

divine love, docile to whatever effect the divine causality worked in them. Perhaps it was, as some authorities claim, because the book had acquired during its history meaning with regard to the Messiah, Who had now come. Perhaps the plea of Deuteronomy for righteousness and newness of life struck a responsive chord in these first followers of the New Law. Or possibly its popularity stemmed from the fact that the early Christians having seen the Christ, could now give a new answer after all the centuries of inquiry to the question with which Deuteronomy ends:

There was never such another prophet in Israel as Moses: what other man was the Lord's familiar, meeting him face to face? Were ever such wonders and portents as the Lord empowered this man to perform in Egypt, till Pharaoh and all his court and kingdom obeyed the Lord's will perforce? Were ever such great miracles done as Moses did, for all Israel to see?

—Francis Bailie, O.P.

## NATURAL LAW, ST. THOMAS, AND CONTEMPORARY PROBLEMS

*The question arises: Can St. Thomas' teachings be taken out of the books and put to work by busy Christians? A 'No' would have stunned him. Some predigestion may be advisable in a few tracts—certainly in the tract on law, which is subsistent succinctness.*

*For the dialog form which follows we are indebted particularly to Christopher St. Germain, author of a 16th century legal classic and more recently to Professor Henry Hart. The matter is St. Thomas.*

### I

#### **"I Am Confused"**

*Querin*—I am desperately confused about the natural law. As a Catholic I know that the Church has the mission to teach on matters of faith and morals. But what does the Church mean when she says that something is binding, not on her say-so alone, but because it is in agreement with the natural law?

*Ansgar*—You are clear on what revelation is?

*Q.* I have no difficulty there. Revelation is the teaching of God in the Old Testament through his prophets and in the New Testament through Christ. It is expressed in the inspired Bible and in Christian tradition.

*A.* Part of revelation instructs us, does it not, on the code of moral living that binds men? Much of this code is self-evident. But some of it needs explanation, and we are given this guidance by the Church that Christ left to continue His mission after the Ascension. "Who hears you, hears me" were Christ's own words.

*Q.* By faith we know and accept this, and we accept that Christ added that those who fail to heed the Church are as the heathen and the publican. But what of these heathens, or others who do not have the faith to accept the instruction of the Church? There is my difficulty. How can we expect them to be bound by the Church's teachings merely because she says something is right or wrong according to the law of man's nature? Take birth control for example.

*A.* Now let us not have our discussion on the natural law taper off into a dialogue on birth control.

*Q.* But how can we avoid it? Look at the newspapers just this past summer—both Catholic and metropolitan. . . .

*A.* About the Connecticut law forbidding contraceptive devices and birth control literature?

*Q.* Yes. The Connecticut Supreme Court last year unanimously held that law constitutional. It rejected the claim of a doctor and his patients that the law infringed the right to the best available medical care. An appeal is being taken to the United States Supreme Court this autumn. Now if the Church has been precise about anything on the natural law, it is that such artificial tampering with nature's plan for generation is absolutely and without exception forbidden.

*A.* There is no question about that.

*Q.* Then how in heaven's name can I understand this newspaper report telling us that a Roman Catholic author writes: "In practice such law is unenforceable, and the attempt to enforce it would be an intolerable interference with the private life of individuals." Is this not a change in the Church's position?

*A.* No, there can be no change in the fact that the use of such devices is absolutely and without exception contrary to the law of man's nature.

*Q.* Now I won't have you telling me that this is just one Catholic's opinion, and a non-theologian at that. In two leading Catholic periodicals

I read the same thing. The headline in the *Boston Pilot* read "Catholics Need Not Promote Laws Against Birth Control." A reputable theologian wrote in *Ave Maria*, a national Catholic magazine, "Moral theologians are agreed that a law which cannot be enforced is a bad law. And, in our opinion, a law forbidding the use of contraceptives is practically unenforceable." And the director of the diocesan press of one of our largest archdioceses—Boston—added that this position "has been held for some time by some Catholic theologians and writers."

*A.* You have got to tell the whole story while you are at it. Your theologian-author made perfectly clear that "There is a definite distinction between a *moral* judgment about the use of contraceptives and a *prudential* judgment about the wisdom of a law which forbids their use and dissemination of information about them."

*Q.* It may be perfectly clear to you. But I am confused. We know that Catholic support of these laws has been a main factor in keeping them on the books. If Catholics may now oppose them, does this not mean that there has been a change in the natural law? And how can that be?

*A.* I can clear up your confusion if you will sweat with me a while. But there is no pat formula or short cut. When you asked about natural law and then immediately bounced to the birth control problem, I winced, as you saw. Not because I cannot explain it to your satisfaction on natural law principles. But because it is only one tiny facet of the whole question.

*Q.* Well, let us go into the necessary background to this facet which is certainly causing the greatest confusion.

*A.* There are many problems today which only a correct understanding of the natural law can make intelligible. You have mentioned one. Another, equally current, is the controversy that concerns the nature of law itself. Is there no law binding on men in society other than that enacted by each sovereign nation for its subjects? This is the claim of the legal positivists. They have had almost a clear field outside of Catholic legal thinking until the past fifteen years. Or is there a natural law, a moral standard to which all human law must conform?

*Q.* I can see how this question ties into the other. Let us begin.

### ***The Origins***

*A.* We cannot, of course, exhaust the problems of the natural law in one short session. Thoughtful men have pondered these matters since the Greeks showed us the stability of the natures of all being and the order in the universe. These are the products of a divine intelligent being.

The Greeks demonstrated that man by his reason, which is a sharing in the supreme divine intelligence, may know this order, and may direct his own actions to attain the ends of his nature. On this the Greeks have never been proven wrong.

*Q.* Must we start back so far?

*A.* We must know where natural law thinking began. St. Thomas accepted this doctrine of the Greeks, particularly from Plato and Aristotle, as well as much from the Stoics and from the Romans such as Cicero, Gaius and Ulpian. But since the structure of Christian natural law philosophy is that of St. Thomas, we can center our inquiry today on the natural law as explained by him. Then we can apply our findings to the problem of birth control that you have raised. And while we are about it, we shall see at least the focus of the current controversy between legal positivism and natural law thinking.

