

# **Ultimate Normative Foundations**



# **Ultimate Normative Foundations:**

## **The Case for Aquinas's Personalist Natural Law**

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*To Our Blessed Mother of Guadalupe*



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## List of Abbreviations

Bk	Book
Bonum Precept	“Good is to be done and pursued; evil is to be avoided” (Aquinas, <i>S.T.</i> I-II.94.2c)
Ch.	Chapter
<i>GBF</i>	<i>Germain Grisez, Joseph Boyle, John Finnis</i>
<i>In Charity</i>	<i>Saint Thomas Aquinas on Charity</i>
<i>In N.E.</i>	<i>Commentary on Aristotle’s Nicomachean Ethics</i> (Aquinas)
<i>Lieber Code</i>	<i>General Orders 100; The Code for the Government of the</i> <i>Armies in the Field</i> (Abraham Lincoln)
<i>LR</i>	<i>Love and Responsibility</i> (Karol Wojtyła)
<i>N.E.</i>	<i>Nicomachean Ethics</i> (Aristotle)
<i>On Laws</i>	<i>On Laws and God the Lawgiver</i> (Francisco Suarez)
<i>SCG</i>	<i>Summa Contra Gentiles</i> (Aquinas)
<i>S.T.</i> I-II	<i>Summa Theologica prima secundae</i> (Aquinas)*
<i>S.T.</i> II-II	<i>Summa Theologica secunda secundae</i> (Aquinas)*
<i>Treatise</i>	<i>The Second Treatise of Government</i> (John Locke)
<i>UDHR</i>	<i>Universal Declaration of Human Rights</i>
<i>V.S.</i>	<i>Veritatis Splendor</i> (John Paul II)

\*Aquinas’s *Summa Theologica* is divided into three parts, with the second part subdivided into two, namely, the *prima secundae* (the first of the second part) and the *secunda secundae* (the second of the second part). These are subdivided into articles headlined by a question, followed by objections, abbreviated *obj*, which is followed by the body (*corpus*) of the article, abbreviated *c*, which is followed by replies to the objections, abbreviated *ad*. As a result, the traditional way of citing refers to each of these subdivisions. For instance, *S.T.* I-II.3.4 *ad* 6 refers to the *prima secundae*, question 3, article four, response to objection 6; while *S.T.* II-II.35.5c refers to the *secunda secundae*, question 35, article 5 *corpus*. Aquinas always begins the *corpus* of each article with the words *I answer that*.



## Preface

In this book, we seek to identify the normative theory that is capable of explaining and justifying two moral and juridical phenomena. The first of these phenomena is culpability. Culpability would not be possible if moral and legal obligations were discretionary or merely prudential. Culpability thus presupposes that obligations indefeasibly bind here and now. Since such indefeasibility is characteristic of moral and legal systems across the globe, we ask: why is indefeasibility ubiquitous?

The second phenomenon is the universal condemnation and proscription—by both morality and human law—of certain acts, such as genocide, as well as the universal prescription of other acts, e.g., the care of one's children. So we ask: why are certain obligations universal?

Explaining and justifying these two phenomena requires an investigation into the ultimate foundations of normativity that takes us deep into metaethics, normative ethics, and applied ethics.\* For we seek the normative theory best able to justify the universality of certain norms as well as the indefeasibility of moral and juridical obligations, whether universal or particular.

\*Morality is typically identified as dealing with what is considered good and evil, right and wrong, while ethics is identified with the explanation and justification of morality. As a result, ethics can be divided into three branches: (1) metaethics for establishing the essential structures of morality, e.g., the nature of moral obligations, moral psychology, moral epistemology, and the source of ethical values; (2) normative ethics for establishing norms that specify what is obligatory; and, (3) applied ethics for establishing morally requisite actions in particular cases, e.g., in wars or bioethics.

We shall find that personalist natural law—as expounded by Aquinas in terms of a love of God and neighbor that is other than Christian charity, and as updated by John Paul II in terms of personalism and rights—is the theory that we seek.

The argument for this finding in favor of personalist natural law is complex and has several parts. Part One argues that intractable metaethical flaws plague most paradigmatic ethics, including, for instance, Kantian ethics, autonomous virtue ethics, and some versions of natural law. Parts Two, Three, and Four argue that personalist natural law not only escapes these problems, but also avoids other fatal flaws. Part Five explicates the normative specifications of love vital for global morality and jurisprudence. Finally, Part Six considers the challenges raised by moral and juridical diversity across the globe and argues for the perennial relevance of personalist natural law. I then conclude that personalist natural law offers the global community a normative system able to counter key objections, denounce cruelty, unmask tyrannical pretensions, promote kindness, justify inalienable rights, and advance a global jurisprudence capable of making our world more humane without overriding legitimate moral and juridical diversity.

## Acknowledgments

Many thanks to the University of St. Thomas in St. Paul, Minnesota, for the sabbatical release time, to the Aquinas Foundation for various grants, and to the editors of the University of St. Thomas *Law Journal* for permission to include revised excerpts from my 2006 article “Juridical Prudence and the Toleration of Evil: Aquinas and John Paul II,” *University of St. Thomas Law Journal* 4, no. 1: 25–46; and my 2005 article “Tolerance, Society, and the First Amendment: Reconsiderations,” *University of St. Thomas Law Journal*. 3, no. 1: 75–91.

Many thanks to all who have provided invaluable feedback on various sections through the years including Gordon Barnes, David Clemenson, David Deavel, Fr. Kevin Flannery, Heidi Giebel, Stephen Heaney, Ken Kemp, Fr. Joseph Koterski, Mathew Lu, James Madden, Eric Pedersen, Mary Catherine Sommers, Christopher H. Toner, various anonymous readers, and especially Ann M. Hale. Many thanks to my colleagues and to all my teachers—especially the director of my master’s thesis, Raphael Waters, and the director of my doctorate thesis, Joseph Boyle—for sharing their wisdom, their passion for truth, their enthusiasm for argument, and their conviction that arguments among friends of truth bring philosophical insight.

I am also very grateful to all whose encouragement to philosophize has sustained me over the years, especially Johnrose and Rose Hayden, Chad Lemmons, and Mary F. Rousseau. But most of all, I am very grateful for the patience, love, and joy given me, through the long years of writing this book, by my dear friends, and by my family, especially my husband, Chad, and our children, Rosemary and David. Finally, I am grateful to you, my reader, for joining me in this investigation into the foundations of moral truth.



## Introduction

Within human experience, we find a hierarchy among our obligations. We consider, for instance, the obligation to go—as promised—to the movies with friends to be defeasible and overridden by the obligation to take one’s child to the emergency room. Why can some obligations be identified as defeasible and thereby eligible for being overridden, while others cannot be? What accounts for the indefeasibility of certain obligations? Why does moral fault characterize the failure to accord with indefeasible obligations—even if that failure is unknown to others? Why is it that, despite differences, moral aspirations and codes of some sort characterize every people and bind every heart?

An historical explanation for the ubiquity of indefeasible moral obligations can be found in the ancient belief that morality was a requirement of heaven—religiously understood: the gods or one’s ancestors would not—or, could not<sup>1</sup>—tolerate moral lapses. But heaven can also be understood as embodying a moral order that establishes indefeasible and ubiquitous obligations. For the ancient Greek Sophocles—and others<sup>2</sup>—these heavenly obligations bound even rulers, as shown by *Antigone*’s protest against a royal decree: “[N]or deemed I that thy decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of today or yesterday, but from all time, and no man knows when they were first put forth.”<sup>3</sup> Nearly a hundred years later, the indefeasibility of these heavenly obligations was explicitly linked to nature—and, thereby to universality—by Aristotle:

Universal law is the law of nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocles’s

Antigone clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature.<sup>4</sup>

The universality of nature was thereby deemed sufficient for establishing universal and indefeasible obligations—even for rulers across the globe. In this way, not only were the parameters of human law set, but so was the need for any obligation that is other than discretionary to partake of the authority of nature.

But how does this work? How can nature be the source of specific indefeasible obligations? The history of natural law shows that theorists have yet to reach a consensus.<sup>5</sup> Nevertheless, theories of natural law can be divided into two generic categories according to whether nature's goodness or God's—non-arbitrary<sup>6</sup>—will is identified as the source of morality's indefeasible and universal obligatoriness. Those theories identifying God as the source of obligatoriness hold that it is God's command to accord with the goods of nature that makes nature binding. I identify these theories as versions of "divine prescriptivism." Leading proponents of divine prescriptivism have included Francisco Suarez and John Locke.<sup>7</sup> More recently, a new version of divine prescriptivism has been proposed by Jean Porter.<sup>8</sup>

On the other hand are all those versions of natural law that identify the source of obligatoriness with either a set of objective goods or with one paradigmatic good. (These versions may or may not also rely on a theistic metaphysics as the ultimate explanation for why indefeasible and universal obligations arise from a good or a set of goods.<sup>9</sup>) I call these versions of natural law "classical," since they were first developed by the ancient Greeks and Romans.

Classical natural law can be divided into axiomatic and non-axiomatic systems. Axiomatic versions of natural law consider morality to be a closed axiomatic system of norms where secondary precepts can be strictly deduced from a few more basic precepts without the need of experience. Hugo Grotius has been identified as a key proponent of axiomatic natural law.<sup>10</sup> We shall not be investigating this version of natural law, since all closed axiomatic ethics succumb to various difficulties, most notably, the impossibility of having *a closed set* of specific moral norms be applicable in every situation.<sup>11</sup>

The need for a non-axiomatic natural law was recognized by Aquinas: "But in matters of action, truth or practical rectitude is not the same for all as to matters of detail, but only as to the general principles: and where there is the same rectitude in matters of detail, it is not equally known by all" (*S.T.* I-II.94.5c). Non-axiomatic versions of natural law include not only Thomism as developed by Thomas Aquinas and refined by John Paul II,<sup>12</sup> but also two other families of natural law, namely, what I call "voluntarist naturalism," and



“eudaimonic pluralism.” Voluntarist naturalism identifies humans as possessing libertarian free will, while also identifying the ends of natural inclinations as the specificatory principles of moral obligations. Eudaimonic pluralism identifies a variety of goods as constituting eudaimonia. A version of eudaimonic pluralism has been developed by Germain Grisez, Joseph Boyle, and John Finnis (GBF) insofar as they identify a variety of incommensurable goods as constituting integral human fulfillment. As we shall see in Part One, these versions of natural law differ primarily according to the ways in which they identify the basis of obligations and how they treat the normativity of good.

Yet another new version of classical natural law may be developing, in part, as a result of various international documents that proclaim the existence of human rights as if they were self-evident manifestations of the respect owed to human beings. For instance, the *Universal Declaration of Human Rights* states in its prologue that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>13</sup> Likewise, the preambles to both the *International Covenant on Economic, Social and Cultural Rights*<sup>14</sup> and the *International Covenant on Civil and Political Rights*<sup>15</sup> state that “rights derive from the inherent dignity of the human person.”<sup>16</sup>

However, since these documents do not specify the basis for respecting persons and their rights, they are vulnerable to being interpreted in ways opposed to the classical natural law tradition that conceived them.<sup>17</sup> Indeed, there is deepening interest in grounding rights, not in the objectivity of human nature, but rather in liberty.<sup>18</sup> Any such a reduction of rights to liberty and liberty to interests or desires cannot warrant indefeasible and universal obligations, since changes in socially permissible desires or interests would override any prior moral obligations. As a result, the ambiguity present in human rights renders them unable to explain and justify per se indefeasible and universal moral obligations.

Besides the various warrants for universal and indefeasible obligations given by families of natural law, others are possible, namely, rational intuitionism,<sup>19</sup> Kantianism,<sup>20</sup> the social goods indispensable for a community, and, the virtues taken autonomously (i.e., as not subordinated to universal rules of reason). These normative foundations as well as the normative foundations of natural law are explored below as we seek to answer two basic questions: (1) which of these, if any, suffices to establish the universality and indefeasibility of certain moral norms, e.g., the proscription of genocide; and (2) which, if any, offers help to today’s world by providing a solid foundation for a global jurisprudence and morality. The first question is addressed in Parts One through Four. The last question is addressed in Parts Five and Six.

More specifically, Part One examines those paradigmatic ethical theories with problematic normative foundations. Part Two then argues that the best way to ground indefeasible and universal obligations was expounded by Aquinas because he identified those obligations with the requirements of practical rationality, *eudaimonia*, and love without conflating those obligations with the ones that are unique to religious believers. Part Three considers a series of objections to this interpretation of Aquinas. Part Four considers whether Thomistic natural law is able to meet the otherwise fatal objections arising from contemporary philosophy. Is it the case, for instance, that human nature is too indeterminate to generate specific obligations—as argued, for instance, by Jean Porter (1999, 142–3; 2005, 176)—that descriptions of good cannot ground obligations (Hume 1992, 469–70); that moral objectivity is unwarranted (Mackie 2001, 259–76); that freedom ought not be subordinated to objective goods (Nietzsche 1966, 204–8); and that the contemplation of God is unnecessary for happiness (Nielsen 1990, 101). Part Five then explicates the normative specifications of Thomistic natural law in terms of the love precepts and personalism. In doing so, the section explores whether personalist natural law is able to specify the virtues and generate traditional natural law precepts, such as those concerning punishment and war. Part Six considers whether personalist natural law is able to offer the growing global community a helpful ethics and jurisprudence, especially in light of today’s feminism and normative diversity. Finally, there is an appendix that places natural law into its historical context and traces its key developments, and lines of influence. The appendix thereby tacitly argues that natural law encapsulates the wisdom of the ages; that the current global community, such as it is, has been built within the bulwarks of natural law; and that natural law offers the future a map for avoiding Balkanization and endless strife.

## Notes

1. The Aztecs, for example, believed that without the blood of human sacrifices the sun god would not be able to rise in the morning. See Michel Graulich (2000).
2. This way of viewing the heavens may not have been unique to the Greeks. The texts of Confucius suggest a similar approach. See, for instance, Jiyuan Yu (2005).
3. Sophocles (2009) *Antigone*.
4. Aristotle (1941b) *Rhetoric*, Bk. 1, ch. 13, 1373b6–11.
5. There are some excellent in-depth histories of natural law; see, for instance, Michael Bertram Crowe (1977), Thomas E. Davitt, S.J. (1951), and Brian Tierney (1989, 1997). Otherwise, a very brief sketch is given in the appendix.

6. Indefeasible universality cannot arise from an arbitrary Divine Will as proposed by Divine Command theory. For since an arbitrary Divine Will could only be known through special revelations, only believers in Holy Scripture could know about indefeasible moral obligations. No such obligation could then be universal.

7. Divine prescriptivism is extensively discussed in chapter 2.

8. Jean Porter (1999, 2005). Porter's early work is extensively discussed below in chapter 5, her later work in chapter 11.

9. For instance, theistic metaphysics underpins Aquinas's natural law but not Ayn Rand's objectivism, which relies on a non-theistic metaphysics of good to warrant identifying the criterion of good and evil as "that which is required for man's survival qua man" (A. Rand 1964c, 23). For some of her arguments against a malevolent universe see her "Ethics of Emergency" (A. Rand 1964a).

10. A. P. D'Entrèves (1970, 55); Pope (2005, 46). Grotius is also famous for declaring that even if there were no God, natural law would persist. By so doing, he was not interested in secularizing natural law (Edwards 1970, 784–807). Nor was Grotius the first to suggest the possibility of a secular natural law; it was also suggested by Gabriel Biel (Sigmund 1971, 59) and by Gregory of Rimini in his *On the Sentences* Bk. 11, d. 34, d. 1 a.2 (E. B. F. Midgley 1975, 477 n. 26). For more discussion see Brian Tierney (1997) and the Appendix: A Historical Sketch of Natural Law.

11. Perhaps, the inadequacies of closed axiomatic systems was best put by William Sweet, "We cannot, as the Enlightenment approach suggests we can, take account of all values and find a set of rules that can help us to prioritize these values while at the same time recognizing them for what they are and giving them their moral weight. Moreover, a 'rationalistic' procedure based on the mere following of certain rules falls short; what we need instead is the development of skill in judgment—something suggested by Aristotle's model of the practically wise person, the *phronimos*. Here, reason leaves room for the notion of 'insight'" (2000, 224).

12. Before he became pontiff, Wojtyła argued in *LR* that all moral obligations are based on the "Personalistic Norm": "A person is an entity of a sort to which the only proper and adequate way to relate is love" (1981b, 41). By so doing, Wojtyła reframed morality—long understood as to be an objective natural law, as the appendix shows—in terms of love and personalism. The need for this reframing resulted from the Thomistic tradition's failure to understand that Thomistic natural law is actually based on the love of God and neighbor understood in terms other than Christian charity, as I have previously argued, see R. Lemmons (1992a) and under my maiden name Hayden (1988). Wojtyła advances the reframing of natural law in terms of Thomistic personalism not only by arguing in favor of the Personalistic Norm, but also by arguing that Thomistic metaphysics is necessary for properly understanding the nature of the human person and his moral life, see Wojtyła (1993b, 165–75) and Jarosław Kupczak (2000). Wojtyła's personalism offers Thomism a fuller understanding of human freedom and a new appreciation for the indispensability of religious liberty and the inalienability of human rights, see Thomas Williams (2005), as well as chapters 3, 15, and 16 below. Furthermore, after he became the Roman Pontiff John Paul II, Wojtyła reaffirmed the perennial importance of natural law and Aquinas. See, for instance, the encyclicals *Veritatis Splendor* (paragraphs 12, 36, 40, 44, 50, 67, 76, 79) and *Fides et*

*Ratio* (paragraphs 43–4, 57–8, 61, 78).

13. <http://www.un.org/Overview/rights.html> (accessed December 28, 2009). For the philosophical background of the drafters of the *Universal Declaration of Human Rights*, see Mary Ann Glendon (2001b).

14. <http://untreaty.un.org/English/TreatyEvent2001/pdf/08e.pdf> (accessed December 28, 2009).

15. <http://www.un.org/millennium/law/iv-4.htm> (accessed December 28, 2009).

16. The *International Covenants on Rights* are extensively discussed in chapter 18.

17. For a history of rights versus natural law see Francis Oakley (2005).

18. The reduction of rights to desires is not new: it can be found in both Thomas Hobbes and John Stewart Mill. When Hobbes identified rights with desires and liberty interests, he divided rights from law and identified law as constraining liberty and rights, as put in the *Leviathan* ch. 13: “Right consisteth in liberty to do, or to forbear; whereas law, determineth, and bindeth to one of them: so that law and right differ as much as obligation and liberty; which in one and the same matter are inconsistent” [sic] (1985, 189). When John Stewart Mill identified rights with liberty interests, he argued that these placed parameters on the law, as put in *On Liberty*: “every one who receives the protection of society owes a return for the benefit . . . [and is] bound to observe a certain line of conduct . . . [that] consists, first, in no injuring the interests of one another . . . which . . . ought to be considered as rights” (1947, 75). For excellent histories of rights see Brian Tierney (1989, 1997) and Michael Betram Crowe (1977) and John Finnis (1980). I also discuss rights in chapters 15 and 18.

19. Proponents of rational intuitionism include G. E. Moore (2005); William David Ross (1930); David McNaughton (2000); and Robert Audi (2007). Rational intuitionism is evaluated in chapter 1.

20. According to Kant: “There is, therefore, only one categorical imperative. It is: Act only according to that maxim by which you can at the same time will that it should become a universal law.” (1959, 39). “The practical imperative, therefore, is the following: Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only” (47). Kantianism is evaluated in chapter 2.

## *Part One*

### **Problematic Sources of Normativity**

The question that frames the chapters in this part is which—if any—of the non-Thomistic paradigms of normativity can establish the indefeasibility characteristic of moral and legal culpability across the globe, while also being able to specify universal norms, e.g., those proscribing genocide or prescribing the care of one's children.

Our investigation into normative foundations is not exhaustive: we seek to identify the foundation most suitable for establishing indefeasible and universal obligations—not to catalogue all the possibilities,<sup>1</sup> while also situating those possibilities within the context of their proposers' overall philosophy and historical context. Our scope is narrow; we seek the best foundation for universal, normative indefeasibility.

The chapters of Part One proceed from the simplest foundation to the most complex. The simplest ground is that moral obligations are simply intuited as proposed, for instance, by the intuitionism of W. D. Ross or that of Jacques Maritain. These are discussed in Chapter One.

The inadequacies of intuitionism suggest that a better ground would be to base morality on a moral rule commanded by the will. This monistic warrant was first proposed by Kant and has been adapted by others as discussed in Chapter Two.

Monistic difficulties with identifying the human will as that which both commands and specifies moral obligations lead us to explore, also in Chapter Two, the dualistic foundation offered by those versions of natural law (that I call "divine prescriptivism") wherein nature is the source of moral specification and God's will is the source of indefeasible obligatoriness. Prominent proponents include Francisco Suarez, John Locke, and Jean Porter.

By holding that nature describes while only the Divine Lawgiver commands, divine prescriptivism attempts to do what classical Divine Command theory cannot do, namely, hold non-theists morally culpable for any immorality. Classical Divine Command theory cannot hold non-theists morally culpable because it bases morality's content and obligatoriness on God's arbitrary will. As such, Divine Command theory is centered on the claim, put forward by William Ockham (1979),<sup>2</sup> that obligations originate in the will of God as freed from any necessitation whatsoever. But if all moral obligations were nothing other than the *arbitrary* dictate of God's will, then one could not know one's moral obligations without first knowing God's will; and, this would mean that no moral obligations could be known by sincere atheists and agnostics.<sup>3</sup>

The reduction of moral obligations to theistic obligations thus precludes the possibility of moral obligations being universally known. Classical Divine Command theory cannot then provide the warrant for morality's universality. Neither can classical Divine Command theory adjudicate opposing moral claims made by theists. If moral goodness is a completely arbitrary designation of God, then—apart from special revelation—there's no way, for instance, to discern whether human sacrifice is mandatory as held by the ancient Aztecs, or forbidden as held by the Jews and others.

More recently, Divine Command theorists have attempted to meet this objection by distinguishing the epistemic and normative warrants for moral obligations.<sup>4</sup> Whether the knowledge of good and evil can be successfully distinguished from obligatoriness is a key issue in Chapter Two's determination of whether divine prescriptivism can explain or justify the culpability caused by the indefeasibility of moral obligations across the globe.

We shall see, however, that intractable difficulties with culpability persist in divine prescriptivism and require us to consider the possibility that some good or goods of nature suffice both for the indefeasibility of obligations and moral specification. There are several possibilities compatible with the culpability made possible by libertarian free will. One possibility is that the end of every natural inclination suffices per se for universal and indefeasible obligations. To so treat natural inclinations is a form of voluntarism; I accordingly describe it as form of voluntarist naturalism.<sup>5</sup> It is examined in Chapter Three.

Another possibility is that moral obligations are based on indispensable social goods. This possibility is examined in Chapter Four. Yet another possibility is that there is one good (eudaimonia) that suffices per se for obligations either because it consists of partial goods that together constitute human fulfillment or because it is the paradigmatic good. Autonomous virtue ethics, and eudaimonic pluralism take the first option, as argued in the final

chapters of Part One. Thomistic natural law takes the second option, as argued in Part Two.

### **The Normativity of Theories Beyond Our Scope**

Since the scope of this book is limited to identifying the normative ground best able to establish universal and indefeasible obligations, several well-known ethical theories are placed beyond our scope, such as, those proposed by Jeremy Bentham, John Stewart Mill, A. J. Ayer, R. M. Hare, David Hume, Charles Darwin, and their contemporary followers. The inability of these normative theories to warrant universal and indefeasible obligations are considered by some as great strengths, but by us as weaknesses that reveal what a normative system seeking to establish universal and indefeasible obligations must avoid. Let us then very briefly sketch some of the ways in which these normative systems fail.

Let us begin with expressivism. Expressivism, whether formulated in terms of emotivism by A. J. Ayer (1936), or formulated in terms of prescriptivism by R. M. Hare (1952)<sup>6</sup> identifies moral claims as expressions of one's feelings or commands. As such, they lack not only objectivity, but global uniformity, since feelings about morality differ across the globe. Versions of expressivism cannot then be the normative theory that we seek.

Neither can utilitarianism be that ethics; for, utilitarianism opposes identifying as universal and absolutely indefeasible any obligation other than the obligation to pursue utility, originally understood as maximizing pleasure and minimizing pain for society's greatest number, but more recently understood in terms of any social benefit.<sup>7</sup> Utilitarianism thereby permits either any *act* in which utility compensates for pain, or any *rule* that maximizes social well-being. As a result, neither act nor rule utilitarianism can condemn as immoral the pleasures of the ancient Roman Colosseum, in which the few were thrown to the lions for the pleasures of the many—and the utility of the Roman Empire. Attempts to block this entailment by requiring utility to benefit the worst off, as proposed by prioritarian rule-consequentialism, compromises both impartiality and the purity of utilitarianism by borrowing moral values from outside of itself (Hooker 2000, 62, 65).<sup>8</sup>

Moreover, as Thomas Hill argues, utilitarianism or rule-consequentialism would remain "morally inadequate," even if "Kantian elements are so utility promoting that they will be incorporated into the best moral code from the rule-consequentialist perspective" (2005, 173). The "moral deficiency" arises from the utilitarian "attitude of indifference towards everything but consequences" (171). This indifference permits sacrificing individuals for the sake of others. As put by Brad Hooker: "Presumably, rule-consequentialism will favor some such rule as 'When necessary to save the world, or even just some significant

proportion of humanity, one may be required to make an extreme—even the ultimate—self-sacrifice” (2000, 169). Indeed, the ability of social utility to override individual rights precludes not only the ability of utilitarianism to sustain the values and the individual rights supportive of the human person but also its compatibility with democracies. For this reason, Mark Tebbit argues that “the uncomfortable truth is that democratic freedoms do not always coincide with the interests of the majority, or with raising the aggregate welfare of society. It is much more conducive to efficiency to suppress dissent. The interests of utility, it seems, do conflict with a general respect for individual rights” (2005, 134). The inability of utilitarianism to establish indefeasible and universal rights able to protect individuals indicates that the ground of human rights must be other than the utility interests of the social majority.

This ground, moreover, cannot simply be in-born feelings, e.g., those of sympathy or sentiment as proposed, for instance, by David Hume<sup>9</sup>—for several reasons. First, sentiment is incapable of explaining and justifying how it is that we can have obligations that are contrary to one’s feelings, e.g., the parental obligation to discipline one’s cutest and most adorable, but disobedient, child. Second, sentiment cannot adequately specify normative and juridical obligations. Consider, for instance, two caring and generous brothers who would not hesitate to help each other. Then the elder brother becomes a drug dealer and greatly impresses the younger brother with his financial prowess and street smarts, before requesting the younger brother to help him by making deliveries and giving out free samples to his classmates in the hopes of creating new addicts and clients. In such a scenario, it is likely that the younger brother would be not only repulsed by the thought of refusing the older brother but also eager help him. Such sentiments, however, would eliminate neither the younger brother’s ability to choose and do otherwise, nor the moral obligation to choose and do otherwise. All moral obligations are thus not reducible to sentimentality; and, the ground of normativity cannot be feelings of sympathy.

But what if normativity is grounded only on sentiments arising from an impartial perspective? Such a ground was suggested, for instance, by David Hume:

[C]onsider that every particular person’s pleasure and interest being different, ‘tis impossible men cou’d ever agree in their sentiments and judgments, unless they chose some common point of view, from which they might survey their object, and which might cause it to appear the same to all of them. Now, in judging of characters, the only interest or pleasure, which appears the same to every spectator, is that of the person himself, whose character is examin’d’ or that of persons, who has a connexion with him. And tho’ such interests and pleasures touch



us more faintly than our own, yet being more constant and universal, they counter-balance the latter even in practice, and are alone admitted in speculation as the standard of virtue and morality. They alone produce that particular feeling or sentiment, on which moral distinctions depend. (*Treatise of Human Nature* Bk. 3, part 3, sec. 1; 1992, 591). (sic)

Hume's identification of normativity with the sentiments of impartial spectators caused by another's character state leaves his morality underdetermined and susceptible to normative inconsistencies. For, since it is not only possible for a good person to make a moral mistake or to otherwise not act in accord with his moral character, but also possible for a wicked person to do a good deed, a person's character does not suffice for identifying the morality of the act. Furthermore, even though Hume hoped that human nature would suffice to give all impartial spectators the same affective reaction to a person's character state,<sup>10</sup> such is not the case as shown by the diverse reactions to the character states of public officials. Humean sentiment, thus entangles us in intractable moral disputes and cannot be the source of normative universality and indefeasibility that we are seeking.

