

Natural Law

IN MEDIEVAL CATHOLICISM, IN LUTHER AND IN CALVIN

BY THE RÉV. A. J. DREWETT, M.A.

THE whole question of the nature of law, whether it is founded upon reason or will, is again exercising the minds of the world's leading jurists. The argument was summarized in a leading article in *The Times* as recently as June 20th of this year: "Essentially the argument is for some means of subjecting man-made law to correction by what used to be called natural law. Natural law, in turn, according to Christian and particularly Thomist teaching, was subordinate to divine law and that proceeded from God, not as infinite power, but as perfect reason. No doubt it is by pursuing this profound idea of reason rather than will as the ultimate source of authority in law that we have to seek the remedy for the growing helplessness to which the legislative sovereignty of the state tends to reduce the individual in the face of the mass. But how to re-enthrone reason as arbiter of the contention of partisan interests is a problem of which the solution in practical politics has not begun to appear."

This quotation shows the contemporary relevance of the question of Natural Law and the need for theologians, lawyers and sociologists to renew their acquaintance with it. This is no purely academic subject but has become a matter of life and death to millions of our fellow-men. As democracy of one sort or another spreads over the world, so will the heresy that Law has its ultimate authority in the will of the people spread with it. Against this, the Christian tradition for a thousand years was that Law depended upon Reason for its ultimate authority, the Reason not of man, but of God.

The origins of the conception of Natural Law go far back into antiquity; Aristotle, the Stoics and the great Roman jurists all taught a conception of law which was prior to and superior to the Positive Law of any state. Cicero in the *Laws*, sums this up in these words:

"I find that it has been the opinion of the wisest men that law is not a product of human thought, nor is it any enactment of peoples, but something eternal which rules the whole universe by its wisdom in command and prohibition. Thus they have been accustomed to say that Law is the primal and ultimate mind of God, whose reason directs all things either by compulsion or restraint. Wherefore the Law which the Gods have given to the human race has been justly praised; for it is the reason and mind of a wise lawgiver applied to command and prohibition.

Law is the distinction between things just and unjust, made in agreement with that primal and most ancient of all things, Nature; and in conformity to Nature's standard are framed those human laws which inflict punishment upon the wicked but defend and protect the good."

It was this ancient teaching which Aquinas married with the Christian revelation to produce the scholastic doctrine of Natural Law. The Jupiter of Cicero or the *anima mundi* of the Stoics were replaced by the God who had revealed Himself as Lawgiver at Sinai and had become incarnate in Jesus Christ. For Thomas, the entire universe was governed by Eternal Law. Angels, men, animals and vegetables were all subject to the laws which governed their creation. The universe falls into two great divisions, the rational and the irrational, and Eternal Law operates differently in each. In the world of animals, vegetables and things, it takes the form of a system of laws of nature in the modern scientific sense of the term. But in the case of rational beings, Eternal Law is presented to their reason and they conform to it by an act of will. *The Eternal Law as it is present to the reason of a rational creature is what Aquinas calls the Natural Law.* It will be seen to have obvious affinities to what was later called Moral Law.

It is necessary at this point to distinguish between Eternal Law and Natural Law on the one hand and Positive Law on the other. Positive Law is made at some particular point in time. Its making causes certain things to be obligatory or forbidden which were not so until that time. The Eternal Law has never been made, not even by God, since it is the reason of God. But precisely for this reason, man has not been endowed naturally with a grasp of the entire system of Natural Law, but only of certain general and fundamental principles of it. He must therefore be provided with a more detailed system of rules. These St. Thomas divides into Human Law and Divine Law. The first is worked out by human reason from the principles of Natural Law, the second is a system of commands of God's will, communicated by revelation. Both are Positive Law, for they come into existence at some point in time.

We see from this that Human Law has to supply much that is left undetermined by the Natural Law, but this is the starting point from which it is derived. Human Law is valid only so long as it does not conflict with the principles of Natural Law. If anything is repugnant in itself to Natural Law, it cannot be made just by human will. The law of the state belongs to the system of Human Law. It is thus limited in two different ways: it is subordinated, within its own sphere, to the Natural Law which is above it; it is excluded from the sphere of the Divine Law, which exists alongside it.

It is clear from this brief description that for St. Thomas, Natural Law bridges the gulf which exists between Man and God. It is that which enables Man, alone of all creatures, in virtue of the reason which he shares with God, to share in his creative work. As a Christian, St. Thomas is fully aware of the devastating effects of sin upon God's creation, but he still finds the pattern of the divine reason recognizably present. As he puts it, the consequences of sin do not shatter in the least the existence of a sphere of purely natural ethical values, and it is in this sphere that the state and the other orders find their *raison d'être*. The effects of sin are seen in man's inability to fulfil the Natural Law, not in his failure to recognize its existence and validity.

