of the will however, since a command is "an

ordering of a subject to do something by declaring something to him — and to order this by declaring is an act of the reason."⁶ This is also the work of law so that it follows that law is essentially a thing of reason. "Ordering of actions to an end is precisely the chief work of the law. We have a perfect parallel between the work of reason and of law, so that it follows that law is essentially a thing of reason."⁷ So in St. Thomas there are two commands of reason in lawmaking, one prior to the act of the will, which determines what the will-act will be and a second command after the will-act which orders the subject to do something.

Eternal Law

St. Thomas lists four kinds of law: Eternal Law, Natural Law, Human Law (which can be state or ecclesiastical), and Divine (revealed) Law. When God brought into existence the various creatures of the universe He had to have an end for each of them and had to direct them to their ends. The name given to the law by which God directs all His creatures to their ends is the Eternal Law. As St. Thomas stated it, God "governs all the acts and movements in each single creature." The divine wisdom as directing all actions and movements is the Eternal Law.⁸ Inanimates, plants and animals God directs through their natures which lead them to acts suitable to their natures and through these acts to their ends. These creatures always attain their ends since they are not free.

That part of the law of God (Eternal Law) which directs men as rational, free creatures is called the Natural Law. This

⁶ *Id.*, I-II, q. 17, art. 1.

⁷ FARRELL, THE NATURAL LAW ACCORDING TO ST. THOMAS AND SUAREZ 9 (1930).

⁸ SUMMA THEOLOGICA, I-II, q. 93, art. 1.

is Natural Law as it is in the "legislator," as against Natural Law "in the subject." The preceding is indicative of St. Thomas' definition of the Natural Law. He says: "The Natural Law is nothing else than the rational creature's participation of the Eternal Law."⁹ This definition indicates Natural Law as it is "in the subject."

St. Thomas says one "participates" a law if he is ruled by that law. "A thing is ruled as it partakes of the rule."¹⁰ This statement would be true of human law-makers and their subjects. So to participate the Eternal Law means to be ruled by it — to have the law of God become a law in man through an order or command in man's head. Just as man's reason participates Divine Reason, his will participates the Divine Will, and his existence the Divine Existence, so this law in man is a participation of God's law for him. St. Thomas maintains that every law is derived from the Eternal Law. He says: "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 the laws besides the Eternal Law."¹¹

God directs creatures to their ends through the natures He has given them. One can obtain the Scholastic teaching on nature in Collingswood's *The Philosophy of Nature*.¹² We find that beings in this world exist in classes or species. They are not merely individuals but individuals of a particular class. We see that men too belong to a class or species, that they have certain common acts and a specific nature

which is common to all men, and is the source of those common acts.

This human nature embraces powers which each and every man possesses and retains permanently even though at certain times he may not be able to use them. All men have the same specific powers or faculties while at the same time they have many other powers which are individual to them and which vary greatly from person to person. These individual powers are the result of their particular heredity or environment or determinations of their own free wills or combinations of these. If one accepts the doctrine of forms, as do the Scholastics, and holds that all men have in them the same form, a rational soul, which is the root source of their nature and of their specific acts, the reason for the common human nature becomes clearer. Natural Law examines man's specific natures and gives universal laws — and does not consider individual men as such.

So God gives to each species, and so to men, a nature or "inclinations," as St. Thomas calls them, which are the same in all men and which lead to certain acts which in turn lead men to the end God had in view for them. As indicated previously the only object which can fill out or complete the powers of human nature and give man the happiness he craves is God Himself. From the inclinations impressed on man by God, man's reason acquires the Moral Law which is known as the Natural Law since these inclinations indicate God's Plan and Will for men. Those acts which are in accord with man's inclinations will lead him to his end and so are pronounced good, and those acts which are opposed to man's inclinations and lead him away from his end are labeled bad. The Natural Law orders the good ones to be done and the

⁹ *Id.*, I-II, q. 91, art. 2.

¹⁰ *Ibid.*

¹¹ *Id.*, I-II, q. 93, art. 3.

¹² COLLINGSWOOD, *THE PHILOSOPHY OF NATURE* 116 (1961).

bad ones to be avoided. So the Natural Law could be defined as a moral law obtained and pronounced by reason from an analysis of human nature.

