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Ralph J. Masiello

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# SOME BRAVE IDEAS ON AN OLD RULE OF LAW: THE NATURAL LAW ACCORDING TO JACQUES MARITAIN

## JACQUES MARITAIN ON THE NATURAL LAW AND HUMAN RIGHTS

RALPH J. MASIELLO\*

Jacques Maritain observed at the Second International Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1947 that while this is an organization of nations with irreconcilable ideological differences, "agreement among its members can be spontaneously achieved . . . on the affirmation of the same set of convictions concerning action." This was the overriding theme of his intrepid defense of human rights, and it became the point-of-departure of his treatise on human rights in *Man and the State*. Undaunted by the persistence of conflicting speculative theories on human rights, Maritain believed that a consensus could be achieved with a common agreement on the natural law, the history of which spans the history of civilization; and encouraged by prevailing action-decisions, he was certain that theoretical agreement could be extended through a purified understanding of the natural law, which is fundamentally action orientated.<sup>1</sup>

His treatise on the natural law is divided into two parts, the ontological and the gnoseological elements, its reality and its manifestation. The reality of the natural law is manifested in the natural tendency of man to eschew violence and pursue peace. The spontaneous quest for justice, friendship, enlightenment, everything that is necessary for the perfection of the person, is rooted in man's will. Every person has an intimation of the natural law at the very threshold of his first moral act. Man's natural

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\*. Professor of Philosophy, Niagara University; B.S., Fordham University; M.A., University of Notre Dame; Ph.D., The Catholic University of America.

<sup>1</sup> J. MARITAIN, *MAN AND THE STATE* 76-80 (1951).

inclination to order his actions for his own good and the good of others is a tendential or inchoative quality of the dynamic order of human actions. Maritain locates the potentiality for understanding the natural law in the preconscious and it is quickened at every moral turn unless one be inured to evil ways. In short, man has a natural inclination to order his actions for his own good and the good of others. This is a fundamental human right and the mastery of his freedom consists in the true exercise of this right.

The gnoseological element of the natural law can only be approached through the ontological element, which Maritain characterizes as *functional* and *ideal*, or one could say *ideally functional*. Because the natural law is functional in an inexorable and excellent manner, one could mistake the basis of law as purely pragmatic were it not for the ideal reality of the natural law. This is not an imaginary or a reified ideal in the Platonic sense. It has a real existence as a natural habit of the practical order whereby man possesses a natural tendency to order his acts to his proper end in a free and rational manner. This is analogous to the manner in which all things in nature are determined to their proper end according to the eternal law. The natural law is man's participation in this eternal law, a law created by God. This is a source of consternation encountered with the natural law. To use an expression of Maritain, this provokes allergies bordering on the scandalous among certain contemporary philosophers who prefer to treat law and morality in a metaphysical void. Nevertheless, a sense of guilt naturally arises following transgression, and this is a sign of the natural law created in man. To the perverse this becomes a matter of social conditioning. Nevertheless, a sense of guilt will naturally arise following a transgression of the law because man is naturally habituated according to the natural law. That is why civil law is binding in conscience.

How man has his first intimations of the natural law, how the natural law emerges from the unconscious, how our moral and creative intuitions have their origins, have been deep and abiding concerns of Maritain. One of his many distinctive contributions to contemporary psychology and philosophy is his theory of the intellectual unconscious, or preconscious as he would prefer to say, which is a source of intellectual, creative, and moral intuitions. This is quite distinct from Freud's preconscious, where libidinous and suppressed desires irrationally surge towards consciousness. The repressed instincts in man striving for expression are confined to man's participation in the animal world. Maritain found Freud's limitation exasperating: he completely rejected the life of reason and of the spirit, the higher principle of man's nature whereby he transcends the limitation of the animal world. Man can override sensory instincts with a rational instinct to exercise mastery over his actions. "He thus ignored the central law, . . . the law of the essentially human character of normal instinctivity in man."<sup>2</sup> The normal instinctivity in man that Maritain treats in *Man and the State* with respect to the natural law was developed at length in

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<sup>2</sup> J. MARITAIN, SCHOLASTICISM AND POLITICS 165-66 (1940)(emphasis in original).

*Scholasticism and Politics*<sup>3</sup> for the psychologist, in *Education at the Crossroads*<sup>4</sup> for the educator, and in *Creative Intuition in Art and Poetry*<sup>5</sup> for the artist, wherein his most elegant treatise on this subject is on the preconscious as it relates to man's response to the beautiful.

