THE RIGHTS OF MAN
AND NATURAL LAW

BY
Jacques Maritain

Translated by
DORIS C. ANSON

New York
CHARLES SCRIBNER'S SONS
1951

In order to treat the problem of the rights of the human being—to which this essay is devoted—in a philosophical manner, we must first examine the question of what is called natural law. There are people who imagine that natural law is an invention of the American and the French Revolutions. Reactionaries of all varieties have done a great deal to spread this nonsense; unhappily, in their efforts to discredit the idea of natural law, they have found allies on the one hand in the pessimism of certain religious thinkers of Lutheran or Jansenist tradition, and on the other hand among the bulk of contemporary jurists (particularly those of the positivist school) who, by the way, are really attacking a false idea of natural law, and in exterminating it, exterminate only a man of straw, drawn from the pages of cheap-jack textbooks.

The idea of natural law is a heritage of Christian and classical thought. It does not go back to the philosophy of the eighteenth century, which more or less deformed it, but rather to Grotius, and before him to Suarez and Francisco de Vitoria; and further back to St. Thomas Aquinas; and still
further back to St. Augustine and the Church Fathers and St. Paul; and even further back to Cicero, to the Stoics, to the great moralists of antiquity and its great poets, particularly Sophocles. Antigone is the eternal heroine of natural law, which the Ancients called *the unwritten law*, and this is the name most befitting it.

Since I have not space here to discuss nonsense (you can always find very intelligent philosophers to defend it most brilliantly) I am taking it for granted that you admit that there is a human nature, and that this human nature is the same in all men. I am taking it for granted that you also admit that man is a being gifted with intelligence, and who, as such, acts with an understanding of what he is doing, and therefore with the power to determine for himself the ends which he pursues. On the other hand, possessed of a nature, being constituted in a given, determinate fashion, man obviously possesses ends which correspond to his natural constitution and which are the same for all—as all pianos, for instance, whatever their particular type and in whatever spot they may be, have as their end the production of certain attuned sounds. If they don’t produce these sounds they must be tuned, or discarded as worthless. But since man is endowed with intelligence and determines his own ends, it is up to him to put himself in tune with the ends necessarily demanded by his nature. This means that there is, by very virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act in order to attune itself to the necessary ends of the human being. *The unwritten law, or natural law, is nothing more than that.*

The great philosophers of antiquity knew, Christian thinkers know even better, that nature comes from God, and that the unwritten law comes from the eternal law which is Creative Wisdom itself. That is why the idea of natural law or the unwritten law was linked for them to a sentiment of natural piety, to that profound and sacred respect unforgettably expressed by Antigone. Because they understand the real principle of this law, belief in it is firmer and more unshakable in those who believe in God than in the others. Belief in human nature and in the freedom of the human being, however, is in itself sufficient to convince us that there is an unwritten law, and to assure us that
natural law is something as real in the moral realm as the laws of growth and senescence in the physical.

The law and knowledge of the law are two different things. The man who does not know the law (so long as this ignorance itself does not spring from some failing) is not responsible before the law. And knowing that there is a law does not necessarily mean knowing what that law is. It is because this very simple distinction is forgotten that many perplexities have arisen concerning the unwritten law. It is written, they say, in the heart of man. True, but in the hidden depths, as hidden from us as our own heart. This metaphor itself has been responsible for a great deal of damage, causing natural law to be represented as a ready-made code rolled up within the conscience of each one of us, which each one of us has only to unroll, and of which all men should naturally have an equal knowledge.

Natural law is not a written law. Men know it with greater or less difficulty, and in different degrees, running the risk of error here as elsewhere. The only practical knowledge all men have naturally and infallibly in common is that we must do good and avoid evil. This is the preamble and the principle of natural law; it is not the law itself. Natural law is the ensemble of things to do and not to do which follow therefrom in necessary fashion, and from the simple fact that man is man, nothing else being taken into account. That every sort of error and deviation is possible in the determination of these things merely proves that our sight is weak and that innumerable accidents can corrupt our judgment. Montaigne maliciously remarked that, among certain peoples, incest and thievery were considered virtuous acts. Pascal was scandalized by this. We are scandalized by the fact that cruelty, denunciation of parents, the lie for the service of the party, the murder of old or sick people should be considered virtuous actions by young people educated according to Nazi methods. All this proves nothing against natural law, any more than a mistake in addition proves anything against arithmetic, or the mistakes of certain primitive peoples, for whom the stars were holes in the tent which covered the world, prove anything against astronomy.

