UNIT 5 NATURAL MORAL LAW

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5.0 OBJECTIVES

It is to understand the phenomenon of morality, to define natural law, to understand its nature, i.e. its universality and particularity, change of natural law, the relation of natural law to particular laws, its relation to human dignity, to the concept of intrinsic evil and to understand the criticism of natural law and to answer it.

5.1 INTRODUCTION

Knowledge of natural law is as widespread as humankind itself. So also is its critique. The task here is to reflect on natural moral law. I intend to proceed as follows. I give first a brief description of the concept of natural law. Then some of the basic criticisms of natural law will be enumerated. And finally I will try to answer some of those criticisms. That will constitute this unit on natural moral law.

5.2 ETHICAL OR MORAL PHENOMENON

In the light of natural reason man distinguishes between good and bad. According to theoretical reason, wonder over the very existence of things is the beginning of all knowledge. The “prescribing character” or the “ought” character of the good is the primordial ethical phenomenon and ethics begins from that primordial phenomenon, and practical reason has also its origin here. The difference between good and bad is in the nature of the good. The good urges the human subject towards that which ought to be, and the bad pulls in the opposite direction. The good makes a claim on man, and he who has understood this has understood the contradiction between good and bad.

*Ratio boni* (the reason of the good or the call of good) is that all men desire the good. All men desire the good precisely because the good manifests itself as desirable. Whoever understands
the *ratio boni* also understands the ought character of the good. He also understands simultaneously the highest norm of morality, namely good is to be done and evil to be avoided. The supreme norm of natural law: do good and avoid evil, is born from or based on the ought character of the good.

Good is to be done and evil is to be avoided. The power of the good to lead man to the good manifests itself in the judgement of practical reason urging man to realize the good. The validity (*Gültigkeit*) of all the norms of practical reason rests on the primordial insight (*Ureinsicht*) into the meaning (*Sinn*) of the good. This is open to all men. That is to say, the light of the good is available to all men.

### 5.3 NATURAL LAW (DEFINITION)

The supreme principle of ethics or morality is: good is to be done and evil to be avoided. And that one principle is grounded in the ought character of the good. It is from this one principle that practical reason draws all its other individual norms. All the individual laws of natural law, to the extent they refer to the one supreme principle of natural law (do good and avoid evil), participate in the reasonability of the supreme principle.

The presuppositions of any moral philosophy are a) the capacity of practical reason to perceive truth and, b) a substratum (rudimentary basis) of human nature that remains the same through all historical changes. A genuine ethical theory must believe in the universal validity of its principles.

Natural law presupposes that there is a common human nature which is constant. It is from that human nature that ethical principles are drawn. Thus the objective foundation of natural law is the nature of man. Natural law exists before practical reason, i.e. practical reason discovers it because natural law is grounded in the basic structure of being man. Natural law, unlike emotivism, (i.e., the theory that morality is a question of emotion), is based on the being of man, on the nature of being human.

Natural law, or the phrase “by nature”, expresses the minimum presuppositions for being an ethical subject, that is, freedom and reason. Without these, one cannot be an ethical subject. Natural law understood as the minimum pre-suppositions for being human is same for all, in every culture and age. These minimum conditions are protected by the negative commands of natural law.

Natural law as an ethical theory proposes principles that are valid for all people because it contains minimum indications for being human and it defends the most basic sector (*unhintergehbarer Raum*) of a human being. The minimum of natural law that is common to all men is applicable everywhere and is independent of revelation or divine intervention. It is available to any man as man.
Natural law as a moral philosophy is against relativism and believes in the truthfulness and universal validity of moral norms. One needs natural law to be able to criticize the ideologies of one’s society. In the absence of natural law one will be forced to give equal value to both cannibalism and a democratically ordered society. Natural law must be the basis for individual moral laws and civil law, and it should be independent of any religious foundation. It should be accessible to any man as man.

Thomistic natural law is a combination of natural reason and the natural inclinations of human towards a fulfilled life (gelungenes Leben). Natural law and human life goals are given in the very nature of man. There are goals in human life and the inclinations lead man to them. The goals are recognized as good by practical reason naturally, i.e. without any other aid.