St. Thomas states that man has three sets of inclinations: (1) certain inclinations in common with all other creatures (2) inclinations in common with other animals (3) inclinations which are proper to him as a rational creature. An example of the first set is the inclination to continue in existence, which is common to all creatures. This leads to the moral precepts in man concerning the preservation of life. The second set considers generation and the education of offspring and gives rise to moral precepts on the generation and education of children. The third set considers the inclinations to attain the truth, to live with our fellow men, to form a state, etc., and gives rise to precepts on respect for authority, the practice of justice, the worship of God.

When we state that human nature is the foundation of the Natural Law, we do not mean merely a human nature in its intrinsic constitution, in the relation of one faculty to another, but human nature taken completely, including its relation to God, to other men and to animals, plants and inanimates.

Three Classes of Precepts

The Natural Law may be said to comprise three classes of precepts: first — some “primary” or very general principles which are self-evident. Examples of these “primary” principles are: “Follow human nature,” “Attain your end,” and “Good is to be done and evil is to be avoided.” The last is St. Thomas’ formulation. These precepts are the same. Good here means what leads to one’s end or what is in accord with human nature. What is in accord with hu-

man nature takes man to his end. All the other precepts of the Natural Law flow from or are conclusions of these first principles.

The “secondary” precepts are derived from the primary by easy reasoning. These are known to practically all, even to the uneducated, but can be missed by a few, particularly in their application. Precepts like: “Do unto others as you would have others do unto you,” “Don’t murder,” “Don’t steal,” belong to this class. The Ten Commandments, with the exception of the “Sabbath Day” part of the Third, are all secondary precepts of the Natural Law as known by reason — and they can be so known.

The Remote Conclusions or “tertiary” precepts (St. Thomas did not use the expression “tertiary”) are far removed from the primary principles and are difficult to learn. Although objectively certain also, they are not known to ordinary people but to those who are better trained in ethical matters, to the “wise” as St. Thomas put it. The Natural Law principles in certain complex medical problems such as euthanasia and ectopic gestation, in certain tax and insurance cases and in hunger strikes are “tertiary” precepts.

There is added reason why some men do not comprehend the “tertiary” and at times the “secondary” precepts and that is “the interposition of emotions in the consideration of conclusions.” Hence, among the reasons listed by St. Thomas for missing the truth in these precepts are “concupiscence or some other passion,” “evil persuasions,” “vicious customs” and “corrupt habits.” Men are at times prejudiced and don’t want certain answers a priori since such answers mean suffering and demand a change in conduct. Men are inclined to

justify the activity which is pleasing to them, especially if they have been engaging in that activity. As someone has said: "If you don't act as you think, you will ultimately think as you act."

For Thomists none of the preceding precepts are "innate." They are all empirical in some way. For example, before a man concludes that in ordinary circumstances it is wrong to kill his neighbor, but it is not wrong for him to kill his cow or pig, he must learn the nature of his neighbor and the nature of these animals. That knowledge begets the right and wrong.

It might be mentioned that these precepts of the Natural Law concern acts which necessarily lead to man's end and so are said to be intrinsically good — such as worshipping God, honoring parents, respecting authority — and acts which necessarily take man away from his end and so are said to be intrinsically bad — such as murdering, stealing, blaspheming. Because these precepts of the Natural Law concern acts which are necessary means for man's attaining his end, they beget in man an "obligation" to obey them.

Conflict — Higher and Lower

At times, a conflict takes place among the inclinations in man and the precepts built on those inclinations — for instance, when the same object will satisfy one appetite or inclination of human nature and impede or prevent the satisfaction of another. In human nature there is a certain order of higher and lower, a certain hierarchy among man's faculties and inclinations (each faculty has an inclination). Man has the duty of keeping the higher faculties and inclinations higher, and the lower, lower; of preferring the higher to the lower — of maintaining the order of

faculties and inclinations established in man by the Author of his nature. The spiritual faculties of intellect and will, with their corresponding inclinations, which are wider in scope and deal with the universal, the super-sensible and the spiritual, are higher than sense faculties dealing with proximate goals, with the individual and the material.

