

The Natural Law in Catholic Ethics

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Abstract and Keywords

This chapter presents Catholic teaching on the natural law as the product of a conversation over millennia. After offering some basic conceptual distinctions, the chapter begins by considering ancient non-Christian sources for Christian reflection on the natural law, especially Plato, Aristotle, and the Stoics. The chapter then considers relevant biblical texts and the teachings of Augustine and Thomas Aquinas. Attention is particularly played to Thomas's adaptation of Classical traditions, and his argument concerning the unchangeableness of natural law. The final section of the chapter focuses on discussion of natural law after the Second Vatican Council (Vatican II) in the work of Germain Grisez and John Finnis.

Keywords: natural law, Aristotle, Augustine, Plato, Thomas Aquinas, Germain Grisez, John Finnis

THE most important post-Vatican II work on natural law has been conducted either by historians working on the thought of Thomas Aquinas and of his sources (such as Aristotle and Augustine), or by other scholars engaged in systematizing ethical ideas taken from this tradition. In these writings (whether historical or more systematic), the nature of natural law may or may not be an explicit theme; whether it is or not, however, has no bearing on whether a work is about natural law. Proponents of natural law are such not because of what they say about natural law but because they defend a certain type of moral theory, that is, one that follows the traditional sources in recognizing that some things are moral (or immoral) because they are in accord with (or contrary to) human nature. This all makes any account of natural law in post-Vatican II Catholicism a historical account of very large scope since, almost by definition, a scholarly interest in natural law is an interest in the same ethical theory that was taught by the Catholic Church before the council—indeed, well before the council, since it invariably involves the appropriation of ideas both medieval and ancient.

This is not to say, however, that natural law theory does not develop. The Catholic understanding of natural law is the result of a millennia-long conversation in which foundational contributors to the tradition have also sometimes said things incompatible with natural

law—and those things have had, therefore, to be discarded and alternatives preferred. Adjustments have also had to be made due to altered societal circumstances. The only way to locate a particular scholar or group of scholars within the tradition of natural law theory is to provide an overview of this development and its limits. Although the number of authors it can consider is necessarily limited, the present chapter attempts to provide such an overview. It concludes with a brief consideration of the one major new (post-Vatican II) attempt to give an account of natural law within Catholic ethics, posing the question to what extent it is consistent with the tradition of which it claims to be a part.

(p. 389) **Basic Distinctions**

According to Thomas Aquinas, natural law is a participation by rational creatures in the eternal law. The eternal law is the very intelligibility of God as the source or highest principle of order in the universe. Since the nature to which the term ‘natural law’ refers is human nature, the reason that participates in the eternal law is reason that arises, develops, and is systematized in the way appropriate to embodied rational animals who need to exert themselves in order to bring order to the various inclinations and activities that arise spontaneously from their nature. So there can be, has been, and always will be development in their understanding of natural law, for they can always bring further attention to the same issues, especially as they present themselves in different circumstances.

Besides natural law and eternal law, Catholic ethics also recognizes divine law and human law. Divine law comes to us primarily through Scripture, interpreted by the Church’s teaching office. It is necessary in order to direct human beings toward ends not known by natural means but only through divine revelation. It also serves as a corrective to human reason which is prone to misconceive the content and proper application of the natural law. Such corrective progress can also be made independently of divine law, but it is more difficult and risky, due to the fallibility of merely human reason.

Human law can be said to be ‘derived’ from the natural law in the limited sense that, if a human ‘law’ is incompatible with the natural law, it is not a law at all. Human laws closely bound up with precepts of natural law get their effectiveness as laws not from their being formulated (or ‘posited’) as human laws but from the natural law itself. Human laws that, when there is a legitimate reason for variation, specify how the natural law shall be applied, get their effectiveness as laws from human law, although (as already stated) they get their intelligibility as laws from the natural law. Although a human law that is incompatible with the natural law is no law at all, for reasons intrinsic to law itself—which exists for the common good—the threshold for ceasing to be a human law (of the second type) is high. Laws issued by legitimate authorities have presumptive obligatory force since, if they did not, that itself would harm the common good.

All law, says Aquinas, requires promulgation in order to be binding. How this occurs in the case of divine and human law is fairly apparent. The promulgation of the natural law occurs in human nature itself: in its inclinations, understood not just as subjective feelings but also as inclinations to perform the actions typical of human beings, such as con-

structing houses, composing music, and educating children. Such activities, in which human beings engage naturally, are *prima facie* in accordance with natural law.