The inclinations point to the goals that lead to fulfillment in life. And knowledge of good and evil follows the order of the inclinations. There are principally three types of inclinations in man: The first level inclinations are those inclinations in common with all substances. These concern self-preservation. The second level inclinations are inclinations in common with all living beings. These concern social living, procreation and education of the young. Third level inclinations are inclinations that are specific to man. They concern striving for knowledge which include knowledge about God, and desiring to live in fellowship with others. The desire to live in fellowship calls for avoidance of ignorance. The same includes the inclination not to hurt one’s fellowmen.

The inclinations in man correspond to the dictates of practical reason. But what is the precise relationship between the two? Interpreters of Thomas, the medieval philosopher, have proposed three types of relationship between the inclinations and practical reason: The inclinations are just a framework. Practical reason is decisive. There is a relationship of practical reason informing the inclinations. And finally there is the position that the inclinations give detailed goals of life and practical reason just approves them. Eberhard Schockenhoff, a German ethicist, is of the view that practical reason cannot be seen as just a ratifying agent. Nor can it be that the inclinations are an unlimited amount of raw material to be given form by practical reason. According to Schockenhoff, the supreme law of practical reason diversifies into individual ethical norms and together with the inclinations they form a unity informed by reason. Reason is like a music conductor who fine-tunes the inclinations. Or again, reason is like an author who transforms the rough draft of a book (inclinations) into a coherently written book. Reason informs the inclinations and they become norms of the actions of men.

Natural inclinations show the fulfillment image (Vollendugsgestalt) of being human only in an outline. Reason has to devise the means towards that goal, i.e.evolve norms for the conduct of men to realize the goal. Man must, in the light of reason, choose concrete actions to realize the life goals. To view the inclinations as giving in detail the norms of behaviour is to go against the reservation Thomas himself had about them. It is to read into Thomas what later Scholastics (philosophers between 9th and 14th centuries) said after two to three centuries.

Only those inclinations that are according to reason belong to natural law. The one supreme principle of natural law, namely, do good and avoid evil, splits into many individual norms so as to lead the inclinations to the fulfillment of human life.
5.4 REASON AND MORALITY

Human obeys a law because it is reasonable. Every law must have reason in it. The *vis obligandi* (the obligating or compelling power) of a law (*Gesetz*) does not come from outside itself but from the internal obligating character of reason itself. According to Thomas Aquinas the *regula et mensura* (rule and measure) of human acts is reason. The only criterion of morality is whether a human act is according to reason or not, i.e. if reason sanctions it or not.

The origin and validity of moral values come from practical reason. This is because it is reason that makes a law that which it is. Without reason there is no law. Reason and its law of non-contradiction finally decide about the content of any moral system. An immoral act is one that contradicts reason. It militates against reason. And it cannot be that a moral value is an importance in one place and a non-importance or its contradiction in another place.

There are two aspects in the faculty of reason in human, namely, theoretical reason and practical reason. One is not subordinate to the other. They are not two faculties in human but a single capacity of the self that is directed towards different objects: theoretical reason is directed towards truth in itself for its own sake, whereas practical reason is directed towards truth in so far as it has to be realized, acted upon.

The fact that both are faculties of the same soul does not rob them of their distinctiveness. These two have their own specific goals (*Ziele*). They are not subordinate to each other but they complement each other. The distinctiveness of both is shown in the fact that each has its own non-demonstrable first principles (*unbeweisbare Prinzipien*). They deduce from their own sources.

Theoretical and practical reason are complementary in the sense that the objects of their orientation can fall either in the field of theoretical reason or practical reason. The object of theoretical reason is the truth in itself. The object of practical reason is the good. The object of theoretical reason is truth in so far as it is worthwhile longing for. The object of practical reason is the good that has been discovered under the aspect of truth or as truth.

The first principles of theoretical reason are not provable. They are self-evident and they are understood by intuition. So also are the first principles of practical reason. Practical reason possesses its own naturally known and non-provable principles. They are not deduced or borrowed from theoretical reason. The first principles of practical reason are the first principles of natural law. They cannot be proved. They are intuitively known.

