

Natural Law

1 Cicero

True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions upon good men in vain, though neither have any effect on the wicked. It is a sin to try to alter this law, nor is it allowable to attempt to repeal any part of it, and it is impossible to abolish it entirely. We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishment.¹

2 Paul

For as many as have sinned without law shall also perish without law: and as many as have sinned in the law shall be judged by the law; (For not the hearers of the law are just before God, but the doers of the law shall be justified.

For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves: Which shew the work of the law written in their hearts, their conscience also bearing

¹ Marcus Tullius Cicero, *De re publica, De legibus*, edited by Clinton Walker Keyes (Harvard University Press, 1943), p. 211.

witness, and their thoughts the mean while accusing or else excusing one another;).²

3 Aquinas

OBJ 1: It would seem that the law is not always directed to the common good as to its end. For it belongs to law to command and to forbid. But commands are directed to certain individual goods. Therefore the end of the law is not always the common good. ...

I answer that, ... the law belongs to that which is a principle of human acts, because it is their rule and measure. Now as reason is a principle of human acts, so in reason itself there is something which is the principle in respect of all the rest: wherefore to this principle chiefly and mainly law must needs be referred. Now the first principle in practical matters, which are the object of the practical reason, is the last end: and the last end of human life is bliss or happiness Consequently the law must needs regard principally the relationship to happiness. Moreover, since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. ...

Now in every genus, that which belongs to it chiefly is the principle of the others, and the others belong to that genus in subordination to that thing: thus fire, which is chief among hot things, is the cause of heat in mixed bodies, and these are said to be hot in so far as they have a share of fire. Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law,

² *King James Bible* Paul's Epistle to the Romans 2:12-15.

save in so far as it regards the common good. Therefore every law is ordained to the common good.³

4 Hobbes

God is king, let the earth rejoice, saith the psalmist (Psalm 96. 1). And again, (Psalm 98. 1) *God is king though the nations be angry; and he that sitteth on the cherubims, though the earth be moved*. Whether men will or not, they must be subject always to the divine power. ... But to call this power of God, which extendeth itself not only to man, but also to beasts, and plants, and bodies inanimate, by the name of kingdom, is but a metaphorical use of the word. For he only is properly said to reign, that governs his subjects by his word, and by promise of rewards to those that obey it, and by threatening them with punishment that obey it not. Subjects therefore in the kingdom of God, are not bodies inanimate, nor creatures irrational; because they understand no precepts as his: nor atheists; nor they that believe not that God has any care of the actions of mankind; because they acknowledge no word for his, nor have hope of his rewards, or fear of his threatenings.⁴

5 Locke

The *state of nature* has a law of nature to govern it, which obliges every one: And reason, which is that law, teaches all mankind, who will but consult it, that being all *equal and independent*, no one ought to harm another in his life, health, liberty, or possessions. For men being all the workmanship of one omnipotent and infinitely wise Maker; all the servants of one sovereign master, sent into the world by his order, and about his business; they are his property, whose workmanship they are, made to last during his, not another's pleasure. And being furnished with like faculties, sharing all in one community of

³ St. Thomas Aquinas, *Summa Theologiae* (1265-73), I-II Q. 90.

⁴ Thomas Hobbes, *Leviathan* (1651) Ch. 31.

nature, there cannot be supposed any such subordination among us, that may authorize us to destroy another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours. Every one, as he is *bound to preserve himself*, and not to quit his station willfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to *preserve the rest of mankind*, and may not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of life, the liberty, health, limb, or goods of another.⁵

Locke's argument

1. God created people and therefore owns them.
2. No one has a right to damage another person's property against that person's will.
3. We can know how God wills for us to use his property by observing the faculties he gave us.
4. Human beings have "like Faculties," so we can tell that God wills that we treat one another as equals.
5. Therefore, all human beings have equal rights against being harmed.

6 Hume

In every system of morality which I have hitherto met with, I have always remarked, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surprized to find, that instead of the

⁵ John Locke, *Two Treatises of Government* (1690-1714) II.ii.6.

usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, it is necessary that it should be observed and explained; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it.⁶

7 Fuller

... the attempt to create and maintain a system of legal rules may miscarry in at least eight ways A total failure in any one of these eight directions does not simply result in a bad system of law, it results in something that is not properly called a legal system at all Certainly there can be no rational ground for asserting that a man can have a moral obligation to obey a legal rule that does not exist, or is kept secret from him, or that came into existence only after he had acted, or was unintelligible, or was contradicted by another rule of the same system, or commanded the impossible, or changed every minute. ... there is a kind of reciprocity between government and the citizen ... Government says to the citizen, in effect, "These are the rules we expect you to follow. If you follow them, you have our assurance that they are the rules that will be applied to your conduct". When this bond of reciprocity is finally and completely ruptured by government, nothing is left on which to ground the citizen's duty to observe the rules.⁷

⁶ David Hume *A Treatise of Human Nature*, III.i.1.

⁷ Lon L. Fuller, "Eight Ways to Fail to Make Law," in *Philosophy of Law*, edited by Feinberg and Coleman, 8th edition (2008), p. 16.