Natural law is an unwritten law. Man’s knowledge of it has increased little by little as man’s
moral conscience has developed. The latter was at first in a twilight state.\textsuperscript{1} Anthropologists have taught us within what structures of tribal life and in the midst of what half-awakened magic it was primatively formed. This proves merely that the idea of natural law, at first immersed in rites and mythology, differentiated itself only slowly, as slowly even as the idea of nature; and that the knowledge men have had of the unwritten law has passed through more diverse forms and stages than certain philosophers or theologians have believed. The knowledge which our own moral conscience has of this law is doubtless itself still imperfect, and very likely it will continue to develop and to become more refined as long as humanity exists. Only when the Gospel has penetrated to the very depth of human substance will natural law appear in its flower and its perfection.

**NATURAL LAW AND HUMAN RIGHTS**

We must now consider the fact that natural law and the light of moral conscience within us do not prescribe merely things to be done and not to be done; they also recognize rights, in particular, rights linked to the very nature of man. The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, an end which must be treated as such. The dignity of the human person? The expression means nothing if it does not signify that by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. There are things which are owed to man because of the very fact that he is man. The notion of right and the notion of moral obligation are correlative. They are both founded on the freedom proper to spiritual agents. If man is morally bound to the things which are necessary to the fulfillment of his destiny, obviously, then, he has the right to fulfill his destiny; and if he has the right to fulfill his destiny he has the right to the things necessary for this purpose. The notion of right is even more profound than that of moral obligation, for God has sovereign right over creatures and He has no moral obligation towards them (although He owes it to Himself to give them that which is required by their nature).

The true philosophy of the rights of the human person is therefore based upon the idea of natural law. The same natural law which lays down our most fundamental duties, and by virtue of which every law is binding, is the very law which assigns to us our fundamental rights. It is because we are enmeshed in the universal order, in the laws and regulations of the cosmos and of the immense family of created natures (and finally in the order of creative wisdom), and it is because we have at the same time the privilege of sharing in spiritual nature, that we possess rights vis-a-vis other men and all the assemblage of creatures. In the last analysis, as every creature acts only by virtue of its Principle, which is the Pure Act; as every authority worthy of the name (that is to say, just) is binding in conscience only by virtue of the Principle of beings, which is pure Wisdom; so too every right possessed by man is possessed only by virtue of the right possessed by God, which is pure Justice, to see the order of His wisdom in beings respected, obeyed and loved by every intelligence.

Another altogether opposite philosophy has sought to base the rights of the human person on the claim that man is subject to no law other than that of his will and his freedom, and that he must "obey only himself," as Jean-Jacques Rousseau put it, because every measure or regulation springing from the world of nature (and finally from creative wisdom) would destroy at one and the same time his autonomy and his dignity. This philosophy built no solid foundation for the rights of the human person, because nothing can be founded on illusion; it compromised and squandered these rights, because it led men to conceive them as rights in themselves divine, hence infinite, escaping every objective measure, denying every limitation imposed upon the claims of the ego, and ultimately expressing the absolute independence of the human subject and a so-called absolute right—which supposedly pertains to everything in the human subject by the mere fact that it is in him—to unfold one’s cherished possibilities at the expense of all other beings. When men thus instructed clashed on all sides with the impossible, they came to believe in the bankruptcy of the rights of the human person. Some have turned against these rights with an enslaver’s fury; some have continued to invoke them, while in their inmost conscience they are weighed down by a temptation to scepticism which
is one of the most alarming symptoms of the present crisis. A kind of intellectual and moral revolution is required of us, in order to re-establish on the basis of a true philosophy our faith in the dignity of man and in his rights, and in order to rediscover the authentic sources of this faith.

The consciousness of the dignity of the person and of the rights of the person remained implicit in pagan antiquity, over which the law of slavery cast its shadow. It was the message of the Gospel which suddenly awakened this consciousness, in a divine and transcendent form, revealing to men that they are called upon to be the sons and heirs of God in the Kingdom of God. Under the evangelical impulse, this same awakening was little by little to spread forth, with regard to the requirements of natural law, over the realm of man’s life here on earth, and of the terrestrial city.