It belongs to practical reason to seek for the good in the light of its highest principle (do good and avoid evil). But it does not end there. It seeks further the ways or means to realize the good. Both functions belong to practical reason. Practical reason reaches the fullness of its activity to the extent it commands the recognized good to be realized. This is also called the law character of practical reason, i.e. practical reason commands the recognized good to be executed. That is the difference of the universal propositions of practical reason from those of theoretical reason.
The judgements of practical reason do not have the same degree of certainty as those of theoretical reason because the judgements of practical reason deal with contingent events. That does not mean that they are not valid.

5.5. UNIVERSALITY AND NATURAL LAW

One can think about and practice a universal ethic only if one presupposes the universal validity and reach of reason in all men. There is a human nature that does not change. So too, there is an unchanging natural law.

Only the top-most principles (oberste Prinzipien) of practical reason and their conclusions are universally valid. The supreme principles of practical reason are valid for all because they are grounded in the very reasonability (Vernunftfähigkeit) of human beings. Secondary natural laws are those laws that flow from the first three: do good and avoid evil, the golden rule (do unto others what you would like them to do to you) and love of neighbour. The negative laws of the Decalogue (the ten commandments as contained in the Bible) also belong to them. These laws are known to all men. But they admit of exceptions. The findings of theoretical reason and their conclusions are valid for all (like: the angles of an equilateral triangle are equal). That is not the case with practical reason. Except for the first or supreme principles, the findings of practical reason are contingent, i.e. they are not necessarily valid for all.

Once reason discovers a truth, it is valid for all. “It corresponds completely to the structure of historical perception of truth that such crossing of boundaries occurs in a particular time and place. Once such a discovery or crossing has taken place in the thought of the human spirit, it belongs to the permanent possession of mankind and is valid everywhere” (Schokenhoff, Naturrecht, p. 139). Truth once discovered is truth for all and it is independent of historical particularities. It is not dependent on being historically recognized. It transcends historical times and epochs. According to Max Scheler, as soon as a value is discovered, its validity is for all people of all time. It is so because an essential aspect of reality has been discovered. E. Troeltsch (another German philosopher) is of the same view.

Not all the commands of practical reason possess the trait (Bewandnis) of a law. Only the universal propositions/commands possess that. It is the aim of Summa Theologica I-II, Question 94, articles 4 and 5 of Thomas Aquinas to show that the universal natural law branches (auffächert) into individual concrete norms.

It is practical reason that discovers the universal natural laws. It is again practical reason that discovers the non-universal norms applicable to particular situations. Thus there are grades in the judgements or laws of practical reason.

If it is true that there is a universal concern of reason, then it shows itself on the international level as the international human rights issue. Natural law expresses the dignity of the human person. Natural law lays the foundation for rights and duties. To that extent natural law is universal and its authority is over all men. The idea that there is a right which belongs to all
human beings is the possession of mankind itself. That it has not been respected at all times does not invalidate it.

Check Your Progress I

Note: a) Use the space provided for your answer.
    b) Check your answers with those provided at the end of the unit.

1) What is natural Law?

2) Why is natural law universally valid?

5.6 NATURAL LAW AND CHANGE

The different grades of certainty of the norms of practical reason and the diminishing certainty of individual concrete norms in different situations lead us to believe that natural law is an outline, formed by the supreme principles, within which reason has to find individual norms. Natural law is not a closed system with fixed norms. Only those norms that carry the tag “according to nature” are unchangeable. What concrete actions are to be classified as murder, theft and adultery will differ according to both divine and human norms/considerations.

Ethics transcends history. However, its individual norms need not be valid for every situation.

The changeability and non-universality of the norms of practical reason are not due to the inborn incapacity of some men to perceive moral norms nor is it due culpable ignorance. It is due to the contingency and diversity of situations. Besides, human nature changes in a certain sense. There are many laws of nature to which both human laws are added so as to make the true meaning of the laws correspond to the changed situation. For example, the law of not hating one’s neighbour was added to the prohibition of murder. In the same way to the prohibition of not stealing. Practical reason knows the universal laws and draws out concrete norms for the realization of the universal in the particular situation. That these concrete norms vary from place to place and do not possess the same degree of certainty of the universal norms is not a weakness.
or deficiency of natural law. It is, rather, due to the fact that reason is a finite reality, and concrete situations do not offer a greater degree of certainty.

