

## Chapter 1

# What is Natural Law?

Perhaps the most confusing aspect of natural law is the phrase itself: “natural law.” For many people, the word “natural” implies human biology or the physical environment. For others, it means “instinct.” Likewise, when some people hear the word “law,” it implies “constraint” or obedience to legislation, regulations, and codes decreed by institutions with the authority to do so.

There is obviously some validity to using these words in such ways. Yet such uses are not a good starting point for understanding what natural law is.

The origins of the expression “natural law” are to be found in debates between the Greek philosopher Plato and those thinkers known as the Sophists. In broad terms the Sophists believed that politics was not about questions of right, wrong, justice, or injustice. They maintained that social arrangements reflected whoever was the strongest. Hence, it was “natural” for the strong to rule the weak. Such was the “law” of human “nature.”

Plato disagreed with the Sophists. For him, politics and justice could not be reduced to the rule of the strong. Nevertheless, Plato recognized the rhetorical power of the term “natural.” He thus decided to use it for his own purposes. In Plato’s thought, “natural” became a way of saying “human,” and one distinctive feature of humans is that we have *reason*. This is what makes humans different from animals. They act according to instinct alone. We do not.

What did Plato mean by “reason?” First and foremost, he meant the mind’s ability to know truth, and how to choose and act rightly as individuals and communities in light of truth. Reason was thus more than our mind’s ability to know how to weigh and calculate quantifiable objects, or our capacity to comprehend the workings of the material world in which we exist. Reason certainly included those capacities; it found expression in fields such as mathematics or natural sciences like physics. But reason, from Plato’s standpoint,

was above all *practical* in the sense of helping us *know* ethical and philosophical truth and then how to *choose* and *act* rightly.

What is the “law” dimension of natural law? The law part concerns that which is right for human beings. Here “right” does not primarily mean “efficient” or “useful.” Insofar as efficiency means the optimal use of scarce resources and avoidance of waste, or utility means the usefulness or value that consumers experience from the use of a product, natural law regards efficiency and utility as valuable and, as we will see, potential factors to consider when making moral judgments.

But when the phrase “right” is used in natural law, the focus is upon what reason identifies as good and just. Much of this was neatly explained by Thomas Aquinas. To his mind, natural law consists of the basic principles of practical reason for humans. The most fundamental of these principles is that good is to be done and evil is to be avoided. Here good means reasonable while evil means unreasonable. A second key principle of practical reasoning is that knowledge is a good to be pursued while falsehood and ignorance are to be overcome. A third principle is that you may never do evil even if you anticipate that good may come of it.

This third principle merits more explanation as it is one that many have found perplexing. Surely, the argument goes, there are instances in which one must choose means (e.g., bombing German cities in World War II) that we would not otherwise choose in order to realize a greater good (e.g., hasten the defeat of Nazi Germany).

In one sense, the idea that we may never do evil that good may come of it is a logical derivative of the first principle of doing good and avoiding evil. That means avoiding the free choice of evil in *every* aspect of any action, whether it is the *object* or goal of the act (defeating Nazi Germany), or the *means* through which that goal is achieved (the waging of war). Once your act involves a conscious choice of an evil (consciously targeting civilian populations and non-combatants while waging war), it follows that the act itself is evil, no matter how much good might be realized. In other words, there are some acts that cannot be rationally defended by reference to any end.

### **Right reason and truth**

How then do we know these principles? Natural law holds that people possess a basic knowledge of these principles through their possession of reason

(ST I-II a.94, a.4). In this sense, the principles of natural law are “natural” to human beings (ST I-II q.94, a2) not because of human biology but because they are universally knowable by human reason (ST I-II q. 94, a.4; a.94, a.6) and universally binding because of their basis in human reason (ST I-II q. 94, a.4). Reason thus permits us to know the truth about good and evil, even though the directedness of such knowledge can be undermined or obscured by the pull of powerful emotions, and the meaning of this information for human choice and action can be hard to determine (ST I-II q.94, a.6).