## II

### ST. THOMAS AND THE NATURAL LAW

#### *Eternal Law*

*Q.* How can you satisfy a non-believer by going to St. Thomas? Is it not clear that his view of the natural law was basically theological? His definition of natural law—the participation by man in the eternal law—is not from Aristotle or Plato, but from St. Augustine.

*A.* What does "eternal law" mean to you?

*Q.* St. Thomas calls it, following St. Augustine, the rule of divine wisdom ordering creatures to their end.

*A.* You must remember that St. Augustine borrowed the notion of eternal law from the pagan Stoics. They had taught that a supreme intelligence was responsible for the order in the universe, including the moral order. St. Augustine identified this supreme intelligence with the creator, whom Christians and Jews call God. The Augustinian doctrine of the eternal law was then forgotten until the generation before St. Thomas. At that time the Franciscan school of Alexander of Hales and John of Rupella revived and expanded it. St. Thomas's contemporary, the French Dominican Peter of Tarantaise, who became Blessed Pope Innocent V, also made extensive use of it. It remained for St. Thomas to formulate a unified tract on law in which he showed that all law was derived in some way from this eternal law of God.

Q. He taught that this supreme intelligence—I am trying to stay away from those theological words—established an order among all things, a moral as well as a physical order?

A. Exactly.

Q. And man by his human nature was given the power to know this moral order; that is, to know what he must do to achieve his destiny?

A. That is the function of natural law. By his intelligence, guided by natural inclinations, man knows how to direct his own actions. He also knows how to make rules and give directions for other men. These general directions themselves should serve to carry out the designs of the eternal law.

Q. It still seems to me that this is pure theology.

A. In a certain sense it is theology. But we reach these general notions by our reason. From the things we see around us, we can come to know of this supreme intelligent being. We are here at St. Thomas's celebrated five ways of knowing God's existence. For instance, from the fact that things move we proceed to a first being that started all movement. We see things about us with some aspect of intelligence, beauty, goodness, or even "is-ness." We must then proceed to some one source who is all-wise, all-beautiful, all-good, supremely 'being.' This is the supreme intelligence. Many modern agnostic physical scientists affirm that the minute order in the universe can not be explained by mere chance or in any way other than that an intelligent being has established this order of things to an end. Why should we think that the only worldly being with intelligence and free will—man—alone is exempt from this order, alone is without a natural purpose or goal?

This is all we mean by a moral order: that there are laws or rules that man must know and follow if he is to achieve the end for which he is made. And, by reason alone, we know this order exists. Remember Plato and Aristotle proceeding in similar ways came to the same conclusion.

Q. But you must concede that St. Thomas took up law in the *Summa* in a strictly theological context. In the *Summa* he deals with law as an instruction by God.

A. In one sense all law may be considered an instruction by God. Even Aristotle, who wrote only of law in society, insisted that a prime purpose of law was to make men good, good citizens at least. Some of God's instruction came through the revelation of Christ. Some was from the Ten Commandments given to Moses. Some came from the inclinations which God had inserted in man's nature. These natural inclinations, as

man knows them by his intellect, were for St. Thomas the key to the natural law.

*Q.* Is there not complete ambiguity about this word "law." Are you using "law" in the same sense when you refer to the New Law of the Gospel, the Old Law of Sinai, the law of man's inclinations, and then human law.

*A.* Neither I, nor St. Thomas are using the word "law" in the same way in all these situations. But there is not ambiguity, but true analogy. St. Thomas starts with the eternal law. Natural law is man's sharing in this eternal law. Passively through his natural inclinations—his will to live for example. Actively when by reason, which is natural to him, he provides for himself and for others—by other laws, rules for right living. His city's ordinance fixing a reasonable speed limit. Natural law, divine positive law, human law—these are all lesser analogues of this intelligent, ordering eternal law by which the world is governed. St. Thomas' concept of law as a precept of ordering reason springs from just this fact.

*Q.* But how can this eternal law be known without relying on revelation?

*A.* The eternal law as such is not known. But we do grasp flashes of it from things around us. The chief root of our knowledge is the first natural common principles of our practical reason. These *were* the natural law, for St. Thomas, in its strictest sense.

*Q.* Would you clear that up a bit?

*A.* God—the supreme intelligence, if you prefer—set up a universe with a purpose, an end, in view. In this universe he placed coal and cabbages and cats—minerals and vegetables and animals. And men are but rational animals. To all living things God gave natures which would act in regular, predictable ways. He arranged for inclinations that would guide these natures to the fulfillment of the purpose for which each nature was made. Of all inclinations, the most primitive is to maintain existence. In living things this means to keep alive. By taking nourishment—the rose bush stretches out its roots to the source of water. By avoiding mortal danger instinctively—the fawn flees a marauding wolf, the first time she has ever seen a wolf.

*Q.* Nature also gives a special inclination which keeps each species from dying out, does it not?

*A.* Yes, this is the next most fundamental inclination in all living things. "The rose crushed to earth will rise again" because even in "death" its living seeds will flourish in fertile ground. Bees and deer and otter and

salmon, each in their own way instinctively perform the acts necessary to keep their species alive.

*Q.* But what have these inclinations of plants and animals to do with men? Men, after all, can reason and they have freedom of choice.

*A.* These inclinations of the lower grades of life also exist in the higher forms of life, in a higher way. In man, too, there is the natural inclination to hold on to life. Look at his appetite for food and drink, at his fear of danger and death. How can you doubt man's natural inclination to continue the human race? The drives for food and sex have pleasure attached to them as part of nature's plan—not only in the lower animals but in man. Man is essentially distinguished from the lower animals, however, in that he has a special, unique natural inclination that is designed to dominate—but not to reverse—all the other drives.

*Q.* That he must act in accordance with his reason?