Reason finds particular norms for particular situations. The experience of wise and sensitive men play a crucial role here. There are exceptions to the universal laws in particular situations. For example, it is universally accepted that borrowed things or goods given for safe-keeping must be returned. But one would not easily return the weapon of a man who is drunk and is intent on killing someone.

According to Eberhard Schockenhoff, a German ethicist, a list of laws that will not accommodate to changing situations is an unreasonable thing (Unding). It is impossible to write a catalogue of human rights that is valid for all time because it is impossible to get a view of the total. Natural law is not a finished catalogue of rights. It is rather the power of reason which discovers universal principles. These principles will take different forms in different cultures.

Natural law is opposed to historicism which believes that human is an evolving creature and what he is will only be revealed by his history. Historicism does not believe in the existence of an unchanging human nature. One has to counter historicism and say that there is a common metaphysical human nature and it is visible only in historical forms. That nature remains essentially same all through history. The moral norms which man discovers also takes place in a historical situation. But that fact does not contradict the existence of a common nature nor universal moral laws.

History is an essential dimension of human and human nature. Because of that, that which is permanent in human and one’s nature can only be observed in historical manifestations. Human lives in history. One does not become human on account of history. One makes history on account of one’s nature, on account of one’s body-soul structure.

Nature and history are not opposed to each other. Human is a historical being, i.e. one realizes oneself in history as a finite being. Human’s reason is also a historical reality in the sense that it realizes itself in a historical context. It does not live in the realm of the pure spirit. History is essential to human and one’s nature. Thus natural rights, i.e. the idea of a moral criterion of good and evil that transcends all times and ages, must manifest itself in history. However, the dependence of reason on historical situations does not nullify its capacity to discover truth nor does it mean that a truth discovered in a historical context is valid only for that period.

Reason holds on to what has been achieved as experience (Erfahrung) in history. The same reason holds man open to the new of every situation. With reason man lives in history. The same reason enables man to transcend history.

The flood of historical events and changes can make natural law appear as relative. It is true that an ethical insight is valid for all time. But its historical realization is often linked to compromises in concrete situations.

5.7 NATURAL LAW AND HUMAN DIGNITY
There is a core sector/aspect (unhintergehbarer Schutzraum) in a human being. That centre is the person, the source of morality, and it is the aim of morality to protect that sector. The minimum requirements of natural law are the minimum requirements of human right and human dignity. That is to say that there is a basic requirement for being moral. So too there is a basic requirement for demanding and accepting human dignity and right. Human dignity and the rights that flow from it are universal and it can be demanded from any person or government. Respect for human dignity is not just respect for the spiritual powers and convictions of human. It is a respect for the totality of human, body and soul. Human lives one’s life not as an angel but as an embodied being in this world.

In natural law, right and morality are closely related. Rights are the moral claims an individual makes on another human being or human beings. To the extent that natural law thinking sees rights arising from the supreme principles of practical reason and since morality itself is grounded in practical reason, rights are closely related to morality. Human rights and ethics belong together. They protect the elementary goals and values of life. Human rights are, like values, a historical manifestation of the principles of practical reason.

Human rights are the minimum conditions, in every age, under which a human being can be seen as an ethical subject and can be held responsible for his deeds. Natural human rights represent the minimum of being ethical. But it can learn from any anthropology that visualizes a fuller human life.

Natural human right is the knowledge of a law, a moral law that is independent of human domination or despotism. International human rights built on the basis of natural rights. Natural rights point beyond themselves. They point to the wealth of religions and the way they propose to fulfill human life.

The state upholds the rule of law (Rechtsordnung). Rule of law aims at the realization of a life worthy of a human being. It guarantees the minimum space a human being needs to realize himself as an ethical being. Rule of law recognizes the inalienable rights of the person and his duty in the community.

