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Law and Morals

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LAW AND MORALS

THERE is a science of ethics, and a science or philosophy of law. They are distinct but not unrelated sciences. By law, I mean the natural moral law as well as human positive law, or law that is drawn up and promulgated by any legitimately established political sovereignty for the common welfare of its citizens. By morals I mean the body of principles and rules by which any fully deliberate human action, whether it be internal only or external, private or public, having to do with individual or with social conduct, may be adjudged morally right and good, or morally wrong and bad.

It is a commonly accepted and well known principle of classification that one science is distinguished from another, not by reason of what is studied, but by reason of the particular viewpoint from which it is studied. This is true of the physical sciences, such for example as chemistry, physics and geology. For though all investigate material substances, each approaches it from a different angle and includes in its purview a more or less extended field. The situation is no different in the moral sciences. Their common subject matter is human acts. Inasmuch as ethics or morals embrace the study of all human acts without exception, and from the very general though quite fundamental viewpoint of their moral goodness or badness, it may rightly be described as a parent science. The historian, the economist, the sociol-

ogist likewise are concerned with the rational activities of men, but the scope of their work is narrower and their respective viewpoints are different. The same may be said of law.

If then we regard the material element only of all these studies, it is clear that since morals take cognizance of the whole field of human, that is, deliberate and free, acts, while the other disciplines select only a portion of this field, it bears the relation to them of an inclusive to included departments of knowledge. If, however, we consider the formal element, that is, the special aspect under which each particular social science views its subject matter, while it would not be true to say that law—to leave the others aside—is simply a sub-division of ethics, it is nevertheless true that law making and law interpretation and law administration are subject to ethical or moral principles. The phrase “law for the law’s sake” or even “law for utility’s sake,” is as inadmissible as the phrase “art for art’s sake,” when the connotation is that lawmakers or artists are or can be independent of the principles of morality. For to claim independence of morality, that is, of the obligation to conform to the rules and principles which make action rightly human, is to claim the right not to act like a man; it is to place action upon other than a human basis.

Man, after all, is a part of the universe which, since it is an orderly whole, is subject to law, the proximate principle of order. His freedom in no way renders him immune from law. It merely requires that law be applied to him in a manner that is different from the way it is applied to non-free creatures. As there is but one final end of creation, so there is ultimately but one Supreme Legislator and one Supreme Law. Now this law, I submit, everywhere manifests itself in the constant and uniform actions of creatures. Below the human level, the most rigid determination holds sway. Reactions are predictable, relations unvarying, behavior falls into fixed patterns. These are but the sensible signs of rules

of action ingrained in the very natures of things, and rightly therefore called laws of nature or physical laws. Through a knowledge of these laws we are able to dominate the powers of nature and to make them serve us in manifold ways.

But man, I repeat, is a part of nature, and his sentient organism is as subservient to physical laws as are other species within the genus animal. It is only when we come to consider the rational and free side of human nature that man's unique position in an ordered universe presents itself. The order of his rational life is not set up in fixed grooves. His freedom imposes upon him the task of constructing the order of living that will enable him to work out his perfection as a man. Questions of right and wrong, of good and bad, of licit and illicit impose themselves only upon man. Unless he finds by incessant labor or by humbly accepting the instruction of others the true answer to these questions he is bewildered in thought, tortured by doubt and uncertainty, and liable to blunders that will either stunt his normal development as an individual or engender in him such anti-social tendencies as to make him a positive menace to society.

Fortunately, with the light of reason that he possesses, he can determine his place in the cosmos. He can solve the questions of his origin and nature and destiny. He can find out how he came to be and how he is related to other things that are, and what is their significance and relative value to him, and so come to the knowledge of the meaning of life and the meaning of right and wrong in human actions. It is only after one rightly understands these things that he can understand what he *ought* to do, and trace to its source the moral obligation by which he is constrained to do it. It is from such knowledge that he deduces the rules and principles of moral action, or, what is the same thing, the Natural Law and its mandates.

To put it more concretely, once I know that I am related to God as creature to creator, effect to cause, agent to end,

subject to sovereign, I understand that it is a law of my being to acknowledge this relationship by acts of worship. Once I grasp the truth that in all essentials every other human being is my equal, that in all the essentials of human nature we are alike, I realize that we are bound to each other by the bonds of a common origin, a common nature, a common destiny, by common needs, that I have in fact no substantial superiority over them. From such facts my reason spontaneously deduces the basic laws governing my relations with them, so that, in the realm of justice, I understand that I may not do to them what I should consider injurious if done to myself, and in the realm of charity, I see a universal obligation of doing for them what I in similar circumstances would want them to do for me. Further, as I come to understand myself with all my powers and faculties, I learn by experience and reflection that each of them is related necessarily to a specific object, the attainment of which by them in some way contributes to my well-being physical or moral, and to the well-being of the race. .

