

Summary

In this work the problematics of natural law is seen in a strictly philosophical way as fundamental part of philosophical anthropology. Thus, it is seen as part of a greater whole which constitutes the necessary basis for posing and solving problems connected to law in general and to natural law in particular. The book is composed of four chapters. Chapter I discusses the general concept of law as such, both in its theoretical and historical aspects. The two following chapters outline general philosophical issues of understanding reality and human being itself. They constitute the background against which the set of problems in understanding natural law is presented in Chapter IV.

The general understanding of law presented in Chapter I is derived from the very "fact of law", i.e. from the ascertainment of the existence of lawful order in society. The fact of law becomes more intelligible when we distinguish its two fundamental forms: law as *ius* and law as *lex*. The natural lawful order is fundamentally shown by law as *ius*, as the authority to do something which stems not only from the proclamation of law as a legal norm, but because human being is entitled to it by virtue of the fact that one is human. The following are natural for every human being: the "right to live", the "right to get married", the "right to be educated", the "right to rest", etc. Thus, law apprehended as *ius* is an interpersonal relation, characterized by a duty to act or to stop acting on account of the ordering to common good which is proportional to everyone. On the other hand law as *lex*, i.e. as a legal norm

promulgated by appropriate legislative organs, is in fact a "dictate of reason" (of the practical reason) for the sake of common good, carried out by the person who has a legitimate charge of society and appropriately promulgated. This is captured in St. Thomas's famous definition: "lex est quaedam rationis ordinatio ad bonum commune ab eo qui curam communitatis habet, promulgata"¹. Law so apprehended is in its ontic structure a kind of intentional being, existing in the same way as all other intentional beings.

In the history of human thought concerning law and its binding power there was always a dispute between legal conventionalism and advocates of natural law. The latter searched for the foundations of the binding power of law in nature, whether in the whole universe or in human being itself. However, throughout history here existed various interpretations of law itself, and also natural law acquired various formulations. The following are discussed: the ancient cosmological-theological formulation; the psychological and theological formulation of St. Augustine and of the canonists, formulations of the Historical School of Natural Law in the 17th and 18th centuries, as well as St. Thomas Aquinas's analogical conception of natural law. It is this last conception in the spirit of which the analysis of natural law is developed in this book.

The next two chapters are devoted to metaphysical foundations of the understanding of natural law. Thus, in Chapter II the pluralistic view of the existing world is philosophically analyzed. It turns out that such a view is consistent only if one recognizes the necessity of the existence of God-the Absolute as a Being existing through itself. The First Being, as Pure Existence in relation to the world, is the cause of the world; and this means that He is the giver of an intelligible order of things. Thus, in God there necessarily exists the "eternal law", which St. Augustine sees as *ordo divinae sapientiae secundum quod est directiva omnium actuum et motionum*. The human being participates in this eternal law by natural law, which is analogically realized in each human being as person.

Chapter III analyzes in details issues concerning human being as a personal, social being. Particularly significant points in this analysis are

¹ S. Thomae Aquinatis, *Summa theologiae*, I-II, q. 90, a. 4, resp.

the problem of human free will and that of decision as the “place” in which there arises the main formulation of natural law: “do good”. The human being must determine oneself to action; and action is possible only when there exists a motive for acting rather than not acting. That motive is always some real good. A particularly important moment of the analysis of person as a social being and – in consequence – of the necessity of law, is the problem of “common good”. Here common good is seen in a finalistic way: good is realized by perfecting human beings in their personal aspects, i.e. in their cognition, love and freedom. Common good so understood is the only non-antagonistic one and serves every human being. Moreover, such a concept marks out the personalistic order of any social system.

The last and essential chapter is devoted to the analysis of natural law. Natural law is here understood as the judgement of practical reason: “do good” – *bonum est faciendum*, which is analogically binding. The realization of this basic judgement in the order of practical reason (that is, in the order of human conduct) stems from the understanding of the very nature of the human person as acting freely thanks to self-determination which is not possible without the co-operation of cognitive (intellectual) faculties interpreting the content of things expressed in particular judgements, and at the same time without cooperation of volitional faculties making acts of choice (non-choice) of particular practical judgements. In the analysis of acts of decision it is presupposed that human choice is necessarily linked with good. Thus, acts of decision cannot occur without some connection to good (even if sometimes perhaps an apparent one). That is why the judgement “do good” is doubtlessly the first judgement presupposed in every human action. Hence, the analogical content of natural law can be identified with the judgement “do good” and this judgement recognized as the principal norm of human conduct binds every human being. This judgement – as an expression of natural law – can be seen as a participation in the eternal divine law expressed through the following dependence: causal-efficient, exemplar, and final. This means that the judgement “do good” indicates the ontic contingency of human being: that being is to become complete with a good which it chooses; and the good chosen by human being must be recognized as

precisely “one’s own” real good. This presupposes that the chosen good is seen in the perspective of the Absolute, which is the source of the intelligibility of being-good, and thereby the exemplary cause. Finally, a good chosen by human being is an aim which functions as a final cause when connected with the ultimate aim.

Natural law, expressed in the form of the judgement: “do good”, is realized – as the Stoics emphasized – along the main lines (“roads”) of human inclinations. These are: the inclination to preserve life, the inclination to propagate life, and the inclination to personal development in a peacefully organized society. Here any breaking of the norm: “do good” is particularly dangerous.

Natural law is linked with positive law but only as a “negative criterion”. This means that we cannot make any “deduction” of positive law from the fundamental judgement constituting natural law, but at the same time it means that any positive law negating the content of natural law: “do good” is only a pseudo-law and cannot be put into force. The society confirmed this in the “Nuremberg Tribunal” when some leaders of the Third Reich were convicted as criminals in spite of the fact that they obeyed the positive German law – for they did not recognize objective good and broke the natural law expressed in the judgement: “do good”.

In relation to natural law, inseparably connected with morality (as natural law expressed in the judgement: “do good” is the foundation of morality), any positive law constituted by the will of a law-giver can be binding not under the threat of moral guilt but under the threat of the punishment. That is why it is sometimes said that positive law binds a person not in conscience but in court. However, there is a particular connection between natural law and the human rights formulated in the *Declaration of the Rights of Man* or in papal encyclicals (eg. *Pacem in terris*), for the declared rights of fulfill in a more determined way the natural inclinations of human nature.