What is the content of this truth about good and evil? In basic terms, it is the truth about human flourishing. Such flourishing occurs when we can freely choose particular things that are good in themselves (such as knowledge or beauty) and therefore fulfilling (ST I-II q.94, a.2) for humans *qua* humans, intelligible to human reason as reasonable for humans to pursue, and which other species (like animals and plants) cannot know and cannot therefore choose because they lack reason. Our knowledge of such goods comes about through our intrinsic orientation toward the various goods that reason bids us to pursue. These goods in turn provide reasons for humans as rational beings to make this implicit awareness explicit and propositional through reflection on human choice and action.

The study of natural law consequently involves identifying and applying the principles of rational thought to how we know and choose the good, right, and just when we make free choices. Natural law maintains that for us to be rational in the fullest sense is to choose and act in accordance with what our reason tells us is the truth about the right course of action. Aquinas defined truth as *adaequatio intellectus et rei* [conformity between the intellect and reality] (ST I, q.21, a.2c). What Aquinas meant by “reality” is the truth about something as it is in itself: that, for instance, the content of the most basic principle of justice *is* to give others what they are owed, and not something else; or that the content of the virtue of courage *is not* the same as being reckless or being a coward.

### **The ethics of human action**

Natural law is thus neither social science nor political theory. Instead, natural law is primarily ethics insofar as it is concerned with practical reasoning about how individuals and communities do good and avoid evil when making choices and acting. Aquinas put it this way:

Good is the first thing that falls under the apprehension of the practical reason, which is directed to action: since every agent acts for an end under the aspect of good. Consequently the first principle in the practical reason is one founded on the notion of good (ST I-II, q.94, a.2).

To understand what Aquinas is driving at, we need to ask ourselves: how do we identify a good reason for action; that is, something that requires no other reference to another purpose because our reason tells us that something is *self-evidently* good for human beings?

Let's take the case of someone who exercises to reduce excessive weight. Losing excessive weight is a good reason to act. But it is only *intelligibly* good because it contributes to being healthy and staying alive. The free choice to exercise presupposes that human life is a fundamental good to be promoted and protected. Life is therefore an ultimate reason to act.

Another example of a self-evident good—a reason for action that needs no further explanation—might be “religion.” Imagine someone leaving his house on a Saturday. Why, we ask, is he doing so? If the answer is “he is going to synagogue,” we may inquire, “why is he attending synagogue?” If the response is “because he is a religious Jew,” we may further inquire, “why does he choose to practice his Judaism?”

At this point, we could mention factors like upbringing, a desire to see friends, express his identity, etc. But one answer to the question of why the man chooses to go to synagogue that requires no further explanation is that Judaism is his *religion*.

At some point in their life, most people ask themselves, with varying degrees of intensity and seriousness, 1) whether there is a God (or gods); 2) whether it is *reasonable* to believe in his (or their) existence; 3) which religion's account of God is more compelling than others; and 4) what our conclusions about these questions mean for the way that we live our lives. People want to *know* the true answers to these questions. That includes those who conclude that, upon asking such questions, there is no God.

Thus, to continue with our example, the man's choice to go to synagogue ultimately results from his choice to reflect reasonably upon the truth of whether or not there is an ultimate transcendent source that stands at the beginning of time and who set the universe in motion. Having concluded

that 1) there is such a being; 2) that this being (God) has communicated to humans who he is through special revelation to a particular people at a particular time as well as through the natural reason that he has inscribed into the human mind; 3) that part of this communication by the same God allows people to know what he wants them to do and what he does not want them to do; and 4) that Judaism provides the most compelling account of all the possible explanations for such things, the man's choice to go to synagogue reflects his subsequent decision to order his choices and actions on the basis of these conclusions of his inquiry into the question of religion. Religion is thus a self-evident good.

Other self-evident goods identified by Aquinas included life, procreation, knowledge, sociability, and reasonable conduct (ST I-II q.94, a.2; q.94, a.3). Contemporary natural law thinkers have further fleshed these out as the following goods: life (and component aspects of the good of life like health), friendship, knowledge of truth, aesthetic experience, skillful performance in work or play, and practical reasonableness itself. The last of these is the shaping of our participation in all the other self-evident goods in light of our particular commitments and our choice to pursue specific projects (Finnis, 1980: 81-97).

