The Natural Law is not an ethical IBM computer. It has no existence in the world of objects and does not provide automatic answers to questions of right and wrong. It is not even a law in the ordinary sense of the term, and the modifier, "natural" does not in any way connote something belonging to physical nature.

The Natural Law concept represents an attempt to work out historically, with the exclusive tools of man's reason, the constituents of humanness and an outline of those conditions conducive to it. Social phenomena in general and political relationships in particular, fall within the realm of the human and are therefore open to empirical investigation and rational assessment just as individual personalistic phenomena. For reasons of preliminary clarification, we can speak of Natural Law as an attempt to draw up a model of reasonableness from the confrontation between man's powers of reflection and the facts of human existence, both social and individual. That, which more often than not provides a powerful illumination of this illusive and evolutionary humanness, is suffering. Our notion of what belongs to man's nature and is constitutive of his humanness comes more often than not from contact with the absence of certain goods. Suffering and injustice contribute to a vision of man.

My intention in this paper is to concentrate on two aspects of Natural Law – its historicity and its political function. Insistence on the historical character of the Natural Law is required to balance off a rationalism in the American as well as the Catholic tradition. Certain rights of man such as life, liberty, pursuit of happiness, are held to be self-evident and historical. What is proposed as self-evident in our founding documents is actually the result of a long, historical process and not the product of abstract concepts from which timeless, moral axioms are drawn. Natural Law theory within the Catholic tradition consistently introduced contingent, historical details into its definitions of self-evident, perennial principles.\(^1\) Medieval Natural Law's notions of justice, for example, were shot through with presuppositions of the feudal social order.\(^2\)

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\(^1\) For St. Thomas, the hierarchical view of the natural order was self-evident. A more contemporary, scientific model, however, gives a very different, rational view of the natural order.

Historicity of the Natural Law

It was Giambattista Vico (1668-1744) who first drew attention to the way man acted in history as the surest route to determining what man is.\(^3\) The real character of man is known only through the history of his cultural expression.\(^4\) John Courtney Murray, the most convincing contemporary exponent of Natural Law theory insists as well that the Natural Law cannot be constructed independently of historical evidence. We must inquire into "the real man who grows in history amid changing conditions of social life, acquiring wisdom by the discipline of life itself – in many respects only gradually exploring the potentialities and dignities of his own nature."\(^5\) Evolution in human life brings to light new necessities in human nature which, according to Father Murray, struggle for expression and form. The historical character of the Natural Law in Father Murray's treatment consists of a gradual development of our knowledge of human nature. Human nature, for him, remained the same.

Actually, Natural Law historicity is much more pervasive than Father Murray was willing to admit. Not only does our knowledge of human nature grow with historical experience, but human nature itself, by reason of its radical freedom, develops and changes, requiring an ever-changing enunciation of the content of Natural Law.

In what way does our knowledge of human nature, as well as human nature itself, develop so as to create changing rights and duties? Reason today can support without qualification the rational proscription of the ancients against killing other human beings. Historically, however, that same reason made a number of exceptions to this principle of rational conduct. For many centuries in the West the killing of heretics and witches was looked upon as being altogether reasonable, even a holy thing. Today no one would justify or defend such acts. We continue to kill criminals, but this will surely appear to our descendants just as cruel and unjust as the burning of witches in Spain and Salem. The society from which the criminal sprang bears some of the responsibility and cannot justify a demand for total payment. This altogether reasonable proposition developed gradually as man developed in history and pushes toward constitutionalization in man’s ethical tradition.

\(^4\) Ernst Cassirer, *An Essay on Man* (New Haven: Yale University Press, 1944). Cassirer examines the major forms of the human enterprise i.e. History, Art, Myth, Science, etc., showing these cultural expressions to be founded in the unique, symbolic nature of man.
\(^5\) John Courtney Murray, *We Hold These Truths* (New York: Sheed & Ward, 1960), p. 33. The book consists of a series of essays by the late Fr. Murray on issues facing a pluralistic society, the solutions which Murray works out by using the methodology of Natural Law. The last essay "The Doctrine Lives" is an important contemporary statement of Natural Law theory.