Ancient Non-Christian Sources

According to Catholic natural law theory itself, natural law exists also outside of Christianity. So, if the theory is a true one, one would expect to find that natural law is (p. 390) an important theme in the writings of those who, independently of Christianity, have turned their attention most skilfully to such questions as what is human nature and how ought human beings to act. This expectation is not disappointed; we find especially in Plato and Aristotle thoroughgoing, although not complete or definitive, investigations of natural law. One sometimes reads that natural law theory began with the Stoics and that in Plato and Aristotle we find at most the occasional use of the term ‘natural law’ (or similar terms), understood, however, in ways that do not correspond to the way in which the later tradition understands natural law. In fact, recognizable variants of the term ‘natural law’ do appear in both Plato and Aristotle in contexts that suggest they were referring to what later theorists refer to as the natural law (in Plato see, for instance, *R.* v,456c1–2 [Plato 1987: 695] and *Lg.* iii,690c1–3 [Plato 1987: 1285]; in Aristotle see *EN* v,7,1134b18–19 [Aristotle 1984: 1790–1791] and *Rhet.* i,13,1373b4–6 [Aristotle 1984: 2187]). But arguing about terminology and particular passages is a distraction from the real issue, which is whether a particular thinker recognizes that acting justly is a matter of acting in a way consistent with natural inclinations—and, in particular, with the natural inclination to behave rationally, reason being the ultimate judge of whether an action performed is consistent with human nature and with natural law.

We find such an approach throughout Plato’s works but expressed in an especially engaging manner in the *Gorgias*, where the character Socrates refutes the theory of Callicles, who maintains (like his counterpart Thrasymachus in the *Republic*) that ‘might makes right’. Callicles posits an opposition between law and nature, insisting that law is just the attempt on the part of the weak to protect themselves from those who are stronger; on the other hand, to exercise one’s own will and to get what one wants is to act according to nature. ‘I believe’, he says, ‘that nature herself asserts the same: that it is just that the stronger and more capable man has more than the weaker and less capable’ (*Grg.* 483c8–d2; Plato 1987: 266). He goes on to praise the imperialist Xerxes and others who, he claims, follow this natural law: ‘I believe that these men do these things in accordance with the nature of justice and, by God, in accordance with the law of nature and surely not that law which we set up’ (*Grg.* 483e1–4; Plato 1987: 266). The position of Socrates (which is to say, of Plato) is quite opposed to this. He holds that the desire to dominate is unnatural and that nature, which inclines us toward the calm pleasures and not towards those that take possession of tyrants and other bullies, coincides with law, i.e. with natural law. ‘The terms we assign to the regularities and orderly dispositions of the soul are “lawful” and “law” (whereby individuals become law abiding and refined): these are justice and temperance’ (*Grg.* 504d1–3; Plato 1987: 287).

Aristotle takes over Plato's idea that the pursuit of the calm pleasures and the exercise of their corresponding natural practices are proper to justice and law (see, for instance, *EN* i,8,1099a5–31 and x,5,1175b24–29; Aristotle 1984: 1737 and 1858) but he is more articulate than Plato about the problem of the relationship between the principles implicit in natural inclinations and their application. In *Rhetoric* i,13, we read the following remark: 'Universal law is that which is according to nature, for, as everyone divines, there is something universally just (and unjust) by nature, even in the absence of any mutual intercourse or explicit agreement' (*Rhet.* 1373b6–9; Aristotle 1984: 2187). Aristotle then (p. 391) cites two principles, formulated by authors prior to himself, which are part of this natural justice: first, that loved ones should be buried (Sophocles); second, that living creatures ought not to be killed (Empedocles). The subsequent discussion makes it apparent that Aristotle believes that these two principles might be invoked legitimately in order to argue (in the courts) for the derogation of certain positive laws. Thus, even given a legitimate decree ordering that Polynices not be buried (*Rhet.* i,15,1375a34–35; Aristotle 1984: 2190), all people know in their hearts that Antigone acted justly in burying her brother. Aristotle does not expand on the application of the principle of Empedocles, although he does speak in the same chapter about the legitimate use of arms (*Rhet.* i, 13,1374a32–33; Aristotle 1984: 2188), so we can be sure that his point is not a pacifist one but that it always makes sense to appeal, in the face of contrary law, for the life of any living creature—because there is in man a natural inclination urging him to believe that the lives of all living creatures are (*qua* lives) good.

Both Plato and Aristotle recognize a relationship between natural law and the divine (what Aquinas calls the eternal law). In the *Laws*, for example, Plato speaks of Homer as inspired when he considers the origins of family law and the law of cities: 'He says these things ... as sayings in harmony somehow with both God and nature' (*Lg.* iii,682a1–2; Plato 1987: 1276). According to Aristotle, as we have already seen, 'everyone divines' (*man-teuontai*—*Rhet.* i,13,1373b7; Aristotle 1984: 2187) the universal law which is according to nature. In *Politics*, he considers the case of the man (or men) who so excels in moral excellence that others in a prospective city bear no relation to him. 'Such a man is as if a god among men,' he says (*Pol.* iii,13,1284a10–11; Aristotle 1984: 2037); in the best city, 'all that is left, what appears to be established by nature, is for all to obey such a one readily' (*Pol.* iii,13,1284b32–33; Aristotle 1984: 2039).

