

Natural Moral Law and Philippine Civil Law

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Law is an ordinance of reason for the common good, promulgated by one who is in charge of the community.¹ It is established by reason as a participation in the providence of the living God.

In his *Treatise on Law*, St Thomas Aquinas distinguishes four kinds of laws: eternal law, divine law, natural law and human law. Eternal law is God's will and wisdom. It holds God's plan for all creation. It is the law from which all other laws are derived. It directs the universe toward its fulfillment in God, inclining all things "to their proper acts and ends."² This eternal law is revealed in the divine law which is given in Scriptures and through the Church. Human beings participate in the eternal law through the natural law. And the human law or civil law is derived from the natural law.

What is Natural Law?

Natural law is inherent in the essence of created things, in the good ends that are natural for all humans to pursue, the potentials that humans generically share. Since we exist as substances and all substances seek to preserve their existence,

¹ St Thomas A., *ST* I-II, 90, 4.

² *ST* I-II, 93.3, 91.1-2.

whatever preserves human life and wards off obstacles is in accordance with natural law.

Natural law being inherent in the essence of created things is expressed in the following writings:

“When Gentiles who do not have the law keep it as by instinct, these men although without the law serve as a law for themselves. They show that the demands of the law are written in their hearts. Their conscience bears witness together with that law, and their thoughts will accuse or defend them x x x.” (*Romans* 2:14-15) “When then are these rules written, if not in the book of that light we call the truth? In it is written every just law; from it the law passes into the heart of the man who does justice, not that it migrates into it, but that it places its imprint on it, like a seal on a ring that passes onto wax, without leaving the ring.”³

“The natural law is nothing other than the light of understanding placed in us by God; through it we know what we must do and what we must avoid. God has given this light or law at the creation.”⁴

“The natural law is written and engraved in the soul of each and every man, because it is human reason ordaining him to do good and forbidding him to sin x x x But this command of human reason would not have the force of law if it were not the voice and interpreter of a higher reason to which our spirit and our freedom must be submitted.”⁵

“For there is a true law: right reason. It is in conformity with nature, is diffused among all men and is immutable and eternal; its orders summon to duty; its prohibitions turn away from offense x x x To replace it with a contrary law is a sacrilege; failure to apply even one of its provisions is forbidden; no one can abrogate it entirely.”⁶

³ St Augustine, *De Trin.* 14, 15, 21: PL 42, 1052.

⁴ St Thomas Aquinas, *Dec. præc.* I.

⁵ Leo XIII, *Libertas præstantissimum*, 597.

⁶ Cicero, *Rep. III*, 22, 33.

Thus, Vatican II's discussion on conscience delineated one of the most fundamental components of the idea of natural law: "Deep within his conscience man discovers a law which he has not laid upon himself but which he must obey x x x For man has in his heart a law inscribed by God. His dignity lies in observing this law and by it he will be judged."⁷

"The natural moral law expresses and lays down the purposes, rights and duties which are based upon the bodily and spiritual nature of the human person. Therefore this law cannot be thought of as simply a set of norms on the biological level: rather it must be defined as the rational order whereby man is called by the Creator to direct and regulate his life and actions and in particular to make use of his own body."

"The natural law, the Creator's very good work, provides the solid foundation on which man can build the structure of moral rules to guide his choices. It also provides the indispensable moral foundation for building the human community. Finally, it provides the necessary basis for the civil law with which it is connected, whether by a reflection that draws conclusions from its principles, or by additions of a positive and juridical nature."⁸

The Need for Civil Law

The natural law is found within the human person, deep within his conscience, written in his heart. Although human beings have a natural capacity to acquire virtue, they need guidance and education from others in order to do so. This is where the family and the community where man belongs play a very vital role in molding his values. However, this is still insufficient because the natural law is not self-imposed. There is a need for civil law because it is backed up by force. "Therefore, in order that man might have peace and virtue, it was necessary for laws to be framed, for, as the Philosopher [Aristotle] says, 'a man is the most noble of animals if he be perfect in virtue, so is he the lowest of all if he be severed from law and justice'; because man can use

⁷ GS, 16.

⁸ *Catechism of the Catholic Church*, p. 449.

his reason to devise means of satisfying his lusts and evil passions, which other animals are unable to do.”⁹ Pope John Paul II in his encyclical *The Gospel of Life*, says that “the real purpose of civil law is to guarantee an ordered social coexistence in true justice.”¹⁰

Thus, we raise an issue: Does civil law, or in particular, our own Philippine Civil Laws guarantee an ordered social co-existence in true justice?

Philippine Civil Laws which Uphold Natural Moral Law

a) The 1987 Philippine Constitution

The Constitution enshrines the basic rights of persons and citizens. The right to life is the most fundamental right of all. From it proceeds all other basic human rights. The Bill of Rights, contained in Article III, enumerates the specific protections against State power. Included in the Bill of Rights are the due process and equal protection clause, the right against unwarranted searches and seizures, the right to free speech and the free exercise of religion, the right against self-incrimination, and the right to habeas corpus.