Human rights presuppose freedom and are grounded in reason. Precisely because of that a change in the concept of right or the discovery of new rights is possible. According to new insights and new situations, rights (civil rights) can change. Civil rights are grounded in natural rights. According to Ernst Wolfgang Böckenförde, (a German ethicist), natural law and rights is a way of thinking of the practical reason. In the light of the fundamental goals of human life, it legitimizes the existing human rights. It also criticizes them and paves the way for progress in human rights.

5.8 NATURAL LAW AND CONCEPT OF INTRINSIC EVIL

If there is something intrinsically valuable, then it stands to reason to believe that there is also something intrinsically evil, because to attack the intrinsically good will be to create an intrinsically evil deed. It is inevitable to use the term “intrinsic evil” when it concerns the mutual respect man has to show to the ethical subject.
The idea of intrinsic evil is not a special teaching of the Church. It is the common property of a moral tradition starting with Aristotle and continuing in the teachings of Augustine, Thomas, Kant and all the non-utilitarians, i.e. deontological ethicists of today.

One should never do an intrinsically evil act. An intrinsically evil act is one that attacks or violates the absolute right, i.e. inalienable right of another person, independent of the fact what benefit such a violation will have for the community as a whole. An intrinsically evil act attacks the minimum conditions necessary for being human. This minimum condition is the possibility for free self-determination as an ethical subject. An intrinsically evil act attacks the personal centre. Ready examples are rape and torture.

The negative commands of natural law prohibits intrinsically evil acts. Just as the concept of human dignity may not be able to enumerate all the laws needed to protect human dignity, so too the concept of intrinsic evil may not be able to produce an exhaustive list of intrinsically evil acts. The concept of intrinsic evil will remind man of something which he should never do, without enumerating in detail what man should avoid as intrinsic evil in every age/epoch.

Rape, murder (killing of innocent and harmless human beings), torture, infidelity to one’s word (breach of promise) and sexual infidelity in marriage are some of the intrinsic evil acts. The evil of rape consists in the fact that it violates the dignity of a human being. That dignity is rooted in freedom and reason. Rape is never in harmony with the respect that is due to a human being.

The innocent has a right, an inalienable right, not to be offered as a means for the greater good of the community. It is the dignity of the other and the “in itself” value of the other (Selbstzwecklichkeit) that are the ontological grounds for loving man as our neighbour for his own sake. Torture of the innocent is one of the intrinsic evils that cannot be done for any other good. Its evil consists in the fact that it violates the absolute right, the right of the individual to determine himself (Selbstbestimmung). Torture militates against the dignity of the innocent.

One is not responsible for the evil consequence of one’s good deed. For example, if one refuses to kill an innocent person, the enemy will kill 200 or 2000 other innocent people.

The prohibition of killing the innocent is valid in normal situations, and not in borderline cases and fictitious circumstances. There may be exceptions to the prohibition. For example, the killing of one’s wounded fellow soldier so as to prevent him from falling into enemy hands which would mean torture and death. So also the killing of a man who cannot be extricated from a burning car after an accident. But even these killings are against the dictum: thou shall not kill. The body is the manifestation of a person. The prohibition to kill refers to the bodily existence of man. Man is called to be a reasonable being. But he cannot exist reasonably without a body. Thus the command not to kill is a call to respect the dignity of man as a bodily existing being.

In this context Schockenhoff refers to both teleologism and deontologism. For one, remaining faithful to teleologism, it is not possible to defend the concept of intrinsic evil. Teleologists may respect the command not to kill the innocent. But that is not out of the conviction that there are
intrinsically evil acts, but because they feel that respecting the command not to kill the innocent will bring more benefit to society in the long run. Both teleologism and deontologism are complementary. While deciding about goods other than human beings, teleologism is in order. But while deciding about human beings, their dignity, etc., deontologism is absolutely necessary. It is only by holding on to intrinsically evil acts that one can, in the long run, fight against terrorists and blackmailers.

5.9 CRITICISM OF NATURAL LAW

In the light of the supreme moral principle, - good is to be done and evil to be avoided - practical reason orders the inclinations. The ordering function of practical reason depends on the order of the inclinations in setting up the ordo praeceptorum. The inclinations are pre-moral. Practical reason orders them to the fulfillment goal of man. The inclinations receive their moral quality through reason to the extent that reason invests in them the criterion of good and bad.