Among the Stoics, the idea that natural law is connected somehow with a divine order is even more prominent, although their divinity tends to be an impersonal force rather than a personal God. According to a third-century AD source, Chrysippus (c.280–207 BC), one of the founders of Stoicism, began his book *On Law* with the following:

Law is king over all things, both human and divine. It must be sovereign, ruler and leader over things noble and ignoble; the just and the unjust is determined according to this standard. For living beings who are political by nature, it is the commander of that which is to be done, and the forbiddener of that which ought not to be done'

(Long and Sedley 1987: 432).

According to Philo, a Jew of the first century BC who adhered to Stoic ethics, ‘the constitution of the various peoples is an extension of the nature which is sovereign over all, for this universe is a great city which makes use of one constitution and one law. This is reason in nature, which commands that which is to be done and forbids that which ought not to be done’ (Philo, *Ioseph* 28-29; Philo 1966: 157). For Cicero, one of our main sources for Stoic ideas and an important influence on St Augustine, ‘there exists a true law, right reason, in agreement with nature, conformed to reason, diffused among all men, constant and eternal, which by commanding urges on to duty and by forbidding (p. 392) deters from crime’ (*rep.* iii.22.33; Cicero 1928: 211; see also *leg.* i.12.33; Cicero 1928: 333-335). This ‘doubled up’ language of commanding and forbidding, found in these three (and also other) Stoic sources, turns up throughout subsequent natural law theory, a sure indication when it occurs of Stoic influence.

The Biblical Basis

Since Catholicism is a religion of the book, natural law as recognized in Catholic ethics must have a basis in Scripture, even though, according to Scripture itself, natural law can be known independently of Scripture (divine law) and even though not all that belongs to natural law is made explicit in Scripture.

The most important biblical texts for Catholic ethics are found in Paul’s Letter to the Romans, at Rom. 1.16-32 and 2.12-16 (related texts would include 1 Thess. 4.3-8 and 1 Cor. 1.21). Paul acknowledges in these two texts that righteousness comes to Jew and non-Jew alike, although men, especially non-Jews, have suppressed the truth by their wickedness. In visible creation, God had made known to them his own invisible self and so they are ‘without excuse’ with respect to their own evil acts. With their darkened minds they worship images instead of God, and so God has handed them over to their lustful and otherwise intemperate practices: women, contrary to nature [*para physin*—Rom. 1.26], lying with women; men similarly lying with men—all such individuals in the grips of envy, malice, and disobedience. For such sins, says Paul, the Jews will be judged by *the* law; non-Jews (‘Greeks’) will be judged by the law that speaks in their conscience [*syneidēsis*], which enables them (at least theoretically) to do by nature what the law requires, their inner reasonings ‘accusing or also excusing’ them as appropriate (Rom. 2.15). Almost all of the key issues in subsequent Catholic natural law theory come to the surface in these first two chapters of the Letter to the Romans, which is to say, at the very beginning of the Church’s existence. These include the character of our natural knowledge of the precepts of the natural law; the role of conscience, which is inextricably bound up with that same knowledge; the connection between ethics and knowledge of God’s existence; the relationship between natural and divine law; and, finally, the bearing of natural law on the moral characterization of particular immoral acts.

Other scriptural passages important for natural law theory include the several formulations of the golden rule: ‘Everything that you wish that men should do to you, even so you do also to them’ (Matt. 7.12; see also Luke 6.31 and Tob. 4.15]. The golden rule is important because it is often cited as a moral principle that is self-apparently true (see, for instance, Aquinas, *ST* I-II, q.94, a.4, ad.1). This does not mean that the rule is not also part of revelation: the Matthean version of the rule (quoted just now) is followed in the same verse (Matt. 7.12) by the remark: ‘for this is the law and the prophets’. This same issue arises with respect to the ten commandments, which are presented in the (p. 393) Bible not as speaking to man in his heart naturally but as given by God to Moses (Exod. 20.1–17, 34.11–27 and Deut. 5.6–21). This does not prevent Aquinas, for instance, from maintaining that the commandments are part of the natural law. At *ST* I-II, q.100, a.1, he suggests that they are very close to the highest principles of the natural law and so recognized immediately by reason as to be followed; in *ST* II-II, q.122, a.1, they are described as ‘first principles of the law, to which reason immediately assents as to most manifest principles’.