But perhaps it is possible to adapt Humean ethics so that it can handle moral disagreements. Justin D'Arms (2005), for instance, distinguishes between types of emotions and argues that moral disagreements can be adjudicated by those natural emotions that are resistant to reason's evaluative judgments since they arise from the process of natural selection.

A different tack is taken by James Rachels (2000). He argues that moral disagreements are due to "ignorance, prejudice, self-deceit and the like" (88). Hence, moral disagreements can be adjudicated by reason's ability to indirectly influence sentiment, since "what people care about is itself sensitive to pressure from the deliberative process" (80). Accordingly, Rachels considers moral reasoning to be the process of "considering facts that have the power to influence your attitudes, considering in Hume's words, 'the constitution of your nature' . . . [a nature] formed by natural selection" (90). In this way, Rachels seeks to resolve moral disagreements while also reaffirming the emotional ground of morality: "Moral properties are powers to provoke sentiments in us" (88).<sup>11</sup>

**"Moral good and evil are certainly distinguish'd by our sentiments, not by reason" (David Hume *Treatise of Human Nature* Bk 3, part 3, sec. 1; 1992, 589).**

Yet another tack is taken by Roger Crisp (2005). He argues that Hume is properly interpreted as holding that impartiality requires social utility and that disagreements can be resolved in terms of utility,<sup>12</sup> even though Hume is a virtue ethicist (169) and not a maximist (170-73). Similarly, Stephen Darwall (1993) argues that, despite tensions in Hume's thought, Hume is best understood as holding "that the moral obligation to justice consists in moral approbation for the trait of justice" understood as following the rules of reason (440).

Whether neo-Humeans seek to resolve moral disagreements by appealing to naturally selected emotions, to emotions resulting from reason's influence, to emotions arising from an impartial perspective, or to emotions appreciative of virtue and acting in accord with the rules of justice, they are left with Hume's identification of feelings as the ultimate ground of human action and normativity. As Hume puts it in his *Treatise of Human Nature*: "Morals excite passions, and produce or prevent actions. Reason of itself is utterly impotent in this particular. The rules of morality, therefore, are not conclusions of our reason" (Bk 3, part 1, sec. 1; 1992, 457). From this it follows that, according to Hume, emotional convictions trump all others.

But if feelings of moral righteousness sufficed for morality, then it would not be possible for them to lead one astray and vindicate, for instance, lynching. Furthermore, given the variability of what receives moral approbation across the globe, and even across one's own lifetime, ethical theories relying on emotions cannot provide the normative foundations for universal obligations.

Neo-Humeans are also left with Hume's Achilles' heel, i.e., a compatibilism asserting that "reason is, and ought only to be the slave of the passions, and can never pretend to any other office than to serve and obey them" (*Treatise of Human Nature* Bk. 2, part 3, sec 3; 1992, 415). Compatibilism eliminates the possibility of being obligated to a course of action independently of one's deepest emotional convictions—or, even the possibility of being able to act contrary to one's strongest desire. As a result, compatibilism renders culpability and the indefeasibility of moral obligations inexplicable. Indefeasibility is precluded because it presupposes the possibility of culpability and culpability presupposes that one need not act in accord with an obligation regardless of how deeply that obligation is felt. Indefeasibility and culpability thereby necessarily presuppose libertarian freedom, i.e., the freedom to act contrary to particular obligations, desires, and feelings.

Such libertarian freedom is integral to the human experience.<sup>13</sup> As Lloyd L. Weinreb put it: "[W]e live in a condition of human freedom and hence, human desert. It is a structured fact of our experience, which cannot be contradicted without altering the nature of our experience, not merely in some concrete particular(s) but in a fundamental way, making it a different experi-

ence entirely” (1993, 9). In other words, not only have each of us experienced acting against our strongest feelings when convinced that morality demands it, but each of us has also lived under a legal system that is intolerant of those who harm others by failing to act against their strongest desires. The angry parent is not exonerated for lethally striking his toddler, regardless of the provocation.

Hence, those normative theories that reject libertarian liberty and presuppose compatibilism cannot be the theory that we seek. After all, any ethics that presupposes compatibilism reduces obligations to desires or feelings, thereby removing the possibility of being obligated regardless of one’s feeling and desires. This is so even if obligations are identified as special feelings arising from conditioning (J. Q. Wilson 1993),<sup>14</sup> or to instincts shaped by natural selection (E. O. Wilson 1980, 287–8).<sup>15</sup> Charles Darwin, for instance, attempted to explain obligations by reducing them to expressions of the moral sense, identifiable as conscience’s feelings of right or wrong caused by replaying one’s actions in the light of the ever present social instincts<sup>16</sup> rooted in the emotion of sympathy (1897, 97–115).

Were Darwin right that obligations reduce to feelings or instincts, there would be no obligation, for example, to treat the visiting stranger justly in the absence of feeling obligated to do so. Nor would there be any obligation to restrain from harming when anger makes one feel that the other deserves such ill-treatment. The reduction of obligation to desire, emotion, or instinct thereby precludes having obligations that bind irrespective of one’s desires, emotions, or instincts. As a result, indefeasibility cannot be explained by evolutionary ethics. Evolutionary ethics cannot then be the normative theory that we seek.

**Moral sense “is summed up in that short but imperious word *ought*. . . . It is the most noble of all the attributes of man” (Darwin 1897, 97).**

Is it then the case that the indefeasibility of obligations depends somehow on rationality? Against this possibility, Michael Slote argues that if obligations were dependent on rationality, then conscience would couch its reproaches in terms of irrationality, rather than by inducing “anxiety, fear, guilt, and/or self-loathing” (2005, 212–3).

Such emotions, however, do not suffice for proving that conscience is an emotional reaction rather than a judgment of reason. Remorse or guilt is as different from reason’s judgment of moral failure as exaltation is different from reason’s judgment that one has won two million dollars.

Besides, if conscience were really reducible to emotional or instinctive reactions, and if moral responsibility really did not presuppose rationality, then

an emotionally sensitive toddler who pushes a baby stroller over the edge of a very steep hill would be as guilty as an adult for doing so—on the assumption that the emotions of each would be comparable. But we would hold only the adult morally and legally responsible, because, unlike the toddler, the adult could have and should have considered the steepness of the hill in relation to his duty to keeping the baby safe.

To assign responsibility only to those of sound minds is to acknowledge that moral duty must be other than feelings or emotional commitments. It is to hold that obligations are knowable by reason—that morality is a function of an intellect that can know one's moral obligations and a libertarian free will that can choose the good—or the evil and be culpable for that choice. It is not however to identify the bases whereby reason discerns what is obligatory, and whether an obligation is universal and also indefeasible.

Nevertheless, since neither utility nor feelings can be the basis of universal or indefeasible obligations, it behooves us to now turn to those normative theories that presuppose both libertarian free will and the rationality of normative obligations. After we identify the theory best able to warrant universal and indefeasible obligations, we shall then determine whether it can withstand the metaethical, and normative challenges that are largely responsible for the appeal of basing obligations on utility or on various kinds of feelings.

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But, perhaps, at this point, the variety and complexity of our investigation may lead one to conclude that all normative theories are bankrupt. Doesn't the very multiplicity of theories prove inadequacy? Or, is it rather the case that there would be no clashing theories if there were not some facts or phenomena that philosophers were struggling to understand, explain, and justify?

We have all encountered, if only through the news, villains and saints; heinous cruelty and sweet generosity. We know, for instance, that genocide would be evil for any culture or any historical period just as we know that love and justice are good in every culture and historical period.

The clash of moral theories do not then provide evidence that there is no moral truth, but evidence that philosophers are still in their laboratories probing and testing theories to find which one best illuminates the phenomenon of morality. In our case, we seek the theory that offers not only the best explanation and justification for the ubiquity and indefeasibility of moral and legal obligations, but also the best basis for humanizing our world through universal proscriptions and prescriptions. Let us then lay open the moral phenomenon and begin seeking its deepest and truest foundation, by exploring in the next few

chapters, the foundations of normativity that are problematic despite their reliance on reason.

## Notes

1. Cf. the analysis of Julia Driver (2007), Richard T. Garner and Bernard Rosen (1967), W. D. Hudson (1970), Russ Shafer-Landau and Terence Cuneo (2007), and Michael Huemer (2005). Huemer takes pains to justify his comprehensive classifications (4–9).

2. Ockham (1979), 56–7: “I reply that the hatred of God, theft, adultery, and actions similar to these according to the common law, may have an evil quality annexed, in so far as they are done by someone who is obligated by a divine command to perform the opposite act. But as far as the sheer being in these actions is concerned, they can be performed by God without any evil condition annexed; and they can even be performed meritoriously by an earthly pilgrim if they should come under a divine precept, just as now the opposite of these in fact fall under a divine command. And, with a divine command in effect for the contrary of these, it is not possible that anyone meritoriously or rightly engage in such acts, because these are not performed meritoriously unless they come under a divine command. And if they should be done by an earthly pilgrim meritoriously, then they would not be called or named ‘theft,’ ‘adultery,’ ‘hatred,’ etc.; because these names signify such acts not absolutely, but with the connotation or understanding that one who performs such actions is obligated by a divine precept to do the opposite. And therefore, as far as the total meaning or the definition of such names is concerned they signify evil qualities; and in regard to this, holy men and philosophers understand that these names, as soon as they are mentioned, are linked with evil. If, however, the acts in question fell under a divine command, then someone who performed them would not be obligated to do the opposite; and consequently, they would then not be named ‘theft,’ ‘adultery,’ etc. . . . But there is no act which God is obligated to bring about.”

3. Compare with the eleven popular objections to Divine Command Morality briefly described by Janine Marie Idziak (1979), 13–20.

4. See, for instance, Philip L. Quinn (2000). He argues not only that “God is just by a necessity of the divine nature” (71), but also that “[o]ur theory . . . makes no claims on moral epistemology. . . . The order of epistemic access may run in the opposite direction from the order of metaphysical dependency” (67).

5. Voluntarist naturalism, unlike the ethical naturalism of modern philosophy, does not deny libertarian free will. It simply holds that the ends of the natural inclinations per se suffice for normativity. Hence, for example, the obligation to have an adequate number of life-boats on a cruise ship is identifiable as a moral obligation due to the natural inclination to self-preservation. Voluntarist naturalism is evaluated in chapter 3.

6. Russ Shafer-Landau and Terence Cuneo (2007, 36–8) not only divide expressivism into the explanatory expressivism of Allan Gibbard and classical expressivism, but they also divide classical expressivism into three waves beginning with the arguments of A. J. Ayer and Richard Hare. Despite such developments, expressivism is not seeking to explain and justify moral facts. Walter Sinnott-Armstrong (2000) criticizes all forms of expressivism as unable to explain the meaning of evaluative sentences.

7. Since Jeremy Bentham (1789) founded utilitarianism, it has been reformulated by John Stewart Mill (1957) and others. An issue yet to be settled debated is whether utility should be understood in terms of an act's consequences or a rule's consequences; see, for instance, Richard B. Brandt (1998) or Brad Hooker (2000).

8. For the book symposium on Brad Hooker's *Ideal Code, Real World* (2000) see Ernest Sosa and Enrique Villaneuva (2005).

9. "The hypothesis which we embrace is plain. It maintains that morality is determined by sentiment. It defines virtue to be whatever mental action or quality give rise to a spectator the pleasing sentiment or approbation; and vice the contrary" (Hume 1966, 129). It is sentiment that specifies utility and obligates the pursuit of mankind's happiness: "Utility is only a tendency to a certain end; and were the end totally indifferent to us, we should feel the same indifference toward the means. It is requisite a sentiment should here display itself in order to give a preference to the useful above the pernicious tendencies. This sentiment can be no other than a feeling for the happiness of mankind, and a resentment of their misery, since these are the different ends which virtue and vice have a tendency to promote. Here, therefore, reason instructs us in the several tendencies of actions, and humanity makes a distinction in favor of those which are useful and beneficial" (126).

10. "[W]e must at last acknowledge that the crime or immorality is no particular fact or relation which can be the object of the understanding, but arises entirely from the sentiment of disapprobation which, *by the structure of human nature*, we unavoidably feel on the apprehension of barbarity or treachery" (Hume 1966, 133–4). (Emphasis mine)

11. Notice that this way of identifying the cause of sentiments may escape G. E. Moore's criticism of naturalism as found in his Open Question Argument. That Humean ethics does escape unscathed has been argued, for instance, by Michael Smith (1987). Another vigorous defense of Humean ethics and the entire family of ethics called sentimentalism has been undertaken by Joseph Duke Filonowicz (2008) and Justin D'Arms (2005).

12. Roger Crisp (2005, 172): "When disagreements arise about what . . . morality requires, Hume recommends reference to the principle of utility: '[Wherever disputes arise, either in philosophy or common life, concerning the mounds of duty, the question cannot, by any means, be decided with greater certainty, than by ascertaining, on any side, the true interests of mankind.]' (citation omitted).

13. John Searle has identified the experience of intentional action as the core of the conviction that we have libertarian freedom: "Reflect very carefully on the character of the experiences you have as you engage in normal, everyday ordinary human actions.

You will sense the possibility of alternative courses of action built into these experiences. Raise your arm or walk across the room or take a drink of water, and you will see that at any point in the experience you have a sense of alternative courses of action open to you. . . . In normal behaviour, each thing we do carries the conviction, valid or invalid, that we could be doing something else right here and now, that is, all other conditions remaining the same. This, I submit, is the source of our unshakable conviction of our own free will” (1984, 95). Searle also holds that “psychological libertarianism is compatible with physical determinism” (97).

14. James Q. Wilson (1993) argued that evolution has naturally selected those particular psychological dispositions that give one a moral sense for sympathy, self-control, and a desire for fairness (23). Obligations are then identified as arising from these dispositions; hence, “duty is the disposition to honor obligations even without hope of reward or fear of punishment” (99). As such, duty is an emotional response to conscience, which “like sympathy, fairness, and self-control, arises . . . out of our innate desire for attachment” (105). In other words, conscience is the inner voice of loving parents (108). Thus, whoever has such a strong sense of duty as to be capable of withstanding torture has also received “a stronger level of conditioning by parents” (117). As a result, even obligations are reduced to feelings. However, if Wilson is correct that obligations are dispositions shaped by parental conditioning of the moral sensibilities given by natural selection, then there can be no explanation for the indefeasibility of moral obligations; nor, for the “evolution” of moral sensibilities, for instance, the ending of chauvinism. For before a society can adopt sexual equality as a practice, the children of chauvinists must do so; and, they cannot do so without going against parental conditioning and, presumably, the sensibilities given by natural selection.

15. Edward O. Wilson (1980, 3), for instance, argued that human behavior can be explained by the feelings generated by the hypothalamic-limbic system “engineered to perpetuate DNA.” For a discussion of evolution and morality see Philip Clayton and Jeffrey Schloss (2004); Marc D. Guerra (2005); Craig A. Boyd (2004). For an interesting discussion of how the findings of evolutionary morality concerning kin relationships can support Thomism see Stephen Pope (1995).

16. Darwin (1897, 99): “[S]ympathy . . . forms an essential part of the social instinct, and is indeed its foundation-stone.”





## *Chapter 1*

# **Rational Intuitionism: Ross or Maritain**

*This chapter begins our search for the normative theory able to explain and justify universal normative indefeasibility.*

Rational intuitionism as an ethical theory can be broadly described in terms of the claim that moral knowledge is immediate and not a product of discursive or inferential reasoning. Under this description, the plethora of moral obligations are neither ranked nor systematically organized in any way. Nor is there a normative principle that can adjudicate moral disagreements and produce consensus.

Such adjudication is unnecessary according to Michael Huemer: “If scientific and other empirical reasoning fails to produce agreement in many cases, yet this does not invalidate them as a source of knowledge, then why should intuition’s similar failure to produce agreement invalidate it as a source of knowledge?” (2005, 136). In order for Huemer’s argument to work, intuition must share with empirical reasoning an objective ground that makes adjudication possible, even when not completely persuasive to all.

I take it that such objectivity is indeed characteristic of rational intuitionism and is presupposed by its other characteristics. Robert Audi identifies three such characteristics: (1) irreducible normative pluralism; (2) each principle has its own ground; and (3) each principle is non-inferentially known by a rational faculty (2007, 402). This description differentiates rational intuitionism from moral sense theories, which base obligations on feelings or instincts rather than on intuitions of reason.

Identification of obligations with reason’s intuitions makes here and now indefeasibility possible, since obligations can bind on the basis of reason’s

knowledge independently of feelings and instincts. Granted the objectivity of rational intuitions, it is also possible for human beings to have the same intuitions and to share the same universally binding obligations. Consequently, rational intuitionism per se is a very simple moral epistemology: every moral obligation is directly intuited; no discursive or inferential reasoning is necessary.

Of course, no moral philosopher attentive to the problems of moral error, relativism, normative specification of here and now obligations, and the need to adjudicate moral disagreements holds such a simplistic view. As a result, intuitionism is divided into various versions as philosophers disagree about whether general moral principles or particular obligations here and now are intuited, whether moral intuitions are fallible, and whether such intuitions constitute the natural law. Consider, for instance, that Robert Audi (2007) proposes a fallibilist and particularist metaethics; that Michael Huemer (2005) proposes a fallibilist and generalist metaethics<sup>1</sup>; that W. D. Ross (1930) proposes an infallible generalist metaethics based on self-evident, *prima facie* duties<sup>2</sup>; and that Jacques Maritain (1944, 1951) proposes a version of natural law based on connaturality.

Not all of these metaethics, if any, offer the explanations that we seek about morality's indefeasibility, objectivity, universality, and certitude. Fallibilist theories, for instance, leave open the possibility that any intuition could be mistaken—even the intuition, for instance, that genocide is immoral. Fallibilism is thus incompatible with universal and indefeasible obligations. As such, fallibilist theories cannot be the theory that we seek. But what about the infallibilist metaethics of Ross and Maritain? Let us consider these by taking them in succession.

### **W. D. Ross**

Ross argued that intuition enables us to know through reason that certain relations constitute self-evident, *prima facie* duties (1930, 20). For instance, the services rendered by others to oneself make the duties of gratitude self-evident; the ability to improve our own condition makes self-evident the duties of self-improvement; and the ability to improve the condition of others makes the duties of beneficence self-evident (21). These self-evident duties are only *prima facie* duties because their self-evidence does not suffice for establishing a here and now moral obligation, as put by W. D. Ross:

Our judgments about our actual duty in concrete situations have none of the certainty that attaches to our recognition of the general principles of duty. A statement is certain, i.e., is an expression of knowledge, only in one or other of two cases: when it is either self-evident, or a valid conclusion from self-evident premisses. And our judgments about our particular duties have neither of these

characters. (1) They are not self-evident. Where a possible act is seen to have two characteristics, in virtue of one of which it is *prima facie* right, and in virtue of the other *prima facie* wrong, we are (I think) well aware that we are not certain whether we ought or ought not to do it; that whether we do it or not, we are taking a moral risk. We come in the long run, after consideration, to think one duty more pressing than the other, but we do not feel certain that it is so. . . . (2) Again, our judgments about our particular duties are not logical conclusions from self-evident premisses . . . there is no principle by which we can draw the conclusion that it is on the whole right or on the whole wrong . . . we have more or less probable opinions which are not logically justified conclusions from the general principles that are recognized as self-evident . . . There is therefore much truth in the description of the right act as a fortunate act. If we cannot be certain that it is right, it is our good fortune if the act we do is the right act. (1930, 30–1)

This inability to connect—except through moral luck—self-evident principles to here and now indefeasible obligations renders inexplicable the universal duty to refrain here and now in this particular instance from, for example, wanton cruelty or genocide. Hence, despite Ross’s insight into the need to base moral obligations on self-evident relationships, Rossian intuitionism cannot be the normative theory that we seek.

### Jacques Maritain

Maritain, like Ross, argues that the ultimate principle of morality is self-evident (2001a, 32). But, unlike Ross, Maritain also argues that there is only one such principle,<sup>3</sup> and that it is the preamble of natural law rather than constitutive of it: “The only practical knowledge all men have naturally and infallibly in common, as a self-evident principle, intellectually perceived by virtue of the concepts involved, 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 a necessary fashion”—once what is good and what is evil is intuited (2001a, 32). As put by Maritain:

It is important to recognize that human reason does not discover the regulations of natural law in an abstract and theoretical manner . . . it does not discover them through the conceptual exercise of the intellect, or by way of rational knowledge . . . human reason discovers the regulations of natural law through the guidance of the inclinations of human nature (2001a, 33).

Maritain identifies this knowledge through inclination as being “connatural,” even though it differs substantially from the connatural knowledge that Aquinas describes as a gift of the Holy Spirit to the virtuous (*S.T.* II-II.45.2).<sup>4</sup> For Maritain, connaturality is not the product of virtue, but the way of attaining moral knowledge:

It is through connaturality that moral consciousness attains a kind of knowing—inexpressible in words and notions—of the deepest dispositions—longings, fears, hopes or despairs, primeval loves and options—involved in the night of subjectivity. When a man makes a free decision, he takes into account, not only all that he possesses of moral science and factual information, and which is manifested to him in concepts and notions, but also all the secret elements of evaluation which depend on what he is, and which are known to him through inclination, through his own actual propensities and his own virtues, *if he has any* (2001b, 19–20; emphasis mine).

From this passage, six characteristics of connaturality can be identified: (1) connaturality enables one's particular obligations to be known; (2) connaturality is used to make free and moral decisions; (3) connaturality signifies awareness of one's own inclinations—including the emotional ones and all others involved in the “night of subjectivity”; (4) connatural judgments are neither propositional nor conceptual<sup>5</sup>; (5) connatural judgments do not result from a process of discursive or inferential reasoning; and (6) virtue is not a necessary condition of connatural knowledge.

Nevertheless, Maritain considers connatural judgments to be acts of reason—as this next quote shows.

My contention is that the judgments in which Natural Law is made manifest to practical reason do not proceed from any conceptual, discursive, rational exercise of reason; they proceed from that connaturality or congeniality through which what is consonant with the essential inclinations of human nature is grasped by *the intellect* as good; what is dissonant, as bad.

Be it immediately added, to avoid any misunderstanding, first, that the inclinations in question, even if they deal with animal instincts, are essentially human, and therefore, reason-permeated inclinations; they are inclinations refracted through the crystal of reason in its unconscious or pre-conscious life. Second, that, man being an historical animal, these essential inclinations of human nature either developed or were released in the course of time: as a result, man's knowledge of natural law progressively developed, and continues to develop (2001b, 20; emphasis mine)

From this statement, three additional characteristics of connatural judgments can be identified: (7) connatural judgments are those whereby the intellect grasps whatever accords with the essential natural inclinations as good; (8) connatural judgments of inclinational goods are natural laws; and (9) natural law evolves along with the essential inclinations of human nature. Maritain thus identifies connaturality as the way to know the natural law through one's inclinations.

It is difficult to reconcile claims (4) and (7), since conceptual awareness seems to be essential to the intellect's ability to function as intellect. But perhaps

Maritain is merely trying to assert that it is the inclinational desire that warrants identifying the ends of natural inclinations as good, and that we accordingly identify objects as good by their ability to satisfy our desires, and that these identifications occur before we can understand that these objects are good. Assuming that this is case,<sup>6</sup> however, deprives Maritain of a rational criteria for adjudicating between desires that are natural and desires that are acquired in early childhood—or, for instance, as the result of bad habits.

Connaturality as moral epistemology, moreover, removes morality from the realm of moral philosophy. In the words of Maritain: “Moral philosophy is *reflective* knowledge, a sort of after-knowledge. It does not discover the moral law. The moral law was discovered by men before the existence of any moral philosophy” (2001b, 22).

On the one hand, this removal of morality/natural law from the realm of moral philosophy has the advantage of making morality accessible to any intellectually alive human being. As a result, moral consensus need not rely on philosophical agreements. And, no doubt, Maritain’s convictions on the distinction between morality and moral philosophy facilitated his ability to influence the drafting of the *Universal Declaration of Human Rights*,<sup>7</sup> which is a remarkable document that bases human rights simply on the “inherent dignity . . . of all members of the human family” (*UDHR*, preamble), rather than on some complex normative theory.

On the other hand, Maritain secured this advantage by denying reason a role in the recognition and authentication of moral obligations. And he did this while acknowledging that mistakes are possible: “That every sort of error and deviation is possible in the determination of these things merely proves that our sight is weak, our nature coarse, and that innumerable accidents can corrupt our judgment” (2001a, 32). Progress occurs, “as man’s moral conscience has developed” (*ibid.*).

But if intuitions of connaturality can be mistaken, then intuition does not suffice for adjudicating conflicting intuitions. For instance, does the natural inclination toward food also suffice for identifying meat as connatural and eating meat to be morally permissible—or, not, as many vegetarians claim?

Ultimately, since connatural inclinations function as a kind of instinctive knowledge, they cannot suffice for morality: we are not ruled by instinct but by reason. As such, we require the full resources of the human intellect. These resources include moral philosophy—as Maritain recognized.<sup>8</sup> Yet, by reserving normative adjudication to the moral philosopher, Maritain leaves the ordinary person without a way to adjudicate moral conflicts and ascertain whether another is mistaken about what is connatural—even if that other is maintaining that *only* those who share his race, sex, and political beliefs deserve to be treated as an equal deserving respect, that is, as another self.

This inability of connatural intuitions to provide the ordinary person a rational criterion for differentiating what is moral from immoral precludes the possibility of moral certitude. Without moral certitude, fallibilism marks moral obligations and undercuts indefeasibility insofar as it then becomes possible that the obligation does not bind. But we are seeking the normative theory that is able to explain and justify indefeasible, universal obligations, e.g., the proscription against genocide, and the prescription to feed one's children. Hence, Maritain's intuitionist natural law cannot be the normative theory that we seek.

### **Lessons, Insights, and Difficulties**

We have learned that rational intuitionism cannot fully explain the universality, indefeasibility, certitude, and objectivity of both universal and particular moral obligations. From the intractable problems of rational intuitionism, we have also learned that the normative theory that we seek must have several characteristics. First, its explanations and justifications must not be so technical as to elude the grasp of ordinary individuals and eliminate their ability to live moral lives. Second, it must be able to explain how ordinary human beings are able to discern moral obligations within particular situations. Third, it must be able to satisfy the human need to understand their moral obligations in the context of intelligible rules that apply to all in like situations. Fourth, it must be objective. Fifth, it must provide a principle of specification whereby self-evident, universal principles can be applied to particular situations and provide the ordinary person with moral certitude here and how, if not in all situations at least in some situations. Finally, it must provide a criterion accessible to the ordinary person for differentiating moral and immoral intuitions and for adjudicating moral disagreements.

The normative theories that follow seek to meet these challenges by basing morality on a rule that is accessible to all, applicable in all moral situations, intelligible, objective, morally certain, adequate for making moral distinctions, able to adjudicate moral disagreements, and able to specify particular moral obligations.

## **Notes**

1. Michael Huemer (2005, 105): "The intuitive propositions we've been discussing are *prima facie* justified. That is, we are justified in believing them unless countervailing evidence should arise that is strong enough to defeat the initial presumption in their favor." Furthermore, Huemer writes, "[M]y own form of intuitionism holds only that some moral beliefs are rendered *prima facie* justified by

intuitions” (106).

2. Cf. Robert Audi (2007). He reconstructs Rossian metaethics as fallibilist and particularist: “One might protest . . . that if Moore and Ross claim strong axiomatic status for their candidate basic moral principles, one should take that claim as essential to intuitionism. . . . I reject this principle of interpretation . . . This certainly applies to what I have developed here in connection with Ross’s view: a reconstruction of the theory intended to be among its most plausible versions, even if that means only strong continuity with its historical embodiments rather than a descriptive articulation thereof” (417).