When we act in ways that allow us to participate in one or more of these goods, we fulfill ourselves in the way that humans should. Conversely, when we act in ways that contradict such goods (such as intentionally working in a less-than-skillful way, lying, killing, etc.), we damage ourselves. Indeed, identifying certain reasons for action as always good also allows us to identify certain actions that can never contribute to human fulfillment.

If, for example, knowledge of truth is good in itself, we also understand that error and ignorance are evils that no person can reasonably wish for themselves or others. This does not mean that we are obliged to know everything about every possible subject. All of us have to choose what subjects we are going to invest our time and energy in ascertaining the truth about. Such choices are driven in part by our particular aptitudes and our specific obligations. An unintended albeit foreseeable side-effect of this is that we will remain ignorant of many topics. That, however, is very different from saying that I consciously choose error over truth, or ignorance over knowledge.

Natural law does not hold that we must try and participate in all of these goods in all of our freely chosen actions. This is impossible. We cannot

simultaneously study (the good of knowledge) while running a marathon (the good of skillful performance). Our choice of one good over another inevitably means that we do not participate in other goods through that particular choice. This is an unintended side-effect that we foresee will result from our action but we do not choose it.

## **Reason and free choice**

Plainly, natural law places great emphasis on the fact that all human beings act. Reflection on human actions, it holds, leads us to recognize that they are more than simply the result of human biology or instinct. Certainly, there are acts, like the working of our internal organs, which reflect our biology. But what makes human actions different from those of other creatures are two elements which, taken together, make such actions *free*.

As noted, one such element is our possession of reason. An element of rational logic is required if people are to act freely in a deliberative manner. This point becomes clearer if we consider an insane person's actions. Though her actions are not coerced, we do not consider her actions to be freely chosen precisely because the person's rationality is impaired. For centuries, legal systems have permitted defendants to enter the plea of "not guilty by reason of insanity." People may thus claim that they were not responsible for their actions because their will was not shaped by reason. It follows that unless reason guides the will, there is no free choice; and without free choice, we cannot be regarded as responsible for our actions.

By itself, however, reason is insufficient to make human acts free. Many machines made by humans (like computers) have a type of intelligence built into them. Yet few would claim that a computer is free. For machines do not possess another specifically human characteristic of human action: i.e., free choice.

Unless one accepts that humans can make choices, it is impossible to understand distinctly *human* action. While an animal can be taught to behave in certain ways, humans' capacity for choice allows us to settle upon and implement a course of action, and then choose a different form of action: to drink a glass of whisky now, and then go surfing afterwards. A human act thus amounts to what is chosen.

This, however, does not settle an important question. Can humans make truly *free* choices? Many say no. Some regard choices as resulting from

a combination of a person's environment, emotions, genetics, and brainwaves. From this standpoint, people may have the sense that they are freely making choices but, in reality, free choice is an illusion.

Natural law contests this position. Aquinas argues that practical reason allows us to identify reasons for action. Reason allows us, for example, to resolve medical problems. Reason also tells us, however, that we should try and solve medical questions. Why? Because the preservation and promotion of life and health are *good* reasons for us to act—they require no further explanation—and, in that sense, are self-evident.

This idea is at the root of the vision of free choice outlined by Aquinas: that is, of human intelligence in action. This is a person's will working as an intelligent response to what someone comprehends as an opportunity to act. "For one's will is in one's intelligence," Aquinas wrote, and "the source of this sort of appetite is understanding, i.e., the intellectual act that is somehow moved by something intelligible" (Aquinas, 1270–1272, *Sententia super Metaphysican*, XII, 7, in Busa, 1996). The ultimate source of human actions—their motivation—are thus *reasons*; that is, something intelligible.