Two Church Fathers

In the earlier Church Fathers, remarks about the natural law are somewhat scattered and unsystematic but important nonetheless as evidence that natural law theory is not a late accretion to Christian doctrine. Sometime between AD 155 and 160, Justin Martyr, in his *Dialogue with Trypho*, associates the golden rule with the second ‘great commandment’, that you should love your neighbour as yourself (Matt. 22.39) (*dial.* 93.2; Justin 2003: 144). He also writes some things remarkably similar to what Aquinas says much later about whether the knowledge of justice can be obliterated from an individual’s conscience. By nature, says Justin, all men know that adultery, fornication, and murder are wrong. When they commit such acts, they know that they are acting unjustly, ‘with the exception of those who, possessed by an unclean spirit—corrupted by their upbringing, by sordid customs and by evil laws—have lost their natural concepts or, rather, who have quelled them or hold them in check’ (*dial.* 93.1; Justin 2003: 144).

A couple of centuries later, in the twelfth of his ‘Homilies to the people of Antioch on the Statues’, John Chrysostom (c.347–407) argues that natural law (*nomos physikos*) or conscience (*to syneidos*) is antecedent to at least some of the commandments of the decalogue. ‘Why is it then that when He says, “Thou shalt not kill”, He did not add, “because murder is evil”? Since He taught us this presupposing conscience, and as to those who know and understand even so He speaks’ (*stat.* 12.9; Chrysostom 1994: 421–422). Later in the same homily, he refers to Paul’s remark about conscience in Rom. 2.15, arguing that, if there were no such thing, how is it that legislators with no knowledge of Moses or the prophets have written laws ‘about marriages, about murders, about wills, about deposits, about fraud, and about a thousand other things?’ (*stat.* 12.12; Chrysostom 1994: 423). It is apparent that Chrysostom did not limit the influence of natural law to the natural inclinations but extended it into the details of human law. In the subsequent homily (the thirteenth), Chrysostom speaks of the golden rule as part of a natural law within us of ‘that which is good and noble and that which is not’. A few paragraphs later he says

that we know by our natural lights that prudence (*sōphrosunē*) is ‘both noble and useful’. He was aware, however, that this did not mean that men necessarily follow natural law or prudence. ‘Knowledge of virtue he has placed within us by nature, but the action and the right ordering he has committed to our choice’ (*stat.* 13.7–8; Chrysostom 1994: 428)

(p. 394) Augustine

In Augustine (AD 354–430), we find more developed ideas on natural law and a more conscious effort to integrate non-Christian ideas into Christianity than in any previous Christian author. *De libero arbitrio*, book one, composed in 388, is the source, at least for Aquinas, of the distinction between eternal and human (‘temporal’) law (*lib. arb.* 1.6.15, 1.15.31; Augustine 1953: 120–121, 130–131). Eternal law, says Augustine, is immutable and is called therefore ‘highest reason’; only with respect to it is human law ‘legitimately created and legitimately altered’. This understanding of the relationship between the two types of law causes the interlocutor in the dialogue identified as Augustine to remark famously, ‘It seems to me that that which is not just is not a law’ (*lib. arb.* 1.5.11; Augustine 1953: 118). (The remark has found its way into legal jargon as the phrase, usually attributed to Augustine, *lex iniusta non est lex*; the idea shows up, however, as early as Plato [*Hp. Ma.* 284d1–e1, *Lg.* iv,715b2–4; Plato 1987: 1537, 1306].) This principle has become an object of scorn to legal theorists of a positivist bent who regard it as undermining authority and, therefore, as a maladroitness intrusion by moralists into the properly legal sphere; but, in fact, Augustine maintains a presupposition in favour of the obligatory character of human laws. He is against judicial interpretation of the law; once temporal laws are established, he says, ‘it is licit for a judge to judge according to them, not regarding them’. His understanding of the legislator’s role is not much different: ‘It is permitted for pure souls to recognize the eternal law not to judge it’ (*vera rel.* 58; Augustine 1953: 255).

This is not to say, however, that Augustine does not recognize the possible development of applications of the natural law. That he recognizes the need occasionally to change human law is manifest in his calling it ‘temporal law’. Such change is clearly called for when those who originally put forward directives had not ‘pure souls’ and were, therefore, not attentive to the eternal law (*vera rel.* 58; Augustine 1953: 255); but Augustine also speaks of ‘temporal law’ as law that is *by definition* alterable: ‘So, if you please, let us call that law “temporal” which, although it is just, can be modified justly according to the times [*per tempora*]’ (*lib. arb.* 1.6.14; Augustine 1953: 120). In a number of places, Augustine speaks of only partial understanding of the natural law even among its greatest exponents. In *Contra Julianum opus imperfectum*, he criticizes Plato, for instance, for advocating in the *Republic* (v,464b5–6; Plato 1987: 703) the promiscuous use of women and therefore violating the ‘natural laws of propagation’, that is, the ‘desire implanted in the human race’ to be sure of one’s own progeny. But what Plato advocated—and was criticized for by Aristotle (*Pol.* ii,1–2; Aristotle 1984: 2000–2002)—at least recognized the natural love of progeny, which he wanted to make more universal by preventing citizens from knowing which woman had born whose son. This, says Augustine, is at least to acknowledge ‘that same voice present in the heart of all fathers’, which caused Cicero to write to

his son, 'Only by you, of all men, would I wish to be surpassed in all things' (*c. Iul. imp.* 6.22; Augustine 1999: 657).