3. Ultimately, the reason why Jacques Maritain held that there is an obligation to honor the goods of our natural inclinations is that these inclinations are authored by God: “In the last analysis, as every creature acts 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 by virtue of the Principle of beings, which is pure Wisdom: so too every right possessed by man is possessed by virtue of the right possessed by God, Who is pure Justice, to see the order of His wisdom in beings respected, obeyed, and loved by every intelligence. It is essential to law to be an order of reason; and natural law, or the normality of functioning of human nature known by knowledge through inclination, is law, binding in conscience, only because nature and the inclinations of nature manifest an order of reason,—that is of Divine Reason. Natural law is law only because it is a participation in Eternal Law” (1951, 96; italics omitted).

4. Some Thomistic commentators argue that moral virtue suffices for the type of connaturality that increases one’s sensitivity to salient moral factors and to the perception of requisite obligations; see, for instance, Catherine Green 2002. To identify virtue as establishing a type of connaturality that facilitates reason’s discernment process seems right to me: it explains why the virtuous can rapidly identify moral obligations. This presupposition of virtue, however, precludes identifying connaturality as a way of achieving the moral insight necessary for becoming virtuous and differentiates it from Maritain’s view of connaturality.

5. Jacques Maritain: “Knowledge by inclination or by connaturality is a kind of knowledge that is not clear, like that obtained through concepts and conceptual judgments. It is obscure, unsystematic, vital knowledge, by means of instinct or sympathy, and in which the intellect, in order to make its judgments, consults the inner leanings of the subject—the experience that he had of himself—and listens to the melody produced by the vibration of deep-rooted tendencies made present in the subject. All this leads to a judgment—not to a judgment based on concepts, but to a judgement which expresses simply the conformity of reason to tendencies to which it is inclined” (2001a, 34–5).

6. The inability of Maritain’s connaturality to adjudicate between desires based on bad habits and desires based on natural inclinations identifies his natural law theory as a type of voluntarist naturalism. Voluntarist naturalism is extensively discussed in chapter 3.

7. Mary Ann Glendon (2001b) describes the process of drafting the *Universal Declaration on Human Rights* and Maritain’s role.

8. The moral philosopher has the resources to adjudicate disagreements and identify moral errors because the moral philosopher understands the ontology of natural law as put by Jacques Maritain (2001a, 29): “The first basic element to be recognized in natural law is then, the ontological element; I mean the normality of functioning which is grounded on the essence of that being: man. . . . Let us say, then, that in its ontological aspect, natural law is an ideal order relating to human actions, a divide between the suitable and the unsuitable, between what is proper and what is improper to the ends of human nature or essence.” Ontology provides the objectivity necessary for moral philosophy, as put by Jacques Maritain: “Moral philosophy has critically to analyze and rationally to elucidate moral standards and rules of conduct whose validity was previously discovered in an undemonstrable manner, and in a non-conceptual, non-rational way; it has also to clear them, as far as possible, from the adventitious outgrowths or deviations which may have developed by reason of the coarseness of our nature and the accidents of social evolution” (2001b, 22).



## **Chapter 2**

# **Human or Divine Will: Kantianism or Divine Prescriptivism<sup>1</sup>**

*Since rational intuitionism cannot provide a normative theory capable of explaining universal normative indefeasibility, perhaps it is because moral obligations result from the rational will's command. We begin with Kantianism, which identifies the human will as the source of moral obligation. We will then consider whether God's non-arbitrary will<sup>2</sup> is a better source for moral obligation.*

### **Kant's Rational—and Monistic—Voluntarism<sup>3</sup>**

Immanuel Kant (1724–1804) identified the will as the sole source of moral obligations and normative specifications. This identification seeks to overcome the idea that morality diminishes freedom by identifying the laws of freedom with the laws of morality.<sup>4</sup> In this way, the will is not constrained by anything other than the will's own rational nature. At least, this seems to be Kant's rationale, since he identified the will with practical reason.<sup>5</sup> A rational being, said Kant, “is only bound to act in conformity with his own will—a will, however, which is designed by nature to give universal laws”<sup>6</sup> (1949, 49). Since these laws are constrained only by the will's requirement of universal consistency, they enable the will to act freely, that is, without being constrained by any object other than the will itself: “Autonomy of the will is that property of it by which it is a law to itself independently of any property of objects of volition. Hence the principle of autonomy is: never choose except in such a way

that the maxims of the choice are comprehended in the same volition as a universal law” (Kant 1959, 59). Kant thus grounded morality—not in the will’s objects—but in the will’s autonomy as a universal legislator. As the universal legislator, the will is the source not only of obligatoriness, but also of specific norms: whatever expresses the will’s autonomy is moral, and whatever fails to express the will’s autonomy is immoral.<sup>7</sup>

In this way, Kant identified the will as the ground of human freedom/autonomy, obligation, and moral specification. Kant thus proposed a threefold command monism in which the will/practical reason is the ground of freedom, obligation, and moral specification. Kant’s command monism can be classified as a type of rational voluntarism, since he identified the rational will as the ground of both freedom and obligation. But is rational voluntarism or command monism coherent? Is it coherent to identify the principle of freedom as the principle of obligation?

**For Kant, morality is the law of freedom in so far as the will is constrained only by the requirements of its own universal consistency.**

Kant thought so, since he argued against identifying the ground of obligation with anything other than the will itself. No object, nor good, could be the universal and indefeasible ground of obligation insofar as any object known by reason is nothing other than an incentive for a course of action that can be prescribed, not as a categorical imperative, but only as a hypothetical imperative.<sup>8</sup>

*If the will seeks the law which is to determine it anywhere else than in the fitness of its maxims to its own universal legislation, and if it thus goes outside itself and seeks this law in the property of any of its objects, . . . then the will does not give itself the law, but the object through its relation to the will gives the law to it. This relation, whether it rests on inclination or on conceptions of reason, only admits of hypothetical imperatives: I should do something for the reason that I will something else. The moral, and therewith categorical, imperative, on the other hand, says I should act this or that way even though I will nothing else. (Kant 1959, 59–60; emphasis mine)*

Kant’s perceptiveness is keen: morality either originates within the will itself or within the will’s objects. Kant and some scholastic theorists have adopted the first disjunct; others, including—as I shall argue—Aquinas, adopt the second disjunct.

Kant’s adoption of the first disjunct leads him to argue that the will’s legislation of universally—consistent maxims specify the specific and paradigmatic duties of common morality: not to commit suicide; not to lie; to develop one’s faculties; to act altruistically. The first two duties are necessary

because their opposing maxims allowing suicide and lying cannot even be conceived without contradiction; the latter two duties are necessary because their opposing maxims allowing laziness and selfishness cannot be willed without contradiction. In this way, the will as universally legislative bestows the dignity which must always be respected.<sup>9</sup> Respect for human dignity requires respecting rights and never treating any human being simply as a means to one's own goals.<sup>10</sup> It also requires universal benevolence.<sup>11</sup>

### **Lessons, Insights, and Difficulties**

Kantian ethics grounds normativity (that is, both obligatoriness and moral specification) exclusively within the will's command and not within the will's objects. As a result, incentives are necessarily rejected because incentives would transfer the ground of obligatoriness from the will to its objects. But whenever morality becomes divorced from incentives, insurmountable difficulties and absurdities result. For, as has been frequently noted, a morality without incentives is a morality that lacks the ability to motivate moral action, since, by definition, only incentives motivate. Kant, however, did not argue that moral action is unmotivated but only that it lacks incentives other than itself: the incentive of moral duty inexplicably motivates: "for us men it is quite impossible to explain how and why the universality of the maxim as a law, that is, morality, interests" (1949, 78).<sup>12</sup>

Moral motivation must remain inexplicable for Kant because—although he acknowledged that happiness was the only end that could possibly ground morality's indefeasible and universal necessity while explaining why morality interests human beings<sup>13</sup>—he defined happiness in empirical and consequentialist terms that are too relativistic to be a foundational principle of a universal and indefeasible morality. (But if happiness could be defined in different terms, it is possible that its constituents could specify moral obligations.)

Recently, neo-Kantians have argued that autonomy—understood either as human freedom or as rational self-realization—suffices for moral motivation.<sup>14</sup> Any failure to adhere to the categorical imperative would then reject the will's autonomy and favor its heteronomous determination by something other than itself. To so ground morality in autonomy rather than in the will's nature, identifies morality with the incentive of promoting one's autonomy and personal choice independently of whether the act under consideration is actually good or evil. As a result, the principle of maximizing one's autonomy has been used to authorize acts that Kant explicitly condemned, e.g., suicide and prostitution. Perhaps, Kant sought to block such arguments by explicitly denying that the identification of freedom as morality's ground suffices to explain moral legislation: "The question, then, how a categorical imperative is possible, can be answered to this extent that we can assign the only hypothesis

on which it is possible, namely the idea of freedom . . . but how this hypothesis itself is possible can never be discerned by any human reason.”<sup>15</sup>

Reason can discern neither the grounding of freedom nor its connection with the categorical imperatives, because if it could, morality would have an incentive that would shift normativity from the will itself to freedom as the will’s incentive. Kant’s moral monism, like all forms of rational voluntarism, requires the absence of all incentives in order for *that whereby one is free* to also be *that whereby one is morally bound*.

Herein is the Achilles’ heel of all forms of rational voluntarism: its monistic identification of that whereby one is bound with that whereby one is free is absurd. It makes the self’s moral legislator responsible for immorality. It cannot be otherwise: whenever the ground for free acts (both good and bad) is identified as the self’s moral legislator, the self’s moral legislator is responsible for all free acts, even immoral ones.

Besides the absurdity of having the self’s moral legislator responsible for immorality, rational voluntarism necessarily compromises culpability. For if the will needs no incentives to be moral, its proper functioning disregards incentives. Succumbing to incentives would then be due only to a weakness of the will. Such flawed movements of the will would then reflect a compromised freedom—and, a diminishment of culpability.<sup>16</sup>

According to Yirmiyahu Yovel, Kant recognized that readers of the *Ground-work* could conclude that immoral acts are unfree and so made explicit in his *Religion within the Limits of Reason Alone* that freedom characterizes immoral acts (1998, 281). “Evil,” reiterates Yovel, “is generated when the will turns against itself, against its own inherent structure, a move which it is perfectly free and capable of making” (1998, 281). Such declarations, however, do not eliminate the incoherence of declaring that freedom is the moral law and that evil acts are free—as Kant well knew. Thus, Kant sought to preclude *inquiry* into the ground of immorality: “Hence the source of evil cannot lie in an object determining the will . . . it can lie only in a rule made by the will for the use of its freedom, that is, in a maxim. But *now it must not be considered permissible to inquire* into the subjective ground in man of the adoption of this maxim rather than of its opposite” (1960, 17; emphasis mine). Rather than forbidding inquiry, it would have been better if Kant had surrendered his monistic voluntarism and recognized that the will/practical reason cannot be both the self’s moral legislator and ground of freedom.

In any case, I have argued that monistic command theory cannot escape the incoherence of identifying the ground of obligatoriness with the ground of freedom: the ground of obligatoriness cannot ground immorality without being defective. Hence, monistic command ethics fails to be an adequate foundation for universal and indefeasible obligations. It also fails to achieve its noble goal

of defending human freedom and absolute moral obligations: these cannot be defended by identifying the source of freedom with the source of obligation. That whereby we are free cannot be that whereby we are bound without the incoherence of making immorality be due to an impairment of freedom. It is therefore necessary to distinguish that whereby we are free from that whereby we are bound and that whereby we sin. This means that the human will as the principle of freedom cannot also be the source of normativity. The principle of obligatoriness and the principle of moral specification must therefore be other than the human will.

There are two ways that this can be done. Some good or set of goods can be identified as the source of both obligation and moral specification; or, the source of obligation and the source of moral specification can be divided from each other. Aquinas took the first option as Part Two explicates. Divine prescriptivism takes the second option and identifies God as the source of obligations and nature as the source of moral specifications.

### **Divine Prescriptivism: Scotus, Suarez, and Porter**

Divine prescriptivism is the version of natural law that identifies God as the source of morality's obligatoriness. It differs from Divine Command theory by holding that God's will is not arbitrary but an expression of what is really good. It also differs from classical natural law theory in holding that the goods and evils that reason can discern by reflecting on nature do not suffice for morality's obligatoriness: obligatoriness is known only after one knows that God wills for one to conform to nature. This version of natural law expresses a belief dear to the heart of Christians, namely, that morality is commanded by God.<sup>17</sup> As such, this version of natural law may well be the most common among religious believers.<sup>18</sup>

The origins of divine prescriptivism lay deep within medieval Christianity with Henry of Ghent (ca. 1217–1292). Henry proposed that the obligations of law originate with the will of the lawgiver.<sup>19</sup> This position was then adopted by John Duns Scotus, Francisco Suarez, John Locke, Jean Porter, and others.<sup>20</sup> John Duns Scotus (ca. 1266–1308) argued that obligations arise from those commands of the human will that are not necessitated by intelligible goods or ends.<sup>21</sup> “In sum,” explains Davitt (1951, 36), “although man's nature may be a *lex indicans*, it is not a *lex obligans*” (36); obligations thereby arise only arise from the divine will, which is bound only by the requirements of God's own nature and not by the requirements of human justice and nature (35). Thus,

Scotus held that while God can arbitrarily alter the obligations that humans owe to each other, as found in the Decalogue's Second Table, He cannot so alter the obligations that humans owe God, as found in the First Table.

Scotus's distinction between the Decalogue's two tables did not last long. It was rejected both by William Ockham and Francisco Suarez, albeit in different ways. Ockham argued that God was free to dispense with even the obligations of the First Table and command, for instance, that He not be worshiped; while Suarez argued that God's goodness would preclude His commanding contrary to His own nature or to the natures that He has created. God's will is not arbitrary according to Suarez. As a result, Divine Command theory was established by Ockham's arguments in favor of God's arbitrary will, while divine prescriptivism was established by Suarez's arguments that although obligations arise only from God's will, God commands only what is good.

Central to Suarez's argument were two key ideas: (1) descriptive judgments about what is intrinsically good or evil cannot suffice for legal obligation<sup>22</sup>; and (2) legal obligation requires the command of a superior.<sup>23</sup> Natural law is therefore binding because human reason recognizes nature as expressing the will of the Creator.<sup>24</sup> This position was adopted centuries later by John Locke (1632–1704). Locke argued that God underwrites morality by pointing out that God is the Creator and humans are His creation.<sup>25</sup> Natural law thereby binds both within the state of nature and within a human society insofar as it declares the will of God.<sup>26</sup>

Jean Porter's version of divine prescriptivism is somewhat broader in her 2005 *Nature as Reason*. In this work, she not only holds that God's will grounds natural law's obligatoriness but also holds that an indeterminacy so marks human nature—and human reason<sup>27</sup>—that a natural law pluralism is inescapable.<sup>28</sup> Porter accordingly rejects eudaimonia as a sufficient ground for natural law: “[natural law’s] teleological evaluations . . . do not, in themselves, compel us to endorse a distinctively human way of life as something to be valued and promoted” (134). Hence, the need for theology to recognize that while “nature . . . reflects God’s will for humanity” (135) and provides moral guidance,<sup>29</sup> “an appeal to human nature alone is not sufficient to determine God’s will in moral matters” (339).

### **Lessons, Insights, and Difficulties**

The question that divine prescriptivism raises for natural law metaethics is not whether it is true that nature expresses the Divine Creator's will (that is a question for theology and believers in the Divine Creator<sup>30</sup>), but whether nature suffices for morality's obligatoriness.

On the one hand, identifying a divine will as the source of morality's obligatoriness has three metaethical advantages. *First*, it solves the problem of command monism as explored in the previous section on monistic command metaethics. In that section we saw that it is incoherent to identify the human will as that which binds us and as that whereby we are free. That incoherence is avoided by identifying the divine will as the source of obligatoriness and nature as well as the source of moral specification, even while raising the question whether Aquinas erred in defining law as an ordinance of reason in *S.T.* I-II.90.4c. A *second advantage* of divine prescriptivism is that there can be no more powerful source of motivation for being moral than the Creator's command—if one believes in the Divine Creator. A *third advantage* is that it precludes any suggestion that human beings are subordinated to the blind demands of an impersonal nature; or, as put by Thomas E. Davitt (1959, 128): "To speak therefore of a . . . 'natural' . . . law and not to relate it to the Creator-lawmaker would be . . . to make of it a blind, irrational force that is in no way a law."<sup>31</sup>

On the other hand, to identify divine command as the basis of natural law's obligations precludes awareness of obligations prior to awareness of the Creator's existence and will. This presupposition of theism limits knowledge of moral obligations to theists. This is not a problem for Davitt (1959). He argues that human nature's basic drives not only enable the natural law to be automatically known,<sup>32</sup> but also enable the Creator's existence and will to be known, given the "order of means to end in a man's basic drives, especially his master drive [to happiness]" (129), and given that "complex order implies intelligence" (114).

Although Davitt is right that the Creator's existence and will can be known from the facts of human nature, the current popularity of evolution, agnosticism, and atheism hinder achieving this knowledge.<sup>33</sup>

Furthermore, if human nature could supply sufficient evidence for establishing the Creator's existence and will, then it would be possible to garner from nature an adequate knowledge of our moral obligations; and, this is just what divine prescriptivism denies. This means that the consistent divine prescriptivist must hold that knowledge of the Creator's will requires explicit revelations—like the one that occurred on Mount Sinai when God revealed the Decalogue to Moses or the one that occurred when God ordered us to listen to His Son on the day that Christ was baptized by John.

But if explicit divine revelation were really necessary for knowing our moral obligations, then natural law would not bind anyone who does not believe in God.<sup>34</sup> Indeed, since what cannot be known excuses, divine prescriptivism must require exonerating the wicked who are not believers, even those practicing genocide and other horrendous evils. Herein lies the fatal weakness

of divine prescriptivism, namely, its epistemic reliance on theism empties natural law of its transcultural universality, indefeasibility, and non-sectarian character. The Suarezian version, for instance, does this by requiring humans to recognize intrinsic goods and evils while denying that this recognition includes the ability to predicate obligatoriness of *per se* goods and forbiddenness of *per se* evils. This is tantamount to claiming that one can recognize genocide, for instance, as a horrendous evil without also recognizing that it ought never be practiced.

The Achilles' heel of divine prescriptivism is thus its denial that an affirmative obligation can be self-evidently predicated of any good. From this follows two problems. First, as argued centuries ago by Robert Bellarmine, S.J. (1542–1621),<sup>35</sup> if obligatoriness were to arise solely from God's will, rather than from the necessity of the good being prescribed, then all obligations would have the same degree of forcefulness or necessity, and the laws prohibiting murder and idle speech would be equivalent, and there would be no difference between mortal and venial sins.<sup>36</sup> In other words, obligations could not vary in their seriousness because any violation of a moral obligation would be a dismissal of God's will.

A second problem with divine prescriptivism's rejection of self-evident obligations is that it requires one to identify some basis other than a self-evident obligation as the grounds for obeying God. Fear of divine retribution or hope of divine rewards are two such possibilities. If such options are taken, then it follows that God is not obeyed for His own sake but for the sake of gaining pleasure and avoiding pain. Pleasure and pain would then become the ultimate grounds of obligation. However, if this were the case, the pleasurable and the good would not and could not be distinguished by moral agents; and, then, voluntarist naturalism, as unpacked in the next chapter, would be true.<sup>37</sup>

The denial of *per se* obligations means not only that no moral obligation can be predicated *per se* of any good, but also that there is no good that can serve as a standard of what is morally right and wrong, that is, as a principle of moral specification. This leaves open the possibility of misconstruing basic moral norms. Moreover, unless an ethics identifies some natural good—of which moral obligatoriness is predicated *per se*—then there is no way to adjudicate conflicting moral claims from different religious traditions. Nor is there a way to adjudicate conflicting juridical and religious claims. As a result, one loses, for instance, the ability to adjudicate the claims of obedience from diverse gods and to distinguish, for instance, God from Tanit, the ancient goddess of Carthage who demanded, by law, human sacrifice. Hence, the rejection of self-evident moral obligations inherent in divine prescriptivism ultimately sets the human race either adrift on the stormy seas of conflicting



religious belief or adrift on a nihilistic sea without any ability to know the significance of good and evil.

Furthermore, if this were the case and divine prescriptivism were true, then only theists would experience their conscience reproving or approving their actions. But none escape the reproaches of conscience that arise when one fails to do what one knows one ought to do. Even atheists and agnostics experience guilt. Hence, it is not true that knowledge of the Divine lawgiver is necessary for knowing one's obligations.

Since guilt arises from freely choosing to act contrary to own's own moral knowledge, Aquinas was correct to argue that the human will is morally obligated to adhere to the good identified as morally obligatory by reason while declining the evil identified as morally prohibited by reason.<sup>38</sup> Even if reason is mistaken, it is evil for the human will not to adhere to it (*S.T. I-II.19.5c*). The human will thus does not create but responds to the moral obligations identified by reason. As put by Aquinas, it is self-evident that good is to be done and pursued and evil avoided.<sup>39</sup> Reason's judgments that something is good, and thereby obligatory, or evil, and thereby forbidden, are the judgments of conscience.

Aquinas characterizes conscience as an act of reason whereby knowledge of moral principles is applied to what we do, to what we ought to do or ought not do, and to whether something is done well or ill (*S.T. I.79.13*). Conscience thus deals with three kinds of moral obligations: (1) norms that are self-evident or derived<sup>40</sup>; (2) here and now obligations that instantiate those norms; and (3) past obligations as fulfilled or unfulfilled. For instance, conscience enables the finder of a cell phone to know that valuable possessions ought to be returned to their owners; that the cell phone ought to be returned to its owner; and that one has either acted morally or immorally. The first two obligations identified by conscience bind the will to obedience; the last judges whether the will has acted accordingly. The phenomenon of guilt is the recognition that one has betrayed not only what one knows to be true but also one's own mind. The will then cannot be identified as the ground of obligatoriness.

**Both Kantianism and divine prescriptivism rest upon the idea that the universal and indefeasible necessity of moral obligation cannot originate from the goods obligated, neither as the objects of specific natural inclinations nor as the objects known by reason. However, if this were the case, no indefeasible obligations could be self-evidently predicated of any good.**

Aquinas thus holds the view that freedom is not the absence of restraint, instead it is the ability to act in accord with the truth known by reason, rather than in submission to feelings.<sup>41</sup> The freedom to be rational, to act by thought rather than instinct or feelings, requires a will free to move reason to deliberate carefully, to recognize the limitations of desired objects, and to consider whether these objects of choice are truly worthy of the person<sup>42</sup>—as essentially rational.<sup>43</sup> To accord with reason is thereby to accord with one's true self. It is also to accord with morality as the rule of reason, since "natural law is something constituted by reason" and since reason specifies the moral object.<sup>44</sup>

Divine prescriptivism, moreover, cannot describe Aquinas's natural law,<sup>45</sup> since Aquinas explains that the will has the nature of law insofar as it expresses the rule of reason.<sup>46</sup> Hence: "Now it is evident that in moral matters the reason holds the place of commander and mover, while the appetitive power is commanded and moved."<sup>47</sup> Accordingly, imperium is an act of reason rather than the will (S.T. I-II.17.1). The rationalism of Aquinas, hence, identifies the origin of moral obligation with reason's ability to know the morally obligatory good. This good then binds the will to accord with the judgment of conscience. But since the will is free, it is neither necessitated to act based on whatever reason judges to be morally obligatory, nor excused for refusing accord with reason's judgment. In this way, Aquinas avoids identifying the will, or that whereby we are free, with that whereby we are morally bound. Thus, Aquinas's rationalism avoids the incoherence within monistic command metaethics, which identifies only one ground for both freedom and obligatoriness: that whereby one is free cannot also be that whereby one is bound.

*To recapitulate:* The inability of indefeasible obligatoriness to be grounded in the will's freedom, as held by command monism, or in the revelations of God's will, as held by divine prescriptivism, requires some good or some set of goods to be the source of indefeasible obligatoriness and moral specification. Possible candidates for being the source of normativity (obligatoriness and moral specification) include the per se ends of natural inclinations, indispensable social goods, autonomous virtues, or integral human fulfillment. Let us examine each of these in succession.

## Notes

1. Many thanks to David Clemenson for his feedback on this chapter.
2. The problems with identifying God's arbitrary will as the source of moral obligations as proposed by Divine Command theory have already been discussed in the Introduction to Part One.

3. For a very interesting and updated treatment of Kantian normativity see Christine M. Korsgaard (1996b).

4. Kant was not the first to seek the preservation of freedom by making the will responsible for moral obligations. It was proposed by Henry of Ghent, John Duns Scotus, William Ockham, and others. Henry of Ghent identified this legislative will with the lawmaker; Scotus and Ockham identified it with God (Davitt 1951). Underpinning this line of thought is the view that freedom is the lack of restraint. Opposing it is the view that freedom is the empowerment of pursuing what reason knows is good. These two opposing views of freedom have been differentiated as negative versus affirmative freedom; autonomous versus heteronomous will; false versus true liberty; and licentiousness versus liberty. That human freedom cannot endure without the subordination to the good known by reason forms the heart of Plato's arguments against the claims of Thrasymachus and Callicles that the will is most free when unbounded by anything other than its own desires; see the *Republic* and the *Gorgias*, respectively.

5. For a recent explication of Kant's identification of the will as practical reason, see Yirmiyahu Yovel (1998).

6. Also see Kant (1959, 52): "[The will's] principle then is to take no action according to any maxim which would be inconsistent with its being a universal law and thus to act only so that the will through its maxims could regard itself at the same time as universally lawgiving."

7. Kant (1959, 58): "Morality is thus the relation of actions to the autonomy of the will, i.e., to possible universal lawgiving by maxims of the will. The action which can be compatible with the autonomy of the will is permitted; that which does not agree with it is prohibited."

8. The moral or categorical imperative requires—according to Kant (1949, 58)—abstraction "from all objects [so] that they shall have no influence on the will, in order that practical reason (will) may not be restricted to administering an interest not belonging to it, but may simply show its own commanding authority as the supreme legislator."

9. Kant (1949, 56–57): "Our own will, so far as we suppose it to act only under the condition that its maxims are potentially universal laws, . . . is the proper object of respect; and the dignity of humanity consists just in this capacity of being universally legislative, though with the condition it is itself subject to this same legislation."

10. Kant (1959, 48): "[H]e who transgresses the rights of men intends to make use of the persons of others merely as means, without considering that, as rational beings, they must always be esteemed at the same time as ends."

11. Kant identifies universal benevolence as the fourth duty (1959, 41).

12. Also see Kant (1959, 83): "Therefore, reason restlessly seeks the unconditionally necessary and sees itself compelled to assume it, though it has no means by which to make it comprehensible . . . it cannot render comprehensible the absolute necessity of an unconditional practical law (such as the categorical imperative must be)." (1960, 20): "The disposition, i.e., the ultimate subjective ground of the adoption of maxims . . . must have been adopted by choice. . . But the subjective ground

or cause of this adoption cannot further be known."

13. Kant (1949, 33): "There is one end, however, which may be assumed to be actually such to all rational beings . . . and, therefore, one purpose which they not merely may have, but which we may with certainty assume that they all actually have by a natural necessity, and this is happiness."