Far beneath the sunlit surface thronged with explicit concepts and judgments, words and expressed resolutions or movements or the will, are the sources of knowledge and creativity, of love and supersensuous desires, hidden in the primordial translucent night of the intimate vitality of the soul. Thus it is that we must recognize the existence of an unconscious or preconscious which pertains to the spiritual powers of the human soul and to the inner abyss or personal freedom, and of the personal thirst and striving for knowing and seeing, grasping and expressing: a spiritual or musical unconscious which is specifically different from the automatic or deaf unconscious.<sup>6</sup>

The basic volitional tendency which preconsciously gives rise to a moral intuition in a moral encounter pertains to the will, ineluctably drawn to good in the finite order because it is an adumbration of the goodness of God. Man is instinctively drawn to his proper end as a means to his ultimate end. Every man aims at the highest good wherein his greatest happiness is to be found. Regardless of any perversity which intervenes through man's freedom, man is ordered to his ultimate end. This order has the nature of law, an exalted law, the natural law, evidenced by "those genuine inclinations which are rooted in man's being as vitally permeated with the preconscious life of the mind."<sup>7</sup>

It is a natural law because it is naturally known, ordered to the good of the individual and the common good of society, and its judgment is compelling but resistible, and it is the basis of all moral regulations, personal and civic:

With regard to the second basic element (the gnoseological), the element of knowledge which natural law implies in order to have force of law, it thus can be said that natural law—that is, natural law *naturally known* or, more exactly, *natural law the knowledge of which is embodied in the most general and most ancient heritage of mankind*—covers only the field of the ethical regulations of which men have become aware by virtue of knowledge *through inclination*, and which are *basic principles* in moral life—progressively recognized from the most common principles to the more and more specific ones.<sup>8</sup>

The inclination of the natural law is not to be construed or vitiated as an urging of the body, such as a passion or emotion, in response to some sensory good. Rather it is an inclination which emerges from the precon-

<sup>3</sup> *Id.* ch. VI ("Freudianism and Psychoanalysis").

<sup>4</sup> J. MARITAIN, *EDUCATION AT THE CROSSROADS* 3 (1943).

<sup>5</sup> J. MARITAIN, *CREATIVE INTUITION IN ART AND POETRY* ch. IV (1953).

<sup>6</sup> *Id.* at 69.

<sup>7</sup> J. MARITAIN, *supra* note 1, at 92.

<sup>8</sup> *Id.* at 92-93 (emphasis in original).

sciousness of the intellect in man's awareness overriding every human act that good should be done and evil avoided. This inclination, as naturally known, cannot be interpreted as something emotive as the analysts do without sacrificing a basis for personal moral liability. This rational inclination is a fact of order tendentially disposing man to direct his actions to his proper and ultimate end—to act normally.

Maritain's interpretation of the natural law has its inspiration in the writings of St. Thomas Aquinas, who establishes the ultimate foundation of the natural law in Divine Providence:

Now among others, the rational creature is subject to Divine Providence in a more excellent way, by being provident both for itself and for others. Therefore, 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 creature is called the natural law . . . . The light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing other than the participation of the eternal law in the rational creature.<sup>9</sup>

To Thomas there are two distinct goods that pertain to the order of divine providence, the goodness of the being of each thing and the goodness of the order of each thing to its proper and ultimate end.<sup>10</sup> In modern treatises on the transcendentals there is a preoccupation with the goodness of being to the exclusion of the goodness of order. It is only through the goodness of order that being becomes dynamic, functional and perfective.

Without the natural law as a basis for civil law, a purely pragmatic interpretation of the law could become capriciously susceptible to the whims of public opinion, and inalienable rights can become a figment of positive law, undermining the foundations of our democratic freedoms. The pragmatic erosions of our democratic ideals were well perceived by Jacques Maritain in *Education at the Crossroads*:

Our crucial need and problem is to rediscover the natural faith of reason in truth . . . . At the same time the universe and the reality-value of all that is not verifiable by sensory experience or humanly feasible have lost their meaning. With such a philosophy of pragmatism a great thinker like Professor John Dewey is able to maintain an ideal image of all those things which are dear to the heart of free men; but outside of the ideological system the historical impact of this philosophy upon culture will naturally lead to a stony positivist or technocratic denial of the objective value of any spiritual need.

We may thus understand by what internal conflict democracy is now weakened. Its motive power is of a spiritual nature—the will to justice and brotherly love—but its philosophy has long been a pragmatism which cannot justify real faith in such a spiritual inspiration. How, then, can democracy

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<sup>9</sup> ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE* I-II 92, 2.

<sup>10</sup> See *id.* I, 22, 1.

vindicate its own historical ideal—a heroic ideal—against the totalitarian myths?<sup>11</sup>

Without a spiritual inspiration that the will to justice and brotherly love elicits because of a “value objectively true in itself,” the value of an order which is a manifestation of Divine Reason, there is no firm foundation for human rights. “If the affirmation of the intrinsic value and dignity of man is nonsense, the affirmation of the natural rights of man is nonsense also.”<sup>12</sup> In one fell swoop, the decision in *Roe v. Wade*<sup>13</sup> has the effect of negating any semblance of the natural law and its concomitant natural rights. With the negation of a human being’s most fundamental right, the right to existence, you remove every natural right consequent upon existence.

