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# JACQUES MARITAIN ON THE NATURAL LAW AND ITS APPLICATION

CHARLES P. NEMETH\*

As profound as Maritain's thoughts are, their applications or extensions are quite elementary. We have discovered the nature of the law, its foundation, and its source, and we have become aware of a higher plane on which the law operates. Natural law is not merely a rationalist's time-clock. The moral conscience demands a more eminent code, one in which the true notions of right and wrong are tossed into the mental fires. "We must consider the fact that natural law and the light of moral conscience within us do not prescribe merely things to be done and not to be done; they also recognize rights, in particular, rights linked to the very nature of man."<sup>1</sup> All legal standards recognize that there is a higher order, a design in which men govern and are governed by just measure. This concept is embodied in the natural law. The rights to life, personal freedom and property are not legislative inventions; they are merely reflections on the supreme rule. "The legal realists tried to exclude values from the law, but in vain." "From this it is . . . evident that laws are made, not discovered, except in the natural principles in which they are ultimately grounded."<sup>2</sup>

Man is a creature endowed with dignity. Maritain undeniably was aware of this notion and offered two basic reasons to support it. The first is that man is man, trudging through the quagmire of existence and endeavoring to fulfill his destiny in a proper and moral fashion—his basic right as a spiritual agent. If we grant man the right to stumble and trip, we must recognize that "he has the right to the things necessary for this purpose."<sup>3</sup> Maritain, like St. Thomas Aquinas, "[upheld] the unity and integrity of the principles of human nature and of the natural law."<sup>4</sup> He realized that the "roots of all the basic principles of human nature—the rational and social principles as well as the others—are indestructible in human nature."<sup>5</sup> Man's basic rights include the right to be respected, to work and to enjoy a decent and humane existence. The second reason

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<sup>1</sup> J. MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* 64 (1943).

<sup>2</sup> McKinnon, *Natural Law and Positive Law*, in 1 *NATURAL LAW INSTITUTE PROCEEDINGS* 100, 101 (A. Scanlan ed. 1949).

<sup>3</sup> J. MARITAIN, *supra* note 1, at 65.

<sup>4</sup> Midgely, *Natural Law and Fundamental Rights*, 21 *AM. J. JURIS.* 144, 153 (1976).

<sup>5</sup> *Id.* (emphasis in original).

offered by Maritain to support his proposition that man is endowed with dignity was derived from God's sovereign right over men and all creatures. Maritain argued that rights exist in a divine way and therefore support the rights of man, who is within the Divine plan. "[E]very right possessed by man is possessed only by virtue of the right possessed by God, which is pure Justice. . . ."<sup>6</sup> By this logic, Maritain conveyed his thoughts on human rights, which, in turn, are governed by the natural law, the law of man's destiny, the search for the proper and ultimate end. Maritain believed that all human laws, whether statutory (positive) or national, are governed by the natural law. For our purposes, laws designed by legislatures are considered as "contingent" extensions of the basic natural law theory.<sup>7</sup>

Since law is directed to justice, and justice is inclined to the "good," it is not difficult to find extensions of the natural law in a variety of legal situations. The influence of the natural law on American law is evident in virtually all areas of civil and criminal litigation. It is clear, for example, that the "due care" standard applied in negligence cases embodies natural law principles. An imprecise doctrine, the due care standard governs human conduct, demanding that every person act reasonably in his journey through the temporal world and entitling him similar treatment in return. It is generally agreed that individuals do not have a duty to anticipate others' negligence, and thus, absent special circumstances, persons may assume, and act accordingly, that other members of society will use ordinary care.<sup>8</sup> The shadow of natural law may be seen within these lines, for man is thought of as good and is expected to be directed to it. "Everyone is justified in assuming that everyone else will obey the laws."<sup>9</sup> Therefore, the natural law not only directs our steps to the good, but also, it seems, reminds us of the care we should exercise as we take these steps.

The field of commercial law also is replete with terms and standards that defy precise definition. It would be impossible, for example, to assign exact meanings to the terms "good faith" and "implied." Although the law always attempts to set things straight, human affairs are fraught with hedging, dodging, stumbling, doubt and dejection. The "good" is not always easy to come by. Contractual negotiations are fairly commonplace and, to an extent, even predictable. No matter how precise with language the original parties may be, however, difficulty frequently arises. At times, the difficulties may be corrected easily through means such as mutual agreement, rescission or modification. Where difficulties are so deep that they cannot be rectified by changes in words or clauses, however, terms such as unfair, unconscionable, bad faith and duress come to the forefront. To what source can we turn for solace and aid? The wide body of statutory

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<sup>6</sup> J. MARITAIN, *supra* note 1, at 66.