14. Paul Guyer (1998, 34): "But what ultimately moves us, what immediately presents a necessary end for us, is the recognition of the 'inner value, i.e., dignity' of freedom or autonomy. That is, as I understand Kant's deepest thought, the immediately evident and irreducibly normative starting point of morality. The rest of moral reasoning is just the means—that is, a matter of using reason to figure out what principles we need to adopt in order to preserve and promote our incomparably valuable autonomy." See also Geyer (1998, 32): "It is because of the immediately recognized dignity of autonomy that humanity presents itself to us as a necessary end, which in turn requires us to conform to the categorical imperative, because we see that so conforming, and in particular requiring the universalizability of our own maxims, is the only means to preserving and promoting the autonomy that our potential for humanity makes possible for us." Geyer cites the following texts in support of his position: *Naturrecht Feyerabend* 27, 1319: "The inner value of the human being rests on his freedom, that he has his own will. Because he is to be the ultimate end, his will must not depend on anything else." *Ibid.*, 27: 1321–2: ". . . if only rational beings can be an end in themselves, that is not because they have reason, but because they have freedom. Reason is merely a means. . . Without reason, a being cannot be an end in itself, for it cannot be conscious of its existence, cannot reflect thereon. But reason does not constitute a cause: since the human being is an end, he has dignity, which cannot be replaced by any equivalent. But reason does not give us the dignity. . . . Freedom, only freedom alone, makes us into an end in itself."

15. Kant 1949, 78. Also see Kant (1960, 17–18 footnote): "That the ultimate subjective ground of the adoption of moral maxims is inscrutable is indeed already evident from this, that since this adoption is free, its ground (why, for example, I have chosen an evil and not a good maxim) must not be sought in any natural impulse, but always again in a maxim. Now since this maxim also must have its ground, and since apart from maxims no determining ground of free choice can or ought to be adduced, we are referred back endlessly in the series of subjective determining grounds without ever being able to reach the ultimate ground."

16. Christine Korsgaard (1996a, 172–76) attempts to defend Kant against this criticism, as it is made by Sidgwick, by characterizing the postulate of freedom as being purely practical—without import for the noumenal world. For a discussion of Korsgaard's interpretation and defense of Kantian morality, see Paul Guyer 1998, 22–35; Hannah Ginsborg 1998, 5–21; and, J. B. Schneewind 1998, 36–48). For her reply see Christine Korsgaard 1998, 49–66.

17. Suarez, *On Laws*, Bk. 2, ch. 6 #23: (1944, 206), for instance, argues that the Creator would not have created us to do evil: "[A]ssuming the existence of the will to create rational nature with sufficient knowledge for the doing of good and evil, and with sufficient divine co-operation for the performance of both, God could not have refrained from willing to forbid that a creature so endowed should commit acts

intrinsically evil, nor could He have willed not to prescribe, the necessary righteous acts. For just as God cannot lie, neither can He govern unwisely or unjustly; and it would be a form of providence in the highest degree foreign to the divine wisdom and goodness, to refrain from forbidding or prescribing . . . such thing as are intrinsically evil or necessary and righteous.”

18. According to Thomas E. Davitt, S.J. (1951, 226), “most manuals of moral theology and canon law” inconsistently combine “Aquinas’s and Bellarmine’s philosophy of intellect and will” with “Scotus’ and Suarez’ concept of law and obligation.”

19. For an explication of Henry of Ghent’s ethics see Thomas E. Davitt, S.J. (1951, 9–23).

20. For instance, divine prescriptivism describes the natural law theories of Oscar J. Brown (1981) and G. E. M. Anscombe (1958).

21. See, for instance, Thomas E. Davitt (1951, 30–1) and A. B. Wolter (1990).

22. Suarez, *On Laws*, Bk. 2, ch. 6, #6, line 122 (1944, 192): “[I]n those matters which fall within the province of the natural law as it relates to good or evil actions, a judgment pointing out the good or evil involved in a particular thing or act . . . has not the character of a law or of a prohibition, but is merely a recognition of some fact already assumed to be true.”

23. See Suarez, *On Laws* Bk 2, ch. 6, #6 (1944, 193): “Law, then, is that sort of authority which can impose a binding obligation; whereas the judgement in question does not impose an obligation, but . . . points out what obligation should be assumed to exist. Therefore, if this judgment is to have the nature of law, it must indicate some sort of authority as the source of such obligation.” Chapter 6, # 8, line 123 (194): “God has complete providence over men; therefore, it becomes Him, as the supreme Governor of nature, to prohibit evil and prescribe that which is good; hence, although the natural reason reveals what is good and what is bad to rational nature, nevertheless God, as the Author and Governor of that nature, commands that certain actions shall be performed or avoided, in accordance with the dictates of reason.”

24. Suarez, *On Laws* Bk. 2, ch. 6, #22 (1944, 205–6): “[T]he mere dictate of intelligence apart from will, cannot have the nature of a precept with respect to another human being, nor can it impose upon that being, a particular obligation. For an obligation is a certain moral impulse to action; and to impel another to act is a work of the will.” Also see, # 13 (199–200): “Wherefore one concludes, finally, that the natural law, as it exists in man, does not merely indicate what is evil, but actually obliges us to avoid the same; and that it consequently does not merely point out the natural disharmony of a particular act or object, with rational nature, but is also a manifestation of the divine will prohibiting that act or object.” And, # 13 (198): “[T]he natural law is truly and properly divine law, of which God is the author.”

25. John Locke, *Treatise*, section 6 (1952, 5–6): “The state of Nature has a law of Nature to govern it, which obliges everyone; and reason, which is that law, teaches all mankind who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions; for men being all the workmanship of one omnipotent and infinitely wise Maker—all the servants of one

sovereign Master, sent into the world by His order and about His business—they are His property, whose workmanship they are made to last during his, not one another's pleasure; and, being furnished with like faculties, sharing all in one community of Nature, there cannot be supposed any such subordination among us that may authorize us to destroy one another, as if we were made for one another's uses, as the inferior ranks of creatures are for ours. Every one, as he is bound to preserve himself and not to quit his station wilfully, so by the like reason, when his own preservation comes not in competition, ought he, as much as he can, to preserve the rest of mankind, and many not, unless it be to do justice to an offender, take away or impair the life, or what tends to the preservation of the life, the liberty, health, limb, or goods of another."

26. John Locke, *Treatise* #135 (1952, 77): "The obligations of the law of nature cease not in society but only in many cases are drawn closer and have by human laws known penalties annexed to them to enforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others. The rules that they make for other men's actions must, as well as their own and other men's actions, be conformable to the law of nature—i.e., to the will of God, of which that is a declaration—and the fundamental law of nature being the preservation of mankind, no human sanction can be good or valid against it." Also see Steven Dworetz (1990), Hans Aarsleff (1969), Richard Ashcraft (1969), and Nicholas Wolterstorff (1994). For a discussion of Locke's "voluntarism" see J. B. Schneewind (1994).

27. *Nature as Reason* (2005), especially at 338: "[T]he intelligibilities of human nature under-determine their form of expression, and that is why this theory does not yield a comprehensive set of determinate moral norms, compelling to all rational persons." At 127: "Similarly, even if we accept (as I do) Aquinas's claim that practical reason also starts from first principles, including most fundamentally the principle that the good is to be sought and done, and the bad avoided, these principles are too general to yield practical conclusions by themselves. Reason, like nature, underdetermines the moral conclusions that we suppose to flow from it." This rejection of universal norms leads Porter to characterize natural law as a capacity or power to reflect on the moral significance of pre-rational nature.

28. Porter (2005), 339): "[T]his theory recognizes the plurality of possible expressions of human nature at the level of social morality. For this reason, we cannot speak of *the* natural law at the level of determinate norms, but must rather speak in terms of natural moralities in the plural." At 330: "Earlier I remarked that any socially embodied morality can be regarded as a natural law ethic, and the same can be said of the moralities that have emerged through the practice and reflection of the church in its many embodiments. . . . For this reason, I would suggest that we should extend scholastic flexibility by speaking of natural law moralities in the plural." For an extensive treatment of this indeterminacy thesis see chapter 11 below.

29. Porter (2005, 326): "[The natural law] does have substantive moral implications, including some that are generally available to human reason, although many others only become apparent from the perspective of revelation." At 308: "The ideal of equal regard, according to which each human person is owed the same basic kinds of respect, is one ideal of justice. What is more, I would argue that it is the right ideal of justice, but this claim can only be justified on theological grounds—it is not a

necessary expression of the exigencies of human well-being, nor is it logically necessitated by one's sense of oneself as an agent, or by the requirements of communication."

30. On the one hand, the Christian belief in natural law is rooted in *Romans* 2:14–15: "For when the Gentiles who do not have the law by nature observe the prescriptions of the law, they are a law for themselves even though they do not have the law. They show that the demands of the law are written in their hearts." As a result, some Christians have a tendency to equate natural law with Christian morality, despite Aquinas's distinction between natural law and divine law and his arguments that the inadequacies of natural law make divine law indispensable for adequate guidance (see *S.T.* I-II.91.4–5). Contemporary arguments that Aquinas's natural law cannot be understood apart from Christian theology are evaluated in chapter 10 below. On the other hand, as the appendix on natural law's history shows and as Jacques Ellul (1960) points out, natural law exists "as a concrete event in history. It is a fact which appears at a given moment in the history of law" (14). As such, a theocentric understanding of natural law requires one "to first know the meaning of human institutions, human justice, etc., *with reference to God*, and what place according to his revelation they occupy in God's design. Only then may we probe their value for man and his conduct with respect to them" (12).

31. Either nature is a disordered and irrational force or it is intelligibly ordered. If the former, then it cannot provide evidence for the Creator. If the latter, then it can provide evidence not only for the Creator but for objectivity of moral obligations. In an intelligibly ordered universe, the failure to know the Creator need not also be a failure to know objective moral obligations.

32. Davitt (1959) identifies the natural law as "a natural promulgation of eternal law" (117). He accordingly identifies basic drives as the means of promulgation and defines natural law as "the directive judgment of the Creator ordering means necessary for the common good of all men and promulgated through their basic drives" (116). "Natural law . . . may, therefore be said to be the elementary demands expressed by a man's basic drives . . . which are known without a reasoning process" (117).

33. The challenges to theism are taken up and refuted by Sandra Menssen and Thomas D. Sullivan (2007) in their *The Agnostic Inquirer: Revelation from a Philosophical Standpoint*.

34. For more extensive treatments of the universality of natural law see chapter 18 below.

35. For an exegesis of Bellarmine see Thomas E. Davitt (1951, 195–218), and for a brief treatment see the appendix.

36. Thomas E. Davitt 1951, 208–9.

37. Arguments against voluntarist naturalism can be found in chapter 3.

38. *C.G.* III, c. 107, n. 8: The will is good when it "follows understanding; in our case, for instance, the good is what is in accord with reason, but what is apart from reason is evil." Also see *S.T.* I-II.19.5 and 6.

39. *S.T.* I-II.94.2. Also see part 2 for a more extensive treatment of this issue.

40. *S.T. I-II.18.10c*: "Just as the species of natural things are constituted by their natural forms so the species of moral actions are constituted by forms as conceived by reason." *S.T. I.83.1c*: "But man acts from judgment, because by his apprehensive power he judges that something should be avoided or sought." *S.T. I-II.104.2c*: "[I]n every law, some precepts derive their binding force from the dictate of reason itself, because natural reason dictates that something ought to be done or to be avoided. These are called moral precepts: since human morals are based on reason." *S.T. I-II.91.3c*: "[L]aw is a dictate of the practical reason." *S.T. I-II.90.1 ad 2*: "Such like universal propositions of the practical intellect that are directed to actions have the nature of law." *S.T. I-II.18.5 ad 1*: "[G]ood, inasmuch as it is in accord with reason, and evil, inasmuch as it is against reason, diversify the moral species." Also see *S.T. I-II.100.3 ad 1*.

41. Challenges to this notion of freedom are considered in chapter 13.

42. *S.T. I.49.3 ad 5*: "the good of man as regards the senses is not the good of man as man—that is, in regard to reason."

43. *S.T. I-II.18.5c*: "Now in human actions, good and evil are predicated in reference to the reason; . . . For this is good for a thing which suits it in regard to its form; and evil, that which is against the order of its form. It is therefore evident that the difference of good and evil considered in reference to the object is an essential difference in relation to reason; that is to say, according as the object is suitable or unsuitable to reason. Now certain actions are called human or moral, inasmuch as they proceed from the reason. Consequently it is evident that good and evil diversify the species in human actions; since essential differences cause a difference of species."

44. *S.T. I-II.90.1 ad 3*; *S.T. I-II.94.1*; *S.T. I-II.90.1 ad 2*; *S.T. I-II.18.5c*.

45. For an extensive discussion of Aquinas's natural law in relation to his Christian commitments see chapter 10.

46. *S.T. I-II.90.1 ad 3*: "Sed voluntas de his quae imperantur, ad hoc quod legis rationem habeat, oportet quod sit aliqua ratione regulata."

47. *S.T. I-II.60.1c*: "Manifestum est autem quod in moralibus ratio est sicut imperans et movens; vis autem appetitiva est sicut imperata et mota." Practical reason moves the will by enticing it with its proper objects. See *S.T. I.79.11 ad 1*: "Intellectus practicus est motivus, non quasi exequens motum, sed quasi dirigens ad motum. Quod convenit et secundum modum suae apprehensions." Also see *C. G. III, c.26, n.21*; emphasis mine: ". . . primarily and directly the intellect moves the will; indeed, the will, as such is moved by its object which is the known good."



### ***Chapter 3***

## **Natural Inclinations as a Voluntarist Naturalism<sup>1</sup>**

*The first chapter established that moral obligations cannot simply be intuited, as W. D. Ross and Jacques Maritain had hoped. The second chapter established that moral obligations, whether universal or particular, cannot be specified by that whereby humans are free, as Kant had hoped, or by what cannot be universally known even if it is the will of God, as Divine Prescriptivists had hoped.*

*We come now to the hope that there is some set of goods able to specify moral obligations because they are the ends of natural inclinations, i.e., the objects of the human race's essential biological and psychological drives. Such a naturalist identification of obligation leaves open the question of whether human beings choose their moral actions as an expression of libertarian freedom or as an expression of compatibilism. But, since compatibilist ethics cannot explain the indefeasibility of moral obligations as already argued in the Introduction to Part One, this chapter deals only with the type of naturalism compatible with libertarian free choice. As such, this metaethics is a naturalistic version of natural law that I call "voluntarist naturalism" in order to indicate that we are dealing with a type of natural law that accepts libertarian free choice and that identifies immorality with acting against the essential inclinations of human nature, whether biological or psychological.*

An early version of voluntarist naturalism was proposed by the Roman jurist Ulpian (ca.170–228). Without denying libertarian freedom, he argued that

moral law is simply the version of natural law that rules the human animal, as well as all other animals, through their natural inclinations:

Natural law is what nature has taught all animals. For this law is not proper to man but is common to all animals whether born on land or in the sea, and birds also. Whence comes the conjunction of male and female, which we call marriage; whence the procreation of children and their education; we see that other animals also, even wild animals, come under this law. (*Digest* I.1.1.3)<sup>2</sup>

Perhaps the most remarkable element of Ulpian's naturalism is that he does not assign any special weight to acting in accord with the natural inclination to reason. Reason is treated merely as the instrument for identifying one's natural inclinations and their objects.

In the twentieth century, a version of voluntarist naturalism was proposed by Robert B. Ashmore as an interpretation of Aquinas: "When St. Thomas says that the general principles are the same for all [*S.T.* I-II.91.5 ad 2], he means that each man shares with his fellows common appetites, of which the drive to fulfill prompts the declaration that certain things are sought or avoided universally because of their compatibility or incompatibility with these common appetites" (1975, 78). Furthermore, Ashmore argues: "Having equated good with being-an-object-of-appetite, St. Thomas establishes the moral end for man in harmonious fulfillment of the appetites of integral man. Actions are judged right or wrong according as they promote or contribute to the attainment of this end" (81).

To identify natural law with natural inclinations is to identify natural inclinations as the source of universal and indefeasible normativity, moral certitude, and normative specification. It is to define natural law as nothing other than the correspondence of inclination and obligation. Consequently, this version of natural law bases moral obligations on nothing other than desire—albeit innate or natural or inclinational, i.e., "X is right and ought to be morally prescribed because I desire, albeit naturally, X." To identify natural desire as the ground of moral obligation is to identify morality—and reason—to be the instrument of desire-satisfaction.

Given this understanding, it is easy to assume that each natural inclination *suffices* to ground its own moral norm, as put, for instance, by R. A. Armstrong: "We have indicated the different categories of inclinations possessed by man and shown that corresponding to each category there exists a [self-evident] principle" (1966, 50).<sup>3</sup> Accordingly, Armstrong argues that corresponding to the natural inclination of self-preservation is this prescription: "while recognizing that not all life has equal value in the world of creation, one ought to respect and preserve not only human life, but where possible, all life" (48).

### Lessons, Insights, and Difficulties

The key insight of voluntarist naturalism is that nature specifies the parameters of morality through its essential inclinations. It is thus immoral to intend per se the contrary of a natural inclination, e.g., to seek death for its own sake. This version of natural law, however, errs in identifying natural desires as the *sufficient* ground of normativity. For this identification assumes, not that the object of a natural desire is good primarily because of its ontological properties, but that the object is good because it is naturally desired. Desire—albeit natural—warrants goodness. “Any ethical judgment,” wrote Donald Johnson, S.J., “is demonstrably valid only insofar as it can be shown to be an expression of what one fundamentally desires” (1963, 349).

But, as Plato once asked,<sup>4</sup> is it good because desired or desired because good? If the former, then whatever is desired is good—even if it is harmful. But if this were the case, delight and good could not be distinguished. But they can be and are distinguished. For example, they are distinguished whenever certain delights are deemed to be immoral, such as overindulgence in food or drink.

Aquinas honors this distinction. He notes that although delight is good as the end of a desire, “delight is desirable for

something else, i.e., for the good, which is the object of that delight, and consequently is its principle, and gives it its form: for the reason that delight is desired is that it is rest in the good desired” (*S.T.* I-II.2.6 ad 1). The nature of good therefore primarily resides, not in delightfulness, but in that which is delightful. Hence, Aquinas writes: “The value of desiring a certain delight arises from the thing which delight accompanies” (*Contra Gentiles* III, c. 26, n. 13); “the reason that a man is delighted is that he has some fitting good, either in reality or in hope, or at least in memory” (*S.T.* I-II.2.6c).

In other words, there is a distinction between satiation and that which satiates, i.e., between delightfulness and goodness. The good is more desirable than the delightful. It is for this reason that in the well-known thought experiment devised by Robert Nozick (1995, 497), which he called the “experience machine” and which I call the Pleasure Box thought experiment, humans refused to consider as desirable the imaginative possibility of experiencing pleasure or delight by being passively and irreversibly linked to a box that would stimulate the brain in such a way that pleasure would be experienced. For the pleasure of this box would be divorced from that which would normally supply the pleasure. Pleasure that is separated from that which

**The distinction between pleasure and goodness means that desire-satisfaction need not be good: immoral delights are possible.**

is good is not really desirable: humans want what really produces pleasure; they want what is good.

This distinction between delight and good shows that the ontology of good establishes the essence of good as *suitable*. Indeed, St. Thomas explains the Aristotelian enigma that good is what all desire by beginning with the characterization of the desirable as *something* suitable, and then proceeding with the transcendental identification of being as good, in order to conclude that: “It must needs be that every inclination is to *something* good” (*S.T.* I-II.8.1c).<sup>5</sup> From this explanation, it is clear that every natural inclination is to being—but not being as being<sup>6</sup>—but being as suitable.<sup>7</sup> It is a thing’s “ontological suitability” that makes it good, that makes it a desirable end. This means that goodness cannot be constituted by desires. Rather, any inclination for X presupposes that an X exists with properties suited for satiating that desire. If it doesn’t, it isn’t desirable. Hence, for example, no amount of desire can render the fender of a car the object of a hungry mechanic’s natural inclination.

Therefore, good is existential.<sup>8</sup> The being of goodness enables it to be the end of natural inclinations while also precluding its reduction to mere pleasure, since in order for a thing to be good in relation to a particular inclination, it must exist in certain ways. Indeed, the existential character of good precludes reducing the essence of good to nothing other than the object of desire: such a reduction would assume that the existential character of what is desired is irrelevant to its ability to cause pleasure. But, as already seen in the Pleasure Box thought experiment, the pleasurable ceases to be truly pleasurable when divorced from its ontological properties, i.e., from the good. Thus since voluntarist naturalism fails to grasp that inclinations are for existential goods rather than simply for pleasure, it fails to explain both normative specification and moral obligatoriness.

**Desires are understood through their objects, since apprehension precedes desire.**

### **Good’s Self-Evidence and Epistemology**

Voluntarist naturalism also fails insofar as it holds that one’s natural desires or natural inclinations provide a cognitive starting point for discerning the goods of those inclinations. Good cannot be discerned solely from desires—even natural ones. Consider a rumbling stomach. Is it expressing a desire for food? Is it a sign of gas—or worse? Is it expressing a revulsion for food? What does it mean? When confused by a rumbling stomach, we can discover its meaning by testing its teleology, i.e., we smell or taste some food. If the food is judged

tasty, the rumbling stomach indicated hunger; if the food repels, the rumbling stomach was a sign of nausea. Accordingly, desires are understood through their objects. Aquinas's perspective explains that this is because something is intelligible only insofar as it is actual; and since desires are inclinational potencies moved into act by their objects,<sup>9</sup> no natural inclination is adequately understood except when delineated in terms of its end or its good. For good is the actuality that fulfills the inclination's potency. This means that good is that which makes a natural inclination knowable. Therefore, since Aquinas's natural law concerns natural inclinations, the knowledge of natural law—strictly speaking—arises from understanding the goods that are ends of natural inclinations and their contraries. In short, the goods that are ends and their inclinations cannot be known apart from each other. For good is essentially related to an inclination as its end.<sup>10</sup> So, to know something as an end of a natural inclination is to know it as good.<sup>11</sup> Such knowledge includes the intelligibility of that good as a suitable being for quieting an inclination or desire. Indeed, it is the cognitive apprehension of suitable being—that is, as a good—that evokes desire. This “cognitive priority” of apprehending good over desiring good is characterized by Aquinas as somewhat temporal: apprehension precedes desire (*S.T.* I-II.58.5 ad1). After all, desires are for something known.<sup>12</sup>

Thus, if one were to prescind from the objects of desires in accordance with voluntarist naturalism, how could one experientially differentiate between natural and acquired desires or inclinations? Aren't all desires experienced as longings? And, the intensities of longings cannot suffice for distinguishing natural and acquired desires: surely the intensity with which a thirsty man desires a glass of water in the desert can be equaled by a child desiring candy or a smoker desiring a cigarette.

Moreover, as argued by J. Budziszewski, it is possible to become so habituated to evil that evil becomes connatural and desirable (2009, 68–72). After all, as noted by Aquinas, “some take pleasure in cannibalism or in the unnatural intercourse of man and beast” (*S.T.* I-II.31.7c). The desires and pleasures of vice preclude the possibility of using desires or pleasurable experiences as the means whereby the good is known.

Therefore, natural inclinations, in and of themselves, do not provide the information necessary to derive the identity of the goods that are their objects. Natural inclinations considered without their objects cannot provide a cognitive starting point for natural law. And thus, voluntarist naturalism fails yet again.

**Voluntarist naturalism fails  
both as an explanation and as  
a justification of normativity.**

### The Need for Personalism

If voluntarist naturalism were a sound theory of natural law, the objects of natural inclinations would suffice per se for moral obligations and intentionality would be morally irrelevant. If so, it would be immoral to leap upon a mine to save the lives of friends or to volunteer to die in another's place as did Maximilian Kolbe.<sup>13</sup>

Aquinas, however, differentiates the moral object from the inclinational object by arguing that, since the moral object is determined by the will's intention, there can be diverse moral objects resulting from one act:

It is possible, however, that an act which is one in respect of its natural species, be ordained to several ends of the will: thus this act "to kill a man," which is but one act in respect of its natural species, can be ordained, as to an end, to the safeguarding of justice, and to the satisfying of anger: the result being that there would be several acts in different species of morality: since in one way there will be an act of virtue, in another, an act of vice. (*S.T. I-II.1.3 ad 3*)

Natural objects are not also per se moral objects: for that would be to judge culpability solely by physical consequences, e.g., whether or not someone is killed. Culpability arises, as recognized by the civil and criminal laws of every country, not only on the basis of what was done in a particular circumstance but also on the basis of what was intended—or should have been intended according to due diligence. Culpability thereby presupposes the three moral determinants that Aquinas identifies as object, circumstance, and intentionality (*S.T. I-II.18.1-11*). Culpability thus shows that the realm of morality includes reason and choice. After all, it is only through reason that one can apprehend the moral significance of one's acts and freely chose one's actions.

Freely acting according to reason is the act that natural law identifies as paradigmatically human<sup>14</sup>—and virtuous. As put by Aquinas: "Wherefore, since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason and this is to act according to virtue" (*S.T. I-II.94.3c*).<sup>15</sup> This privileging of reason identifies acting according to reason as not only natural but virtuous. As a result, the natural inclinations belong to natural law only through reason's providential rule: "All the inclinations of any parts whatsoever of human nature, e.g., of the concupiscible and irascible parts, *in so far as they are ruled by reason, belong to the natural law*" (*S.T. I-II.94.2 ad 2*; emphasis mine). Aquinas also says: "As, in man, reason rules and commands the other powers, so all natural inclinations belonging to the other powers must need be directed according to reason. Wherefore it is universally right for all men, that all their inclinations should be directed according to reason" (*S.T. I-II.94.4 ad 3*).

Hence, apart from reason, natural inclinations do not suffice for the natural

law. If they could suffice, then every being with natural inclinations, including the brute animals, would also be ruled by natural law.<sup>16</sup> But, for Aquinas, only humans are guided by natural law, since “law is an ordinance of reason” (*S.T.* I-II.90.4c).

Acts of reason may be either autonomous or subordinated to the truth about human beings. Autonomous acts of reason cannot be an adequate ground for natural law’s universal, objective, and inalienable moral obligations: because autonomous acts of reason must either create moral values according to personal choices that vary according to individuals’ preferences, or identify moral values according to a metaethical monism. Neither of these suffice as the ground for universal and indefeasible obligations.

If reason cannot be the autonomous ground for natural law, reason must ground natural law through some truth. That truth must be one knowable through reason, otherwise animals would also be ruled by natural law in the same way as human beings. Since Aquinas identifies this grounding truth as the truth that human beings are rational, he argues that the difference between moral and immoral actions lies in whether or not one is honoring the truth about one’s own nature as a rational being: “Now the good look upon their rational nature or the inward man as being the chief thing in them, therefore in this way they think themselves to be what they are. On the other hand, the wicked reckon their sensitive and corporeal nature, or the outward man, to hold the first place, therefore, . . . they know not themselves aright” (*S.T.* II-II.25.7c).

This distinction between one’s rationality and physicality, or between the inward and outward person, presupposes the possibility of conflict between what is desirable according to reason and what is desirable according to the body. This conflict is well-known to anyone who has yearned for a doughnut while dieting or for a beer while being the designated driver. The reality of such conflicts shows that there are goods that are not reducible to bodily desires. Reflection on such conflicts shows that it is reason that grasps what is really good for the person, e.g., health, a safe drive home from the bar, an education. Aquinas is thus correct to assign priority to what reason identifies as good for the person: rationality really is the paradigmatic human characteristic. For it is only through reason that one can integrate the desires of the “outward man” with one’s knowledge of what harms or benefits the person or the “inward man.”

The difference then between judgments about the objects of natural inclinations and the objects of moral obligation is that the former identifies inclinational objects to be good without integrating that identification with an awareness of one’s nature as being primarily a rational person. Goods are morally obligated, if and only if they are judged to be indispensably necessary for one’s self as a rational person. Thus, the warrant for natural law’s moral

obligations is not simply a correspondence with a natural inclination, it extends to what is indispensable for one's nature as a rational person. And, the latter takes precedence. For instance, a rational being can know that it is right and good to defend one's family against wild beasts, even when the natural inclination for self-preservation urges one to flee without them. Likewise, one can know that one ought to make love with one's spouse rather than with a prostitute.