That there are certain basic drives in human is undeniable. Modern human, with one’s improved knowledge over descriptive or positive sciences, is in a better position to understand the drives/inclinations than Aquinas was in the thirteenth century.

The second criticism of Thomistic natural law is that it commits the fallacy of *petitio principii*. It reasons as follows: The concept of nature is an empty shell that is filled with arbitrary (beliebig) contents from sociology or anthropology, and the content is invested with the dignity of being ethical. *Petitio principii* is precisely the fact that, instead of proving the ethical dignity of the content, it is presupposed that the arbitrarily filled content of the concept of nature is ethical. But the very existence of different grades of truth in the concept of natural law contradicts this accusation of *petitio principii*. If the content of the term nature was filled arbitrarily and then given ethical dignity, then every element of the content must have the same degree of certainty. That is not the case with Thomistic natural law. It is not true that Aquinas fills the empty shell of the concept of nature with any content. Rather he enumerates the basic presuppositions of morality in the concept of nature. And they are: Man is a being of reason and he is responsible for his being. He, as a rational creature, ought to recognize the “good and true” for the very being of man, and that very recognition brings man to his integral fulfillment. Human’s inclinations have an orientation towards the good and the true, and reason recognizes the good and the true and approves them. Finally, human realizes oneself as a body-soul reality necessarily in relation with other human beings and in harmony with the orientation of his soul towards the good and the true. These presuppositions are not just arbitrary principles (*Festlegungen*) from which man draws again arbitrary norms. Rather these are the very conditions that make morality possible at all.

The third criticism is that Aquinas has an unhistorical/unchanging understanding of human nature. The answer to this is that Thomas does concede change in human nature. That is evident in the two levels of practical reason. The second level does admit of change of norms in different situations and a change in human nature in the sense of living human life differently in
different epochs/ages. When Aquinas speaks of a change in human nature he does not mean that man becomes something other than human.

Human’s nature changes but an unchanging element is presupposed in every age and culture. This is evident from the concept of human dignity which is valid for all generations. Human’s dignity does not increase or decrease with the passage of time. That man has certain rights on account of his dignity will also remain stable. What will change is only the way the rights are realized. For example, ladies had no voting rights in certain epochs.

Human’s nature changes, i.e. it manifests itself in different ways in different cultures. The cave human’s being human is different from the urban human’s being human. But they both remain humans. Human’s nature has to manifest itself in a particular culture. But no culture exhausts it. Human’s nature transcends all historical manifestations.

5.10 LET US SUM UP

Our understanding of natural law has shown that there is an essential relationship between moral values and reason. The good manifests itself to reason. Or, it is only in the light of reason that the good becomes visible. The *vis obligandi* of any law is that it is reasonable. And the essence of moral evil is that it is against the order of reason.

Natural law is the law discovered by reason in human. Natural law is inherent in the nature of human, the core of which does not change. The basis of every good positive law is natural law. So also, every human right is based on natural law. One cannot understand the concept of intrinsic evil without natural law. The discovery of the good leads to the discovery of the evil in itself.

Check Your Progress I

Note: a) Use the space provided for your answer.
    b) Check your answers with those provided at the end of the unit.

1) Does natural Law change?

2) What is intrinsic evil?
5.11. KEY WORDS

**Law:** Law is a system of rules, usually enforced through a set of institutions.

**Nature:** The word nature is derived from the Latin word natura, meaning “birth.” Natura was a Latin translation of the Greek word *physis*, which originally related to the intrinsic characteristics that plants, animals, and other features of the world develop of their own accord.

5.12. FURTHER READINGS AND REFERENCES


5.13. ANSWERS TO CHECK YOUR PROGRESS

**Answers to Check Your Progress I**

1. It is the moral law discovered by reason in the rational nature of man.

2. Natural law is universally valid because it is based on a human nature that is universally the same.

**Answers to Check Your Progress II**

1. The most basic natural law does not change. Its application to individual situations change.

2. An intrinsically evil act is one that attacks the absolute right of another human being, no matter what the social benefit of that act is. Just as reason perceives the most basic natural law, so too it perceives certain acts as intrinsically evil.