*A.* Yes. He must use his lower inclinations, not instinctively as do the birds and bees, but reasonably. This means that man achieves the end for which he was made not automatically, but by his deliberate acts. By free acts chosen by him in accord with his reason. Nature gives him guides—these other natural inclinations, and certain principles that he knows naturally. These principles which we shall take up presently are the natural law in its purest sense. So man shares in the world order by using his mind.

*Q.* I had understood that the very first principle of natural law was to "Do good and avoid evil." Now you are suggesting that it is to "Act according to reason." There seems to be a conflict here.

*A.* Not at all. "Do good" means simply this, "Act in accordance with the inclinations of your nature." Animals pursue their good instinctively by following their natural inclinations. "The good" is the end for which any particular nature is designed. But man has reason and free will. He must achieve his good, his end, by conscious choice. There is no physical compulsion upon him, but there is moral compulsion. There are acts that he must perform if he would attain his end—his natural end, as well as his supernatural end which we won't talk about now. "Do good" for man means "Act according to your reason." The moral law consists in certain commands or precepts that man must use as his guide, if he would be properly man and achieve the goal that his nature has marked out for him.

*Q.* What are these precepts of natural law, these commands to man's nature that oblige him?

*A.* We must make a distinction at the outset. Some of these precepts are clearly applicable to all men and all situations. They are what I have

called natural law in its purest sense. They are universal, applying to all men of every age. They are immutable—they cannot be changed. They can under no circumstances be dispensed from. We will refer to these here by St. Thomas' designation—the "common principles." Other commands of man's reason apply in most cases, but admit of some exceptions. This second class St. Thomas calls the "proper conclusions," proximate deductions from the common principles. Grasp these two terms and hold on to them—the common principles and the proper conclusions. They are St. Thomas' basic vocabulary here. He uses "precepts" in a generic way to designate them both.

*Q.* These common principles and proper conclusions—they cannot depend on divine revelation for their effectiveness, for all men do not have faith in the Revealer. Likewise they may not depend for their obligation on the Church, or on any human lawgiver. Can you accept these restrictions in outlining the natural law precepts?

*A.* I not only can, but I must. St. Thomas specifically accepted these restrictions. He dealt with the Ten Commandments in a separate question on the Divine Law. For him the natural law consisted of those precepts known to man's nature naturally, that is, without supernatural help.

### ***The "Common Principles"***

*Q.* You have said that the first common principle for man is to act according to reason. What are the others?

*A.* First of all we have those that are identified by the natural inclinations that man shares with other animals—to live, and therefore to nourish himself and avoid personal peril; to perpetuate the human race, and therefore to generate children and raise them to maturity. Then there is the one not shared with other animals. I refer to the special inclination of man—to think and to regulate his life and his other inclinations by his reason.

*Q.* Are these the only common principles of the natural law?

*A.* *No.* As soon as man knows the meaning of the words, he assents to nature's command to live according to virtue. This command is from the natural inclination of man the doer to achieve his goodness, his human goals. Next, man the thinker must "Know the truth." These two common principles in turn include the inclinations to know the Supreme Truth and to love the Supreme Good, which we call God. The inclinations of man the "social animal," as Aristotle called him, tell him that he should live



in society, conserve the order of justice, give to other men what is due them, and conserve the common good of society.

*Q.* These are all affirmative aspects. Are not the commands of the natural law more often stated negatively?

*A.* Dealing still with the common principles that are applicable to all men, we must, it is true, add some negatives. "Avoid whatever is destructive of these primary ends of nature as indicated by the natural inclinations." And "Do evil to no man."

*Q.* "Primary ends of nature" seems like a highly vacuous designation. How are we to know them?

*A.* Again we rely upon the guide of man's natural inclinations—to live, to continue the species, to act reasonably. Whatever act makes the pursuit of these ends impossible is against a primary end of nature. It thus violates a common principle of the natural law that is binding on all men, at all times, without any exception.

*Q.* We are here at the point of the absolute opposition of the natural law to suicide and artificial birth control?

*A.* Exactly. If man were free to go against the natural inclinations identified by his drive for life and his generative power, he would be free to terminate the human race on terms that seemed convenient to him in a given time and place. He has free will, and physically he has the power to violate these absolute principles. But morally, naturally, he may not do so. Man's reason is never free to reverse his natural inclinations.

*Q.* Did St. Thomas develop this concept of the "primary ends of nature"?

*A.* Yes. In his very earliest legal writings—his commentary upon the *Sentences* of Peter Lombard, the theological touchstone of the 12th and 13th centuries, the problem up for solution was whether one man might have at the same time several wives. St. Thomas asked the correct questions. Would polygamy defeat the principal end of nature for which matrimony was founded—the perpetuation of the race? Or, on the other hand, would it only make the attaining of this end difficult, though not impossible?

*Q.* He was concerned here, was he not, with the biblical fact that many of the patriarchs of the Old Testament had several wives?

*A.* Yes. But he answered the question on the basis of the common principles of the natural law. He showed that the primary end of matrimony—continuing the race—*could* be attained where a man had several wives. Generation and upbringing of children were not impossible under

this arrangement. Polygamy was not therefore against the common principles.

*Q.* But what of the mutual companionship of spouses? Surely polygamy interferes with this legitimate end of marriage?

*A.* It is surely an important and legitimate end of marriage, but it is a secondary end, since nature primarily designed the coming together of male and female to procreate and raise up offspring. Since polygamy did interfere with this secondary end of marriage, it *was* contrary to the natural law—but only with respect to its proper conclusions which, as we have seen, admit of exceptions.

*Q.* How about polyandry? May a wife have several husbands?

*A.* That is the next question St. Thomas dealt with. He gave a different answer. Polyandry does not unduly interfere with the generation of offspring. But it does interfere with the *raising* of the children, a primary end of marriage, because of the key role of a father in the raising of a child by giving it his name, support and love. Human experience had shown that children did not flourish amid uncertainty as to parentage. You recall Shakespeare's observation: "It is a wise father who knows his own child." Polyandry deprives a father of this knowledge. It also deprives a child of knowledge of his father. It thus defeats a primary end of marriage, and so is against the common principles of the natural law.