This distinction between living according to one's desires for self-gratification and living according to reason has long been in the Greco-Latin moral tradition. And living according to reason has long been understood as living in accord with the truths known by reason, that is, according to reason's conception of what is objectively good. Presupposed here is that a rational being seeks to be a good person, rather than just a satiated individual. This emphasis on being a good person is the gist of personalism in ethics—according to Karol Wojtyła.<sup>17</sup>

The absence of personalism is thus the fundamental error of voluntarist naturalism. For voluntarist naturalism reduces the human person to his natural inclinations and defines moral obligation and the meaning of human life—in terms of attaining the objects of those inclinations—as if humans are merely animals or robots rather than primarily persons with an inner life. That such a conception of life's meaning is grossly inadequate can be readily seen in the human ability to master nature. As Wojtyła explains: "A being that continually transforms nature, raising it in some sense to that being's own level, must feel higher than nature—and must *be* higher than it" (1993e, 178). Such personal transcendence is attained through "the most expansive openness of the subject toward reality" (1993b, 233). As put by Wojtyła: "Without this transcendence—without going beyond myself and somehow rising above myself in the direction of truth and in the direction of a good willed and chosen in light of the truth—I as a person, I as a personal subject, in a sense am not myself" (1993b, 234). Seeking what is really good for oneself as a rational person thus involves seeking to be good by seeking to honor the truths known by reason about what is or is not good for oneself as a person.

In seeking to be good, a person self-consciously seeks that which brings self-perfection, as Aquinas put it,<sup>18</sup> or self-fulfillment, as Wojtyła put it.<sup>19</sup> This emphasis on the self-perfection or self-fulfillment identifies the quintessential moral obligation as one of personal development rather than as merely achieving all those inclinational goods that are ends of natural inclinations—as Wojtyła explained in "The Problem of the Theory of Morality:"

To want a good and to want to be good—these are two dynamic realities that occur on different levels in the subject "human being." They are actualizations of the will



that are connected with this subject in different ways. In wanting any good whatsoever, the human self goes out toward a valuable object, whereas in wanting to be good the same subjective self in a sense confers value upon itself. . . . And it is in this sense that we must accept a distinctive teleology of morality . . . as that which fulfills—is conducive to the fulfillment of—the subject. . . . In this view, morality appears as something proper to the human person, corresponding to the person’s dynamic sphere of fulfillments and unfulfillments. (1993c, 148–9)

Ultimately, morality is not about gratifying various inclinations, but about achieving fulfillment, i.e., about achieving self-perfection.

On this point, Aquinas and Wojtyła agree not only that self-fulfillment or self-perfection structures moral obligations, but also that the choice to be good is the choice to seek what enables one’s nature to actualize its potentials; it is the choice to seek personal fulfillment according to the parameters of one’s nature. As Wojtyła (1993c) put it, “Moral evil basically consists in this: that a human being, in wanting some good, does not want to be good” (148)—and, “achieve the end that is proper to a human being as a person” (149). This means that, although the ends of natural inclinations specify the parameters of human nature and thereby what is beneficial and what is harmful to human beings, it is only their relationship to the person and their relationship to personal fulfillment that can make them obligatory.

Thus the fundamental error of voluntarist naturalism is that by reducing morality to the objects of human acts, it fails to realize that moral choices either fulfill the person or frustrate the person’s fulfillment. The quintessential moral obligation is not to attain certain objects, but to be a good person. Moral specification is thus ultimately based on what is necessary for the human being to flourish as a human person. Consequently, although the natural inclinations and their objects identify basic parameters of human action, they do not suffice per se as the ground of indefeasible obligations.

The principles of natural law’s indefeasible obligatoriness and moral specification must therefore lie in some good, or goods, of the person whereby self-perfection is achieved. Personalism must thus characterize natural law’s metaethics. The next three chapters consider whether one achieves self-perfection through indispensable social goods, autonomous virtues, or the basic goods of integral human fulfillment.

## Notes

1. Cf. Hayden (1990; 1991).

2. Citation from Crowe 1977, 45. in *S.T.* II-II.57.3, Aquinas rejected exclusively identifying natural law with Ulpian's definition by counterpoising it to the definition of Gaius, who defined natural law as a dictate of natural reason. The appendix discusses this further.

3. Also see R. A. Armstrong (1966, 47): "It is clear that, for St. Thomas, the natural inclinations provide the foundation and the direction for our knowledge of the self-evident principles of natural law. The immediate problem is clear we must first enumerate the natural inclinations possessed by man and secondly determine which principles may be said to correspond with these inclinations." For Armstrong's list of self-evident claims that correspond to each inclination see pages 47–50.

4. Plato's *Euthyphro* 10a puts it like this: "Is what is holy. holy because the gods approve it, or do they approve it because it is holy" (1941, 178). This question has received much attention from Henry Veatch (1981, 1971, 1962).

5. *S.T.* I-II.8.1c: "Omnia autem appetitus non est nisi boni. Cuius ratio est quia appetitus nihil aliud est quam inclinatio appetentis in aliquid. Nihil autem inclinatur nisi in aliquid simile et conveniens. Cum igitur omnis res, in quantum est ens et substantia, sit quoddam bonum, necesse est ut omnis inclinatio sit in bonum. Et inde est quod Philosophus dicit, in I *Ethic.* quod 'bonum est quod omnia appetunt.'" *S.T.* I.5.1c (emphasis mine): ". . . ratio enim boni in hoc consistit, quod aliquid sit appetibile: unde Philosophus, in I *Ethic.* dicit quod bonum est quod omnia appetunt." *S.T.* I, 5, 6c: "Nam bonum est aliquid, in quantum est appetibile et terminus motus appetitus."

6. Since it is being as suitable that is desired by natural inclination and not being as being, St. Thomas is not sneaking into his ethics properly metaphysical considerations. For Aquinas differentiates the disciplines by their object. And the difference between being as desirable and being as being is as great as the difference between being as mobile and being as being. Moreover, if Aquinas did consider metaphysics to be the basis of ethics, he would never have urged that the study of metaphysics *follow* ethics. But he did. See his *Commentary on the Nicomachean Ethics* lecture 7, #1209–11 (1964).

7. *S.T.* I-II.8.1c: "Nihil autem inclinatur nisi in aliquid simile et conveniens." *S.T.* I.80.1ad3: "Each power of the soul is a form or nature, and has a natural inclination to something. Wherefore each power desires by the natural appetites that object which is suitable to itself."

8. The existential element of good is used by Aquinas to differentiate between good *simpliciter* and good *secundum quid*, see *S.T.* I.5.1ad 1. He also uses it to describe the morally good act, see *S.T.* I-II.18.1c.

9. *S.T.* I.80.2c: "For the appetitive power is a passive power, which is naturally moved by the thing apprehended: wherefore the apprehended appetible is a mover which is not moved, while the appetite is a mover moved, . . . Now things passive and movable are differentiated according to the distinction of the corresponding active and motive principles; . . . indeed the passive power itself has its very nature from its relation to its active principle." After all, the powers of the soul are differentiated by their acts, which are specified by their objects, see *S.T.* I.77.3c.

10. *S.T.* I.5.6c: “Nam bonum est aliquid, inquantum est appetibile et terminus motus appetitus.” *S.T.* I.16.1c: “. . . bonum est in re, inquantum habet ordinem ad appetitum; et propter hoc ratio bonitatis derivatur a re appetibili in appetitum.”

11. See *S.T.* I-II.94.2c in which St. Thomas claims that whatever is the end of a natural inclination is naturally known as good.

12. Even animal appetite is not moved without, at least, the imaginative apprehension of something as suitable.

13. Kolbe was a Catholic priest in a WWII Polish concentration camp who volunteered to take the place of a family man who was capriciously sentenced to die by starvation.

14. It is beyond the scope of this book to defend rationality and freedom. Nevertheless, there seems to be three kinds of arguments in support of free rationality: namely, those holding that the variability of human action requires free deliberation (Aquinas, *S.T.* I.82.2; *S.T.* I.83.1; *Truth* 24.1); those holding that survival is not instinctual (Nathaniel Branden 1969, 21–7); and those holding that conceptualization requires free deliberation (Nathaniel Branden, 1969, 40–5, 54–7). Also see Mary Midgley (1995).

15. Also *S.T.* I-II.71.2c; *S.T.* I-II.18.5c; and *S.T.* I-II.19.1 ad 2.

16. Aquinas (*S.T.* I-II.91.2) notes that all creatures participate in the eternal law inasmuch as they possess natural inclinations to their proper acts and ends. This rule by inclinations is designated as a similitude of law in the reply to objection three. The absence of intelligent participation in this “law of inclinations” precludes this law from being natural law; it is only participation in the eternal law. This critical difference between man and animals is also made in *S.T.* I-II.17.2 ad 3: “Aliter invenitur impetus ad opus in brutis animalibus, et aliter in hominibus. Homines enim faciunt impetum ad opus per ordinationem rationis: unde habit in eis impetus rationem imperii. In brutis autem fit impetus ad opus per instinctum naturae.”

17. Wojtyła (1993a, 145–6): “Moral good is that through which the human being as a person is good (is a good person), and moral evil that through which the human being as a person is evil (is a bad person). Such a formulation could be regarded as a fundamental tenet of personalism in ethics.”

18. *S.T.* I-II.1.7c: “[A]ll agree in desiring the last end: since all desire the fulfilment of their perfection.” Ad 1: “Those who sin turn away from that in which their last end really consists; but they do not turn away from the intention of the last end, which intention they mistakenly seek in other things.” The significance of the last end for Thomistic ethics was brought to my attention by William VanderMarck (1963). Others have recognized the importance of self-perfection for ethics. For instance, see Grisez and Boyle (1979, 362): “Moreover, if choice is self-determination, then the goods one can choose must be considered as aspects of one’s own identity. It follows that the rightness of moral choices must be based upon the well-being or flourishing of persons, for a moral agent can identify with this and find self-fulfillment in it.”

19. Wojtyła (1979, 174): “But to fulfill oneself is the same thing as to realize the good whereby man as the person becomes and is good himself.” It is unclear whether Wojtyła’s commitment to personalism arises from his Thomism. For even though, in

1961, Wojtyła (1993d, 165) argued that personalism characterizes Aquinas's philosophy and theology, six years later in he criticized Aquinas for a "naturalistic concept of the human person" (1993f, 104). For brief discussions of the intellectual journey of Wojtyła see, for instance, Thomas D. Williams (2005) or Jarosław Kupczak (2000).

## ***Chapter 4***

# **Indispensable Social Goods**

*The previous chapters have established that the principle of universal and indefeasible normativity must be a good of the person qua person able to specify universal and particular moral obligations with certitude. This chapter considers whether that good could consist in indispensable social goods.*

A possible source of indefeasible obligatoriness is one's community. Community obligations are often held to be indefeasible insofar as they are supreme and unsurpassable.

Such indefeasible obligations are warranted as pertaining to goods indispensable for community survival and well-being either because without them no community can survive and flourish, or because without them no individual can survive and flourish. The former assigns priority to community life and subordinates individuals to the community, while the latter identifies the well-being of the community with the well-being of individuals. Let us distinguish between these bases of obligation by calling the former *political* and the latter *personalist*.

Political normativity thereby holds that community obligations are unsurpassable and able to override all other obligations—including an individual's moral obligations, while personalist normativity holds that universal and indefeasible moral obligations are able to override political obligations.

In this chapter, we ask whether political normativity suffices for generating universal and indefeasible obligations, while reserving the same question for

personalist normativity in later chapters. We begin with the normative theory of Thomas Hobbes.

### **Thomas Hobbes**

In his magnum opus, the *Leviathan*, Thomas Hobbes (1588-1679) argued that prior to the state, there is neither justice nor morality.<sup>1</sup> It is the state, brought into existence through the social contract, that achieves peace by stripping naturally aggressive individuals of their natural rights,<sup>2</sup> and ends their ability to satisfy their desires by waging war. The Hobbesian contract thereby alienates natural rights, obligates the adoption of the natural laws of peace, cooperation,<sup>3</sup>—and the Golden Rule,<sup>4</sup> by striking a social contract with one sufficiently powerful to compel adherence.<sup>5</sup>

The sovereign is also to judge all opinions and doctrines and establish laws.<sup>6</sup> Hobbes considered these laws of community to be immutable and eternal, since they embody the necessary and sufficient conditions of removing aggressive individuals from the state of war to the state of peace: “it can never be that War shall preserve life, and Peace destroy it.”<sup>7</sup>

The Hobbesian social contract is likewise immutable: there is no right to change the form of government, no right to charge the sovereign with breach of covenant, and no right to dissent from the sovereign’s rules—whatever their content.<sup>8</sup> No right to dissent, because the sovereign’s laws cannot be harmful: “For he that does any thing by authority from another, does therein no injury to him by whose authority he acted: But by this Institution of a Common-wealth, every particular man is author of all the sovereign does; and . . . to do injury to ones self, is impossible.”<sup>9</sup> In this way, Hobbes not only leaves the subject without means of redress, but also identifies moral obligations with the legal obligations specified by the ruler in the interest of peace.

Although it may appear that Hobbes succeeds in identifying normativity with the political community thereby providing a way to establish universal and indefeasible obligations, he does not. Moral and legal obligations are not interchangeable. Legal obligations concern human interactions pertaining to community life, not the immoral desires that only lurk in the human heart, e.g., envy and selfishness. Nor is it the case that legal obligations need be morally indefeasible. The obligation to honor one’s God, for instance, not only surpasses legal obligations but also identifies them as morally defeasible should they conflict with moral obligations to God.

Likewise, the obligation to love neighbors not only surpasses legal obligations but also identifies them as morally defeasible should they conflict with neighborly love, as shown by Martin Luther King Jr.’s campaign against the Jim Crow laws that were designed to keep racial peace. The American Civil Rights Movement, moreover, makes it clear that Hobbesian natural law is only

equivocally called a “natural law” insofar as essential to the classical natural law tradition is the moral right to disobey sovereigns who command immoral actions. In this regard, Socrates continues to inspire us, since he risked death by disobeying his political superiors when they told him to fetch—for execution—Leon of Salamis (Plato, *Apology* 32c-e; 1954, 18).

Hobbes also fails to identify a universal and indefeasible ground of moral obligations for three additional reasons. First, Hobbes limits his social contract to the relationship of a people to their own strong ruler. Second, since nothing constrains the ruler’s decisions, there is nothing that guarantees that the values and obligations prescribed by the ruler will remain constant over time. Indeed, as the history of religious wars in England show, a change in sovereign is likely to change the laws specifying one’s obligations. Third, Hobbesian normativity lacks a foundation able to prevent the prejudices of a ruler from becoming promulgated as absolute laws harmful to minorities.

Perhaps, however, these failures are not endemic to political normativity. Perhaps, the fundamental problem with Hobbesian contract theory lies in its misidentification of human nature as being so naturally selfish, aggressive, and exploitative as to necessitate coercive totalitarian regimes and the conflation of moral and political normativity. Perhaps, humans are rational animals; and, rational self-interest could suffice to construct a community not only ruled by law, rather than tyrants, but also ruled by a political normativity distinguished from moral normativity. The legal positivist H. L. A. Hart (1907–1992) certainly thought so.

#### H. L. A. Hart

In his highly influential *Concept of Law*, published in 1961, Hart bases law on community life,<sup>10</sup> approvingly cites Hobbes and Hume about the survival advantages of living in a community bound by law,<sup>11</sup> and argues against identifying legal obligations as moral obligations, since legality is determined by rules of recognition that need not be moral (92) and since laws may be morally iniquitous (203). Nevertheless he also posits that survival interests and requirements constitute a minimum content of natural law.

**“Men are not devils dominated by a wish to exterminate each other . . . neither are they angels” (Hart 1961, 191).**

[T]here are certain rules of conduct which any social organization must contain if it is to be viable. . . . Such universally recognized principles of conduct which have a basis in elementary truths concerning human beings, their natural environment, and aims, may be considered the *minium content of natural law* . . . The general . . . argument is simply that without such a content laws and morals could not forward the minimum purpose of survival which men have in associating with each

other. In the absence of this content men, as they are, would have no reason for obeying voluntarily any rules; and without a minimum of co-operation given voluntarily by those who find that it is in their interest to submit to and maintain the rules, coercion of others who would not voluntarily conform would be impossible.” (188–9)

Hart offers five principles delineating the parameters of the minimal natural law: human vulnerability, approximate equality, limited altruism, limited

**“[O]ur concern is with social arrangements for continued existence, not with those of a suicide club” (Hart 1961, 188).**

resources and the division of labor, and limited understanding and strength of will (190–3). These principles obligate a voluntary system of mutual forbearances and coercive laws that, for instance, forbid violence and obligate property rights (193).

Hart’s identification of survival as the basis of law is controversial. On the one hand, Hart argues that given the current character of human nature, certain laws are indispensable for survival. And *prima*

*facie*, this seems to identify his jurisprudence as a version of natural law.

On the other hand, survival is not a traditional touchstone of natural law but an innovation of Thomas Hobbes. Prior to Hobbes, the touchstones of classical natural law were personalistic, that is, sociality and benevolence—as put forth, for instance, by Cicero,<sup>12</sup> Hugo Grotius,<sup>13</sup> Richard Cumberland,<sup>14</sup> Karol Wojtyła,<sup>15</sup> as well as various tribal cultures that require aiding neighbors as well as strangers.<sup>16</sup> Thus, from the standpoint of natural law’s classical tradition, any natural law based primarily on survival is only analogously a natural law. The analogy is especially strained in Hartian jurisprudence, given his commitments to legal positivism.<sup>17</sup>

Hart’s positivism deprives his minimal natural law thesis with the ability to serve as a corrective for abusive laws that advance the survival of society while meeting that society’s rules of recognition. Hartian jurisprudence is thus not only unable to provide an adequate basis for protecting individuals from a misconstrual of the state’s survival interests that would require, for instance, discriminating against a minority population, but it is also unable to identify a normativity sufficient for universal and indefeasible obligations. This is especially the case, since Hart argues that a radical contingency characterizes

**“The difficulty is not so much to escape death; the real difficulty is to escape from doing wrong, which is far more fleet of foot” (Plato, *Apology* 39b;**



human vulnerabilities: “for things might have been, and might one day be, otherwise” (1961, 190).<sup>18</sup> Hartian jurisprudence cannot then be the normative foundation that we seek.

Perhaps, however, the fatal flaw of Hartian jurisprudence lies in its reluctance to embrace moral normativity as underpinning law. After all, a society is a system of cooperation that seeks to meet mutual needs. And these needs would be better met, argues David Copp, if the members of a society were to share values.

### **David Copp**

David Copp argues in his 2001 in his *Morality, Normativity, and Society*, that a shared moral code facilitates meeting societal needs. Thus, while “it may not be strictly true that a society *requires* the currency of a moral code in order to meet its needs . . . an appropriate social moral code would better enable a society to meet its needs than would any alternative arrangement” (196). Such a moral code is better than a coercive legal system in achieving compliance in following the standards necessary for meeting social needs (196). A society’s moral code is rationally justified if it enables the society to meet its needs and nonmoral values (227), e.g., its needs for social harmony and stability (201), for advancing “a global system of cooperation” (201), and for a stable population with its needs generally met accordingly to a “rough equality” (202), since “it is unlikely that the members of a society would be nearly unanimous in a stable way in preferring institutions that are known to lead to inequality in providing for basic human needs” (203). Likewise, civil liberties must be granted to individuals (203-204). And the social moral code must call for kindness and compassion (204).

Could Copp’s need-based social ethics be the ethics that we seek as the basis for universal and infeasible norms? On the one hand, it seems so, since Copp characterizes his needs-based moral code as a form of naturalism and argues that society-needs and the moral code’s ability to facilitate meeting those needs can be empirically assessed (229).

On the other hand, Copp is not willing to argue that human needs are universal, and, hence, that the justified moral code of societies cannot conflict. Rather, he points out that it is possible for these codes to conflict not only between societies with different needs or nonmoral values (210), but also between individuals and their own societies (244): “In short, it is not necessarily the case, even in a well-ordered society, that rational people would subscribe to or comply with the justified moral code” (244). Copp defends this possibility of radical disagreement as a key advantage to his theory that bases normativity on contingent social needs: “. . . it is a virtue of the theory I am defending that there is no substantive moral standard that the theory shows to be necessarily

justified relative to every society. It is a contingent matter whether a given moral stand is justified” (214).

Such contingency disqualifies Copp’s theory from providing the normativity requisite for universal and infeasible norms. It is not then the theory that we seek.

But, perhaps, normativity could be based on the invariable requirements of the social contract itself in such a way as to establish infeasible norms that could then be as universal as the social contract. The inability of government to function without the consent of the governed, whether implicit or explicit, suggest the possibility that an contractarian essentialism could suffice for universal and infeasible obligations. If so, universal and infeasible obligations would not be based on ontology but the essential requirements of the social contract. Such a basis for normativity was proposed by the still highly influential John Rawls.

### John Rawls

John Rawls (1921-2002) was aware that infeasible and universal obligations are unlikely to result from social contracts lacking in ontological underpinnings in so far as such contracts vary according to the interests of their contractors. Nevertheless, he argued that the rational contractor would be sufficiently interested in cooperation as to structure society in ways that would protect equal liberties as well as promote the well-being of those worse off economically and socially.<sup>19</sup>

But why would such social cooperation be rational, if one is sufficiently powerful to achieve self-gratification through the exploitation of the weak?

To this question, one could answer that, due to one’s nature as a social being, cooperation and not exploitation is in one’s best interest. Such metaphysical normativity is capable of underpinning Rawls’s identification of justice as equal liberties and mutually advantageous economic structures. As a result, justice as fairness suggests—to many (and to a non-committal Rawls in 1985<sup>20</sup>)—a possible normative ground for infeasible and universal obligations, even though he cautions us that he is concerned only with establishing the basis of constitutional democracies.<sup>21</sup>

In his lengthy introduction to *Political Liberalism*, in 1996, Rawls faults his earlier contractualism as developed in his groundbreaking 1971 *A Theory of Justice* as being “unrealistic” and unable to adequately solve the problem of stability in pluralistic societies (1996, xix), since it regarded “justice as fairness . . . as comprehensive, or partially comprehensive, doctrines” (xviii). Comprehensive, or substantive, doctrines are now seen as a problem and without the ability to establish political liberalism: “The problem of political liberalism is to work out a conception of political justice for a constitutional democratic

regime that the plurality of reasonable doctrines—always a feature of the culture of a free democratic regime—might endorse. The intention is not to replace those comprehensive views, nor to give them a true foundation” (Rawls 1996, xx).

Rawls assumes value pluralism and seeks to underpin constitutional democracies without appealing to comprehensive doctrines or to any kind of metaphysical normativity. For instance, in 1985, he rejects metaphysical normativity by arguing against interpreting “justice as fairness” as dependent on “claims to universal truth, or claims about the essential nature and identity of persons” (1985, 223). He thus denies that metaphysical normativity underwrites his heuristic shrouding of the contractors who are setting the conditions of the social contract with a veil of ignorance.<sup>22</sup> “When, in this way,” writes Rawls, “we simulate being in this position, our reasoning no more commits us to a metaphysical doctrine about the nature of the self than our playing a game like Monopoly commits us to thinking that we are landlords engaged in a desperate rivalry, winner take all” (1985, 239). But if this be the case, then why play the Rawlsian contractual game?

Rawls answers that we play because a overlapping consensus arises when other “comprehensive philosophical, religious, and moral doctrines accept justice as fairness in its own way; that is, each comprehensive doctrine, from within its own point of view, is led to accept the public reasons of justice specified by justice as fairness” (1985, 247).

But if overlapping consensus is the only basis of accepting Rawlsian justice, then Rawlsian justice is parasitic on normative foundations not of its own making. As such, it may be able to explain how consensus can arise from pluralism; but it can offer only a fear of “the state’s infringement of basic liberties”<sup>23</sup> as a reason for entering into the social contract, if—by chance—one’s comprehensive doctrine does not overlap with those that support constitutional democracies. But to count on fear in such circumstances is to count on an ontology that would respond to the state’s usurpation of basic liberties with fear rather than with relief that the state is increasing its control of citizens. Consequently, Rawlsian contractarianism does not escape reliance on ontology.

In his 1996 *Political Liberalism*, Rawls seeks to remedy the weaknesses inherent in divorcing justice from metaphysical normativity—even while continuing to disavow that he is constructing a comprehensive normative theory. He thereby argues that “a political conception of justice is a normative and moral conception” (xli). As such, it “must contain its own intrinsic normative and moral ideal” (xliv). He then argues that there are significant goods intrinsic to the political life that can suffice for an overlapping consensus (40), without presupposing comprehensive conceptions. One such good is mutual justice (208). He also argues that justice as fairness is the expression of

two moral powers “the capacity for a sense of justice and the capacity for a conception of the good” (305, 413).

Such arguments suggest that Rawls is re-introducing metaphysical normativity as a basis of justice as fairness as well as confirming an earlier insight found in *A Theory of Justice*:

From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us. . . . Thus if the basic structure of society is just, or as just as it is reasonable to expect in the circumstances, everyone has a natural duty to do his part in the existing scheme. Each is bound to these institutions independent of his voluntary acts, performative or otherwise. (Rawls 1971, 115)

These insights into natural duty, justice, and moral powers could have been the basis of an extended argument that the natural duty to be just is grounded on the objectivity of justice and that political liberalism relies on a certain metaphysical view of human nature whereby humans are free and equal beings.<sup>24</sup> Rawls could have then argued that the parameters of the social contract are set by nature and by metaphysical normativity.

But such an argument would be what Rawls wants to avoid at all costs, namely, a comprehensive doctrine. So, he does not alter his 1971 conviction that contractarian normativity suffices for constitutional democracies and that “the principles of natural duty are derived from a contractarian point of view” (1971, 115). He also attempts to establish human liberty on contractarian grounds.

[A]s free persons, citizens claim the right to view their persons as independent from and as not identified with any particular conception of the good, or scheme of final ends. Given their moral power to form, to revise, and rationally to pursue a conception of the good, their public identity as free persons is not affected by changes over time in their conception of the good. (1985, 241)

If, however, Rawls were correct that one’s identity as a free being is unaffected by any particular concept of the good or by any changes in conceptions of the good, contractarian grounds would have precluded any need to defend or otherwise justify one’s identity as a free person within constitutional democracies. The American civil rights movement and the woman’s suffrage movement tells us otherwise. Indeed, the struggle to achieve the identity of a free person continues across the globe; and, in this struggle the metaphysics of being human plays an indispensable role.

In *Political Liberalism*, Rawls struggles to honor his understanding that political liberalism requires forging a political unity from a plurality of incompatible comprehensive doctrines,<sup>25</sup> while recognizing, on the one hand,

that unless there are normative commitments that are common to these incompatible comprehensive doctrines, any unity would only be an intrinsically unstable *modus vivendi*,<sup>26</sup> and, on the other hand, that proponents of incompatible comprehensive doctrines are not likely to adopt another comprehensive doctrine. As a result, Rawls essentially argues that citizens have a moral obligation to be reasonable and that this obligation is not sufficiently thick enough to be a comprehensive doctrine.<sup>27</sup> The obligation to be reasonable requires “the readiness to propose fair terms of cooperation [that] is reasonable to expect others to endorse, as well as . . . [the] willingness to abide by these terms provided others can be relied on to do likewise” (1996, 81). In brief, reasonableness requires citizens to seek the good of being citizens in order for justice as fairness to achieve the support of an overlapping consensus (1996, 203, 208).

But whence the necessity of being good citizens and caring about justice as fairness? Is it not rather the case that the self-interest that drives individuals into states is also capable of shattering the state—unless it be channeled into institutions that promote the common good? James Madison certainly thought so when he argued for the necessity of republican government in *Federalist Paper* #10. If Madison is right, the claims that one ought to be committed to fair terms of cooperation and to justice as fairness are substantive moral claims that cannot be adequately supported by an imaginary veil of ignorance and the intuitions of a rational contractor. A comprehensive doctrine is necessary.

If Rawls had been willing to base these substantive moral claims on human nature (i.e., metaphysics), rather than simply on the desire to belong to a cooperative society, then his contractualism would have been able to make universal and infeasible obligations possible, since none can escape his own human nature. But, as divorced from the metaphysics of human nature, contractarian normativity loses its objectivity and must refrain from judgment about what is reasonable. Relativism is then unavoidable. As put by Rawls, “political liberalism does not attack or criticize any reasonable view” (1996, xxi). This relativism is self-defeating, since without ontology, there can be neither a non-question begging criterion of reasonableness nor a non-question begging refutation of those comprehensive doctrines contrary to political liberalism and its assertions of equality, freedom, and justice as fairness.