<sup>7</sup> Stalland, *The Natural Law from a Lawyer's Point of View*, in *COLLOQUY ON LAW AND THEOLOGY* (1962).

<sup>8</sup> 65 C.J.S. *Negligence* § 15, at 592-93 (1966).

<sup>9</sup> *Midkiff v. Watkins*, 52 So. 2d 573, 578 (Ct. App. La. 1951) (quotation omitted). *See also Bragg v. Mobilhome Co.*, 302 P.2d 424, 145 Cal. App. 2d 326 (Dist. Ct. App. 1956).

literature certainly can help, but recourse to the natural law may prove even more beneficial. Even the United States Supreme Court recognized that the natural law implicitly governs the rights of parties to a contract:

[I]nto all contracts, whether made between states and individuals or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, of nations, or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation . . . .<sup>10</sup>

Another area clearly evidencing natural law is the law of marriage. In *Sodero v. Sodero*,<sup>11</sup> for example, a New York court rejected an assertion that polygamy is a right upon which the state may not impinge, relying fervently on the natural law: "The natural law was codified in the Ten Commandments. By the natural law, the unity of the matrimonial bond and its indissolubility and permanency are essential properties of conjugal society. Polygamy is opposed to the unity of the bond."<sup>12</sup> Jurists deciding issues of domestic law apparently recognize that the institution of marriage is sacred in a variety of ways. With its basis in natural law, marriage forms the cornerstone of society.<sup>13</sup>

Positivists and natural law thinkers may be found on opposite end of the ocean. Certain exponents of positivism have sought a complete separation of law and morals. Justice Black's dissent in *Adamson v. California*<sup>14</sup> provides a striking example. In *Adamson*, the defendant argued that his fourteenth amendment rights were violated when the prosecution commented to the jury about his refusal to testify, a claim rejected by the majority.<sup>15</sup> In a harsh dissent, Justice Black criticized the majority for suggesting "that [the Supreme] Court is endowed by the Constitution with boundless power under 'natural law' periodically to expand and contract constitutional standards to conform to the Court's conception of what at a particular time constitutes 'civilized decency' and 'fundamental liberty and justice.'"<sup>16</sup> Black's argument has dynamic substance, for how do we determine what is just or good? How do we know at all? "Indeed, it is difficult to see," says Paul Ramsey, "how anything can follow in a necessary fashion from a principle so vague as 'do good and avoid evil'" or that "natural law arises *from* the simple fact that man is man."<sup>17</sup> Justice Black believed that the natural law had no place in legal reasoning and felt that

<sup>10</sup> *West River Bridge Co. v. Dix*, 47 U.S. (6 How.) 507, 532 (1848).

<sup>11</sup> 56 N.Y.S.2d 823 (Sup. Ct. Kings County 1945).

<sup>12</sup> *Id.* at 827.

<sup>13</sup> See C.J.S. *Breach of Marriage Promise* § 1, at 770 (1938) (citing *Lewis v. Tapman*, 90 Md. 294, 45 A. 459 (1900)).

<sup>14</sup> 332 U.S. 46 (1947).

<sup>15</sup> *Id.* at 57.

<sup>16</sup> *Id.* at 69 (footnote omitted).

<sup>17</sup> P. RAMSEY, *NINE MODERN MORALISTS* 217 (1962) (emphasis in original).

the Supreme Court should abandon it as an "incongruous excrescence on our Constitution."<sup>18</sup>

Reasoning such as Justice Black's disturbed Maritain greatly. To Maritain, positive law could not exist without the natural law. There is no true "being" of positive law. Even the most expert craftsman of legal verbiage must rely on more than mere words. Just as a carpenter needs to have a conceptual picture of a table in order to build one, a legal draftsman needs to have a specific foundation of justice appropriate to his or her legislative proposal. "Positive law without a foundation in natural law is purely arbitrary. It needs the natural law to make it rational."<sup>19</sup>