Here, therefore, is a positive attitude to the state, the family and the social order which St. Thomas shares with Aristotle rather than with

Augustine. In Thomist doctrine, the state is a part of that natural law and order which God has given for man's good in this world. Even a non-Christian or pagan state is endowed with a positive value, as against Augustine's view of the pagan state as being the work of sin. For St. Thomas, man is indeed a political animal (*animal sociale et politicum*) who, if he is to attain his proper end must share in political life and behave as a good citizen. "If any man should be such that he is not a political being by nature, he is either wicked—as when this happens through the corruption of human nature—or he is better than man—in that he has a nature more perfect than that of other men in general, so that he is able to be sufficient to himself without the society of men, as were St. John the Baptist and Anthony the Hermit."

We now turn to a brief account of Natural Law as applied to the family, the state, and the social and economic order—the Orders—in Thomist philosophy.

Monogamous marriage and the family which results from it, is for St. Thomas the first result of that Reason which forms men into communities. All larger groupings are made up of families which are the original and basic units of all communities. It is part of Natural Law that the family should own property, have the right of inheritance, and should produce and educate children. The servants form part of the family group which has a patriarchal and organic nature. This natural group is raised above the purely natural level by the Christian virtue of love by which it is interpenetrated. By this means those who share its life are prepared, not only for living in the state but also in the Church; not only for their life in this world but also in the next.

The state, according to Natural Law, is charged with the duty of maintaining law and order. A government has to see to it that its citizens can live in peace in order that they may carry on their rightful business. It is the responsibility of government to enforce at least a minimum of legal morality and to hold to an ideal of justice. The state has to see that each citizen has his share of this world's goods according to his station. The structure of the state is organic and patriarchal and the institution of monarchy best expresses the natural law conception of the body politic. There is a right of revolution against a government which does not govern according to natural law, but only if such a revolution is likely to be quickly successful and will not do more harm than good. It must be remembered that the state is the secular side of the life of the community; the spiritual side is the concern of the Church. The state is thus strictly limited to material interests and the maintenance of formal righteousness. In the realm of the mind and spirit, the Church must be supreme.

In the economic order, Natural Law expresses itself in the form of a reverence for work and in a class structure of society. Property and gain are based upon the personal performance of work; goods are to be exchanged only when necessary and then according to a just price which does not give anyone an unfair advantage. Consumption is regulated in accordance with the principle of moderation; that is, that amount which permits the maintenance of existence. All that is permitted above this minimum is sufficient to give expression to the spirit of generosity in meeting the needs of the poor and destitute.

We might sum up the Thomist philosophy of Natural Law by saying that it is a rational system which seeks to define precisely all human relationships. Each individual fits into a pattern—family, state, society—which is regulated by reference to the perfect order as it left the hands of the Creator. This perfect order is the norm by which all human living has to be judged. Sin has not made this perfect order unrecognizable, but it has made it unrealizable in its perfection. Nevertheless, it can be partially realized as Natural Law. In any case, the source of all law is to be found in the divine reason and not in the will of the state or the people. There is an objective standard to which final appeal can be made. If there is any doubt as to what this standard is or how it is to be applied in any given situation, it is for the Church to decide.

Obviously, such a conception of human society is essentially static; it did indeed last for a thousand years and still remains in isolated corners of Christendom. It was broken up by the tremendous upheavals of the renaissance and reformation. To their effects upon the notion of Natural Law, we now turn.

The most readily accessible account of Luther's treatment of Natural Law is to be found in Troeltsch's *Social Teaching of the Christian Churches*, which we shall follow in this essay. It is only fair to say, however, that some modern Lutheran scholars no longer accept Troeltsch as giving a fair account of what Luther really believed. There are no doubt some important differences between the teachings of the Reformer and those of Lutheranism as a formative influence in the history of Germany. It is, however, the latter which concerns us here, and there would seem to be no doubt that if we judge Lutheranism by its fruits, Troeltsch is not far from the truth.

According to Troeltsch, Luther departs from the traditional conception of Natural Law and formulates a theory which is peculiarly his own. By making a harsh distinction between Law and Love and between the individual as citizen and as private person, he not only changed the relationship of Natural Law to the Church and the Gospel, but he re-interpreted the notion of Natural Law itself.

The individual as citizen is expected to give unquestioned obedience to the state, which has come into being during the course of history as an act of Providence to make life tolerable for sinful man. Instead of natural law being something objective to the state upon which the state must base its own law, the state itself becomes the embodiment of natural law and power is glorified for its own sake. Every act of resistance to the state is therefore an act against natural law itself and tends to destroy society in general.