### ***The "Proper Conclusions"***

*Q.* What is the relation of the other precepts of the natural law—the proper conclusions—to these common principles?

*A.* They embrace a wide range of conclusions of human reason from these first common principles. They vary in the extent of their application. Some conclusions that are obviously implicit in the common principles are almost universal in application and are known by all men almost without reflection. Others, requiring more consideration, apply to the greater number of human situations. Still others may vary in applicability because of varying conditions of society.

*Q.* The "almost universal" group you mentioned includes the Ten Commandments?

*A.* Most of them. But you do not help to de-theologize natural law by referring to the Ten Commandments, although this shorthand has often been used for certain obvious applications of the common principles to preserve the order of justice and to do evil to no man. Such commands as giving due worship to the author of all being, of giving due respect to

the parents who generated and raised us, of allowing our neighbors to enjoy undisturbed their rights to life, marital companionship, and property—all are in the top rung of these proper conclusions of the natural law. You recall that they were made the subject of Revelation on Sinai because man's progressive debasement of his nature had obscured them.

*Q.* But are not *all* the Ten Commandments numbered among these proper conclusions of the natural law?

*A.* No. St. Thomas points out that the commandment of sabbath observance is beyond natural knowledge, though the command to give due worship is not. In order to know the commandment not to take the name of the Lord in vain, faith is a prerequisite. All the others of the Ten Commandments are proper conclusions of the natural law.

*Q.* Why are they not considered common principles? Are they not universal, immutable, and indispensable?

*A.* In one sense they are—if we read into some of them the word “unjustly”: Thou shalt not kill unjustly. We know that some fundamentalists maintain that the command against killing prevents killing in self-defense, or in a just war. Or take stealing, taking the property of another against his will. A starving man may, without violating the natural law, take food from another, even though he knows that the other, if asked, would rather see him starve. In a more theoretical vein, if the Author of the order of justice were to command a man to take up with another man's wife, an exception would be involved to what we know as adultery. God's command to the prophet Osee was at one time so explained.

*Q.* Speaking of marriage, what of the prohibition of divorce? The taunt is sometimes made that the Church finds divorce contrary to the natural law, and yet in certain instances she dispenses from their marital bonds Catholics who had been joined in a marriage that was valid by the natural law?

*A.* You can use to good advantage here the precise tools of St. Thomas' analysis of natural law. The same analysis may be made of divorce as was made earlier concerning polygamy. So divorce, like polygamy, while perhaps not inconsistent with the common principles, is contrary to the proper conclusions of the natural law. These proper conclusions may in exceptional circumstances be transcended by some higher law. God through Moses permitted the Jews of the Old Testament to have divorce. Christ said that this concession had been made “out of the hardness of their hearts.” He withdrew it and established marriage again indissoluble, and a sacrament of His Church. St. Paul in the First Epistle

to the Corinthians, and the Church in a few other comparable situations, recognized that a marriage contracted in paganism might possibly be terminated on the petition of the baptized party.

These developments are consistent with natural law doctrine of proper conclusions. The higher principle superseding the proper conclusions of the natural law in certain special situations is the law of faith authoritatively interpreted. On the other hand, by positive divine law, a sacramental marriage once consummated may never be terminated. The positive aspect is reinforced by the fact that permanence of any true marriage is, as we have just seen, a proper conclusion of the natural law. Certain impediments to marriage such as affinity (marriage to certain relatives of a deceased spouse) are based on merely positive Church law, and not natural law. Others, such as impotency and first degree consanguinity, also claim a natural law basis. Thus many marriage and divorce questions may not be so abruptly answered on natural law grounds as are problems that flaunt the common principles. For Catholics, of course, they are definitely decided by the Church.

*Q.* Getting back to the Ten Commandments, strictly speaking then, the proper conclusions of the natural law that correspond to certain of the Ten Commandments are not of universal application, and may actually be dispensed from?

*A.* That seems to be St. Thomas's analysis. In this way is best understood the case of Abraham's readiness to kill his son, which so troubled the medieval theologians. Though Abraham's hand was stayed, he had assented in his heart to the killing of Isaac. Abraham found it reasonable to obey the Creator Himself, rather than a command of his nature, however basic. This could not be if a common principle of the natural law were involved.

*Q.* Could you say that the precepts corresponding to certain of the Ten Commandments really form a unique category of their own?

*A.* Only two basic categories of natural law precepts were identified by St. Thomas, the common principles and the proper conclusions.

*Q.* What are some of the other proper conclusions?

*A.* St. Thomas mentioned these: The person of an aged man must be honored. Punishment must be prescribed for a crime. Man's right to acquire and use property as his own must be respected. Purchases and sales must be just. Ambassadors must be respected in their persons on a mission among the enemy. Agreements must be kept (*pacta sunt servanda*).

*Q.* Hold up a minute on that last one. That is often identified as the very first principle of international law.

*A.* To go deeply into that would take us off our course. But we may briefly consider it as an example of the lack of rigidity in natural law according to St. Thomas. *Pacta sunt servanda* is certainly a basic precept of natural law. It is difficult to see how the order of justice could be preserved in any society—international or commercial—in which respect for the pledged word faltered. But it must be considered subject to a superior principle; enforcement of the agreement must be objectively just and reasonable at the time it is insisted upon.

*Q.* An example of undue rigidity in applying *pacta sunt servanda* would be the insistence by the World War I Allies on enforcing the letter of the severe terms of the Treaty of Versailles. This contributed strongly to bringing Hitler to power.

*A.* Yes, and another example would be the United States' insistence after World War I on the repayment of war debts. Fortunately we took a more enlightened approach to the settlement of Lend-Lease accounts after the last war. This may have been good politics, but it was also in accordance with the natural law view that there is a higher principle than *pacta sunt servanda*.

*Q.* Then all these proper conclusions of the natural law are subject to possible emergencies in which they will not apply, or to superior principles or conclusions which may make them inapplicable?