Moreover, Rawlsian normativity binds only those who enter into the social contract. As a result, the laws of contractarian societies cannot bind those who refuse to enter into the social contract, e.g., criminals or terrorists. Rawlsian contractualism cannot then generate any universal and infeasible obligations.

Thus, since we are seeking a normative theory capable of prescribing infeasible obligations that protect the weak across the globe, Rawlsian contractualism cannot be the normative theory that we seek.

But perhaps the weakness of Rawlsian contractualism could be avoided if the law were identified as the foundation of normativity and if law's normativity were identified with those procedures without which no legal system could adequately function. The jurisprudence of the influential Harvard law professor Lon Fuller suggests this possibility.<sup>28</sup>

### **Lon Fuller**

Lon Fuller (1926-1977) proposed, in his 1969 *Morality of Law*, not only that the law was a moral institution facilitating community life by regulating human interactions, but also that the law had certain essential characteristics embodying justice, namely, generality, promulgation, clarity, compatibility, no retroactivity, no impossibility, continuity, and administrative congruency (39–94). These requirements are moral as well as legal requirements; because, since law is essentially structured for the purpose of guiding behavior within a community, its structural requirements are moral. Natural law is thus best understood as those procedures essential to a community's law. Fuller's identification of these structural elements of law as essentially moral was driven by analyses of the legal systems of Nazi Germany and apartheid South Africa, which showed them to be riddled with structural weaknesses, most notably, inconsistency (158, 160).

Fuller's insightfulness on this point is striking: for although it is logically possible for an evil system to be totally consistent, no such system can be identified in human history—even the most evil systems have not been utterly devoid of good laws. For instance, the Soviet Union, which systematically killed millions and subjected millions more to totalitarian terrors, had a constitution that affirmed certain human rights.<sup>29</sup> The inconsistency of such regimes suggests that it is not possible for the human heart to be totally ignorant of what is good.

Nevertheless, the logical possibility that a functional legal system could be both consistent and inadequate for protecting minorities from exploitation, and even genocide, means that Fuller's procedural natural law cannot be the normative theory that we seek.

Not that Fuller would have expected his procedural natural law to perform such a service in as much as Fuller does not identify his procedural natural law as sufficient for a people's substantive morality. Rather, he posits his procedural jurisprudence as sufficient only for the laws establishing community living,<sup>30</sup> understood as a substantive moral good instantiating interpersonal communication<sup>31</sup> and neighborly love.<sup>32</sup>

As a result, Fuller's natural law ultimately presupposes a form of personalism that leaves key questions unanswered: how can the fallacy of deriving obligations from descriptions be avoided; how does fulfilling procedural

requirements guarantee that a law is just? Moreover, Fuller's procedural version of natural law seems to be necessarily static and unable to permit moral or juridical developments incompatible with legal precedents. But current laws prohibiting racial or sexual discrimination are just even though they overthrew legal precedent. This major flaw renders Fuller's social warrant for law and natural law proceduralism insufficient on its own terms. We must therefore look elsewhere for the dynamic ground of universal and indefeasible normativity.

### **Ronald Dworkin**

Like Fuller, Rawls, Hart, Copp, and Hobbes, Ronald Dworkin (1931–) uses the community as the basis for obligations.<sup>33</sup> But, he does not base law on the narrow ground of law's procedural requirements as does Fuller, justice as fairness as does Rawls, survival as does Hart, needs-based social values as does Copp, or peace as does Hobbes. Rather, Dworkin bases law on all the elements constitutive of a community, including morality, pre-existing rights, and the common law tradition. As a result, this thick normative foundation provides much better protection for individuals. This is especially the case since the common law tradition considered by Dworkin is an Anglo-American tradition which has been heavily influenced by the tradition of individual rights as found in natural law.

This historical fact raises the question of whether or not the natural law elements within Dworkin's jurisprudence provide a vantage point outside of the community whereby the community's moral and juridical values and norms may be evaluated. If so, Dworkin's jurisprudence stands or falls with the soundness of natural law. If not, then Dworkin must join Fuller, Hart, Copp, Rawls, and Hobbes in being unable to escape the fundamental problem that arises when community life is the only foundation of law—namely, that community life provides the only vantage point for evaluating law. And since community life continues despite any harm done to individuals or to minorities, community life per se can neither warrant the inalienable rights that protect individuals and minorities from what would otherwise be misguided social policies and laws,<sup>34</sup> nor be an adequate warrant for universal and indefeasible obligations.

### **Insights, Difficulties, and Lessons**

The fundamental problem with political normativity, that is, with identifying the community or the goods indispensable for community life as the sole basis for indefeasible and universal obligations is that this identification is easily divorced from personalist considerations that identify the well-being of individuals as an indispensable component of community well-being. As a result, community-based norms lack a basis for establishing universal norms

and are plagued with parochialism, an embedded social relativism, and the ability to override the well-being, and even the lives of individuals. Thus, political normativity neither suffices for the protection of individuals from misconstrued state interests nor provides an adequate basis for any universal and infeasible obligations.

Furthermore, not all obligations are political; for instance, individuals have an infeasible obligation to avoid doing evil—even when it harms none but themselves, e.g., the obligation to avoid envy. Humans also have the obligation to honor whatever good god they hold sacred. Political normativity cannot then suffice for moral normativity. As explained by Joseph Boyle: “Certainly, the members of a community must share some purposes or common interests—minimally an interest in some sort of security and ordering of relationships between persons . . . these values and interests are insufficient to define a moral perspective” (1983, 229). Since community interests do not exhaust the scope of morality, they are inadequate for moral normativity and cannot establish infeasible and universal moral obligations.

The inadequacies of community life or indispensable social goods for establishing universal and infeasible obligations across the globe require us to turn to versions of personalist normativity that are grounded in an aspect of human nature or personhood. These provide a vantage point extrinsic to community life, whereby laws can be evaluated as harmful or beneficial to individuals without collapsing into the vicious circle entailed in using the community as both the source of law and the standard for evaluating law.

## Notes

1. *Leviathan*, chapter 13 (1985, 188).

2. *Leviathan*, chapter 14 (1985, 190): “From this Fundamental Law of Nature, by which men are commanded to endeavor Peace, is derived this second Law: *That a man be willing when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe*” [sic].

3. *Leviathan*, chapter 14 (1985, 190).

4. *Leviathan*, chapter 15 (1985, 214): “*Do not that to another, which thou wouldest not have done to thy selfe*; which sheweth him, that he has no more to do in learning the Lawes of Nature, but, when weighing the actions of other men with his own, they seem too heavy, to put them into the other part of the ballance, and his own into their place, that his own passions, and selfe-love, may adde nothing to the weight; and then there is none of these Lawes of Nature that will not appear unto him very reasonable” [sic]. Also, chapter 26, (1985, 318): “The Lawes of Nature therefore need



not any publishing, nor Proclamation; as being contained in this one Sentence, approved by all the world, *Do not that to another, which thou thinkest unreasonable to be done by another to thy selfe*” [sic].

5. *Leviathan*, chapter 14 (1985, 196). Also chapter 15 (202) and chapter 17 (223–4 and 227).

6. *Leviathan* chapter 18, (1985, 233).

7. *Leviathan*, chapter 15 (1985, 215).

8. *Leviathan* chapter 18 (1985, 228–32).

9. *Leviathan* chapter 18, (1985, 232).

10. See, for instance, H. L. A. Hart 1961, 187–9.

11. H. L. A. Hart (1961, 254): “ This empirical version of natural law is based on Hobbes *Leviathan* ch. 14 and 15 and Hume, *Treatise of Human Nature* Bk 3, part 2, esp. ss. 2 and 4–7.”

12. *On Duties* I.22 (2005, 53): “. . . men, too, are born for the sake of men, that they may be able mutually to help one another; in this direction we ought to follow Nature as our guide, to contribute to the general good by an interchange of acts of kindness . . . to cement human society more closely together, man to man.”

13. Howard Kainz (2004, 33–4): “Grotius takes the intrinsically social, altruistic nature of rational beings as the pivotal principle on which the dictates of natural law hinge—even if there were no God.” See the appendix for more information on Grotius.

14. According to Kainz (2004, 37), Cumberland argued that one’s greatest happiness is one’s maximal benevolence, and that the common good thereby establishes law.

15. Wojtyła (1993g, 194) argued that self-fulfillment requires being a gift for others. Wojtyła (1993d, 174–5) also argued that while society is indispensable for self-fulfillment, it is not sufficient.

16. See, for instance, Kwasi Wiredu (1990, 243–60).

17. Mark Tebbit (2005, 43): “On [Hart’s] own version, the content is constrained by a natural connection between law and basic natural needs, but the conceptual connection between law and morality or justice is decisively rejected.”

18. Brian Bix (2004, 46): “[Hart’s] argument is that there are certain contingent facts of the human situation in this century (and all past centuries): that we are all mortal and vulnerable, that resources are limited, and that we are all dependent to some extent on other people. These facts are contingent, in that it is not impossible (however unlikely it may be) that future scientific developments might change these facts (for example, some series of discoveries might make us physically invulnerable). However, given these facts, . . . any legal or moral system that did not offer certain minimal protections (against murder, serious assault, and theft) . . . would not—could not—survive for very long.”

19. Rawls attempts to block selfishness in the striking of the social contract by shrouding contractors with a “veil of ignorance” that would deprive them of knowing their state in life. The veil places one in an “original position” wherein participants can specify “the most appropriate principles for realizing liberty and equality once society

is viewed as a system of cooperation between free and equal persons” (1996, 22). The resulting social contract would then define justice in terms of fairness as providing both “an equal right to the most extensive basic liberty compatible with a similar liberty for others. . . . [and the arrangement of] social and economic inequalities . . . so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all” (1971, 60-1).

20. “Whether justice as fairness can be extended to a general political conception for different kinds of societies existing under different historical and social conditions, or whether it can be extended to a general moral conception, or a significant part thereof, are altogether separate questions. I avoid prejudging these larger questions one way or the other” (Rawls 1985: 225).

21. “While a political conception of justice is, of course, a moral conception, it is a moral conception worked out for a specific kind of subject, namely, for political, social, and economic institutions. In particular, justice as fairness is framed to apply to what I have called the ‘basic structure’ of a modern constitutional democracy” (Rawls 1985, 224).

22. “Thus, the aim of justice as fairness as a political conception is practical, and not metaphysical or epistemological. That is, it presents itself not as a conception of justice that is true, but one that can serve as a basis of informed and willing political agreement between citizens viewed as free and equal persons. . . . To secure this agreement we try, so far as we can, to avoid disputed philosophical, as well as disputed moral and religious, questions. We do this not because these questions are unimportant or regarded with indifference, but because we think them too important and recognize that there is no way to resolve them politically. The only alternative to a principle of toleration is the autocratic use of state power. . . . Given the profound differences in belief and conceptions of the good at least since the Reformation, we must recognize that, just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state’s infringement of basic liberties. Philosophy as the search for truth about an independent metaphysical and moral order cannot, I believe, provide a workable and shared basis for a political conception of justice in a democratic society” (Rawls 1985, 230).

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conception of justice in a democratic society” (1985, 230).

24. Cf. “Justice as fairness is a moral conception: it has conceptions of person and society, and concepts of right and fairness, as well as principles of justice with their complement of the virtues through which those principles are embodied in human character and regulate political and social life” (Rawls 1985, 247).

25. “[*Political Liberalism*] looks for the most reasonable basis of social unity available to citizens of modern democratic society” (Rawls 1996, xli).

26. Rawls argues against reducing overlapping consensus to a mere *modus vivendi* (1996, xli). For Rawls, there could be no overlapping consensus between pluralistic theories unless “all citizens agree that the regulative political conception is reasonable (1996, l).”

27. “It should also be stressed that justice as fairness is not intended as the application of a general moral conception to the basic structure of society, as if this structure were simply another case to which that general moral conception is applied [cite omitted]. In this respect justice as fairness differs from traditional moral doctrines, for these are widely regarded as such general conceptions. Utilitarianism is a familiar example, since the principle of utility, however it is formulated, is usually said to hold for all kinds of subjects ranging from the actions of individuals to the law of nations” (Rawls 1985, 225). Also see, for instance, Rawls’s denial that his political liberalism is a comprehensive theory (1996, xxix, xliii). Also see his characterization of political liberalism as “a plurality of reasonable yet incompatible comprehensive doctrines is the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democracy” (1996, xviii).

28. There is a resurgence of interest in Fuller’s thought. See, for instance, David Luban (1998, 801–29).

29. *Constitution of the Union of Soviet Socialist Republics*. (Moscow: Novosti Press Agency Publishing House, 1978). Article 52: “Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited.” Article 56: “The privacy of citizens, and of their correspondence, telephone conversations, and telegraphic communications is protected by law.”

30. Fuller (1969, 104): “[T]he internal morality of law . . . may be viewed as made up of separate demands or ‘desiderata’—I have discerned eight—these do not lend themselves to anything like separate and categorical statement. All of them are means toward a single end.” At 106: “[L]aw is the enterprise of subjecting human conduct to the governance of rules.” At 205: “What is generally missing in these accounts [of positivism] is any recognition of the role legal rules play in making possible an effective realization of morality in the actual behavior of human beings. Moral principles cannot function in a social vacuum or in a war of all against all. To live the good life requires . . . the support of firm base lines for human interaction, something that—in modern society at least—only a sound legal system can supply. ‘Do not take what belongs to another’ is about as trite an example of a moral precept as can be found in the books. But how do we decide what belongs to another? To answer that question we resort not

to morals but to law. . . . So it is that the moral precept . . . must of necessity rest on standards borrowed from the law; without that support it could not achieve reality in the conduct of human affairs.”

31. Fuller (1969, 185): “I believe that if we were forced to select the principle that supports and infuses all human aspiration we would find it in the objective of maintaining communication with our fellows.”

32. Fuller seems to place his procedural natural law in the context of a personalism that structures its community life according to the requirement of neighborly love insofar as he argues that the solution to the problem of whom to include in the moral community resides in properly understanding the Old Testament command to love neighbors as oneself, see Fuller (1969, 182–6). Central to this argument is that the morality of aspiration, to which legal morality belongs, obligates all to recognize the humanity of all races (ibid., 183): “The morality of aspiration is after all a morality of *human [sic]* aspiration. It cannot refuse the human quality to human beings without repudiating itself.”

33. For an excellent synopsis of Dworkin’s jurisprudence see Mark Tebbit (2005, 52–69).

34. The tradition of inalienable rights was founded by natural law as shown by the historical sketch in the appendix.

## Chapter 5

# Autonomous Virtues<sup>1</sup>

*The previous chapters have established that the principle of universal and normative indefeasibility must be a good of the person that is not only irreducible to social and political goods, but is also able to specify both universal and particular moral obligations with certitude. This chapter considers whether that good could consist in the virtues considered as autonomous, rather than as dependent on the rules of reason. A later chapter, chapter 14, explicates the virtue ethics entailed by the norms of natural law.*

At the dawn of Greek philosophy, Plato argued that only living according to reason and its wisdom would bring one happiness.<sup>2</sup> To live by reason and wisdom is to live virtuously in harmony with one's nature and to exercise self-control over one's passions.<sup>3</sup> Greek virtue ethics thereby developed as a response to an "ethics" of passion.

The contact of Greek virtue ethics with Stoic natural law fused the development of virtue with adherence to the norms of natural law.<sup>4</sup> And norms were deemed crucial for identifying the salient moral elements embed-

ded in protean situations. Norms were considered to be the lodestars for navigating morally through life. Accordingly, centuries later, Aquinas characterized the moral virtues as being the habits formed from consistently acting in accord with the norms known by reason.<sup>5</sup>

This Greco-Latin fusion of virtue and natural law presupposed an

**"[I]t belongs to virtue  
to safeguard man in  
the good of reason"  
(S.T. II-II.124.1c).**

ontological view of nature that did not survive the scientific revolution, with its embrace of positivism and atheism and relativism.<sup>6</sup> As a result, not only are the norms of natural law not typically seen as indispensable for acting virtuously, but rule-scepticism also marks contemporary virtue ethics.<sup>7</sup> Perhaps, Alasdair MacIntyre puts it best: “[N]either kind of rule, neither inviolable negative rules nor positive prescriptions can by itself be a sufficient guide to action. Knowing how to act virtuously always involves more than rule-following.”<sup>8</sup>

A deep ambiguity marks these words. Is rule-following inadequate because it takes insight into the particularity of a situation in order to know how to apply a rule or to discern which rule is to be applied? Or is it the case that rules are too abstract or general to be applicable here and now in a particular case? The latter possibility removes virtue ethics from being an entailment of natural law, shatters the Greco-Latin fusion of law and virtue, and raises the question whether the Greco-Latin tradition was correct in holding that virtue arises from obeying natural law obligations. If this tradition is incorrect, is it then the case that autonomous virtues can be the ultimate ground of indefeasible and universal moral obligations?

There are various ways to ground obligation in virtues independently of natural law. Moral obligations could be based on the affective dispositions of each virtue considered in separation from each other, as proposed by Non-Cognitive Virtue Ethics. Or, moral obligations could be based on the rational entailments of each virtue considered in separation from each other, as proposed by Socratic Virtue Ethics. Or, moral obligations could be based obligations on the unified perfection of an integrated set of virtues as proposed by Perfectionist Virtue Ethics. Or, moral obligations could be based on insights into particular situations as proposed by Particularist Virtue Ethics. Let us consider these in succession.

## **Non-Cognitive Virtue Ethics**

It is possible to think that Aristotle introduced a non-cognitive ground for virtue, when he held that reason—however able to generate some moral absolutes<sup>9</sup>—must, in some cases consult the practically wise man.<sup>10</sup> This reliance on the practically wise, however, can be interpreted in two opposing ways. On the one hand, it can be interpreted as stating not only a need for reason’s insight into complex moral situations, but also that insight can be thwarted in those lacking virtue. Aristotle<sup>11</sup> and Aquinas<sup>12</sup> took this approach. On the other hand, it can be interpreted as a reliance upon virtuous, albeit non-cognitive, feelings. Yves Simon (1965) took this approach and argued that in cases of unique particularity, moral obligations are knowable only through

one's dispositions:

When moral problems are considered concretely—in all of their concreteness and individuality—the last word belongs always to sound inclination. There are no exceptions. There is always some aspect of the entirely concrete, circumstantiated issue—individual, unique, unprecedented, unrenovable—some aspect that can be decided only by inclination. (Simon 1965, 129)

For Simon, the practical judgment is ultimately beyond logic and rational necessity and within the realm of an affective non-cognitivism.

The individual case with which practical judgment ultimately has to deal may always be in some significant respect unique, unprecedented, and unrenovable. Thus, the last conclusion of the practical discourse is marked in essential fashion by features of strict singularity and of contingency. . . . In fact, a practical judgment fully adjusted to the circumstances is not so much the work of the reason as that of an inclination. It cannot be connected logically with any first principle. It ought indeed to be connected with principles but, owing to the contingency of its matter, the soundness of an inclination is the only thing that can effect this connection. No necessity of discourse deals with data that are not contained in any rational necessity. At the level of practical ultimacy, "love takes over the function of object" and the determination of truth is the work of affective connaturality. It is entirely reasonable that the last word about action be uttered by the inclination of the wise men . . . [citation omitted]. (Simon 1965, 82)

To be ruled by such inclinations is ultimately to deny that reason is able to discern what is objectively good for a person. At the very best, it subjects oneself to voluntarist naturalism and all of its problems, as discussed in chapter 2. At the very worst, it places virtue beyond reason and precludes the ability of reason to adjudicate conflicting moral intuitions, whether in oneself or between virtuous peoples. Either way, non-cognitive virtues ethics cannot explain the universality of indefeasible moral obligations.

Besides the Aristotelian virtue ethics, which history shows was subsumed into natural law by the Greco-Latin tradition, there are two other grounds of virtue that may be able to explain universal and indefeasible moral obligations without appealing to the norms of natural law. The first of these is the virtue ethics proposed by Socrates, the second is a perfectionist virtue ethics proposed, early in her career, by Jean Porter. Let us consider these in succession.

## **Socratic Virtue Ethics**

Socratic virtue ethics considers the virtues to be autonomous principles of normativity, while Aristotelian<sup>13</sup>—and Thomistic<sup>14</sup>—virtue ethics holds that the

virtues result from habitually following reason's rule.

The Socratic version allows the virtues to be independent from each other: for example, one may be just without being temperate. Embedded in this perspective is the idea that each virtue supplies its own maxim so that one can know how to be just without also knowing how to be temperate and vice versa.

This is not the case in Aristotelian virtue ethics; because, since each virtue results from adhering to "the voice of reason," one can have no virtues unless one has learned to listen to reason's voice and rules—and if one has learned to obey reason sufficiently to have one virtue, one also has all the virtues. This grounding of virtues upon adherence to reason's maxims precludes conflict amongst the virtues and is the basis of the compatibility thesis, which holds that the virtues cannot conflict with each other.

Rejection of the compatibility thesis underpins contemporary versions of Socratic virtue ethics. For example, A. D. M. Walker (1989) argued that since virtues shape the personality, and since different virtues require different types of personality, "certain pairs of virtues can no more flourish in the same personality than different species of trees can flourish in the same soil" (352). The virtues that Walker used to argue against *the compatibility thesis* are justice and kindness. Justice requires "impartiality and detachment, and is inimical to attachments to specific persons because of their particular individuality" (353). These requirements are opposed to the sensitive regard to the particularity of others exhibited by kindness. According to Walker, these differences so affect the human personality that justice and kindness cannot be compatible traits of character.

### **Lessons, Insights, and Difficulties**

Walker's argument is not without a degree of persuasiveness: he argues that it cannot be defeated simply by stipulating that one's emotional dispositions for

**"Socrates, then, thought the virtues were rules or rational principles . . . while we think they involve a rational principle." *N.E.* VI, c.13, #27–29.**

**Assuming that Aristotle is right about Socrates, then this is one point in which Plato disagreed with Socrates. For Plato makes all forms of goodness participate in the form of goodness itself; thus, there cannot be autonomous virtues. Accordingly, in the *Protagoras*, Plato argues that the virtues are one, albeit paradoxically in the voice of Socrates.**



justice or for kindness need not be developed to excess, insofar as such a stipulation does not counter the critical premise that “the stronger the disposition, the greater the virtue” (358). This premise, however, presupposes that the virtues are reducible to dispositions and rejects the view that virtues are dispositions resulting from adhering to the truths known by reason. To ground the normativity of the virtues in their dispositions necessarily entails the incompatibility of the virtues; because it entails that one be ruled, not by reason, but by various “virtuous” dispositions. If this were so, there would be no principle capable of guiding choice towards an integrated/unified state. Morality would then lack an overarching end capable of subordinating and coordinating responses to moral values. Without such an end, e.g., *eudaimonia*, virtue ethics would not be able to avoid the incoherence of incompatible virtue-states whereby, for example, justice and mercy conflict.

Furthermore, the identification of dispositions as the principle of normative specification precludes a rational principle for judging certain dispositions as unjust. Consider, for example, how caring for the inferior was once used as a justification of slavery; how Aryan togetherness was used by Nazi Germany to justify genocide<sup>15</sup>; and how love of family is used to justify female genital mutilation. Accordingly, if it were true that non-cognitive dispositions and feelings are indispensable for adjudicating some decisions, then the rational adjudication of those decisions would not be possible. Conflict would then be adjudicated on the basis of the authenticity of feeling or by judges who have passed some kind of virtue test. Either of these possibilities would be unable to warrant the consistency presupposed by universal normative indefeasibility.

Furthermore, underpinning the rejection of both the compatibility thesis and the subordination of virtue to natural law norms is an assumption that practical reason and natural law norms function only on the level of broad and sweeping universal rules. But reason also functions on a particular and unique level when it recognizes not only individual instances of universal norms, but also individual instances so complex that it is not clear which norms should be applied in order to preserve what is right and good.<sup>16</sup> Reason is also functioning when it dismisses some particular norm that usually applies as failing to achieve goodness in a particular case. When such instances of rule-based exceptions pertain to human law, they are instances of equity according to Thomas Aquinas.<sup>17</sup> As such, they fall under the universal proscription of harm.

Moral insight requires identifying the salient variables in complex cases and reasoning out the morally requisite action. Those with prudence excel in these abilities. They are akin to the wise doctor who can accurately and rapidly diagnose diseases—not because they excel in introspecting their feelings but because they excel in following the rules of diagnosis and in the weighing of the objective characteristics of various diseases. This rational adjudication of

complex particular cases is the reason why wisdom requires insight rather than just dispositions to acting morally. Moral wisdom is not simply a matter of wanting to do the right thing; one must actually know what the right thing is and know how to achieve it quickly and easily. If this were not so, then it would not be possible for experts to teach another the nuances of the correct course of action. Nor would it be possible to evaluate and correct mistakes.

Reason's ability to adjudicate complex cases, whether in morality or medicine or law, shows that reason does not function merely on the level of abstract generalities, but also on the level of particularities without losing sight of the whole. Consequently, the rejection of the compatibility thesis shows a faulty understanding of reason and renders inexplicable the development of expertise in any human endeavor.

## Perfectionist Virtue Ethics

When virtuous acts are not identified as acts in accord with the truths known by reason, but as acts expressing the ideals of virtue, it is logical to conclude that it is the perfection of the virtues that specify moral obligations. Perfectionist virtue ethics is thus very similar to Socratic virtue ethics, but differs in so far as it takes the virtues as an integrated set and thereby necessarily accepts the compatibility thesis. Jean Porter (1990, 1993b) once proposed a perfectionist virtue ethics. She argued that reason was subordinated to the virtues insofar as the virtues instantiate human perfection and eudaimonia.<sup>18</sup> Accordingly, to know the ideals of virtue is to know one's moral obligations. Eudaimonic virtue was thus identified as the specificatory norm of natural law.<sup>19</sup> According to Porter, "For Aquinas, . . . the correct descriptions of actions, and correlatively, the rule of morality, are subsequent to ideals of virtue, and these ideals, in turn, cannot be unpacked in isolation from one another, but are mutually interpreting" (1993b, 162). Thus, the early Porter not only held that the *ideals of virtue* sufficed as Aquinas's principle of normative specification, but also that these ideals specify the perfection of human nature. As such, they were indispensable for evaluating moral action.

In order for an action to be morally good without qualification, the end for which the agent acts must also be good, and must therefore be described in terms of the ideals of temperance, fortitude, and justice. Moreover, the agent must pay attention to the particular situation in which she must live out these ideals, in order to choose the concrete actions that will truly instantiate them. (Porter 1990, 98)

Her more recent work continues to rely on the perfection of virtuous ideas and to claim that "natural law takes its norms from the virtues."<sup>20</sup> But now she is

arguing that the ideals of virtue are specified by one's local community's reasoned reflection into species-specific tendencies that are underdetermined and per se unable to specify universally binding obligations.<sup>21</sup>

### **Lessons, Insights, and Difficulties**

There is much to commend in grounding morality in a perfectionist virtue theory as, for instance, set forth by Jean Porter. The reliance on the community for the specification of requisite virtues alleviates some of the problems associated Socratic virtue ethics, namely, the absence of an intrinsic principle capable of adjudicating conflicting dispositions, such as those concerned with mercy and justice.

Such a reliance on a community, however, is a reliance on social consensus. As such, it eviscerates the universality and objectivity of morality and plunges us into the depths of a cultural relativism unable to bridge disagreements between communities. To make the community the adjudicator of virtue and moral obligation is also to render especially problematic the ability of individuals to assert their rights against their community's preferences.

On the other hand, virtue ethics can offer a way to maintain social cohesion within a local community inasmuch as even in cases where there is no agreement about all the specifications of a virtue's particular obligations, there can be agreement that, at least, the virtue itself is morally good and normative. Another advantage is that perfectionist ethics is eudaimonic and, as such, its norms and obligations are indefeasible insofar as they pertain to eudaimonia, the only absolutely necessary end.