People make free choices when—having judged that they have a reason or reasons to agree to one possible act, and a reason or reasons to adopt alternative but opposing options for action—they choose one option instead of the others. Once a person formally chooses a possibility, it becomes a plan for action. Putting this into effect is what Aquinas calls "command" [*imperium*] (ST I-II, q.17, a.1).

Natural law thus sees free choice as (1) the contemplation of possibilities that provide reasons for action, followed by (2) the active determination of the value of the object of a possible act, and then (3) the active willing of that act (Finnis, 1998: 71). This view of free choice and reason suggests that humans can make free choices to the extent that we understand and act upon reasons that are not reducible to the emotions, the influence of our environment, etc.

It is not that natural law views something like emotions as unimportant. The felt strength of an emotion can be a sign of one's commitment to good reasons to act. Aquinas observed that sometimes "good desires work against a perverse reason" (ST II-II, q.155, a.1. ad.2). In some cases, emotions may even reflect our inner awareness of the wrongness of rationalizing a bad choice. Nevertheless, natural law maintains that feelings must be subordinated to reason when it comes to making a free choice. While we can describe the

experience of moral good and evil, experience itself cannot define, intellectually speaking, why one action is good and another is wrong. Only reason can identify what is desirable in the sense of what is good. Only by allowing our rational will to direct our lives, can we become free agents of our decisions rather than slaves of our passions.

### **Freedom, morality, and virtue**

There is another way in which natural law attaches deep significance to free choice. This concerns the effects of our actions.

Much of the time we think about our actions in terms of the effects that they may have upon others or the material world. But natural law stresses that our choices also have an effect on our own character. This difference may be described in terms of what are called the “transitive” and “intransitive” dimensions of human acts. Aquinas explains this in the following way:

Action is of two sorts: one sort—action [*actio*] in a strict sense—issues from the agent into something external to change it... the other sort—properly called activity [*operatio*—does not issue into something external but remains within the agent itself perfecting it (Aquinas, 1256-1259/1952: q.8, a.6c).

The transitive effect of an act is what occurs outside us as a result of the action. When I work, for instance, I shape other people and things. But the intransitive effect of the same act leaves a mark on me as a person. My very same act of work, for example, shapes me internally in terms of reinforcing certain good habits (virtues) or certain bad habits (vices), depending on the act. While the intransitive effects of my work may not be at the forefront of my mind when I choose to work one way rather than another, it is an unavoidable effect of any freely chosen act. This free choice lasts within people until they decide to act in a way incompatible with that choice.

This is how people develop habits of action. The more we choose to steal, for example, the more accustomed we become to stealing. To break this bad habit, we need to repudiate our past choices to steal and start performing actions incompatible with stealing. One person may thus choose through her actions to renounce a past life of crime, while another weakens her virtuous habits by suddenly starting to make unreasonable choices.

For Aquinas, the more virtuous we are, the more likely it is that we will act well and the easier it becomes to choose the good freely. Pursuing the good and avoiding evil, he insists, won't happen simply through studying philosophy. We will always need to cultivate the virtues if we are to act well (Aquinas, 1271–1272/1993: II, 2, 259), especially what are called the cardinal virtues of prudence, justice, courage, and temperance.

And by prudence, Aquinas doesn't mean shrewdness, being worldly-wise, cautious, or pragmatic. Rather, he means the type of practical wisdom that involves understanding and applying the principles of natural law in an integrated way, with discernment, and in accordance with one's effort to live all the other virtues. This means, among other things, that the prudent person will exclude from her reflection and deliberation any choice that involves choosing to violate directly any of the moral goods: that is, to do evil.

### **Moral absolutes**

This raises the question of how natural law understands the nature of evil acts. Human actions, from the standpoint of natural law, can go wrong in several ways. An act might be wrong, for example, simply because it involves directing oneself against a good like truth, for instance, by lying (ST II-II q.110, a.3).

There is, however, another dimension to natural law theory that shapes its understanding of free choice, morality, and virtue. This is its insistence that there are certain choices which may *never* be made; that is, certain actions that are never acceptable, regardless of the circumstances or the nobility of the intention, because such actions are always seriously wrong by reason of their object: that is, what we are choosing to do.