*A.* They apply for the most part. But they are not unyielding. And that is the chief distinction between the natural law as viewed by St. Thomas and his faithful followers on the one hand, and the rigidly rationalistic natural law outside that tradition in the past three centuries. The root of this difference is that the rationalists treated law and moral science as governed by the speculative intellect that attains unerring conclusions, which admit of no exceptions. St. Thomas recognized that law and moral science belong to the practical intellect, which attains only moral certainty, and reaches conclusions which are true for the most part.

*Q.* What was this rationalistic natural law?

*A.* It began with the postulate that man could by the use of his reason formulate a system of legal rules. Nature itself, these rationalists said, made these legal rules irrevocably valid. There was no case so unique, they said, that it couldn't be decided by a mechanical application of these "natural law" precepts, which took no notice of changing situations and conditions of human living. The rationalists refused to acknowledge that

moral and legal conclusions deal with the contingencies of human living. St. Thomas and Aristotle, on the other hand, insisted that such rules can be true only with respect to the greater number of human situations. But not all. We have learned that the abstract "freedom of contract" of a large corporate employer may be outweighed by the social need of employees to be able to bargain collectively.

*Q.* Can you give a specific example which illustrates the distinction between the approach of the rationalists, and St. Thomas' treatment of proper conclusions of the natural law?

*A.* Take his favorite example of such a conclusion—one must return goods held in trust. In the ordinary situation this principle applies. Since Roman times it has been accepted that a bank or trustee, or the equivalent, must return money or property in accordance with the terms of the agreement of deposit. So it is with things checked in a restaurant. But suppose a madman asks for the return of his gun—St. Thomas would say sword—so that he may kill his wife, or the waitress. Obviously the hat check girl, or the management, has no obligation to return the weapon at such a time under such conditions. In fact they would seriously violate the natural law common principle to act reasonably were they to do so.

*Q.* May we summarize our discussion to this point by saying that the natural law consists of that portion of the eternal law governing the universe that man has come to know through the guide of his natural inclinations?

*A.* Yes, provided we keep in mind that to act reasonably is primary among man's natural inclinations. And that, aside from the common principles which are in fact natural ends, precepts governing moral matters are true, not universally, but only for the most part.

### ***Human Law***

*Q.* How can human laws, which vary so much from place to place and time to time, be said to spring from the supreme ordering intelligence?

*A.* Man was given power in his reason to formulate rules of law for himself and for others that would achieve the end of human society—temporal peace and human justice. Just as the proper conclusions of the natural law proceed from the common principles, so human laws, appropriate to the particular time and place, should proceed from these proper conclusions. In fact, many proper conclusions themselves are explicitly recognized as a part of the observed laws of human society, either as customs, or as statutes.

Q. It is clear to me that the laws against murder and stealing are found in every legal system worthy of the name. But how can you claim to have human laws enforcing true religious observance, which must come from within, or punishing evil desires such as the coveting of neighbors' riches or wives?

A. St. Thomas emphasizes that human laws are not appropriate to regulating internal actions. They are most properly directed to those external evils which might disturb the peace of society. Human laws are also appropriate to promoting the external aspects of human justice.

Q. But you cannot get away from the fact that different human laws deal with identical problems in conflicting ways. If one way is in accord with the natural law, why is not the other contrary to it? Take traffic problems. In England they drive on the left; in the United States on the right. Liquor may be sold in some of our states only by state dispensaries; in others by private individuals. What possible bearing could the order established by the supreme intelligence have on laws such as these?

A. In dealing with the laws of human society, St. Thomas followed Aristotle, whose entire treatment of law concerned men in society. Aristotle called the law of the state—for him it was "the city"—the "politically just." He divided it much as you have. It included, on the one hand, the "naturally just": laws or generally accepted customs that merely restated the obligations that human nature itself proclaimed. Your examples of murder and theft fit in here. Then there was the "legally just": laws dealing with acts that were in themselves indifferent. These directions were binding on men only because the human lawmaker so decided. Even these "legally just" laws were related to natural law. Their purpose was to make men good citizens by being obedient to the rule of law, and to order them in the interest of social peace. These laws were subject to the condition that the choice which they made among alternatives be reasonable. Preferably the most reasonable choice. But at least a choice on which reasonable men might differ. The lawmaker may say "drive left" or "drive right," but he may not say that black horses keep left and white horses keep right on two-way streets. That would create not order, but pandemonium.

Q. Suppose the legislator legislated contrary to the "naturally just." Suppose he awarded bounties to children who would kill incurable parents?

A. You know the answer to that. Nothing can be law if it is contrary to the "naturally just." It is not then according to reason; it is a product of brute, malignant will.

*Q.* Has human law no further obligation with respect to the natural law?

*A.* We agreed that punishing evil thoughts and desires is not a function of human law. Again, human law is wary of intruding on family living. Yet if a desirable end may be achieved practically, human law may correct situations that provoke or entail flagrant violations of natural morality. Glaring parental brutality or neglect is chastised in most societies.

*Q.* Is not the limitation you mention with respect to human law's steering clear of punishing thoughts and desires a practical limitation, rather than a theoretical one?

*A.* Yes. But law is a practical science. Thoughts and desires sometimes burst forth into immoral social conduct as a result of abuses of freedom, such as sale of pornographic literature, and actual incitement to immoral acts. In such situations no civilized law may remain unmoved. Its course is to act, not against the thoughts and desires, but against the forces provoking them. In the area of application of these principles rages the furore over censorship.

*Q.* So human law has an affirmative obligation to implement the natural moral law?

*A.* To implement it, yes, judiciously; but with a particular eye on current public abuses where such implementation offers practical hope of reform. And with a balanced glance at the legitimate demands of human freedom and privacy. Human law must measure itself to the "naturally just"—never flying in its face. For law is a principle of order. Order is the product of reason. And whatever is contrary to the common principles of man's nature, and the proper conclusions derived from them, is unreasonable.

*Q.* The positivist would deny the pertinency of any other consideration than: Was this human law actually enacted?

