

Phi 213 S11: some ideas of natural law

Aristotle (384-322 B.C.E.)

- 1 Of political justice part is natural, part legal, natural, that which everywhere has the same force and does not exist by people's thinking this or that; legal, that which is originally indifferent, but when it has been laid down is not indifferent, e.g. that a prisoner's ransom shall be a mina. . . . It is evident which sort of thing, among things capable of being otherwise, is by nature, and which is not but is legal and conventional. . . . The things which are just by virtue of convention and expediency are like measures; for wine and corn measures are not everywhere equal. . . . Similarly, the things which are just not by nature but by human enactment are not everywhere the same, since constitutions also are not the same, though there is but one which is everywhere by nature the best. [*Nicomachean Ethics*, W. D. Ross (tr.), 1134<sup>b</sup>-1135<sup>a</sup>.]

Cicero (106-43 B.C.E.) [The translation is from *The Hellenistic Philosophers*, Long and Sedley (eds.) (Cambridge: Cambridge University Press, 1987). This passage is from a work that survives only in fragments, and its immediate context is not known.]

- 2 True law is right reason, in agreement with nature, diffused over everyone, consistent, everlasting.... There will not be a different law at Rome and at Athens, or a different law now and in the future, but one law, everlasting and immutable, will hold good for all peoples and at all times.... Whoever does not obey it is fleeing from himself and treating his human nature with contempt. [*Republic*, 3.33.]

Ulpian (d. 228 C.E.)

- 3 When a man means to give his attention to law (*jus*), he ought first to know whence the term *jus* is derived. Now *jus* is so called from *justitia*; in fact, according to the nice definition of Celsus, *jus* is the art of what is good and fair. [The *Digest* of Justinian, C. H. Munro (tr.), book I, title 1, article 1.]
- 4 Justice is a constant, unfailing disposition to give every one his legal due. 1. The principles of law are these: Live uprightly, injure no man, give every man his due. 2. To be learned in the law (*jurisprudencia*) is to be acquainted with divine and human things, to know what is just and what is unjust. [*Ibid.*, article 10.]

Julius Paulus (fl. c. 200 C.E.)

- 5 The word *jus* is used in a number of different senses: in the first place, in that in which the name is applied to that which is under all circumstances fair and right, as in the case of natural law; secondly, where the word signifies that which is available for the benefit of all or most persons in any particular state, as in the case of the expression civil law. [*Ibid.*, article 11.]

Thomas Aquinas (1225-1274)

- 6 [Law] is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated. [*Summa Theologiae*, I-II, q. 90, a. 4.]
- 7 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 else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law. [*Ibid.*, q. 91, a. 1.]
- 8 Just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters. These particular determinations, devised by human reason, are called human laws, provided the other essential conditions of law be observed. [*Ibid.*, a. 2.]
- 9 Man has a natural participation of the eternal law, according to certain general principles, but not as regards the particular determinations of individual cases, which are, however, contained in the eternal law. Hence the need for human reason to proceed further to sanction them by law. [*Ibid.*, ad 1.]
- 10 The natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail. [*Ibid.*, q. 94, a. 4.]
- 11 Nothing hinders the natural law from being changed [by way of addition]: since many things for the benefit of human life have been added over and above the natural law, both by the Divine law and by human laws.  
[By way of subtraction] 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 ... may be changed in some particular cases of rare occurrence. [*Ibid.*, a. 5.]
- 12 A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: e.g. that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did not give him clothes, but art invented them. In this sense, *the possession of all things in common and universal freedom* are said to be of the natural law, because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life. Accordingly the law of nature was not changed in this respect, except by addition. [*Ibid.*, ad 3.]

13 As Augustine says ... *that which is not just seems to be no law at all*: wherefore the force of a law depends on the extent of its justice. Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature, as is clear from what has been stated above .... Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law.

But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details: thus the craftsman needs to determine the general form of a house to some particular shape. Some things are therefore derived from the general principles of the natural law, by way of conclusions; *e.g.* that *one must not kill* may be derived as a conclusion from the principle that *one should do harm to no man*: while some are derived therefrom by way of determination; *e.g.* the law of nature has it that the evildoer should be punished; but that he be punished in this or that way, is a determination of the law of nature.

Accordingly both modes of derivation are found in the human law. But those things which are derived in the first way, are contained in human law not as emanating therefrom exclusively, but have some force from the natural law also. But those things which are derived in the second way, have no other force than that of human law. [*Ibid.*, q. 95, a. 2.]

14 Positive law is divided into the *law of nations* and *civil law*, according to the two ways in which something may be derived from the law of nature .... Because, to the law of nations belong those things which are derived from the law of nature, as conclusions from premises, *e.g.* just buyings and sellings, and the like, without which men cannot live together, which is a point of the law of nature, since man is by nature a social animal.... But those things which are derived from the law of nature by way of particular determination, belong to the civil law, according as each state decides on what is best for itself. [*Ibid.*, a. 4.]

15 Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience....

On the other hand laws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above—either in respect of the end, as when an authority imposes on his subjects burdensome laws, conducive, not to the common good, but rather to his own cupidity or vainglory—or in respect of the author, as when a man makes a law that goes beyond the power committed to him—or in respect of the form, as when burdens are imposed unequally on the community, although with a view to the common good. The like are acts of violence rather than laws; because, as Augustine says..., *a law that is not just,*

*seems to be no law at all.* Wherefore such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should even yield his right....

Secondly, laws may be unjust through being opposed to the Divine good: such are the laws of tyrants inducing to idolatry, or to anything else contrary to the Divine law: and laws of this kind must nowise be observed.... [*Ibid.*, q. 96, a. 4.]

16 Since then the lawgiver cannot have in view every single case, he shapes the law according to what happens most frequently, by directing his attention to the common good. Wherefore if a case arise wherein the observance of that law would be hurtful to the general welfare, it should not be observed....

Nevertheless it must be noted, that if the observance of the law according to the letter does not involve any sudden risk needing instant remedy, it is not competent for everyone to expound what is useful and what is not useful to the state: those alone can do this who are in authority, and who, on account of such like cases, have the power to dispense from the laws. If, however, the peril be so sudden as not to allow of the delay involved by referring the matter to authority, the mere necessity brings with it a dispensation, since necessity knows no law. [*Ibid.*, a. 6.]

17 Now just as human reason and will, in practical matters, may be made manifest by speech, so may they be made known by deeds: since seemingly a man chooses as good that which he carries into execution. But it is evident that by human speech, law can be both changed and expounded, in so far as it manifests the interior movement and thought of human reason. Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be established which obtains force of law, in so far as by repeated external actions, the inward movement of the will, and concepts of reason are most effectually declared; for when a thing is done again and again, it seems to proceed from a deliberate judgment of reason. Accordingly, custom has the force of a law, abolishes law, and is the interpreter of law. [*Ibid.*, q. 97, a. 3.]

18 The people among whom a custom is introduced may be of two conditions. For if they are free, and able to make their own laws, the consent of the whole people expressed by a custom counts far more in favor of a particular observance, that does the authority of the sovereign, who has not the power to frame laws, except as representing the people. Wherefore although each individual cannot make laws, yet the whole people can. If however the people have not the free power to make their own laws, or to abolish a law made by a higher authority; nevertheless with such a people a prevailing custom obtains force of law, in so far as it is tolerated by those to whom it belongs to make laws for that people: because by the very fact that they tolerate it they seem to approve of that which is introduced by custom. [*Ibid.*, ad 3.]