An example of what natural law scholars call an exceptionless norm is the direct killing of an innocent person: in other words, directly choosing to violate the fundamental good of life. Even if an act of directly killing an innocent person might save an entire city from destruction, such an act remains intrinsically wrong by reason of its object. It is always irreconcilable with the choice of the good. There is never a good reason to make murder the deliberate object of our act. It follows that, in accordance with the principle that good is to be done and evil avoided, such an act can never be freely chosen. There are no exceptions.

To this extent, natural law is grounded on a commitment to moral absolutes. Examples of other acts that would meet the same criteria are lying

(which violates the good of truth) and theft (which violates the good of property). Aquinas puts it this way: “Let us say that someone robs in order to feed the poor: in this case, even though the intention is good, the uprightness of the will is lacking. Consequently, no evil done with a good intention can be excused” (Aquinas, 1273/1954: 250). For what is being willed *is* theft, and all theft is always wrong.

This is not to say that natural law denies certain relativities in morality. One such relativity is that many moral principles apply variously. Take, for example, the obligation to honour our parents. The requirements of living out this affirmative norm rightly vary with persons and circumstances. Some of the ways in which an eleven-year-old child honours his living parents can't help but be different to the way in which the same person as an adult honours his aging or deceased parents. Note, however, that acknowledging this variability involves no denial of the principle that certain acts may never be freely chosen.

Natural law also affirms a wide pluralism about what we may rightly choose. While natural law theory posits certain acts as never worthy of humans, it also insists that there is significant room for judgment concerning the reasonable and good options that people can choose. Some of these judgments may be incompatible with each other even though they are derived from the same principles.

From a natural law standpoint, for example, there is no single absolutely right answer to the question of what percentage of a given country's GDP should be directly controlled by the state. Natural law thinkers acknowledge that answering such a question depends upon theoretical and empirical information about which people equally well informed by practical reason can and do form different, even incompatible views.

By contrast, if we try to relativize those negative norms of natural law which forbid absolutely, natural law insists that the door opens quickly to barbarism. Suddenly it becomes conceivable that the choice to carpet-bomb cities full of non-combatants might be acceptable if it's deemed likely to undermine the enemy's will to fight. Maybe it's licit to steal from your employer “just this once” to pay your rent next month. In the absence of exceptionless absolutes, you are at least in principle open to choosing evil in order to realize good, which means in effect that you *are* willing to freely choose to do evil.

This commitment to moral absolutes in the form of exceptionless norms puts natural law directly at odds with those forms of ethics that either 1) seek to determine the right course of action based on a weighing of all knowable (and unknowable) good and evil effects of an action; or 2) try to establish criteria by which we can judge the rightness of a given way of acting based on a calculation of foreseeable consequences deriving from a given choice.

Jeremy Bentham, for example, argued that moral decision-making involves people weighing all the possible pleasures and pains proceeding from a variety of possible actions, and assessing which act is likely to maximize the most pleasure. But Bentham offers no *morally* objective criteria to establish what is greater pleasure or lesser pain. This means that, in the process of weighing, it is very difficult to stop people from quickly drifting in the direction of choosing whatever it is they happen to want based upon their feelings and passions rather than according to reason (Finnis, 1991: 18).

Those ethicists who adhere to what is called “consequentialism” take a somewhat different approach. Recognizing the problems associated with the type of calculus proposed by Bentham, they seek to establish criteria according to which we can decide what to do (especially in what are called hard cases) on the basis of a rational assessment of 1) all the consequences that flow from an act and 2) all the intrinsic goods that are part of that act. The act that is to be chosen is one in which all the possible good consequences and intrinsic goods realized outweigh all the possible bad consequences and intrinsic goods realized.