But Augustine is also quite prepared to diverge from Cicero, from whom he derives so many of his ideas on natural law. A good example would be his *De doctrina christiana*, which is heavily dependent on Cicero's rhetorical works and yet opposed to Cicero's (p. 395) occasional blasé acceptance of the use of rhetoric for 'shameful causes' (*Her.* 1.4.6; Cicero 1954: 11–13). The issue is, however, complicated. Cicero does speak of the need for wisdom in addition to eloquence as, for example, at *De inventione* 1.1 (Cicero 1949: 3). At one point, Augustine actually cites the latter passage (*doctr. chr.* 4.5.18; Augustine 1995: 203), but he immediately adds that pagan writers on rhetoric say such things only reluctantly.

Augustine is not against the use of rhetoric by Christian teachers, for he realizes that rhetorical incapacity on their part would mean that the exponents of falsehood might ply their trade eloquently and convincingly, while the exponents of truth speak in a way that bores their listeners and impedes their believing (*doctr. chr.* 4.2.4; Augustine 1995: 197). But Cicero (and other pagan orators) erred in failing to see that rhetoric is essentially—that is, by natural law—for the propagation of truth. We find in the world, says Augustine, 'many who want to lie—no one who wants to be deceived' (*doctr. chr.* 1.36.86; Augustine 1995: 235). He goes on immediately to argue that it is better to be lied to than to lie, 'since it is better to suffer iniquity than to commit it' (*doctr. chr.* 1.36.87; Augustine 1995: 235). This is most likely a reference to Plato's *Gorgias* (e.g. 469c2; Plato 1987: 252) (which is also largely about rhetoric and about which Augustine would have learned through Cicero); but, if it is a reference to Plato, it is also an implicit criticism of him, since, as Augustine knew, Plato was quite prepared to countenance the 'noble lie' for the sake of the common good—even if he is inconsistent on this (See *R.* iii,414b8–c17–e6; Plato 1987: 658 and *Lg* v,730c1–6; Plato 1987: 1317).

The issue of the morality of lying (and of the proper use of rhetoric) is not often mentioned in discussions of natural law, but it ought really to be one of first issues historians examine in order to determine how an author understands natural law and how that author fits into the tradition of its exposition. Augustine wrote two works about lying—*De mendacio* (394) and *Contra mendacium* (420)—and each understands it as speaking (or otherwise communicating) in a way that goes contrary to what one knows in one's own conscience. In *Enchiridion* he says explicitly that language was instituted not so that men might lead one another astray but in order to make their thoughts known to one another (*ench.* 22; Augustine 2005: 287–288). In studying the issue of truth-telling and lying it becomes apparent that natural law is not about humanly natural inclinations *as such* but rather about inclinations to *do* things that have intelligible structures. In the historical debate over this issue we see, too, that understanding natural law is not so much a matter of determining what all (or most) humans agree about but rather of considering moral arguments in order to determine which of them hold up best under philosophical scrutiny—or, for Christians, also under theological scrutiny. Regarding lying, Augustine disagreed

not only with his pagan predecessors but also, occasionally, with his Christian confreres, such as Jerome (*ep.* 82; see Augustine 2001: 315ff).

How Augustine understands the relationship between natural law and Christian grace becomes apparent in his interpretation of the first two chapters of Romans in his *De spiritu et littera* (412). He interprets Rom. 2.14–15, where Paul speaks of the non-Jews who follow the law although they have it not ('they demonstrate the work of the law written on their hearts, their conscience also bearing witness'), as speaking about (p. 396) those non-Jews who have become Christians and have, therefore, the benefit of grace and revelation in understanding the urgings of conscience (*spir. et litt.* 26.44; Augustine 1997: 170–171). This interpretation has in turn been interpreted as Augustine's rejecting pagan theories and acknowledging that fallen human beings are utterly incapable of knowing anything about the natural law, depending for their moral bearings utterly on the grace that comes from Christ. But this is hardly compatible with what Augustine says earlier in the same work in interpretation of Rom. 1.18–21, where Paul says that those who commit various abominations (women lying with women, men with men, etc.) are without excuse since they know God. Says Augustine, 'Notice how [Paul] does not say that they are ignorant of the truth but that, in their iniquity, they have held the truth off' (*spir. et litt.* 12.19; Augustine 1997: 155). This points once again to the fact that it is no argument against natural law theory to note that not everyone agrees with what the proponents of natural law understand to be right or wrong, for at the very core of the theory is the idea that not everyone understands—or acknowledges—what their own consciences say to them.