There has disappeared from this conception of Natural Law the idea that the state and the natural orders are good in themselves—a reflection, imperfect though it be, of the perfection of the divine reason. So polluted and corrupted had human nature become by sin that these orders of the state, the family and the economic order are given the negative function of keeping sin in check. The good life, therefore, has to be lived in the purely personal relationships between individuals where love can have influence. We find therefore in Lutheran ethics a strange dualism. There is an almost brutal harshness in the relation-

ship of the state to the individual, particularly if the individual is disobedient to the powers that be. On the other hand, as between persons in their personal relationships, there is inculcated a gentleness and consideration which almost borders on sentimentality.

The subtle twist which Luther gives to the notion of Natural Law is due to the fact that he thinks of it as divine activity expressed in reason, rather than as the divine reason itself. By reference to the Bible, and particularly to the Old Testament, he tries to find proofs of the divine appointment of the natural orders in time. In so doing, he introduces into natural law an element of myth which is foreign to it and the careful logical distinctions of Aquinas disappear. It was left to Melancthon to make a tidy scheme again and this he did by returning to Aristotle and Cicero and coupling with their definition of Natural Law, the Decalogue, which he considered to be identical with it.

We may say, therefore, that the Lutheran doctrine of the state is far more negative than is that of Catholicism. Its economic doctrine, on the other hand, is much nearer to that of Thomism. Many social changes had taken place in the intervening centuries which had tended to shift economic power from ecclesiastical to secular authority, but the theory remains largely the same. Natural Law still insists on the dignity of labour, on the just reward of labour and on the just price for goods. In these matters, Luther was essentially conservative. It was against all law, both Natural and Divine, to wish to rise in the world, to break through existing institutions on one's own free initiative or to improve one's social position.

Lutheranism, like Catholicism, was opposed to the new commercialism and capitalism of the time. It was Calvinism which moved out into the new world and became the spearhead of a new ethic. Calvin is not so concerned to emphasize the effects of sin upon social institutions as is Luther, for he does not draw so great a distinction between the state of perfection before the Fall and the actualities of living in the present world. Calvin does not think of the natural orders as things to be tolerated on account of sin, but as useful institutions which can be used for the purposes of God and against the forces of evil. He is essentially practical in his approach, not interested so much in abstract principles of Natural Law as in the solution of the problems of everyday life. His attitude is therefore far more hopeful and constructive than that of Lutheranism, which believes that reason is so corrupted by sin that it can have no confidence in a natural law which is based upon it.

Nevertheless, Calvin, although nearer to Catholicism in some ways than was Luther, was too much of a practical statesman and lawyer to be satisfied with the vagueness of the medieval notion of Natural Law. He turns therefore to the Scriptures for definite instructions and equates what he finds in them with natural law. This leads to a severely practical and puritanical ethic which glorifies hard work and becomes the driving force of the new capitalism.

What then are we to say of the permanent validity of the idea of Natural Law? "Reason," says Reinhold Niebuhr, "is at the same time a servant of sin and a judgment upon it". To abolish reason altogether is to hand over morality, both private and public, to the vagaries of instinct and to base law upon the quicksands of emotional

reactions. It is, at the other extreme, possible to have too great a confidence in Reason, as though it were pure and untainted with sin and particularly with the lust for power. This has been the error of catholicism and the system of law which has been built upon it. Natural Law becomes equated with the interests of Law and Order as desired at any particular time by those in power. Thus, in the name of Law and Order, legitimate movements for social betterment are crushed.

At all times in the history of Christendom, there have been groups of people who have appealed against the positive law of States to a higher law which they find, for example, in the Sermon on the Mount or in the idea of a perfect state where the will of God is done. The medieval attitude to such groups was that of ruthless suppression. This can no doubt be explained as the fear of anarchy, than which no worse fate could be imagined. It has been left to the modern period to shew a more tolerant attitude to such minorities, but we do well to remember that this tolerance hangs upon the slenderest of threads. In our day, the lot of minorities in some countries which have had a long Christian history is not very enviable.

It seems unlikely that the old conception of Natural Law will come back in its original form to help us, for it was essentially a conception which depended upon a general acceptance of God as the source of truth and reason. In place of God we now have the will of the people, which can hardly be said to have its origin in reason. The result is that justice itself is most precariously based and would seem to be in jeopardy in most countries in the modern world.

There can, therefore, be no more urgent problem facing the moral theologians than the formulation of some alternative to the medieval doctrine which will command the assent of thinking people to-day. However it is stated, it must give reason its rightful place. If the light of reason is extinguished, there can be no true humanity left.