*A.* Yes. In John Austin's phrase the "command of the sovereign" is law. Other factors are beyond "the province of jurisprudence." They concern not the law "that is," but the law "that ought to be."

*Q.* St. Thomas insisted, did he not, that law is essentially rational and only incidentally, though usually, positive?

*A.* He did, and he has much contemporary support. We are here on the threshold of the liveliest debate in jurisprudence today—whether law is essentially positive. In the recent concession of a confirmed and articulate positivist, "at the present time in this country and to a lesser extent in



England this separation between law and morals is held to be superficial and wrong."

*Q.* But St. Thomas himself seems to have been cautious in his claims for the legitimate sphere of influence of natural law, and he seems to have acknowledged the great role of positive law in spelling out the implications of more general natural law precepts.

*A.* You are right. Incidentally, Mortimer Adler has done a tremendous service in highlighting that "law" was used analogically by St. Thomas on the three levels of common principles, proper conclusions and human positive law. In discussions of law, with each other and with adversaries of natural law thinking, St. Thomas' followers should keep this in mind.

### ***Knowledge of the Precepts of Natural Law***

*Q.* You have suggested that St. Thomas stressed the natural inclinations as the key to the precepts of the natural law. Is it not true that he insisted upon knowledge of the precepts as well?

*A.* Yes. Knowledge as well as natural inclination must be present. This follows from St. Thomas' identification of promulgation as a property of law. Promulgating a law brings it to the knowledge of those whom it obliges. The crucial consideration here is that the natural law is not promulgated to each individual, but to human nature as such. The common principles are in fact known by all men; there may be errors with respect to their application to individual cases. The proper conclusions are known by most men; the further a proper conclusion is from the common principles, the greater the possibility of its being obscured.

*Q.* You have talked of these natural inclinations as if they were self evident. Is it not true that few men know what these inclinations are?

*A.* Do you really believe that men do not have a natural revulsion to taking their own lives—either by violence or by starving; that they do not have a natural drive to eat and to drink; that they do not have a driving force to the sex act, the natural effect of which is the generation of children; and that they do not have a natural inclination to raise their children to maturity in the family community? Can you seriously question that they know they have an intelligence which they must use to measure their actions? Is not anyone who, for earthly motives (as distinguished from supernatural ones), denies the obligations that these inclinations proclaim considered an odd-ball, or worse?

*Q.* How do you account for knowledge of these inclinations?

*A.* You cannot incline to, or love, something that you do not to some

extent know. The point is that the knowledge of these common principles is a natural knowledge, implanted in man. By nature, not only men but all animals know that they cling to life, and so must eat; that to continue the species, male and female must cohabit and bring up offspring. No brute animal left to himself will overeat or deliberately starve, nor neglect to produce and to raise his offspring until they are able to fend for themselves. These things are provided for by nature.

*Q.* Surely nature does not instruct men as to the happy medium in these regards. The excesses of the human race are evidence enough of this.

*A.* Only in man is a firm knowledge of this happy medium not fixed by nature. But nature did give man the means to achieve this happy medium. His reason is designed to educate him in the proper use of his free will and his appetites—in these matters of food and drink and sex, for example. When still a young child he knows that he has freedom and this means of regulating it. The sense of shame in a young person is keen and sharp. It prompts confident conclusions of conscience. This is common experience. Only persistent evil acts dull the warnings of shame and harden conscience.

*Q.* Does not nature incline man to happiness itself—in the words of the Declaration of Independence to the “pursuit of happiness”?

*A.* It does. And you must understand by “happiness” not mere pleasure and material comforts, but that full package of all the good things—spiritual and material—for which man is destined. He makes firm this inclination to happiness by repeated good acts. Habitual firmness is the life of virtue.

*Q.* This is a pretty picture. But again I point to the history of the human race. Have not weakness and evil been the rule in human nature rather than the exception?

*A.* Deviations from right acting come not from man’s nature, but from the progressive misuse of his reason and his free will.

*Q.* Could it be said that an original goodness of man’s nature has been reversed by original sin?

*A.* You’re dipping back into theology—bad theology too, heresy in fact. Aristotle noted the generality of human evil, but he still insisted upon the basic natural human inclination to good. We can see this echoed in the teachings of St. Paul. The Ten Commandments and the rest of the Law of the Old Testament, the teachings of Christ, and the grace of God were aids offered by God to a human nature, still essentially good, that had be-

come befogged and weakened by generations of abuse of reason and free will.

*Q.* But did not St. Thomas blame original sin for this weakening of human nature?

*A.* For St. Thomas original sin did not subtract from human nature as such, but deprived men of special gifts that Adam and Eve had enjoyed in paradise. St. Thomas blamed man's personal sins for the progressive despoiling of human nature, which still has never lost its basic inclination to good.

*Q.* Your reference to revelation and grace ties in knowledge of the natural law pretty closely to supernatural assistance.

*A.* In practical living we cannot separate ourselves from the overwhelming utility and responsibility of revelation and grace, even to lead a good life in the area of human affairs. St. Thomas in his *Summa* isolated what man knows and inclines to naturally, as a good teacher showing us the necessity and nature of revelation and grace.

*Q.* Did not St. Isadore of Seville, and Gratian the archetype among canon lawyers, and most of St. Thomas' predecessors, actually identify natural law with revelation? "What is contained in the Law and the Gospel" was Gratian's definition of natural law.

*A.* They did. Their treatment of natural law was certainly theological. But it is significant that St. Thomas disassociated himself from this stream of natural law teaching. He went back to Aristotle and the Stoics, to Cicero and the Roman jurists, and presented the natural law as the law of man's inclinations subjected to his reason. The Law of Moses and the Gospel of Christ he treated under an entirely separate heading—divine law. It helps us to understand our differences with the positivists if we remember that John Austin was reverting to St. Isadore in classifying natural law and revelation as two branches of divine law. They were for Austin measures of positive law and morality "as they ought to be." But they were excluded from the area of jurisprudence. This was reserved to positive human law "as it is."