Conclusion

Among the properties of Natural Law, two are outstanding — its universality and its immutability. It applies to all men and it is unchangeable. Regarding the possibility of change, many have misunderstood St. Thomas and have taught that the Natural Law can change or fail in some cases. Now, in a number of places, St. Thomas has taught that the Natural Law is immutable. For instance he says:

The Natural Law is a participation of the Eternal Law and therefore endures without change, owing to the unchangeableness and perfection of the Divine Reason, the Author of Nature. The Natural Law contains certain universal precepts which are everlasting whereas human law contains certain particular precepts according to various emergencies.¹³

It is true that St. Thomas does use the word "change" but not in its present-day meaning. He says "a change in Natural Law may be understood in two ways. First, by way of addition . . ." ¹⁴ (this would occur if a state law would be made on killing, for instance, by declaring mercy-killing illegal and so adding to the law. Nobody today would say that the addition of a positive law "changes" the Natural Law) and "secondly, a change in the natural law may be understood by way of sub-

¹³ *SUMMA THEOLOGICA*, I-II, q. 97, art. 1.

¹⁴ *Id.*, I-II, q. 94, art. 5.

traction, so that what previously was according to the natural law ceases to be so. In this sense the natural law is altogether unchangeable in its first principles: but in its secondary principles, which are certain detailed proximate conclusions drawn from the first principles, the natural law is not changed so that what it prescribes be not wrong in most cases. But it may be changed in some particular cases of rare occurrence."¹⁵

The problem here concerns not a change in knowledge but a change in the precept itself. The case frequently mentioned is that of the return of a deposit or something held in trust, an example used by St. Thomas many times. "Deposits should be returned" is a law of justice. If however the deposit should be a gun and the depositor returns in a drunken or insane condition or expects to use the gun for suicide or murder, the gun should not be returned. Some say there is here a change in the Natural Law. The previous statement no longer holds. The statement — "Deposits should be returned" — supposes ordinary conditions. Since most depositors would return in this condition, that principle would hold for most cases but it would not cover a few, like those mentioned above. St. Thomas indicates that the law in all these cases of justice is unchangeable when he says "the precepts of the Decalogue [which are Natural Law commands] as to the essence of justice are immutable."

"Deposits should be returned" is an incomplete and abbreviated expression of the Natural Law on deposits. It is a formula which, if understood absolutely, is incorrect — just as "Thou shalt not kill" taken absolutely is an incorrect expression of the Natural Law on the taking of human

life. When cases of lawful killing are met, the Natural Law on taking human life does not change.

Therefore, when St. Thomas speaks of the law's changing, he refers to these abbreviated expressions. The well-known theologian, Rev. Francis Connell, C.S.S.R., states on the preceding:

Frequently the mode of expressing the natural law even by the Almighty in the promulgation of the ten commandments is abbreviated, so that the precise meaning can be found only through a certain measure of interpretation and expansion. Thou shalt not kill would be expressed thus in its fullness: "Thou shalt not kill directly an innocent person, apart from a special divine authorization."¹⁶