A weakness of a pragmatist’s interpretation of rights is to define rights simply as “justified claims.” Only those rights which are a basis of arbitration are aptly called “justified claims.” But the right to life and the rights that are essential for the development and destiny of life cannot be put in a category subject to transaction or bargain. They are absolute rights, the most fundamental of natural rights: “rights which the civil society does not have to *grant* but to *recognize* and sanction as universally valid.”<sup>14</sup>

St. Thomas defined *jus* as a right which is an object of justice, a right which can be arbitrated, a “justified claim,” such as proper wages for labor rendered. But natural rights he simply placed under the natural law, and throughout the *Secunda Secundae* of the *Summa Theologiae*, he treats the duties imposed by this law. As Maritain rightly observes, this era was more concerned with the duties imposed by rights than with rights as such, and he incisively points out that natural right is the other side of the coin of natural law: “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.”<sup>15</sup>

It is in the very nature of our rational powers and the powers under their control to be ordered to the good intended by such powers. This is at once a basis of moral obligation imposed by the natural law. While these powers have a tendency towards good, they are not determined towards the good as vegetative and sensitive powers are. These latter powers are perfected by nature. But the powers which are related to moral obligation can act in a contrary manner. These powers are free. They can be directed towards virtue or vice, knowledge or ignorance, skill or the lack of appropriate skill. They can be directed towards their natural inclination to good with appropriate acts or contrary to their natural inclinations through evil acts. Since these powers are by nature inclined towards their proper acts,

<sup>11</sup> J. MARITAIN, *supra* note 4, at 115-16.

<sup>12</sup> J. MARITAIN, *supra* note 1, at 97.

<sup>13</sup> 410 U.S. 113 (1973).

<sup>14</sup> J. MARITAIN, *supra* note 1, at 96 (emphasis in original).

<sup>15</sup> *Id.* at 95.

it is *normal* for man to act virtuously, and an aberration to act contrary to the natural inclination. That is why Maritain maintains that the first basic element to be recognized in natural law, the ontological element, is the *normality of functioning*, "which is grounded on the essence of the being: man."

The inclination to good on the part of powers which are the subject of moral habits constituted for St. Thomas a norm of morality: "Everything that is contrary to the law of nature is a sin because it is contrary to the law of nature."<sup>16</sup> A natural inclination is a tendency of man to function according to the normal capacity of a power. This pertains to the natural order of human acts and "everything that is contrary to the natural order is vicious."<sup>17</sup> It is thematic in the *Summa Theologiae* that "the principles from which reason starts are the principles established by nature."<sup>18</sup> It is just as normal for man to act morally upright as it is for him to walk in an upright fashion. Abhorrent behavior is abnormal. It is not the penalty of law which compels a man to be virtuous. It is only the fractious who are compelled by the law.

It is evident that the natural law did not constitute for St. Thomas a few basic assumptions.<sup>19</sup> At the very outset of the *Summa*, he enunciates the crux of the natural law: "Man is directed to God as to an end in a manner which surpasses the grasp of his reason." This is manifested in the way every man seeks his highest good, and in the way a man can be mistaken as to the nature of his highest good. Man's highest good is the architectonic good which determines the hierarchy of his values, political, economic and social. The differences in the philosophies of the highest good create the differences in the priorities of rights and the corresponding limitations of other rights:

Everything depends upon the supreme value in accordance with which all these rights will be ordered and will mutually limit each other. It is by virtue of the hierarchy of values to which we thus subscribe that we determine the way in which the rights of man, economic and social as well as individual, should, in our eyes, pass into the realm of existence.<sup>20</sup>

The rights of a person extend throughout the scope of actions over which he exercises a mastery, including aesthetic activities, and extend to the very recesses of his conscience. In the ultimate analysis, the preservation of the inviolability of certain basic rights which pertain to the very existence of the person depend on man's conscious awareness of the natural law. Any misconception of the person's dignity, found in his freedom and equality, will give rise to a corresponding limitation in the rights of man—not the just limitation that truly exists with respect to another's rights in the community according to a certain hierarchy of values, but an unjust limi-

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<sup>16</sup> ST. THOMAS AQUINAS, *SUMMA THEOLOGIAE* II-II, 142, 1.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* II-II, 154, 12.

<sup>19</sup> Cf. J. ROSENBERG, *JEROME FRANK: JURIST AND PHILOSOPHER* 267 (1970).

<sup>20</sup> J. MARITAIN, *supra* note 1, at 106-07.

tation which ineluctably inflicts a corresponding measure of human suffering.

The crucial problem relating to human rights today, over and above an overriding sense of uncertainty as to the true foundation of human rights, is the confusion of surrogate rights entrusted to the state with the natural rights, or the relegation of natural rights to acquired rights.