Maritain's understanding of the interrelationship of positive and natural law went further. Since positive law is subordinate to the natural law, the State is necessarily subservient to individuals. The rights of the individual, therefore, cannot be violated by the State. Otherwise, governmental policies would conflict with the natural law. One who perceives a higher order can rationalize a universe of truths loftier than any political community without difficulty. "[T]he human person naturally transcends the State, to the extent that [he] enfolds a destiny superior to time."<sup>20</sup> Alas, many nations have been remiss in accepting these principles, and even our judiciary is not immune. In *Rediscovering Natural Law*, author Scott Buchanan makes this point eloquently:

There are signs that the present crisis in our Supreme Court and in our politics will not issue in a clarifying judgment without recourse to deeper reasonings than we have ever tried before. That is the reason that strange echoes of the great tradition of natural law are coming from the most unexpected sources.<sup>21</sup>

We are living in a new age of "rights"—inherent, acquired and demanded—and the courts must come to grips with the natural law regardless of certain jurists' definitional problems with its concepts. The importance of the natural law becomes particularly evident when the dignity of the individual is impugned overtly, as in recent acts of political persecution. Whenever the State exceeds its natural powers, it becomes abhorrent. "That is why, whenever [the State] goes beyond its natural limits in order to penetrate, in the name of totalitarian claims, into the sanctuary of conscience, it attempts to violate this sanctuary by monstrous means of psychological poisoning, organized lies and terror."<sup>22</sup>

It would appear that any state action that abridges human rights automatically violates the natural law. Indeed, the fourteenth amendment

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<sup>18</sup> *Adamson v. California*, 332 U.S. 46, 75 (1947).

<sup>19</sup> Adler, *The Doctrine of Natural Law in Philosophy*, in 1 NATURAL LAW INSTITUTE PROCEEDINGS 83 (A. Scanlan ed. 1949).

<sup>20</sup> J. MARITAIN, *supra* note 1, at 76.

<sup>21</sup> S. BUCHANAN, *REDISCOVERING NATURAL LAW* 5 (1962).

<sup>22</sup> *THE SOCIAL AND POLITICAL PHILOSOPHY OF JACQUES MARITAIN* 41 (J. Evans & L. Ward eds. 1955).

itself seems bent to the natural law, and modern day judicial analyses of it are as timely and universal as the natural law doctrine itself. Although courts rarely acknowledge the influence of the natural law on their reasoning, its influence is apparent. The long list of civil rights cases attests to this. For example, the Supreme Court's ruling in *Miranda v. Arizona*<sup>23</sup> reminds us that even an accused felon or suspect has certain rights in the custodial setting. Similarly, in *Powell v. Alabama*,<sup>24</sup> the Court held that counsel must be provided for indigent defendants charged with capital offenses.<sup>25</sup> These decisions suggest an underlying basic concern for the dignity of man.

Maritain suggested still other extensions of the natural law. As might be expected, his philosophy branched from the civic and social person to the working person. Each distinct area was analyzed with care and characteristic gentility, out of which evolved one basic and deeply moving thought: "[A]ll these rights are rooted in the vocation of the person, a spiritual and free agent, to the order of absolute values, and to a destiny superior to time."<sup>26</sup> The rights accorded the "human" person also apply to the working person, since these individuals are one and the same. "What is involved in all this is . . . the dignity of work . . . the feeling for the rights of the human person in the worker, the rights in the name of which the worker stands before his employer in a relationship of justice and as an adult person, not as a child or a servant."<sup>27</sup>

For Maritain, and other exponents of the natural law, we offer little novel insight. Although the natural law is a concept for the ages, it is forgotten all too often. As a result, human actions are not always of the best design. All of man's institutions can benefit from the principles of natural law, for they are simultaneously secular and divine. The natural law reminds us that "our" law is truly subject to another form of law. We are not the creators of judicial wisdom and logic. Dean Roscoe Pound conveyed this thought eloquently: "Are we not saying over again in different ways what men have been saying since Socrates? . . . I submit that [natural] law has proved itself in the history of civilization . . . . It gives us the distinction between law and laws."<sup>28</sup>

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<sup>23</sup> 384 U.S. 436 (1966).

<sup>24</sup> 287 U.S. 45 (1932).

<sup>25</sup> *Id.* at 71.

<sup>26</sup> THE SOCIAL AND POLITICAL PHILOSOPHY OF JACQUES MARITAIN 41 (J. Evans & L. Ward eds. 1955).

<sup>27</sup> J. MARITAIN, MAN AND THE STATE 105 (1951).

<sup>28</sup> Pound, *The Revival of Natural Law*, 17 NOTRE DAME LAW. 287, 328 (1942).