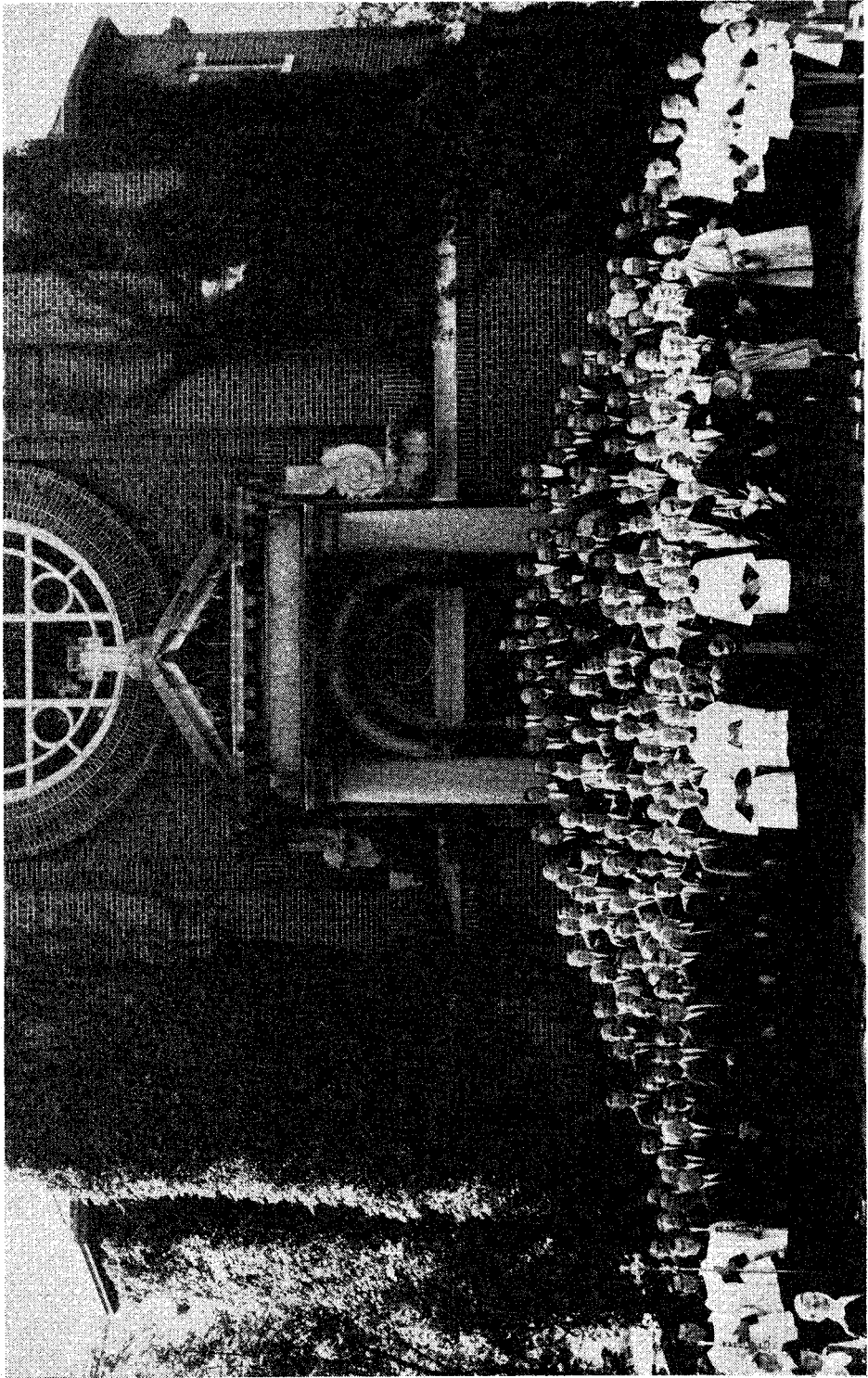
St. Thomas and Thomist thinkers maintain that the Natural Law is not only intrinsically unchangeable but that it cannot be changed extrinsically, *i.e.*, by men or by the Church or by God Himself through a dispensation, if the word dispensation is taken in a strict sense. St. Thomas says, "God cannot dispense a man so that it be lawful for him not to direct himself to God or not to be subject to his justice, even in those matters in which men are directed to one another."¹⁷ He also states, "the precepts of the Decalogue admit of no dispensation whatever."¹⁸ Instances of alleged dispensations in Natural Law are not dispensations in the strict sense. Thus when God ordered Abraham to kill Isaac, He did not dispense him from the Fifth Commandment since Abraham had been given by God the right over Isaac's life whereas murder is the killing by one who has not the right of life over another.

¹⁶ CONNELL, OUTLINE OF MORAL THEOLOGY 31 (2d ed. 1958).

¹⁷ SUMMA THEOLOGICA, I-II, q. 100, art. 8.

¹⁸ *Ibid.*

¹⁵ *Ibid.*



Lawyers' Guild of St. Thomas More After the Thirteenth Annual Red Mass, September, 1961 at the Chapel of the College of St. Thomas, St. Paul, Minnesota