Thomas Aquinas

In Aquinas's remarks explicitly and specifically about natural law, we find not much that is new; his prominence in discussions of natural law is due largely to the fact that he understood so well the tradition of legal philosophy before him and that he was able to sift out the false and to shape the true into a clear and consistent subpart of his more general ethical theory (that is, his theory of natural law). It also helped that this general theory was of extraordinary breadth and precision.

The main locus of Aquinas's specific remarks on natural law is the so-called 'Treatise on law' in *ST* I-II, qq. 90–97, near the beginning of which he sets out the now classical terminology which we have already seen: 'eternal law', 'divine law', etc. The question dedicated to natural law (q. 94) begins with an article on whether natural law is a *habitus*, that is, a state of the soul. He acknowledges that calling it such is not without sense but that strictly speaking it is a work of reason, 'just as a proposition is a certain work of reason'. In other words, natural law has an intelligible structure. It emerges, certainly, from a psychological state but has more to do with what emerges from that state than with the state itself. As such, it is more readily susceptible than the psychological state to philosophical (and theological) analysis.

This becomes very apparent in the subsequent article (*ST I-II*, q.94, a.2), where Aquinas sets out an elaborate comparison between the structure of theoretical reason and that of practical reason (the latter being subject to natural law). Whereas the principle of non-contradiction is the basic principle of theoretical reason, he says, the basic (or first) principle of practical reason is the precept that ‘good is to be done and pursued and evil avoided’. The doubling up of this principle (pursue good *and* avoid evil) is typical of Stoic natural law theory, although many of the other concepts employed by (p. 397) Aquinas in this article are taken either from Euclidian geometry or from Aristotle. Just as in theoretical reason below the first (and so highest) principle are located secondary principles such as ‘things that are equal to one and the same thing are equal to each other’, so in practical reason, in a roughly analogous position, we find precepts such as ‘ill is to be done to no one’ (*ST I-II*, q.100, a.3) and ‘one should act rationally’ (*ST I-II*, q.94, a.4).

Aquinas develops this comparison between theoretical and practical reason partly in order to bring out the latter’s intelligible structure, but he is well aware that practical reason behaves in a manner very different from (for example) geometry, for, whereas the conclusions of sound geometrical demonstrations are as free from exceptions as the premises from which they are derived, the ‘quasi conclusions’ (*ST I-II*, q.94, a.4, q.94, a.6) of practical reason allow of exceptions as they become more specific and therefore more distant from the primary precepts of natural law. The example that Aquinas uses of a secondary precept is that deposits (that is to say, things given to one in trust) are to be returned; it follows from the precept that one should act rationally. The ‘deposit precept’ comes from Plato, who couples it with the precept prohibiting lies (*R.* i,331c3; Plato 1987: 580), although Plato and Aquinas approach these precepts very differently.

Plato, as we have seen, thinks that lies are sometimes permitted; Aquinas follows Augustine (and claims to be following Aristotle) in saying that they are never permitted (*ST II-II*, q.110, a.3). Plato and Aquinas both hold that the deposits precept is inapplicable when, for instance, the deposit is a weapon and the person asking for its return has in the meantime gone insane. Plato, however, sees this as just one more reason why we ought to regard the concrete moral universe as ultimately unintelligible and to place our confidence in the more elegantly intelligible universe of the Forms. From that perspective also the occasional lie is permitted. Aquinas, on the other hand, like Aristotle, is confident of our ability to analyse the concrete moral universe and to find intelligibility there also; the natural law against lying is part of that intelligibility.

This very attention to the concrete detail demands that Aquinas acknowledge with Plato that the deposits precept does not always have moral force (*ST I-II*, q.94, a.4; also *ST II-II*, q.57, a.2, ad.1). But his explanation of such failures of laws to apply is not a throwing up of his hands and taking refuge in a universe of mere ideals but an immersion in the details of how moral law works in the concrete. It sometimes happens even in the biological world, he says, that nature ‘wants’ to generate an animal but is impeded from doing so. The same thing can happen with secondary precepts of the natural law: the precept has legal force, but unfortunate circumstances, such as the insanity of the owner of a weapon, impedes its issue in a particular obligation. The more detailed a precept is (if, for in-

stance, added to the deposits precept is the requirement, ‘within one day of being asked for the deposit’s return’), the more ways there are in which its legitimate application might be impeded.

Although all precepts have force (in their own way), a person may lack knowledge of lower precepts due to a deformation of his or her reason, the result perhaps of poor upbringing (some society might, for instance, praise and encourage piracy), or of a ‘corrupt state of nature’ (*ST* I-II, q.94, a.4). By this latter, Aquinas does not mean that nature itself or natural inclinations might cause one not to understand the relevant ethical truth (p. 398) but rather that a tendency towards unnatural behaviour might become so ingrained that it becomes ‘natural’ (in another sense) to engage in it. Aquinas is more expansive on this point earlier in *ST* I-II, at q.31, a.7, where, drawing heavily on Aristotle’s *EN* vii, 5,1148b15–31 (Aristotle 1984: 1814), he says that unnatural delight might become *per accidens* natural because of a corruption of nature existing in the person. This might happen for physical reasons—disease, for example, or an inborn defect; or it might be psychological, as when, through habituation, ‘certain individuals delight in eating men or in sexual intercourse with beasts or with males’. Regarding the latter, Aquinas might have continued to draw on the same passage in Aristotle and mentioned that such corruption might be due to abuse in childhood.