Aside from the Bill of Rights, the Constitution also contains several other provisions enumerating various state policies including, i.e., the affirmation of labor “as a primary social economic force” (Section 14, Article II); the equal protection of “the life of the mother and the life of the unborn from conception” (Section 12, Article II); the “Filipino family as the foundation of the nation” (Article XV, Section 1); the recognition of Filipino as “the national language of the Philippines” (Section 6, Article XIV), and even a requirement that “all educational institutions shall undertake regular sports activities throughout the country in cooperation with athletic clubs and other sectors” (Section 19.1, Article XIV).

The following rights are not only safeguarded by the Constitution but also by the Civil Code of the Philippines:

⁹ *Summa Theologiae*, I-II, 95, 1; cf. Aristotle, *Politics* I,2.

¹⁰ *Evangelium Vitae*, 71.

“Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.”

“Article 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage.”

“Article 26. Every person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons. The following and similar acts, though they may not constitute a criminal offense, shall produce a cause of action for damages, prevention and other relief:

- “(1) Prying into the privacy of another’s residence;*
- “(2) Meddling with or disturbing the private life or family relations of another;*
- “(3) Intriguing to cause another to be alienated from his friends;*
- “(4) Vexing or humiliating another on account of his religious beliefs, lowly station in life, place of birth, physical defect, or other personal condition.”*

b) Republic Act No. 9346

“An Act Prohibiting the Imposition of Death Penalty in the Philippines,” approved by the President on June 24, 2006 – this law was given a retroactive application to those convicted and sentenced to death.

c) Republic Act No. 8353

“The Anti-Rape Law of 1997” – expanded the definition of rape. With the new law, rape is not only committed: ‘1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: (a) Through force, threat, or intimidation; (b) When the offended party is deprived of reason or otherwise unconscious; (c) By means of fraudulent machination or grave abuse of authority; and (d) When the offended party is under

twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present." It can also be committed: "2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." Marital rape is likewise included in the definition.

d) *Laws on Abortion*

Articles 256-259 of Act No. 3815, "The Revised Penal Code of the Philippines" define the ways and means by which abortion is committed, by whom, and the corresponding penalties: *reclusion temporal*, *prision mayor*, and *prision correccional*. The penalties cover those who causes intentional or unintentional abortion; abortion practiced by the woman herself or her parents; abortion practiced by physicians or midwives or pharmacists. The 1987 Constitution upholds the right of an unborn child by providing the equal protection of "the life of the mother and the life of the unborn from conception" (Section 12, Article II).

e) *Republic Act No. 9160 (as amended by Republic Act No. 9194)*

"Anti- Money Laundering Act of 2001." – Money laundering is a crime whereby the proceeds of an unlawful activity as herein defined are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following: (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property; (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above; (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

f) Republic Act No. 9439

“An Act Prohibiting the Detention of Patients in Hospitals and Medical Clinics on grounds of Non-payment of Hospital Bills on Medical Expenses,” approved by the President on April 27, 2007.

These civil laws are in accordance with the natural moral law. They protect the right of men and at the same time prohibit the performance of acts which are considered as evil. They provide for penalties or sanctions against people who would violate the law in order to make sure that men will follow them. If we will simply rely on the natural moral, there will be no force that will compel men to do good and avoid evil. Men sometimes use their reason to do evil. Thus, we have civil laws that are punitive in nature. But what about those civil laws which contradict or oppose the natural law?

Civil Laws which Contradict Natural Moral Law

While the previously mentioned laws are in accordance with the natural moral law, there are others, however, that are at least “controversial” civil laws. Controversial because there is still the issue as to whether they conform to the natural moral law or not. Just to mention some:

a) Divorce Law

Countries like Spain, Italy, the United States of America, et al have divorce law. Based on the history of the development of the law on marriage in the Philippines, we had absolute divorce during the American period and the Japanese occupation. It is only when the Philippine Civil Code took effect on August 30, 1950 that the law on divorce was completely repealed. Thereafter, several bills on divorce were filed in the House of Representative but until now, no law on divorce has been enacted. However, Article 26, paragraph 2 of the Family Code recognizes divorce obtained by a foreign spouse married to a Filipino spouse. This is illustrated in *Roehr vs. Rodriguez* (G.R. No. 14282, June 20, 2003). Here, the Supreme Court recognized the Decree of Divorce obtained by the German spouse against his Filipina spouse in his country. How-

ever, in the recent case of *Republic vs. Orbecido* (October 25, 2005) the Supreme Court likewise recognized the Decree of Divorce obtained by a former natural born Filipino citizen married to another Filipino citizen, who at the time the decree of divorce was issued, the petitioner was already a naturalized American citizen. At present, there are still attempts to enact a law on divorce in the Philippines.