More importantly, virtue ethics—by placing an emphasis upon feelings, and thereby upon the root of all feelings, i.e., love,<sup>22</sup> facilitates the understanding that the moral life is not motivated by duty but by love. Love provides virtuous actions with a persuasiveness all their own: their beauty compels the innocent not only to acclaim the value of the moral act, but also to see one acting morally as beautiful. Such beauty reveals the goodness and the desirability of virtue and inspires one to live morally. Such inspiration derives from the emotional impact of virtue's beauty.

Wickedness also instructs the innocent through a negative emotional impact, since the innocent cannot but see both the performance of a wicked deed and the performer as ugly. Such ugliness reveals evil as a repulsive destroyer of the good and thereby as something to be avoided. For example, it is impossible for a good person to see a friend acting meanly as beautiful. Nevertheless, it is possible for one to lose this sensitivity to inner beauty and goodness by choosing to denigrate moral goodness for the sake of fitting in,<sup>23</sup> that is, for the sake of attaining a pleasure contrary to reason's dictate<sup>24</sup>—or for the sake of avoiding the effort demanded by morality.<sup>25</sup>

Aquinas teaches that goodness is linked to beauty in his doctrine of transcendentals, which also identifies goodness with truth and being. If Aquinas is right, then just as goodness is linked to beauty, truth, and the fullness of being, wickedness is linked to ugliness, falsity, and the diminishment of being. It is thus not for metaphysically insignificant reasons that our cartoons, our fairy tales, and our deepest imagery depict the good as more beautiful and true to the abundance of life and being than the wicked, e.g., the scowl of Scrooge, which expresses his miserliness, versus the beaming radiance of Santa Claus, which expresses his kindness even though he is not handsome. The emotional impact of such images encourages us to treasure and to seek the virtuous good and to avoid wickedness.

The question before us, however, is not whether virtue or its ideals have inspirational priority over moral norms by being that which leads the honest observer to identify and to pursue the good, but rather whether virtue has the foundational priority that suffices for normativity and whether Aquinas erred when he taught that reason through *synderesis* appoints the ends of moral virtue.<sup>26</sup>

I have three objections to identifying moral normativity with perfectionist virtue: (1) it obligates too much and fails as the ground of normative specification; (2) it excuses the morally corrupt—who know not virtue—from culpability; and, (3) it precludes the normative ease and developmental appropriateness necessary for a global morality capable of underwriting a global jurisprudence, while promoting a moral epistemology and pedagogy contrary to the nature of human understanding. The successive examination of these objections follows.

*Objection 1—Perfectionist virtue ethics obligates too much and fails as the ground of normative specification:* If perfectionist virtue were the principle of normativity, then there would be no way to avoid obligating actions to accord with the fullness of virtuous perfection as found in virtuous habits. Such a standard of perfection would entail that anyone lacking the virtues could not act without falling short of attaining the moral standard. But since any act falling short of the moral standard would be immoral, then—insofar as moral virtues are attained gradually over time—it would be necessary to become moral by performing immoral actions. This is absurd. Immorality cannot make one moral.

For this reason Aquinas differentiated between acting in accord with virtue and acting from virtue:

An act is said to be an act of virtue in two ways. First, from the fact that a man does something virtuous: thus the act of justice is to do what is right, and an act of fortitude is to do brave things; and in this way law prescribes certain acts of virtue.—Secondly an act of virtue is when a man does a virtuous thing in a way in which a virtuous man does it. Such an act always proceeds from virtue: and it does

not come under a precept of law, but is the end at which every lawgiver aims. (*S.T.* I-II.96.3 ad 2)

Hence, Aquinas does not hold that there is an obligation to act from virtuous habits. After all, “neither by man nor by God is he punished as breaking the law, who gives due honor to his parents and yet has not the habit of filial piety.”<sup>27</sup>

To reject virtuous habits as the specificatory norm of morality is not however to reject eudaimonia as the foundation of morality; nor is it to reject virtue as the perfection of human beings. It is rather to identify virtue as the habit of according with reason and to identify whatever is indispensable for attaining the end as obligatory and the subject of a precept, while identifying whatever facilitates the attainment of the end as supererogatory and the subject of a counsel. Or, as Aquinas put it in *S.T.* I-II.100.2c, “certain matters, without which the order of virtue, which is the order of reason, cannot even exist, come under an obligation of precept; while other matters, which pertain to the well-being of perfect virtue, come under the admonition of counsel.” Accordingly, if virtue were to ground normativity, then it would be the perfection of virtue that grounds obligatoriness and specifies moral obligations. If so, counsels would be obligations, and none lacking in perfect virtue would be aware of any moral obligation. The quintessential moral obligation cannot then be the obligation to be virtuous, rather it must be the obligation to accord with the *order* of virtue.<sup>28</sup> In this regard, moral duty consists both of the duty to avoid destroying the order of virtue and the duty to maintain the order of virtue (*S.T.* I-II.99.5c). Since the order of virtue consists in the order that reason establishes as it strives for eudaimonia, it is unaffected by whether it is directed towards imperfect or perfect happiness. If this were not so, then the perfect happiness of the next life would overturn the imperfect happiness of this life. Such contrariness between this life and the next violates Aquinas’s principle that grace presupposes nature.

Consequently, although the eudaimonic foundation of Aquinas’s ethics does not obligate the perfection of virtue, it does obligate the maintenance of the order of virtue or eudaimonic relatedness. This position enables Aquinas to argue in *S.T.* I-II.60.1&5 that the moral virtues are not specified by the last end but by their relatedness to reason. As a result, the moral virtues subordinate the appetites to reason thereby enabling one to preserve in one’s ethical inquiries until reason determines what is good and what is obligatory. Besides facilitating reason’s ability to discern and specify moral obligations, moral virtues so determine the human heart that it swells with determination at the thought of doing good and shrinks with repugnance with the thought of doing evil, thereby enabling one to preserve in the moral life.

*Objection 2—The normativity of perfectionist virtue ethics excuses the morally corrupt from culpability:* If the virtues per se were the source of normativity and the principles of moral specification, then those without the virtues would lack the ability to know their moral obligations in specific circumstances. They would lack requisite moral knowledge<sup>29</sup> and would thereby not be culpable for their immorality. But it is not true that the morally corrupt lack moral knowledge—as the murder conviction of serial killer Jeffrey Dahmer, for instance, shows.<sup>30</sup> Indeed, it is possible for the immoral to recognize their own immorality. Hence, it is not the case that virtue is the ultimate source of moral knowledge.

*Objection 3—The normativity of perfectionist virtue ethics preclude the normative ease and developmental appropriateness necessary for a global morality:* The identification of virtue as the moral criterion also removes the possibility of knowing moral obligations from those who do not have a complete understanding of the virtues. As put by the early Porter,<sup>31</sup> “[I]t is impossible to separate the moral evaluation of actions from an account of the virtues, or conversely, to describe a virtue without saying what sorts of actions are typical of that virtue” (1990, 98–9). Notice that in this description of moral action there is no appeal to any moral maxims; the virtues are identified extensively through their paradigmatic acts. To assign foundational priority to the various virtues and to identify them as the principles of normative specification makes one’s knowledge of specific moral obligations dependent upon one’s familiarity with multiple paradigmatic acts identified as ideal(s).

Even children would have to master this extensive understanding of virtue. This means that Porter would have them understand, as she put it in 2005, “why these kinds of behavior reflect valued and admirable qualities . . . given the needs and conditions common to most of human life” (198). This understanding would also require children to integrate a diverse range of the typically virtuous actions by bringing them under the “rubric of one ideal.”<sup>32</sup> This ideal includes the relationship of the virtue to well-being and to one’s life as a whole.<sup>33</sup>

But pre-adolescent children are not capable of such reflections. And, although they may not understand what justice is, they still know that it is wrong to steal. They are thus still morally responsible because, while they cannot reflect much beyond the demands of the moment, they are capable of understanding moral norms.

Thus, if Aquinas were correct that the virtues resulted from following moral norms, then children could begin to develop virtues. But Porter rejected the possibility of understanding the virtues as resulting from the adherence to norms formulated without full consideration of the ideals of virtues and their relationship to happiness.<sup>34</sup> Moral understanding, and thereby moral responsi-

bility and actions, therefore elude not only children, but all who have not been philosophically educated.

In response, one could argue that those without the proper understanding of the ideals of virtue and their relationship to happiness can still participate in the moral life by imitating the virtuous acts of others.

But, insofar as virtuous acts are mental acts, they cannot be imitated: they cannot be directly observed, and an actor can copy their outward manifestations without also replicating the mental act. For instance, the motions of a symphony director may be imitated even though one fails to understand the significance of each motion and fails to adopt the director's intentionality. Consider now a child without the virtue of justice who finds a lost wallet stuffed with cash. Without the virtue of justice, the child will not *feel* like returning the wallet; the child could even be chanting "Finders Keepers." If this child wished to imitate the virtuous, she would have to be able to identify not only the virtuous person but also what makes acts virtuous—and this is not observable. For although it is possible, for instance, to see the wallet being returned, it is not possible to see the intentionality with which it was done. Perhaps, it was done for a reward or public acclaim. If she then returns the wallet for these reasons, she has failed to act virtuously. This is because virtuous activity is not simply the performance of an act but acting according to principle, i.e., a rule of reason such as "the possessions of others ought not be kept." Without the moral maxim or precept, the desire to act virtuously is like a horse running blind (*S.T.* I-II.58.4 ad 3). Only reason is capable of providing the insight that guides actions and allows the virtues to develop. In the words of Aquinas:

Now the virtue of a thing consists in its being well disposed in a manner befitting its nature . . . But it must be observed that the nature of a thing is chiefly the form from which that thing derives its species. Now man derives his species from his rational soul: and consequently whatever is contrary to the order of reason is properly speaking, contrary to the nature of man, as man; while whatever is in accord with reason is in accord with the nature of man, as man. Now "man's good is to be in accord with reason, and his evil is to be against reason," as Dionysius states (*Div. Nom.* iv). Therefore human virtue, which makes a man good, and his work good, is in accord with man's nature, for as much as it accords with his reason: while vice is contrary to man's nature, insofar as it is contrary to the order of reason. (*S.T.* I-II.71.2c)

This argument relies on human nature to establish that acting virtuously is to act in accordance with reason (*S.T.* I-II.85.2c). Likewise Aquinas wrote in *S.T.* II-II.141.6c that "the good of moral virtue consists chiefly in the order of reason: because 'man's good is to be in accord with reason.'" If the good of moral virtue is the order of reason, then "moral virtues do not constitute a source of moral knowledge independent of the knowledge of the universal principles of natural

law” (Boyle 1992, 14). If this is not so, then Aquinas erred in claiming that reason is the nursery of virtue<sup>35</sup> and that virtues are ranked according to their relation to reason (*S.T.* II-II.123.12).

The priority of reason in Aquinas’s doctrine of virtues—when coupled to the will’s obligation to adhere to conscience —enables those without virtue to be morally responsible and to become virtuous by developing a good will, i.e., a will that habitually accords with reason’s norms. As Grisez, Boyle, and Finnis explain:

[A] child whose character is not yet formed can freely choose in accord with a judgment reached by sound practical reasoning. Even if the child’s *judgment falls short* of full moral truth, the child’s *will*, both exercised and formed in such choices, in no way conflicts with moral truth and, indeed, *conforms* to it, insofar as the child is aware of it. Though character is still undeveloped, such good will is the budding forth of virtue.

Thus, insofar as people choose in accord with soundly reasoned practical judgements, especially in making major commitments, they have the core of the virtues. In carrying out such morally good choices, other aspects of the personality will gradually be drawn into line, errors in moral thinking corrected, and facility in carrying out right choices gained. In this way, virtues are acquired. (1987, 131)

Since the development of virtue presupposes that the will adheres to one’s knowledge of right and wrong, and since one’s moral understanding does not begin with the ideals of virtue, the virtuous ideal(s) cannot be the basis of moral development. If inadequate as a principle of moral development, then virtuous ideal(s) cannot be the foundational principle of normative specification insofar as this principle is indispensable—even for children—in ascertaining whether a particular action is morally requisite.

## Particularist Virtue Ethics

Particularist virtue ethics is a family name for those virtue ethics that base moral obligations—not on rules—but on moral insight into the truth of particular situations. A concern with universal and indefeasible obligations is thus not typical. But, could such an ethics be the normative theory that we seek? What if there were a particularist ethics that acknowledges that objective truths underwrite obligations? Could not a particularist ethics then attempt to explain universal moral obligations without appealing to universal norms simply by holding that like cases must be treated alike. Indefeasibility could then be explained by holding that the identification of a particular moral obligation binds regardless of one’s here and now feelings.

Such a virtue ethics could also attempt to avoid the intractable conflict that



characterizes Socratic virtue ethics by arguing that the virtues take their obligatory force from eudaimonia and that, as a result, careful consideration of the particularities of a case will show that the opposing virtues are not equally eudaimonic: after all, opposing virtues cannot equally lead to the same place. For instance, a parent may be torn between imposing justice or showing mercy towards a disobedient child. Focusing on which virtue would best advance the child's well-being in this particular case would provide a way of objectively adjudicating the conflict and identifying one's proper course of action without recourse to a universal principle of specification.

On the other hand, without objective specificatory principles, it is difficult to see how particularist virtue ethics could achieve the normative consistency indispensable for indefeasible and universal obligations. Nevertheless, in his *Love and Objectivity in Virtue Ethics: Aristotle, Lonergan, and Nussbaum on Emotions and Moral Insight*, Robert J. Fitterer (2008) attempts to meet this challenge by appealing to a decision procedure that he calls "performance objectivity."<sup>36</sup>

Performance objectivity requires consciously adopting a state of discernment wherein one cycles through three processes: (1) continually yielding to the desire to know the truth; (2) rationally altering appearances by using one's moral imagination to see things from the perspective of others; and (3) considering whether the decision feels aright (95). If one continues to cycle through these stages until one is certain that one has perceived things from the perspective of the other, one can be sure that one is not biased and that objectivity has been achieved—but only if one's emotions want what is really and truly good for the other and for oneself. For this reason, the emotion of compassionate love excels in conducting one to virtue.

**Lonergan claims "that 'genuine objectivity is the achievement of authentic subjectivity'" (Fitterer 2008, 5).**

Fitterer's defense of compassionate feelings as necessary for virtue can be reconstructed in three steps. First, Fitterer argues that judgment is based on phantasm (how things appear) and that how things appear depends on one's background emotional state (94). In this way, "emotions illuminate salience" (86). Consider, for instance, how salience differs when one walks down a street when in the grip of a background emotion of compassion versus when in the grip of "survival at all costs" (93).

Second, after citing Nussbaum's *Upheavals of Thought* for its discussion of the importance of compassion and love to psychological, ethical, and political health (89), Fitterer argues that "this one emotion—compassionate

love—construes phantasm into the pattern of salience most conducive to sound moral insight” (94). Feelings of compassion conduce to virtue by illuminating and prioritizing “intentional objects . . . with reference to the intrinsic value of individual persons. This . . . ‘interpretative seeing’ . . . will simply forbid us to overlook the salience of another human life” (90). In other words, compassionate persons *see* how events and actions affect others. They also care about others: “compassion would mean ‘feeling towards others a care that one initially feels towards oneself’” (90).

Third, Fitterer identifies compassion as eudaimonic desire:

For compassion is another mode of the desire for happiness; it is the aversion to *unhappiness*, both in oneself and in the other person. And it binds one’s own flourishing to the flourishing of others in a more directly personal way than would, say, the political interest in justice and the mutual instrumentality of peaceful economic order. Precisely by allowing the emotion of compassionate love to become our main social orientation, we are making the judgment that we ought to err on the side of vulnerability if others are not flourishing along with us. (90–1)

Hence, concern for eudaimonia is caring about the flourishing of oneself and others.

### Lessons, Insights, and Difficulties

Even though Fitterer claims not to have developed “a complete theory of moral objectivity” and “an exhaustive justification of moral truth claims” (98), the foundational principles of normativity that he does elaborate suffice for us to note that his virtue ethics has several key advantages. It argues that since background emotions or dispositions frame our perception of particular situations and identify their initial salient features, “being objective in virtue ethics cannot mean the elimination of preferences; objectivity is the unhindered openness to attaining the right preferences” (92). Thus, “some background emotion that rightly construes phantasm is also a necessary part of attaining the human good” (94). That he identifies compassionate love as the background emotion that facilitates moral insights and furthers eudaimonia is also insightful.

**“[L]iving well requires loving aright” (Fitterer 2008, 3).**

Other advantages of Fitterer’s virtue ethics include the decision procedure designed to promote objectivity and moral truth. It presupposes that it is not enough to feel love, one must also do the right thing. Most importantly, this ethics proposes that acting in accord with love is the quintessential moral obligation and the key to eudaimonia.

The obligation to love others as oneself is typically formalized in the precept of neighborly love or the Golden Rule. But Fitterer does not appeal to either of these norms. Nor does he appeal to any norm to provide a ground for the development of virtue—or to provide a criterion for adjudicating moral conflict. He rather relies on the emotion of compassionate love to confirm the rightness of one's moral judgments.

Moreover, he explicitly argues in favor of particularism by providing four reasons for its adoption (31): namely, that standards are set by the good person; that particular statements are more trustworthy than universal ones; that general rules are derived from particular cases; and, that Aristotle was a particularist as shown by his rejection of Plato's Form of the Good. Fitterer also writes that "for Aristotle, choices are not subsumed under some general principle or law which itself grants the moral perspective" (31).

It is unfortunate that Fitterer adopts particularism and defended his adoption with these rather shaky points. For instance, if it were really the case that moral standards were set only by the good, then the vicious could not know that they were bad because they would lack the moral knowledge accessible only by being good. If particular statements were more trustworthy than universal ones, they would not be statements more liable to be emotionally charged, and thereby more likely to be biased. If particular cases were to yield only general rules of thumb, then one could never go through an experience so intense that one would commit oneself to "never, ever, doing that again." If Aristotle was a particularist, then he would not have expounded an ethics arguing that one should live according to the truths known by reason for the sake of an *eudaimonia* consisting primarily of contemplating God and secondarily of acting virtuously.

It was not necessary for Fitterer to adopt a particularist metaethics in order to preserve his insights into morality. He could have based his virtue ethics on the universal and exceptionless norm prescribing benevolence and compassion. If he had done this, he would have not only been able to preserve his insights into how feelings of love facilitate moral insight but he would also have been able to identify a universal norm capable of justifying his virtue ethics. The intelligibility of this absolute norm would then have enabled him, for instance, to justify why it is the case that cruelty is always and everywhere wrong. Or, why Aristotle was right to identify adultery, envy, and other acts as so intrinsically bad as to be absolutely forbidden (*N.E.* II, c. 6, n. 1107a8).

Given, however, that Fitterer did adopt a particularist metaethics and undergirded it with the background emotion of compassionate love and a decision procedure designed to produce objective moral truths, we wonder whether universal and absolute rules are the only way to explain and justify the condemnation of genocide, for instance. Could Fitterer's virtue ethics be the

normative theory that we seek? Is it capable of explaining and justifying indefeasible obligations, such as the absolute prohibition of genocide?

On the one hand, Fitterer's reliance on feelings of compassion to provide moral salience seems adequate to rule out genocide as his procedural objectivity seems adequate to establish that an obligation is here and now binding regardless of any feelings that it be otherwise.

On the other hand, there are three intractable problems. *First*, genocide is not merely an imaginative possibility. It has occurred. It was not prevented by feelings of compassion. Indeed, in a chilling speech during the Nazi era, Heinrich Himmler exhorted his subordinates to fulfill "the heaviest of tasks [destroying the Jews] in love to our people" (Hallie 1993, 13). With Himmler, we see that in conflicts, feelings of love for one's people need not extend to others, i.e., to the enemy.

**Apart from the moral maxim or precept, the desire to act virtuously is like a horse running blind (S.T. I-II.58.4 ad 3).**

Of course, we do not need to appeal to Nazi horrors to demonstrate how compassion for one's own side of a conflict can lead to a lack of compassion for opponents. We need only remember the last time our favorite athletic team came from behind and won a championship that left our opponents devastated: we did not cry for them but cheered for our victory. Indeed, we are only too familiar with those fans whose eagerness for victory leads them to cheer even when opponents are injured. Too many of us are like the ancient interlocutors of Socrates, who before engaging in the philosophical search for absolutes, held that justice means "benefitting friends and harming enemies" (*Republic* 332a–e). The emotion of compassionate love is thus not everyone's background emotion. Can Fitterer's performance objectivity make it so?

Performance objectivity requires one to pay attention to the subjectivity of the other. This attention, when one is already angry or feeling hostile, only reinforces the feeling that the opponent could have and should have known better than hurt oneself or one's friends. Moreover, performance objectivity requires one to pay attention to the particularities of the case at hand. When one is already hurt, angry, envious, resentful, or otherwise hostile, examining and re-examining the particularities of a case tends to intensify one's hostility and decreases any feelings of compassionate love—as quarreling lovers know.

The cycle of intensifying antagonism can only be broken by a fresh insight, an outside perspective that requires one to stop seeking to identify what the other could have—should have—done, and to consider how one should respond in light of moral principles that one knows to be indefeasible. For instance, even

though a colleague has opposed one's choice for hiring, it would be immoral to retaliate by writing a vicious review of his latest book. It would likewise be immoral to seek to injure an obnoxious rival so as to increase one's chances for an athletic scholarship.

If one can bring oneself to adhere to absolute rules forbidding harm even in cases of extreme emotions, then one breaks the cycle of negative emotions and makes it possible to view the other as a human being worthy of receiving compassion, thereby also making it possible to feel such compassion and to develop compassionate love as a background emotion. This being the case, Fitterer's ethics would be strengthened if performance objectivity would include the consideration of how the particularities of a case relate to universal and exceptionless rules.

Without this outside perspective given by an absolute norm, performance objectivity focuses on the subjectivity of the opponent and thereby also focuses on how the opponent's subjectivity is flawed: "I would never have treated me as badly as he did." It thereby not only reinforces how the opponent is not like me, but also how the opponent is inferior to me (who would never have done such and such). From this arises the feeling that only those of whom I approve deserve to be loved. And this feeling feeds the arrogance of having compassion only for those who share one's own particularities, whether it be sharing the same race, creed, sex, nationality, ethnicity, or income status.

**"Cicero notes how our capacity for self-deception makes a general rule useful" (Inwood 1999, 122 n. 28).**

Only the twofold truth that the other is human like oneself and that being human suffices for being loved as oneself can counter the distortions caused by negative emotions. This universal truth about human beings, moreover, cannot be acquired from particularist encounters either because we cannot come to know on a personal level every particular type of person or because in every encounter there are many ways in which we experience the other as unlike ourselves.

Hence, *the first intractable problem* confronting Fitterer's virtue ethics is that performance objectivity fails to provide not only an adequate basis for establishing compassionate love as a background emotion, it also fails to provide an adequate basis for combating the negative emotions that feed hatred and the desire to hurt opponents.

*The second intractable problem* is that particularist ethics base their obligations on either a moral insight or a decision procedure rather than on the intelligibility of a universal rule that is necessarily true. Adjudication of

disagreements cannot then proceed on the basis of objective facts, but must rather proceed on the basis of whose insight or decision procedure is to be authoritative. This is a recipe for hubris as individuals self-identify as being the virtuous ones who excel at discerning moral standards. Those who disagree can then be dismissed as “not getting it” or even as being morally corrupt. Not only would moral superiority then be a virtue, rather than a vice, but so would paternalism, since “the stupid” and “the corrupt” would require “the virtuous” and “the compassionate” to take care of them—even over and against their objections or any inalienable rights.

Particularists cannot avoid this slippery slope by appealing to decision procedures, because decision procedures are the sleds on which they ride. Only an appeal to objective moral norms that are necessarily true and knowable to all makes moral truth accessible to all, and adjudicates moral disagreements by requiring investigation of any alleged moral obligation. Consider, for instance, whether “female circumcision” should be proscribed as immoral. The moral dispute about this act needs to be adjudicated on the basis of whether it harms women—not on the basis of whether those who practice it are virtuous. Even the virtuous can make mistakes.

*The third intractable problem* facing Fitterer’s ethics is that its moral pedagogy requires taking children through multiple descriptions of morally salient features of events and getting them to appreciate that any resulting rules of thumb are not exceptionless rules. As put by Fitterer:

The phronimous may make use of moral principles, but these do not function as universally binding maxims that justify our actions. Rather, as post facto generalizations of what might be morally relevant in a given case, general principles are to be understood as shorthand notes that summarize what has proven to be salient in countless past situations and therefore might be wise to consider in this case. (30)

The tentative nature of particularist principles leaves the moral agent, however wise, unable to answer the question of why must something be the case: descriptions, after all, do not give an account and identify necessities.

But children ask why. They need to understand why something must be the case. Why must they do what they do not want to do? Is it a matter of parental coercion? Or, is it an intelligible matter—a moral truth that demands assent? Unless parents and moral leaders can identify the ground of exceptionless moral necessity, children do not see moral rules as indefeasible.

Moreover, if norms are not exceptionless, why consider them? And if they are considered, then why be bound by them when an exempting condition can easily be found? The absence of indefeasible obligations thus facilitates the

disposition to seek exemptions and not to do what one suspects could be obligatory. Particularist rules, therefore, do not facilitate the development of virtue—or the moral education of children.

Children need rules that are absolutely true and that help them realize the importance of subordinating their wills to what is morally good. They need a moral pedagogy focused on absolute rules: “don’t be mean”; “cruelty is always wrong.” They also need those rules to make sense because they instantiate self-evident obligations towards others. Consider, for instance, the self-evident obligation to treat human beings with love, that is, to treat them benevolently. Karol Wojtyła called this prescription, the Personalist Norm (1981b, 41). This norm is tacit throughout Fitterer’s virtue ethics—as it is tacit throughout every ethics based on compassion, sentiment, or altruism. Indeed, the self-evident nature of this norm is responsible for the appeal of all those ethics that either simply presuppose that feelings of compassion, sentiment, or altruism are good rather than evil; or, that presuppose that being good and doing good constitute human flourishing and eudaimonia.

It is not only children who need to practice adhering to the Personalist Norm. For sometimes, moral error can be unmasked only through this norm. For once this norm is acknowledged as necessarily true, any action inconsistent with this norm is known as necessarily immoral, regardless of the feelings of the agent. So even if a people were led to practice genocide or ethnic cleansing in a misguided attempt to preserve their own status, they could not consistently argue that love warrants their wickedness because the standards of love are the standards of what is good for the human person. The need to rule out cruelty towards enemies by appealing to a self-evident norm suffices to show that particularist virtue ethics lacks the normativity necessary for indefeasible and universal prohibitions, such as those concerning genocide, or the normativity necessary for universal and indefeasible prescriptions, such as those concerning benevolence towards neighbors.

Consequently, Fitterer’s particularist virtue ethics lacks the normativity of exceptionless rules necessary for establishing indefeasible and universal obligations. It also lacks principles of moral specification knowable both to children and to those without virtue. As a result, it lacks an accessible pedagogy for developing moral insight and the acquisition of the virtues. Finally, given that the strengths of Fitterer’s ethics cannot overcome the weaknesses endemic to particularist ethics, it does not seem possible for any particularist ethics to be able to give an account of universal and indefeasible obligations. Particularist ethics cannot then be the ethics that we seek.

Therefore, particularist virtue ethics cannot be the ethics that we seek. Let us then consider the normativity that resides in the norms based on integral human fulfillment, as proposed by Germain Grisez, Joseph Boyle, and John

Finnis. Their proposal has been called the new natural law, but I shall call it the GBF paradigm of eudaimonic pluralism.

## Notes

1. For an in-depth discussion of the proper relationship of natural law and virtue see chapter 14.

2. Plato's key arguments are found in Socrates' refutation of Thrasymachus in Book One of Plato's *Republic* and his refutation of Gorgias in the dialogue called *Gorgias*. The challenges of Thrasymachus and Gorgias are echoed in the philosophy of Nietzsche. *Ultimate Normative Foundations* considers whether natural law can survive these challenges in chapter 13.