Thus the object of the mind being truth, and the knowledge of the truth being no less a necessity for me than for all other men, I cannot fail to understand that to deprive others of it by lying or falsehood, fraud or deceit, inevitably involves a violation of natural order and so also of the natural law. I see, in other words, that a lie is, intrinsically, and so, irrespective of any positive law or set of circumstances, a moral wrong, a transgression of the law manifested to me in my rational nature and by my rational powers. Similarly, realizing my dependence upon external goods, not merely in order to bare subsistence, but also in order to the security, the leisure and independence required for the normal exercise and development of my higher faculties, I cannot doubt that such of these goods as I may have acquired by my industry and personal effort, by primary occupation or free contract are my exclusive property, wheth-

er any positive law concedes it or not.¹ In brief, I see myself as the subject of certain objective and unalterable relations to my Creator, to my fellowmen and to the physical universe in which I live,—relations which, if heeded in my actions, will insure that subordination of myself to and co-ordination of myself with other persons and things that is of the very essence of order and harmony, and hence a guarantee of peace and progress in my individual and social life.

Now I am not unaware that speaking of law in this way may strike some as unusual. If one may judge by the larger part of the literature on both ethics and jurisprudence available in English, this conception of a law prior to and superior to any positive law, and therefore to man himself, is unusual. But though unusual, it is not surprising. For the philosophy of law, as of the social sciences generally, has but followed the drift of speculative philosophy itself away from its traditional objective of seeking an understanding of things through the intellectual effort of laying bare their primary origin and intrinsic constitution, final purpose and the essential relations by which they are bound together into an orderly whole.

To show why this has happened would involve a digression too long to be justifiable here. But there are, I believe, two principal reasons. And these I shall briefly mention. There is first the line of thought initiated by Descartes and developed by Locke, Berkeley and Hume, which threw doubt upon the power of the mind to know with certainty the true character of material substance, or even the very existence of a mind-independent external world. Ironically enough, Kant who set out to rescue philosophy from this attempted suicide, finished up by confirming, and even by elevating into a philosophic dogma, the view that the mind in its efforts to know the nature of things cannot transcend itself, that is, cannot know the metaphysical natures or es-

¹ See McNAMARA, *AMERICAN DEMOCRACY AND CATHOLIC DOCTRINE*, 123-131.

sences of things, cannot acquire a scientific knowledge of anything supra-sensible or supernatural. Kant, in short, denied the possibility of metaphysics or of philosophy proper. From the fantastic systems of Idealism which were the logical development of Kant's theory of knowledge, there was not only a violent reaction, but one which eventually led to the discrediting of intellect itself.²

In the next place, many thinkers, noting the rapid advance made by the physical sciences through the development of the methods peculiarly adapted to their own subject matter, gradually came to the conclusion that, were philosophy to keep stride with science, it would have to adopt the very methods of science itself. But since these methods were suitable only to the investigation of quantitative or measurable things, the notion gained credence that one could know with certainty only the existence and sensible characteristics of measureable things. This left philosophy, in the traditional sense of the word, without any object. Science, in the narrow sense of physical science, became the popular idol and replaced in the minds of many men not only philosophy proper, but in some instances, even religion itself. What was salvaged goes by the names of Positivism and Pragmatism, interesting viewpoints, if you wish, and fruitful of truth to a certain extent, but philosophies really only in name.

At present the utter inadequacy of these pseudo-philosophies to give satisfactory answers to the questions which spontaneously arise in the mind concerning the nature of reality and of man, or to provide a basis for the solution of our numerous and vexing social problems, has caused thoughtful men to grow less confident of the extravagant claims made for physical science on the one hand, and of purely inductive methods in the social sciences on the other. There is a distinct realization of the need for some unifying

² See SHEEN, GOD AND INTELLIGENCE, Chap. 2.

and coördinating principles, some medium of interpretation, which will bring order into chaotic thinking and definite meaning to the vast body of facts that has been collected. The drift away from intellectualistic philosophy has received a definite check and there is a vanishing reluctance to reexamine the claims of a philosophy solidly grounded in metaphysics.³

At any rate, what I am trying to show is that there is another and also legitimate way of considering law than as it exists in the mind of a legislator or is expressed in the sensible symbols of words. It is law applied to and in things, rules of action that are ingrained in their natures, as the rules of architecture are incorporated in a building or the rules of mechanics in the structure of a watch. In their static aspects, the multitudinous creatures that together make up the ordered universe are not only concrete products of thought, but in their dynamic aspects they are also, and evidently, subjects of will. They are agents. They act, but their actions are not random actions. They are for ends, directed to ends, ends proportionate to their powers, ends from whose attainment results individual well-being and perfection and the realization of a cosmic plan. Surely, to call the reasons for such modes of action, manifesting themselves everywhere in the sensible world, by the name of law is not arbitrary. For the simplest, most general and, at the same time, most fundamental meaning of law is rule of action, as the most obvious aspect of action itself is movement toward end.