b) Law on Same Sex Marriage

Same sex marriage started in April 2001, when The Netherlands expanded its definition of marriage to include both opposite-sex and same sex couples. Belgium followed in January 2003, Ontario, a province in Canada in June 2003, and by November 2004, same-sex marriage had become available in most Canadian provinces. On June 29, 2005, Spain passed a law allowing same-sex couples to marry. South Africa followed on November 30, 2006. So far, we have not enacted a similar law in the Philippines. The only jurisprudence that might be connected to this is the case of *Silverio vs. Republic* (G.R. No. 174689, October 22, 2007). Here, the Supreme Court ruled that entries in the birth certificate as to sex and change of first name due to sex reassignment on the ground of equity should not be allowed.

c) House Bill No. 3773, ("Reproductive Health Bill")

According to the proponents of the bill, the guiding principles underscore (1) freedom of informed choice ensured through free and full access to adequate and relevant information on reproductive health and a full range of family planning methods and devices excluding abortion; (2) protection and promotion of gender equality and women's rights vis-à-vis reproductive health; and (3) respect for and protection of adolescent's and children's reproductive rights.

d) Law on Euthanasia – (mercy killing)

The term "euthanasia" comes from the Greek words "eu" – meaning good – and "thanatos" – meaning death – which combined means "welldeath" or "dying well."

Euthanasia societies were formed in England in 1935 and in the U.S.A. in 1938 to promote aggressive euthanasia. Although euthanasia legislation did not pass in the United States or England, in 1937, doctor-assisted euthanasia was declared legal in Switzerland as long as the person ending the life has nothing to gain. While some proponents focused on voluntary euthanasia for the terminally ill, others expressed interest in involuntary euthanasia for certain eugenic motivations (e.g., mentally "defective").

Prior to and during World War II, the Nazis carried out an involuntary euthanasia program, largely in secret. In 1939, Nazis, in what was code-named Action T4, killed children under three who exhibited mental retardation, physical deformity or other debilitating problems which they considered gave the disabled child "life unworthy of life." This program was later extended to include older children and adults where they were transported to one of six killing centres at Brandenburg near Berlin (January 1940 – September 1940), Grafeneck near Stuttgart (January 1940 – December 1940), Hartheim near Linz in Austria (January 1940 – December 1944), Sonnenstein/Pirna near Dresden (April 1940 – August 1943), Bernburg near Magdeburg (September 1940 – April 1943), Hadamar near Koblenz (January 1941 – August 1941). The T4 program of the Nazis was extended to killing of concentration camp inmates when Philipp Bouhler, the head of the T4 program, allowed Heinrich Himmler to utilize T4 doctors, staff and facilities to kill concentration camp prisoners who were "most seriously ill" in a program designated "14f13."

A key turning point in the debate over voluntary euthanasia (and physician assisted dying), at least in the United States, was the public furor over the case of Karen Ann Quinlan which paved the way for legal protection of voluntary passive euthanasia. In 1977, California legalized living wills and other states soon followed suit.

In 1993, the Netherlands decriminalized doctor-assisted suicide, and in 2002, restrictions were loosened. During that year, physician-assisted suicide was approved in Belgium. Australia's Northern Territory approved a euthanasia bill in 1995, but that was overturned by Australia's Federal Parliament in 1997.

These are only some of the "controversial" civil laws because, as it was said, there is still the issue as to whether they conform to the natural moral law or not. What should we do with them? Should we disobey them because our conscience dictates that they oppose the natural moral law? There is a legal maxim that says: "*Dura lex sed lex.*" "The law is harsh but it is the law." A law is enacted to have order in a society. The Second Vatican Council teaches that even when authority is corrupted, citizens should still perform whatever duties are legitimately required of them by the common good.¹¹

Thus, as citizens, we have the responsibility to foster the common good, in part by working for the enactment of truly beneficial civil laws. In a way, we should also blame ourselves for having civil laws which are not in consonance with the natural moral law.

In our country, the Philippines, sovereignty resides in the people. We choose the persons who would represent us. Let us make use of our reason instead of our emotions when we choose our leaders, our legislators. We need to be sure that the elected legislators would strive to enact laws that do not only respond to the needs of the common good but also conform with the moral law. This is the reason why civil laws are dynamic, they are subject to change.

St Thomas Aquinas writes that "human law is a law inasmuch as it is in conformity with right reason and thus derives from the eternal law. But when a law is contrary to reason, it is called an unjust law; but in this case, it ceases to be a law and becomes instead an act of violence."¹² "Every law made by man can be called a law insofar as it derives from the natural law. But if it is somehow opposed to the natural law, then it is not really a law, but rather a corruption of the law."¹³

¹¹ Vatican II, Pastoral Constitution on the Church in the Modern World, *Gaudium et Spes*, 74.

¹² *ST*, I-II, 93, 3, ad 2.

¹³ *ST*, I-II, 95, 2.

John XXIII in his Encyclical *Pacem in Terris* states, "Authority is a postulate of the moral order and derives from God. Consequently, laws and decrees enacted in contravention of the moral order, and hence of the divine will, can have no binding force in conscience x x x; indeed, the passing of such laws undermines the very nature of authority and results in shameful abuse."¹⁴ □

¹⁴ *Pacem in Terris*, II.