In *ST* I-II, q.94, a.4 and q.31, a.7, Aquinas does not mention St Paul’s remark about God’s handing the pagans over to their unnatural practices (Rom. 1.26) and their being ‘without excuse’ (Rom. 1.20), although elsewhere (at *ST* II-II, q.154, a.11), when again discussing unnatural acts, he does make the connection. Does this mean that, even when the knowledge of a precept of natural law is obliterated from or prevented from ever entering into one’s practical awareness, one is still guilty according to natural law? What is the role of conscience here, of which Paul speaks in Rom. 2? Aquinas holds that one is obliged to follow even an erroneous conscience (*ST* I-II, q.19, a.5). Thus, if someone has been brought up among pirates and genuinely believes he is obliged to ply the tribal trade, he must do so. But, if his not knowing that piracy is wrong is due to any negligence on his part, in doing that which (at one level) he is obliged to do, he sins—he is ‘without excuse’—since ignorance for which one is responsible is not the type of ignorance that exonerates morally (*ST* I-II, q.19, a.6).

Can Natural Law Change?

Aquinas asks a question in *ST* I-II, q.94, a.5 that often comes up in contemporary discussions of natural law: can natural law change? His answer is that natural law can often be added to, as when a divine or human law imposes a particular way of following a precept of natural law. And with regard to lower precepts such as the deposits precept, he says, a change might even involve a subtraction, as when the deposits precept applies usually but not in certain cases. But more interesting is a subsidiary issue he confronts in this same article, in the analysis of which he again follows Aristotle—in particular, the pas-

sage from his *Rhetoric* (mentioned earlier), in which Aristotle suggests that it is a universal and natural law that no living creature ought to be killed.

An objection to the idea that natural law does not change cites Isidore of Seville's *Etymologies*: 'the common possession of all things and a single liberty [of all people] is of natural right (*de iure naturali*)' (5.4; Isidore 2006: 117). But, continues the objection, such prescriptions have been changed by human laws—there is private possession and servitude—so the natural law is clearly changeable. Aquinas, who accepts the authority of Isidore, replies that there are two ways of being 'of natural right': one is the standard (p. 399) way, as when 'one should act rationally' informs a number of lower precepts (such as the deposits precept); another is the way in which nature urges nothing to the contrary, 'just as we can say that man is naked of natural right because nature does not provide clothing but human ingenuity (*ars*) introduces it'. Isidore's prescriptions are to be understood in this latter way: private possession and servitude have been introduced by human reason for the benefit (*utilitatem*) of human life (*ST* I-II, q.94, a.5, ad 3). Later in the *Summa theologiae*, Aquinas distinguishes natural right (*ius naturale*) from the 'law of the nations' (*ius gentium*). Servitude, like private possession, he says, pertains to the law of the nations and the latter is natural only in the sense of something that follows upon more fundamental and, strictly speaking, more natural inclinations (*ST* II-II, q.57, a.3c, and ad.2. See also Isidore's *Etymologies* 5.6; Isidore 2006: 118)

Aquinas does not mean that nature has no preferences whatsoever regarding possession and servitude. In a sense nature favours clothing and in a sense it disfavours it: to an extent, it depends on the temperature, although Aquinas's point is simply that nature does nothing to actually provide clothing. Similarly, in a sense nature favours common possession (in times of need) and in a sense it does not (in order to avoid disputes) (*ST* II-II, q. 57, a.3; q.66, a.1–2), but it does nothing about it either way. Regarding servitude, Aquinas says that we naturally resist it (*ST* I-II, q.2, a.4, ad.3; *Sent.* 4.36.1 *sed contra*) but also that we naturally desire it as bringing order to society (*ST* II-II, q.57, a.3, ad.2). Servitude would include what we call 'slavery' but also the relationships between masters and serfs, nobles and domestic servants, kings and subjects, employers and employees, etc. But, again, nature does not do anything in order to erect such relationships, which are of human devising. The same cannot be said of the natural inclination to do no ill to others: nature actually puts this inclination into the soul of man and so it is an instance of the first way of being 'of natural right' set out in *ST* I-II, q.94, a.5.