**NATURAL LAW, LAW OF NATIONS, POSITIVE LAW**

It is well to recall here the classic distinction, central to civilized tradition, between natural law, the Law of Nations, and positive law. As I have pointed out, natural law deals with the rights and the duties which follow from the first principle: “do good and avoid evil,” in a necessary manner, and from the simple fact that man is man, nothing else being taken into account. This is why the precepts of the unwritten law are in themselves or in the nature of things (I am not saying in man’s knowledge of them) universal and invariable.

The Law of Nations is difficult to define exactly, at least for the jurists, because it is intermediary between natural law and positive law. The notion of common law developed in England in about the same way that the notion of the Law of Nations, jus gentium, had developed in Rome. Though these two notions are very different for the historian and for the jurist, the philosopher, nevertheless, is justified in bringing them together in order to disengage from them the notion of natural or unwritten law itself as exceeding the very sphere of nature and as particularized by the conditions of social life. This definition once granted, the term common law, deprived of its specific English meaning, and the term jus gentium, deprived of its specific Roman meaning, may be taken as synonyms. The Christian thinkers of the Middle Ages carefully elaborated
is one of the most alarming symptoms of the present crisis. A kind of intellectual and moral revolution is required of us, in order to re-establish on the basis of a true philosophy our faith in the dignity of man and in his rights, and in order to rediscover the authentic sources of this faith.

The consciousness of the dignity of the person and of the rights of the person remained implicit in pagan antiquity, over which the law of slavery cast its shadow. It was the message of the Gospel which suddenly awakened this consciousness, in a divine and transcendent form, revealing to men that they are called upon to be the sons and heirs of God in the Kingdom of God. Under the evangelical impulse, this same awakening was little by little to spread forth, with regard to the requirements of natural law, over the realm of man's life here on earth, and of the terrestrial city.

**Natural Law, Law of Nations, Positive Law**

It is well to recall here the classic distinction, central to civilized tradition, between natural law, the Law of Nations, and positive law. As I have pointed out, natural law deals with the rights and the duties which follow from the first principle: "do good and avoid evil," in a necessary manner, and from the simple fact that man is man, nothing else being taken into account. This is why the precepts of the unwritten law are in themselves or in the nature of things (I am not saying in man's knowledge of them) universal and invariable.

The Law of Nations is difficult to define exactly, at least for the jurists, because it is intermediary between natural law and positive law. The notion of common law developed in England in about the same way that the notion of the Law of Nations, jus gentium, had developed in Rome. Though these two notions are very different for the historian and for the jurist, the philosopher, nevertheless, is justified in bringing them together in order to disengage from them the notion of natural or unwritten law itself as exceeding the very sphere of nature and as particularized by the conditions of social life. This definition once granted, the term common law, deprived of its specific English meaning, and the term jus gentium, deprived of its specific Roman meaning, may be taken as synonyms. The Christian thinkers of the Middle Ages carefully elaborated
the notion of *jus gentium*. The Law of Nations, or the common law of civilization, deals, like natural law, with the rights and duties which follow from the first principle in a necessary manner, but this time supposing certain conditions of fact, as for instance the state of civil society or the relationships between peoples. It also, therefore, is universal, at least in so far as these conditions of fact are universal data of civilized life.

*Positive law* (statute law), or the body of laws in force in a given community, deals with the rights and the duties which follow from the first principle, but in a contingent manner, by virtue of the determinate ways of conduct set down by the reason and the will of man when they institute the laws or give birth to the customs of a particular community.

But it is by virtue of natural law that the Law of Nations and positive law take on the force of law, and impose themselves upon the conscience. They are a prolongation or an extension of natural law, passing into objective zones which are less and less determined by the simple, intrinsic constitution of human nature. For it is *natural law itself which requires that whatever it leaves undetermined shall subsequently be determined*, either as a right or a duty existing for all men by reason of a given condition of fact, or as a right or a duty existing for certain men by reason of the human regulations proper to the community of which they are a part. Thus there are imperceptible transitions (at least from the point of view of historical experience) between natural law, the Law of Nations and positive law. There is a dynamism which impels the unwritten law to flower forth in human law, and to render the latter ever more perfect and just in the very field of its contingent determinations. It is in accordance with this dynamism that the rights of the human person take political and social form in the community.