*Q.* How can we convince those who will concede no purpose to the universe, and therefore no supreme intelligent author of an eternal law? After all, metaphysics is still rejected as "bunk" by most modern philosophers and jurists.

*A.* We must maintain our position that no system of morality and no

explanation of man's nature or of the universe makes sense that does not suppose the Supreme Intelligence. We must present St. Thomas' natural law doctrine in language that can be understood even by those who are not yet prepared to accept his conclusions. We can then rebut their private dogmas, which they concede they cannot prove: that there is no true law but that pronounced by a human sovereign; that utility is the supreme principle of law; that order in human society resulted from a voluntary transfer by men of all power save for certain reserved human rights, etc., etc. We can emphasize the built-in flexibility of the natural law as Aristotle and St. Thomas saw it: recognizing the vital role of human positive law, the proper function of utility, and the delicate balance between the demands of the general welfare and individual rights. With those like Marx and Sartre, of course, we waste our breath when we talk of natural law since they deny there is a basic immutable human nature with tendencies to man's basic human needs and proper end.

*Q.* We have discussed man's knowledge of the affirmative common principles of natural law. But how does he know of the negative common principles. You mentioned two: "Do not act against the primary ends of the natural inclinations," and "Do evil to no man."

*A.* If man must follow his natural inclinations in a reasonable manner, it follows, does it not, that whatever prevents attaining the primary ends of these inclinations is wrong?

*Q.* That is so, but the difficulty remains. How may we know what is so against these inclinations as to be necessarily naturally wrong?

*A.* If "Seek the truth" is a common principle, it follows, does it not, that every lie—a deliberate non-truth—is wrong?

*Q.* Perhaps it does. But many people sincerely think that in certain circumstances a lie is permissible in order to obtain a greater good. Say to deny having seen an innocent man on the scene of the crime. And in the matter of using artificial contraceptive devices many persons, not supported by the Church's guidance, believe that circumstances justify their use. Since St. Thomas said that natural law involved not only inclinations, but knowledge as well, how can we say that for them lying and artificial contraception are against the natural law?

*A.* The answer lies in this distinction. On the one hand, there is natural knowledge and the natural inclination to use our drives and intelligence in the way calculated to achieve the end of the whole man—the drives subjected to our intelligence. There is an objective and discernible order with respect to how this should be achieved. On the other hand, an

individual person, or a whole society, or nation or tribe, may through self-indulgence or depraved customs lose all recognition of the responsibility to act in the way that nature inclines. St. Thomas reminded us of Caesar's report that some German tribes thought stealing was permissible. When we are talking of the natural law we are talking of a law of human nature. We cannot seriously suggest that human nature is altered, or that the moral order of the universe is "corrected," by such individual or group failures. Some of these failures may possibly involve invincible ignorance for which an individual acting contrary to the natural inclinations would not be morally responsible. The distinction is between the objective existence of a natural law precept and a particular individual's knowledge of it.

*Q.* But sometimes most men—or a great many, at least—seem to deny that a particular kind of act completely frustrates a natural inclination. Does this not suggest that such an act is not unnatural—against divine revealed law perhaps, but not against natural law?

*A.* At the time when most people thought the world was flat, did that change the fact that it was round—pardon me, elliptical? The objective fact for us here is the moral order, which is naturally established. It does not change by operation of people's minds, even most people's.

*Q.* But who is to take it upon himself to say that this act—this lie to save a friend, this putting a suffering man out of his misery, this deliberate frustrating of the generative act because there are too many mouths to feed—is contrary to a primary end of nature?

*A.* Who is to speak with finality in any area of science? The mathematician with respect to mathematics, the physicist with respect to physics. (The astronomers and natural philosophers of Columbus' time were not deceived. They held the world was round, not flat.) And with respect to moral science? Aristotle gave us the answer. The man learned in the field of morals. But more than a clear, well-instructed head is needed in moral matters. So in the more difficult questions of moral law, Aristotle called for the answer of the virtuous man—the man whose emotions and drives were properly under the control of reason. Whom would you consult for dispassioned advice concerning whether or not the natural law dictated that marriage was a permanent, indissoluble state? The man four times divorced? Who would be your counsellor on the value of truth? The light-hearted liar? Who is to be an even-tempered judge of what constitutes misuse of the sex drive? The man who places physical pleasure as the highest human goal; one who sees moral restraint of human free activity as the prime curse of the planet?

*Q.* You are obviously leading up to the conclusion that the last word on the natural law must come from the Catholic Church.

*A.* For the Catholic there is no other answer. We have the explicit teaching of the popes that the Church is the authorized interpreter of the moral law—natural as well as revealed.

*Q.* This is the point where we began. Is it not too much to expect non-believers to accept the implications of this position?

*A.* Perhaps it is. That is, however, not my point. The question that you raised was: who is to say that a controversial action is against the natural law? The answer of Aristotle and St. Thomas is: the wise men—those men wise in the field of moral living with no special axes to grind, no personal or community pressures to give way to. It is a fact that many persons outside the faith applaud the Church for the purity of her moral doctrine and look to her for guidance here. How many moralists of any church held different views in these matters a century ago from those views the Catholic Church held then and still holds today?

*Q.* This is inflammable subject matter with which to persuade those outside the Church of the soundness of Thomistic natural law thinking.

*A.* It is not the happiest area in which to seek from among them converts to St. Thomas' doctrine of natural law. Yet, as you yourself urged, they do bring it up. And they are entitled to. It cannot be soft-pedaled. When the Church speaks authoritatively, as she has on the matter of contraceptive devices, *Catholics* must accept her guidance. There is no necessary implication that those *outside the faith*, who sincerely reach a different conclusion, and act on it, are morally at fault. They are wrong. This is a determination of the natural law. But they may, with sincerity and without culpability, conceivably fail to reach the correct conclusion. This is especially true in an age such as ours with the widespread pressures of planned parenthood literature, and easy personal and social consciences on matters of pleasure and comfort.

*Q.* Some recent writers, friendly to the natural law, have suggested that the Church's position on this and kindred matters is not natural law, but merely another form of positivism.