Aquinas discusses the relationship between servitude and nature also in a passage in his commentary on Peter Lombard's *Sentences*: 4, q.36, a.1, ad.2. Citing passages in Aristotle's *De caelo* [ii,6] and *De generatione animalium* [ii,3] (and also, in the corresponding objection, Gregory the Great's *Magna moralia* 21.15.23), he argues that the 'first intention' of nature—which always aims at perfection—is against servitude, although the 'second intention' allows it as the best that can be attained given naturally occurring conditions. This approach is important for it provides a means of explaining and also guiding alterations in the applications of the lower precepts of natural law. Servitude is the obvious case in point. If certain types of servitude are now regarded as contrary to human

dignity (and, therefore, natural law), that is because conditions are such that human society can now follow more closely the first intention of nature. (In the case of true slavery, its moral character was simply misunderstood by many within the natural law tradition.) To use a more topical example, if capital punishment is now regarded by the Catholic Church as increasingly difficult to justify, this would be because conditions have changed in ways that demand that we adhere more closely to the first intention of nature, as identified by Empedocles and Aristotle: that life be considered good and worth protecting simply because it is life.

(p. 400) The New Natural Law Theory

The one major post-Vatican II advance in the Catholic understanding of natural law is the result of collaboration between Germain Grisez and John Finnis, joined by a number of other scholars who have occasionally worked with them and/or espoused some of their ideas. These latter include Joseph M. Boyle Jr, Robert P. George, Patrick Lee, and William E. May. The theory is a complex one, having been developed, tweaked, and clarified over a period of more than fifty years, beginning with (to take a convenient starting point) Grisez's 1965 article, 'The first principle of practical reason: a commentary on the *Summa Theologiae* 1-2, question 94, article 2'. Grisez's contribution becomes gradually more explicitly theological, in particular, in the three volumes that eventually appeared of his projected four-volume *The Way of the Lord Jesus*; Finnis's has remained more philosophical and legal. Notwithstanding the orientation of his 1965 article, Grisez makes little effort to defend his ideas as consistent with Aquinas's thought, although he certainly maintains that they are consistent with the Catholic understanding of natural law. Finnis has written a major book entitled *Aquinas: Moral, Political and Legal Theory* (1998) in which he defends Aquinas and follows him, although not slavishly.

How does this New Natural Law Theory compare with the tradition of natural law theory as depicted earlier? It makes its keystone Aquinas's first principle of practical reason ('good is to be done and pursued and evil avoided'), and places this within human nature itself and so certainly satisfies the most basic criterion for classification as a natural law theory. It expounds this precept, however, and its attendant precepts in terms of what it calls 'the basic human goods' (such as the good of life, the good of knowledge, and the good of practical reasonableness), an approach certainly not inconsistent with Aquinas, although he does not use the idea of goods in quite the same way. The theory has been criticized for its adherence to the thesis, sometimes associated with Scottish philosopher David Hume (1711-76), that an 'ought' cannot be derived from an 'is' and so for an alleged refusal to acknowledge the role of metaphysics in ethics. However, Grisez and Finnis have replied (compellingly) that the distinction between practical and theoretical reason is important also in Aquinas and Aristotle, who are not forced as a result of maintaining the distinction to exclude metaphysical considerations from ethics.

In *Natural Law and Natural Rights* (351-366), Finnis defends, against certain legal positivists, the adage *lex iniusta non est lex* and thereby puts the New Natural Law Theory squarely in a line of natural law thought that includes Plato (especially in the *Gorgias* and

the first book of the *Republic*), Aristotle, Augustine, and Aquinas (Finnis 1980: 351–366). Both Finnis and Grisez follow Augustine and Aquinas in maintaining that lies are always wrong, connecting this precept with the inclinations inherent to human nature (e.g. Finnis 1998: 154–163; Grisez 1983: 405–412). Like St Paul, neither author hesitates to affirm that certain types of sexual behaviour—women lying with women, for instance, or men lying with men—are intrinsically immoral; and each has defended the Church’s teaching against contraception. Indeed, Grisez’s first printed defence of this teaching (p. 401) appeared a year before his article on Aquinas’s first principle of practical reason and is not unrelated to it philosophically.

In the opinion of the present author, Grisez’s reading of Aquinas’s remarks on the first principle of practical reason in *ST* I-II, q.94, a.2 fails to appreciate the emphasis Aquinas places on the intelligible structures that emerge *from* the inclinations inherent to human nature. An overemphasis on the basic goods as the objects of human inclinations and choices and a concomitant lack of emphasis on the intelligible structures of exterior acts as analysable separately from—although not existing independently of—the intention with which they are performed (see *ST* I-II, q.18, a.6) has affected the whole subsequent development of the New Natural Law Theory. It has led its primary exponents into tension with authoritative statements by the Church regarding, for instance, the type of therapeutic abortion known as craniotomy. It has occasionally also led them into tension with common sense, as when Grisez claims that, in considering the morality of using without permission an automobile belonging to another, the fact that the automobile belongs to another does not in itself determine the moral character of that act—as Aquinas, in effect, says it does (Grisez 1983: 1. 247).

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