Natural law then is that body of rules of action incorporated in the natures of things, constraining them, in the case of non-free creatures, by physical necessity, and in the case of free agents, by moral necessity, to act in such a manner as to attain the ends predetermined for them by the Author of their being. It is axiomatic that operation fol-

³ SHEEN, PHILOSOPHY OF SCIENCE, Chaps. IV and V.

lows nature, that as a thing is so it acts, that as it is related to other things by fixed or essential relations so it *ought* to act. It is therefore in the essential relations of one thing to another, of one person to another, and of persons to things that the first and most fundamental rule of their actions, or of law controlling and rightly directing their actions, is to be found. Hence there is nothing more mystical about the natural moral law than about the natural physical law. The latter is promulgated in the natures of physical things, the former in the natures of moral or rational beings which, having understanding, see the moral necessity of conforming their actions to it.⁴

Here then is the foundation of morals, the science that undertakes to determine the principles and rules by which one may judge whether a human action is intrinsically right and just or intrinsically wrong and unjust. This basis of moral judgment is objective, and therefore free from the inevitable variations and the inconstancies of purely subjective standards. It is factual, in the real order of things, not fanciful, and not subject to the whims of personal caprice or the vagaries of shifting custom or public opinion. It is the same from day to day and from generation to generation, universal and invariable. Without pushing the analogy too far, one may say that what numerical relations are in the mathematical order, essential relations are in the moral order. As out of the former spring the general and invariable principles and axioms or laws of right mathematical procedure, so out of the latter emerge the general and invariable principles of right human conduct, which are accordingly called the natural laws of morality. As the former are capable of the widest application to particular instances, so also the latter. As the one, being static and unalterable in its basic principles and framework, is capable of indefinite progress through more and more varied applications, so also the latter. What pure mathematics is to applied, natural

⁴ See THOMAS AQUINAS, *SUMMA THEOLOGIAE*, I-II, q. 91, a. 1-2.

ethics or morals is to human positive law. For while the natural laws of morality have to do with those actions of man which are essentially right or wrong, positive human laws have to do with those actions which involve only contingent relationships. They are but conclusions deduced from or extensions or applications of the natural law. There are very many human affairs which, since they are subject to variation, to the influence of circumstances of time or place or person or thing, must be regulated by man-made law. It is these regulations which are properly called human positive laws.

“Every law framed by man, says St. Thomas, bears the character of a law exactly to that extent to which it is derived from the law of nature. But if on any point it is in conflict with the law of nature, it at once ceases to be a law; it is a mere perversion of law. But there are two modes of derivation from the law of nature. Some enactments are derived by way of *conclusion* from the common principles of the law of nature; as the prohibition of killing may be derived from the prohibition of doing harm to any man. Other enactments are derived by way of determination of what was in the vague: for instance, the law of nature has it that he who does wrong should be punished; but that he should be punished with this or that punishment, is a determination of the law of nature. Both enactments are found in human law. But the former are not mere legal enactments, but have some force also of natural law. The latter sort have force of human law only.”⁵

If positive human laws then are contained implicitly in the natural law, it is clear that the science of law or jurisprudence is implicitly contained in the science of ethics, is related to it as an included to an inclusive department of knowledge. It is dependent upon it for its first principles and is bound to be ever consistent with them. The human legislator may no more ignore the moral law in his enactments than may the engineer in his constructions ignore the principles of mathematics. Legislators, in other words, are, in the very act of law making and law interpretation and law enforcement, subject to the guidance and the constraints of

⁵ RICKABY, AQUINAS ETHICUS, 287-8.

the moral law. Man is made for an end, and therefore there is a law which comes before him, a law which he must apply to himself in order to attain that end which is, demonstrably, none other than God. This law is the natural law. But this law prescribes or forbids only what is essential in human action, those actions without which life could not be rightly human. It therefore leaves a vast number of actions, in themselves morally indifferent or at least relative, and the determination of these in accordance with primary legal principles and the peculiar circumstances of a given situation, form the subject matter of human legislation. When the jurist does this successfully, he verifies the statement that "law is the perfection of human reason."

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