*A.* This should not puzzle us. If they disagree with the particular conclusion they must logically deny that it is natural law, and affirm that it is positivism. But Thou shalt not contracept and, Thou shalt not abort are worlds apart from Thou shalt not eat meat on Friday. Only the latter is Church "positivism."

*Q.* Is the Church's role with respect to the natural law merely that of monitor, guiding its members against its infraction?

*A.* Happily no. Contemporary natural law thinkers from outside the Church have recognized this. They have paid tribute to the Church's contribution to law and social ethics through promotion of natural law principles—particularly under the leadership of Popes Leo XIII and Pius XI. They have credited the Church with keeping alive the concept of reason as dominant in law and ethics during the dark period of positivist supremacy.

*Q.* Still must it not be recognized that the most decisive blow in our time for the natural law was struck by Adolf Hitler?

*A.* There is no doubt of that. Many of his atrocities were conducted according to precise "legal" formalities. If the only law were that made by the state, and if everything called law by the state were in fact law, then Hitler's mass murders were legal. Legal thinking has, under such pressure, turned from extreme positivism. But still shying from metaphysics, still dubious of a "higher law," and suspicious of a "Catholic positivism," most of the "converts" stop short of St. Thomas' natural law views, which are those of the Church. The opportunity was never brighter than now of pressing them home.

### III

#### ***"Put the Pieces Together"***

*Q.* That was a pretty stiff workout, but I think I am still with you.

*A.* Why don't you put the pieces you need together from St. Thomas' position on natural law. Then tackle the problem you posed.

*Q.* My questions came down to four. First, how we could say that natural law was something known naturally? Second, since human nature is fixed, how could natural law change? Third, how could precepts be natural law that are not known to the large number of men? Finally, how could anyone, but especially Catholics, in conscience oppose public laws that plainly are in support of natural law principles?

*A.* You are satisfied that we know naturally, and not merely by revelation and theology, that there is a natural law?

*Q.* Yes. And from the fact of knowing what man is, we know in what this natural law consists. Our clue to the common principles of natural law, which are binding on all, is our natural inclinations. Any act which would frustrate the primary end of these natural inclinations is ob-

jectively wrong. But some applications of these principles may not be clear to all without instruction. There are also proper conclusions of the natural law, evolved by human reason from these common principles. They are binding and known, for the most part; but they admit of exceptions when special factors bring a higher, or more applicable, principle into play.

*A.* This leads to the question whether natural law can change.

*Q.* It does. The common principles, which are natural law in its strictest sense, never change. The proper conclusions remain constant for the most part. But among the proper conclusions those less proximate to the common principles may occasionally change to reflect changing conditions in human society. A concept of "freedom of contract" has not the same meaning to our century as it did to the last. Thus mass production brought recognition of a right of labor to organize for contracting and other purposes. New needs may thus bring forth additional proper conclusions, or may dictate the amendment, or perhaps the rejection, of formerly accepted proper conclusions.

*A.* Next is the question on knowledge of the natural law.

*Q.* All men, guided by nature's inclinations, know the common principles of natural law. Knowledge of what in fact violates these common principles may escape some men, or groups of men. But such knowledge does not escape the wise and the good, whose emotions are stabilized, and those who are instructed by them.

*A.* Yes. You remember that an elite group in Roman society would resort to a vomitorium after eating. They would tickle their throats and return to the banquet table. If they claimed not to know that nature ordered eating primarily to survival and growth, and not primarily to pleasure, that did not change the natural law. Cicero and Seneca were not deceived. And similarly today with the widespread inversion of the proper order of generation over pleasure in the use of the sexual drive.

*Q.* The proper conclusions, though generally known, can also escape the knowledge of large groups of men, and sometimes without moral fault. But such failure of individuals to know them does not negate their existence. The more remote the proper conclusion from a common principle, the greater the possibility of occasional ignorance.

*A.* You are drawing an important distinction between objective existence of a natural law precept, and individual man's knowledge of it. It was the practical obliteration of many precepts of natural law through generations of depraved customs to which St. Thomas referred when he spoke of the overwhelming utility of God's revelation to Moses on Mount



Sinai. The weakness of the human intellect in discerning some of this natural law is compensated for by the divinely-missioned Church. The weakness of the human will in carrying it out finds its best remedy in the New Testament gift of grace. Excuse this theological aside.

*Q.* If the philosopher, the sage, the wise and good man of even pagan civilizations was better equipped than others to point out the true law of man's nature—witness the many common notes in the ethics of Plato, Aristotle, the Stoics, Buddha and Confucius—it is not too hard to understand, even on natural grounds, the role here of the saint and the Church.

*A.* Finally, we have the relation between human law and the natural moral law. We barely opened up this question.

*Q.* Human law may not go seriously contrary to natural morality and still be acceptable as law. For it would violate the first requirement of law—that it be reasonable. Human law has as its ends peace and justice in society and making men good, at least good citizens. It has no blanket mission of personal reform. It has definite limitations. It encompasses acts, not mere thoughts. It must not unreasonably infringe human liberty or human privacy. To do so would violate the natural law. Finally, no human law that has not some practical possibility of achieving its goals, or of being obeyed, is wise or reasonable.

*A.* You have grasped the essentials. Now apply them to the problem that you raised—those articles about opposition to the birth control legislation in Connecticut.

#### IV

#### *“Apply the Essentials”*

*Q.* I am not dead sure of the wise position for Catholics to take right now on this question. But if the United States Supreme Court should find the statute unconstitutional, I guess I could live with the decision. The natural law does not clearly dictate an opposite result—and I know little of constitutional law. But I do now understand what the theologian-author had in mind when he distinguished “a moral judgment about the use of contraceptives and a prudential judgment about the wisdom of a law which forbids their use and dissemination of information about them.” He concluded, you will recall, “About the first, there is only one Catholic position; as to the second, there is no Catholic position, but only positions taken by individual Catholics.”

—Joseph A. Broderick, O.P.