Natural law thinkers point out that it is impossible for anyone to know all the possible consequences of their actions (indeed, economists remind us that our choices also have many unknown consequences). Moreover, how do we weigh the significance of one consequence against, say, two other consequences? Consequentialism, natural law ethics holds, subsequently ends up arbitrarily assigning some amount of value to a particular consequence, and another amount of value to other consequences. Consequentialism thus leads to haphazard, arbitrary, and thus unreasonable decision-making in the realm of morality.

The same methodological problem arises with comparing and weighing all the different intrinsic goods potentially realized by two different actions. By what criteria do we establish that one realization of the good of truth outweighs two realizations of the good of work? In this regard, consequentialism

runs afoul of what is called the problem of incommensurability: trying to weigh and compare what cannot be weighed and compared.

Natural law is not indifferent to the importance of consequences. It does not tell us to ignore the known, albeit unintended consequences of our actions. It recognizes that our free choices can have many effects, many of which are knowable but unintended, and in that sense, side-effects of our choices. There are also instances in which people can reasonably measure the foreseeable consequences and efficiency of alternative choices. One such context is a market for those goods and services in which a common denominator (i.e., money) allows appraisals of costs and benefits. All that natural law reasoning is stating is that we cannot make an assessment of consequences the *ultimate* reference point for decision-making, let alone appeal to consequences in order to justify intrinsically wrong acts like murder or theft.

### **But what about liberty?**

Natural law's understanding of reason, human action, and human choice is certainly controversial. Some have questioned whether, for example, knowledge, life, or practical reasonableness are universally recognized across cultures as essential human goods.

To this claim, many natural law theorists respond by noting that there are few, if any societies that have regarded it as reasonable and good to desire ignorance for its own sake or that consider it legitimate to murder people. Though there will be arguments about whether a particular act constitutes an act of murder, few will affirm murder *per se* is good.

Other questions about the applicability of natural law arise from the fact of human sociability. We need others in order to survive and flourish ourselves. This has implications for our choices. And such choices—whether they are coordinated through the medium of a contract or via a treaty between two countries—must, from a natural law standpoint, be as reasonable and just as all our other choices.

Natural law is cognizant that our opportunities to choose the good and live virtuously can be bolstered or limited by the conditions surrounding us. Even if we lived in a society in which everyone only made free choices for the good, many of those choices would still be incompatible with each other. Decisions need to be made about how to resolve such conflicts in reasonable and just ways. The reality that everyone sometimes makes unreasonable

choices only further complicates matters. All these factors necessitate institutions, laws, and protocols that enable societies to make decisions about how to coordinate people's free choices in ways that meet the requirements of reason and justice.

Herein lies two of the reasons why natural law is so important for liberty and free societies more generally. Put simply, natural law underscores that we *cannot* flourish if we cannot make free choices, for it is in the very process of making free choices that we can become virtuous and actualize the goods that make us distinctly human. As we will see, natural law does not maintain that government and law must be neutral vis-à-vis questions of morality and virtue, particularly insofar as our actions effect other people and touch on the requirements of justice. Nevertheless, much of natural law's reflections on politics, law, and economics are underpinned by the conviction that any political, legal, and economic coordination of people's choices must give as many people as possible the space they need to make free choices.

That in turn points to the second and complementary reason why natural law matters for freedom. It provides us with principles around which to develop a political and legal framework that helps to prevent the state from exercising excessive control over its citizenry. Sometimes such expansions of government power are undertaken in the name of seeking to realize good ends, such as wanting people to be virtuous and less susceptible to vice. On other occasions, it is done with the explicit objective of unjustly circumscribing freedom, often in radical ways that involve grave violations of justice in order to establish a tyranny intent on pursuing particular goals and which views any emphasis on liberty as undermining the realization of such ends.

But whether the ends are good or bad, preventing illegitimate expansions of state power so as to enhance the possibilities for people to freely choose to pursue the good is a major focus of natural law thought. As successive chapters illustrate, this has major implications for how natural law understands the role of law and government, the nature of property and the functioning of the economy, and the role of international law and the character of trade between nations. Before we turn to those, however, we need to grasp the way in which natural law understands two things that have been crucial for the development of free societies: the nature of rights and the character of justice.