3. See Book Three of the *Republic* at 415a where Plato presents the Noble Lie as a way of linking happiness with fulfilling a specific nature.

4. See the Historical Sketch of Natural Law in the appendix.

5. Clifford Kossel (2002, 177), for instance, cites *S.T.* I-II.14.6 to point out that moral virtues and prudence rely on the first principles of natural law and practical reason.

6. For more details on how natural law declined see the appendix.

7. Stephen M Gardiner (2005, 30): "One prominent feature of contemporary virtue ethics is its insistence on the normative priority of the virtuous person. Another is its skepticism about the place of rules or principles in moral decision-making."

8. Alasdair MacIntyre (1999,93). Also see, for example, the argument of Romanus Cessario (1991) within the context of moral theology.

9. *N.E.* II, c. 6, n. 1107A8: "But not every action nor every passion admits of a mean; for some have names that already imply badness, e.g., spite, shamelessness, envy, and in the case of actions adultery, theft, murder; for all of these and suchlike things imply their names that they are themselves bad, and not the excesses or deficiencies of them. It is not possible, then, ever to be right with regard to them; one must always be wrong."

10. *N.E.* II. c. 6, n. 1107a1.

11. If Aristotle had intended to introduce an element of non-cognitivism into ethics, he would not have defined virtue in terms of a means that is "determined by a rational principle;" nor would he have connected wickedness to the obscuring of reason's insight. See, for instance, *N.E.* II. c. 6, n. 1107a1: "Virtue, then, is a state of character concerned with choice, lying in a mean, i.e., the mean relative to us, this being determined by a rational principle, and by that principle by which the man of practical wisdom would determine it." *N.E.* III, c. 4, n. 113a30: "For each state of character has its own ideas of the noble and the pleasant, and perhaps the good man differs from others most by seeing the truth in each class of things, being as it were the norm and measure of them." *N.E.* VI, c.12, n. 1144a15–21: "As we say that some people who do just acts are not necessarily just, i.e., those who do the acts ordained by the laws either



unwillingly or owing to ignorance or for some other reason and not for the sake of the acts themselves (though, to be sure, they do what they should and all the things that the good man ought), so is it, it seems, that in order to be good one must be in a certain state when one does the several acts, i.e., one must do them as a result of choice and for the sake of the acts themselves.” Ibid., n. 1144a31–37: “. . .for the syllogisms which deal with acts to be done are things which involve a starting-point, viz. ‘Since the end, i.e., what is best, is of such and such a nature’, whatever it may be . . . is not evident except to the good man; for wickedness perverts us and causes us to be deceived about the stating-points of action. Therefore, it is evident that it is impossible to be practically wise without being good.”

12. In *S.T. I-II.94.4*, Aquinas argued that moral complexity is such that standard rules do not always apply; and, in *S.T. I-II.94.6*, he argued that vice can obscure some, but not all, moral obligations. For the definitive argument that Aquinas would reject a non-conceptual, inclinational knowledge see Doolan (2001).

13. According to Aristotle (*Nicomachean Ethics* Book VI, chapter 13, lines 27–29 [hereafter *N.E.* VI, ch. 13 #27–29]), Socrates held a virtue theory in which each virtue was autonomous, that is, neither dependent on the acquisition of the other virtues nor a function of the rule of reason; rather, each virtue gave a maxim to reason. This is another way of saying that normative obligatoriness is grounded in a certain number of autonomous goods which together form a set. Aristotle, on the other hand, held a virtue theory based on the rule of reason; it, thereby, denied that virtues were autonomous; rather, one virtue could not be had without the others insofar as each virtue resulted from the rule of reason. Whether the virtues suffice for indefeasible, universal, and objective obligations is extensively discussed in chapter 5.

14. Clifford Kossel (2002, 177), for instance, cites *S.T. I-II.14.6* to point out that moral virtues and prudence rely on the first principles of natural law and practical reason.

15. Jacques Maritain analyzed the Nazi experience as resulting from seeking the feelings of community life without adopting the common political project of advancing fraternity and mutual well-being. Jacques Maritain (*Rights of Man*: 1944, 24–5): “The aim of political society, as of all human society, implies a certain work to be done in common . . . Men assemble for a reason, for an object, for a task to be done. In the bourgeois-individualist type of society there is no common work to do, nor is there any form of communion. Each one asks only that the State protect his individual freedom of profit against the possible encroachments of other men’s freedom. Nor in the racial type of community (to which inclinations of the Germanic temperament lend themselves all too well) is there an object, a common task to perform; but on the other hand there is a passion for communion. It is not for an objective purpose that they assemble, but rather for the subjective pleasure of being together, of *marching together* (*zusammenmarschieren*). The Germanic notion of community is built on a nostalgic longing to be together, on the emotional need for communion for its own sake—fusion within the community thus becomes a compensation for an abnormal feeling of loneliness and distress. Nothing is more dangerous than such a notion of community: deprived of a determining objective, political communion will carry its demands to the infinite, will absorb and regiment people, swallow up in itself the religious energies of

the human being. Because it is not defined by a work to be done, it will only be able to define itself by its opposition to other human groups. Therefore, it will have essential needs of *an enemy against who* it will build itself; it is by recognizing and hating its enemies that the political body will find its own common consciousness." At 27: "In short, the political task is essentially a task of civilization and culture. The fundamental aspirations of the human person illumine and reveal the nature of this task, and the most fundamental aspiration of the person is the aspiration towards the *liberty of expansion and autonomy*." At 32: "A common task inspired by the ideal of liberty and fraternity, tending, as its ultimate goal, towards the establishment of a brotherly city wherein the human being will be freed from servitude and misery."

16. See *S.T.* I-II.94.4c wherein Aquinas uses Plato's example to show that although "goods entrusted to another should be restored to their owner . . . [in] the majority of cases . . . it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust; for instance if they are claimed for the purpose of fighting against one's country." *Ultimate Normative Foundations* discusses the impossibility of eliminating exceptions to most norms in chapters 14, 15, and 18.

17. For Aquinas's discussion of equity see *S.T.* I-II.96.6; also chapters 14, 15, 19.

18. Porter (1990, 43): "Indeed, our knowledge of what is good for a thing is of a piece with our knowledge of what that thing is. To the extent that we know what something is, we can judge how nearly it approaches to the ideal of its kind of creature, and in which ways it falls short of that ideal. If we know enough about the creature and its usual mode of existence, we can even offer suggestions about what would promote its nearer approach to the ideal state of existence proper to its specific kind, and conversely, what would be harmful to it." In her *Nature as Reason*, Porter reiterates this argument by pointing out that since precepts are informed by the end and since the end is the happiness of virtuous acts, "the life of virtue provides the goal which informs and gives structure to the various precepts of natural law" (2005, 50). Also see 162: "[N]atural law takes its norms from the virtues." Cf. Russell Hittinger (1987, 193): "From a normative standpoint, by what criteria do we determine this notion of the good from which flows relevant hierarchies and the *ordinatio* of the goods or virtues, if not by recourse to a philosophy of nature?"

19. On this point, there is continuity in Porter's thought. Porter (2005, 162): "[H]appiness is the proximate origin for the norms of natural law. The kind of happiness in question is terrestrial happiness . . . equivalent to the practice of the virtues."

20. Porter (2005, 162). Also see 323: "[I]ndeed, this theory of the natural law is a theory of virtue."

21. Porter (2005, 49–51). Porter has adopted this community-based specification of virtues and norms because she has become convinced that the indeterminacy of human nature is such that there are multiple ways to be human and multiple natural law laws. See Porter (2005, 332–9). *Ultimate Normative Foundations* evaluates the Indeterminacy Thesis in chapter 11.

22. *S.T.* I-II.27.4c: "There is no . . . passion of the soul that does not presuppose love of some kind." Also cf. *S.T.* I.81.2; *S.T.* I-II.43.1.

23. See C. S. Lewis, "The Inner Ring," (1980, 141–57).

24. See *S.T.* II-II.25.7c where Aquinas explains that the wicked love the "outward man" more than the "inward man."

25. See Wojtyła *LR* (1981b, 143): "The fact is that attaining or realizing a higher value demands a greater effort of will. So in order to spare ourselves the effort, to excuse our failure to obtain this value, we minimize its significance, deny it the respect which it deserves, even see it as in some way evil, although objectivity requires us to recognize that it is good."

26. Aquinas's key argument for subordinating virtue to reason is found in *S.T.* II-II.47.6c: "The end of moral virtues is human good. Now the good of the human soul is to be in accord with reason . . . . Wherefore the ends of moral virtue must of necessity pre-exist in the reason." *S.T.* II-II.47.6. ad 1: "Natural reason known by the name of *synderesis* appoints the end to moral virtues." Also see *S.T.* I.79.12. For a discussion of *synderesis* in the context of contemporary scholarship see Daniel McInerney (1999).

27. *S.T.* I-II.100.9c.

28. The emphasis on the order of reason enables Aquinas to reconcile the demands of natural morality with those of faith because the ends of natural morality and faith are related as part to whole or as imperfect to perfect or as intermediary or instrumental to essential.

29. MacIntyre (1999, 158) argues that the ability to recognize good reasons "in key part depends . . . upon how far we have acquired or failed to acquire the virtues relevant to that situation." Cf. MacIntyre (1990a, 139) wherein he argues that the virtues cannot be possessed without a prior knowledge of the rules governing that virtue.

30. Jeffrey Dahmer was convicted of murdering, mutilating, and eating human beings because the fact that he hid his crimes demonstrated his recognition of their shamefulness.

31. Porter no longer holds that virtuous ideals suffice for moral specification (2005, 184–7). She nevertheless holds that "the ideals of virtues do have normative content, expressed (among other ways) through their correlation with specific precepts of divine (that is to say, revealed) law" (175).

32. Again the language is from Porter (2005, 216).

33. See Porter (2005, 200–16).

34. Porter (2005, 175): It is erroneous to say, as does John Finnis, "that the virtues consist in nothing more than dispositions to follow determinant, independently formulated rules of conduct."

35. *S.T.* I-II.63.1 wherein Aquinas claims that virtue is natural to man because "in man's reason are to be found instilled by nature certain naturally known principles of both knowledge and action, which are the nurseries of intellectual and moral virtues, and insofar as there is in the will a natural appetite for good in accordance with reason."

36. For another example of a particularist virtue ethics that relies on a decision procedure see Brad Inwood (1999). He argues that the Stoics relied on a decision process and that they lack "moral principles that are simultaneously (i) imperative, (ii) universal, and (iii) substantive (124)." Inwood's interpretation is disputed by Stephen

M. Gardiner (2005). Gardiner argues not only that Seneca maintained that one becomes virtuous by following precepts, but also that Seneca held that for the virtuous person principles can be substantive and exceptionless.

## **Chapter 6**

# **Eudaimonic Pluralism (the GBF Paradigm)**

*The previous chapters established that the principle of normativity must be a good of the person able to specify universal and particular moral obligations with certitude. This chapter considers whether that good could consist in integral human fulfillment understood in terms of an eudaimonic pluralism as specified by the version of natural law expounded by Germain Grisez, Joseph Boyle, and John Finnis.*

In 1980, John Finnis revitalized interest in natural law by publishing *Natural Law and Natural Rights*. In this work, Finnis offered not only an insightful analysis of natural law's history and central problems, but also a new formulation of natural law that was inspired by Aquinas and the arguments of Germain Grisez and Joseph Boyle. Developments and revisions in this theory were set out in "Practical Principles, Moral Truth, and Ultimate Ends," by Germain Grisez, Joseph Boyle, and John Finnis (1987), and have been advanced by Robert George (1999, 1998, 1992a, 1992b) as well as by others, e.g., Patrick Lee (1998).

Evaluation of the Grisez-Boyle-Finnis (GBF) paradigm of natural law has been complicated by two publications from 1998: Grisez and Boyle's "Response to Our Critics and Collaborators," and Finnis's *Aquinas: Moral, Political, and Legal Theory*. The former details some differences between Grisez-Boyle and Finnis; the latter begins with Finnis acknowledging that his

positions are evolving.<sup>1</sup> Has the GBF paradigm thus become the GB paradigm? I suspect not, since the explication of Aquinas's ethics given by Finnis, in *Aquinas* (1998a), harmonizes with many aspects of the GBF paradigm. For example, although Finnis argues that Aquinas's architectonic moral principle is the obligation to love neighbors as oneself (1998a, 126–8), he argues that this love precept is akin—in content but not in form—to the first moral principle identified by the GBF paradigm that requires willing what is compatible with integral human fulfillment (1998a, 131 n. g).

Despite uncertainty about the current status of the GBF paradigm as explicated by Grisez, Boyle, and Finnis in 1987, and before, this normative paradigm remains a version of natural law worth examining not only for its own sake and as the theory that helped revitalize the natural law tradition for the twenty-first century, but also for its innovative way of establishing the universality and indefeasibility of moral obligations.<sup>2</sup> Our examination then will remain narrowly focused on the normative foundations of this theory both as originally set forth and as revised by Finnis.

The foundational touchstone of the GBF paradigm is the conviction that moral actions are as rational as immoral actions. For this reason, Grisez (1965) argued, in an influential and controversial article, that Aquinas's first principle of practical reason cannot be the first principle of morality, since the first principle of practical reason must be the principle of *both* moral and immoral actions. Accordingly, moral normativity cannot originate with—what I call—the *Bonum* Precept (*Good is to be done and pursued and evil avoided*). The ascription of rationality equally to moral and immoral acts resulted in attributing the intelligibility of practical actions to the pursuit and attainment of amoral or pre-moral basic goods and the avoidance of their contraries.<sup>3</sup> Since basic goods are sought as self-evident ends, there are as many self-evident principles of practical reasoning as there are basic goods.<sup>4</sup>

This assertion that the basic principles of practical reasoning are self-evident has underpinned one of the most controversial claims in contemporary Thomistic exegesis, namely, that the principles of practical reasoning are not *derived* from nature. This claim generated much controversy and confusion; because, although Grisez, Boyle, and Finnis spoke in the sense of *logical* derivation, many Thomists heard an *ontological* sense of derivation entailing either a “natural law without nature” (P. Hall 1994, 16) or a misinterpretation of how Aquinas considered the nature of good (Porter 1990 and 1993a).

Such criticisms overlook the texts wherein Aquinas explicitly identifies not only certain moral precepts but also the objects of the natural inclinations as self-evident. To characterize a claim as self-evident is to assert that the truthfulness of that claim is not known through a logical derivation and a middle term. Self-evidence does not mean that the intelligibilities of the claim's terms

are independent of nature and natural inclinations.<sup>5</sup> Explains Finnis:

Of course, Aquinas would agree that "were man's nature different, so would be his duties." The basic forms of good grasped by practical understanding are what is good for human beings with the nature they have. Aquinas considers that practical reasoning begins not by understanding this nature from the outside, as it were, by way of psychological, anthropological, or metaphysical observations and judgments defining human nature, but by experiencing one's nature, so to speak, from the inside, in the form of one's inclinations. But again, there is no process of inference. One does not judge that "I have [or everybody has] an inclination to find out about things" and then infer that therefore "knowledge is a good to be pursued." Rather, by a simple act of noninferential understanding one grasps that the object of the inclination which one experiences is an instance of a general form of good, for oneself (and others like one). (1980, 34)

Hence, Finnis is careful to follow Aquinas's Aristotelian argument that inclinations are understood in terms of their actualizations by their objects; it is the object that determines even inclinational desires. If Finnis had misinterpreted Aquinas on this point—and the intelligibility of every inclinational good were knowable only through the mediation of some theoretical apparatus, e.g., the philosophy of nature, then practical activity—which is always directed to some good—would be inaccessible to all but theoretical philosophers.

In *Aquinas: Moral, Political, and Legal Theory*, Finnis argues that the texts of Aquinas establish that the ends of the natural inclinations are not only basic goods but are self-evident first principles of practical reason (1998a, 87). He also argues that the goods listed in *S.T.* I-II.94.2 do not exhaust the category of basic goods (83); other goods are to be included as basic goods, e.g., the good of acting according to reason and the good of "harmony with the transcendent source of the universe's existence and order" (85). If the basic goods are indeed self-evident, then each is choice-worthy and not only capable of being a principle of practical reason but also as being most important in certain circumstances. Accordingly, the GBF paradigm holds that the basic goods are incommensurable.<sup>6</sup>

Nevertheless, in the 1987 update, Grisez, Boyle, and Finnis argued that the equality and the incommensurability of basic goods did not preclude these goods from having certain natural priorities: "Prior to anyone's choice, unfettered practical reason, together with the conditions which human nature inevitably sets for moral life, establish certain natural priorities among a good person's basic interests (1987, 139)."

If, then, basic goods provide the intelligibility of both moral and immoral acts, basic goods can be neither moral goods<sup>7</sup> nor the source of moral normativity. Moral normativity is drawn from a standard of human flourishing which Grisez, Boyle and Finnis called "integral human fulfillment."<sup>8</sup> Integral

human fulfillment requires pursuing at least some basic goods (each of which counts as a partial fulfillment), while avoiding their contraries. They thereby propose a version of, what I'm calling, eudaimonic pluralism. As a result, they first formulated the basic principle of morality in terms of choosing inclusively, i.e., not choosing to defy or to reject one or more basic goods. Later writings then clarified that since integral human fulfillment is that which generates normativity, the first principle of morality involves always choosing and willing "those possibilities whose willing is compatible with a will toward integral human fulfillment."<sup>9</sup> This identification of normativity with the form of human flourishing called "integral human fulfillment" suffices to identify this natural law formulation as a form of personalism and moral eudaimonism.<sup>10</sup>

Integral human fulfillment differs from Aristotle's eudaimonia and Aquinas's imperfect form of beatitude insofar as it rejects the identification of human flourishing with reason's perfect speculative and practical actions<sup>11</sup> and insofar as it requires for human flourishing an ideal community of all persons, past, present, and future that is unrealizable in this life.<sup>12</sup>

Integral human fulfillment is further specified through "modes of responsibility" or "requirements of practical reasonableness." Said Grisez and Shaw: "we need moral principles which will specify this first principle by ruling out certain kinds of actions involving a relationship to the human goods other than that required by the first principle itself. It is these which we call modes of responsibility" (1974, 112). Later Grisez explained that "the modes of responsibility specify . . . the primary moral principle by excluding as immoral actions which involve willing in certain specific ways inconsistent with a will toward integral human fulfillment" (1983, 189).<sup>13</sup>

In 1980, Finnis listed the modes of responsibility as requiring the following: (1) to choose a coherent and individualized plan of life; (2) to adopt a personal order of priorities without exaggerating or underrating any basic good; (3) to form commitments without treating humans in violation of the Golden Rule; (4) to be detached from considering one's life-plan as the only plan; (5) fidelity in one's commitments; (6) to act effectively and efficiently; (7) to never choose directly against a basic value or good; (8) to favor and foster the common good of one's communities; (9) to act in accordance with one's conscience (1980; 100–27). Finnis also characterized these specifications of eudaimonia by practical reason to be as pluralistic and incommensurable as the basic goods. That these obligations delineate the acts of virtues and vices was explicitly argued by Grisez (1983).<sup>14</sup>

### **Lessons, Insights, and Difficulties**

There is much to recommend this reformulation of natural law. Its identification of wrong doing with acting against the basic human goods and eudaimonic



fulfillment explains the universal experience of culpability. It offers a basis for the development of the virtues. It lists, as the modes of responsibility, what every moral agent needs to do for the sake of eudaimonia. It avoids proportionalism insofar as it identifies the basic goods as incommensurable. It insightfully explains the role of natural inclinations in forming our awareness that the objects of these inclinations are self-evidently good and the parameters of morality. As such, they frame the limits of permissibility: for even though the pursuit of a particular basic good need not be obligatory, it is impermissible to pursue the contrary of any basic good. The GBF paradigm also bases its normativity upon the only end that is universally indefeasible, namely, the eudaimonia of human flourishing, by identifying as the first principle of morality the obligation to always choose in harmony with integral human fulfillment. Thus, the GBF paradigm offers, for the most part, a seminally hopeful and alternative natural law foundation for those rejecting the eudaimonic rationalism of Aristotle and Aquinas, while retaining an eudaimonic foundationalism that is egalitarian in its pluralistic and nonhierarchical structure—as I hope calling it a version of eudaimonic pluralism makes clear.

Such a grounding in egalitarian eudaimonism is a great counter to the contemporary temptation to marginalize morality into being just one of the many activities worthy of human pursuit. Such marginalization may proceed, for instance, by identifying altruism as such an important moral concern that the paragons of moral virtue have neither the time nor interest in developing nonmoral self-perfections, such as becoming a gourmet cook or a concert pianist. Moral saints, argues Susan Wolf (1982), lack the well-roundedness that comes from pursuing human perfections independently of their moral import. Morality, she continues, is just one aspect of life, unable to be a comprehensive and unsurpassable guide to human development and action.<sup>15</sup>

Attempts to marginalize morality on the basis that there are nonmoral goods worthy of pursuit are nullified within the eudaimonic pluralism formulated by GBF. For this paradigm bases natural law upon all those goods basic to human development and perfection (including those that fall beyond the purview of altruism, such as play). Morality is then identified not with the attainment of any particular good or set of goods but with the rational pursuit of integral human fulfillment.<sup>16</sup> In this way, even those goods that are not typically identified as moral goods, e.g., play, become a matter of morality insofar as morality proscribes the pursuit of any good to the detriment of any other good. The egalitarian, pluralistic, and eudaimonic characteristics of these goods within the parameters of rational pursuit identify morality as a comprehensive and supreme guide to practical living. Indeed, the ability of this egalitarian pluralism to resist the contemporary tendency to marginalize morality may well be the greatest gift offered by this new formulation of natural law to the contemporary world.

Unfortunately, the GBF paradigm of eudaimonic pluralism is based on three problematic pillars. *First pillar*, this paradigm holds that basic goods constitute the first principles of practical rationality and that these are the objects sought through moral as well as immoral actions. Immoral acts are, after all—according to the GBF paradigm—as rational as moral acts.

This position relies upon the argument of Grisez (1965) that Aquinas’s first principle of practical reason (the *Bonum* precept), “Good is to be done and pursued; evil is to be avoided” (*S.T.* I-II.94.2c), could not also be the first precept of natural law; because if it were, the first principle of practical reason could not underpin immorality. But, as the next chapter argues, the first principle of practical reason obliges the will to choose that which reason identifies as goods to be done or pursued while avoiding that which reason identifies as evils to be avoided. If this is the case, then the first principle of practical reason is actually a precept that is violated whenever reason is ignored (and, one’s passions, for example, are followed).

In the 1987 update, Grisez, Boyle, and Finnis—while maintaining a distinction between the first principle of practical knowledge and the first principle of morality—come close to the argument of the next chapter.<sup>17</sup> They argue that the first principle of practical reason as well as the first principle of morality prohibit pointlessness, in a weak and strong version respectively (1987, 120), and that “only morally right choices respond perfectly to the first principle of practical reasoning” (1987, 125). Hence, “morally wrong acts do not respond to this principle [‘Good is to be done and pursued’] as perfectly as morally goods acts do” (1987, 121).<sup>18</sup>

But if immorality is an imperfect response to the first principle of practical reason, then there is no need to deny that the first principle of practical reason is also the first principle of morality.<sup>19</sup> Nor is there a need to deny that rationality is, or unsound, when immorality mars adherence to what I call the *Bonum* Precept, i.e., “Good is to be done and pursued; evil is to be avoided” (*S.T.* I-II.94.2c).

A key problem with denying that practical reason is flawed, or unsound, when immoral is that this denial presupposes that practical reason cannot know the truth about what it seeks, or the truth about the actions that it commands. As a result, immoral acts cannot be identified as irrational and insulting to one’s dignity as a rational agent.

*The second foundational pillar* that is problematic is that the principle of moral obligatoriness and specification is human flourishing, or integral human fulfillment, understood independently of any particular good or any set of basic goods—as put by Robert George:

The concept of integral human fulfillment, as it figures in the Grisez-Finnis statement of the first principle of morality, is easily misunderstood. It is not meant to indicate a supreme good above or apart from the basic goods. The basic human goods are reasons for action in a sense that integral fulfillment cannot be. But the fulfillments offered by basic goods, while genuine, are incorrigibly partial. No choice, or set of humanly possible choices, can bring about overall fulfillment. In none can one realize every humanly fulfilling possibility. The very open-endedness of the basic goods precludes this. The possibilities realized in and by human choices and actions are aspects, but only aspects, of complete human well-being. (George 1999, 51)

Nor is integral human fulfillment identified with an attainable level of flourishing. For this reason, the first principle of morality thereby obliges willing only what is “compatible with a will toward integral human fulfillment” (1987, 128).

Our question thus becomes whether the indefeasible and universal obligatoriness of morality survives the reduction of the eudaimonic principle to partial fulfillments that cannot fully instantiate human fulfillment either collectively or individually.

Since the necessity of any act is taken from its end and since moral necessity or indefeasible obligatoriness is that of eudaimonia, indefeasibility and universality can only be predicated of those acts that are indispensable for eudaimonia. Accordingly, indefeasible and universal obligations cannot be self-evidently predicated of any basic good, since no single basic good is indispensable for integral human fulfillment.

In this way, the GBF paradigm weakens the normativity of their natural law formulation by not identifying any human good as either fully instantiating integral human fulfillment or as indispensable for that instantiation. This is

**“[I]ntegral human fulfillment is an unrealizable ideal” (GBF 1987, 132).**

not to say that no degree of obligatoriness is retained; but that the indefeasible necessity of eudaimonia is not fully available.

But perhaps one could argue that the will’s obligation to will in harmony with integral human fulfillment suffices for moral necessity—even if integral human fulfillment cannot be perfectly attained. The problem is that once moral obligation is identified with what is unattainable, the will is being rectified by what it cannot efficaciously will, namely, integral human fulfillment.

The attempt to escape this tension by identifying efficacious will with willing the various aspects of integral human fulfillment, i.e., the basic goods,<sup>20</sup> does not completely work insofar as actually willing any particular, basic good is not morally obligatory. If no basic good is per se morally obligatory and if

integral human fulfillment is neither attainable nor willed efficaciously, then the obligatoriness of morality can be neither a universal nor indefeasible obligation, since these arise only from the necessity of willing a universal and indefeasible end of the person that is attainable or realizable. It would thus be incoherent to predicate an indefeasible obligation of harmonizing with what cannot exist in this life, namely, integral human fulfillment: the impossible does not bind.

Approximations however can exist and, according to the GBF paradigm, the morally good settle for "the most complete possible approximation to the ideal of integral human fulfillment" (1987, 133). Nevertheless, unless the approximation either instantiates eudaimonia or its indispensable means, indefeasible obligatoriness cannot be per se predicated of them. Thus since the GBF paradigm does not identify any goods as per se obligatory, it fails to identify a ground sufficient for establishing moral necessity.

Finnis, however, in his 1998 *Aquinas*, rectifies this situation by arguing that "reason seeks . . . a more complete and coherent guidance-by-reasons-for-action than is supplied by a set of reasons for action considered *one by one*" (106). He then argues that for Aquinas "human fulfillment . . . is . . . *virtue in action*. [cite omitted] . . . For virtue simply is the *perfection* of the human capacities involved in action" (1998a, 107). Such perfect activity is "the good of complete reasonableness in one's willing of human goods" (107); it is also "*imperfecta beatitudo*" (107).

To so identify human fulfillment with virtuous acts makes possible the identification of eudaimonia as the source of moral necessity. It is to make possible indefeasible and universal moral obligations.

*The third foundational pillar* that is problematic is the failure to identify the primary form of this life's eudaimonia with reason's best act, namely, the contemplation of God. As put by Finnis:

All in all, *beatitudo imperfecta* can plausibly serve as a moral principle for social and political theory only when it is understood as the life of practical reasonableness in action, not forgetting that at least one of the basic human goods to be pursued and realized by practically reasonable choices and actions is a good necessarily involving contemplation: knowledge. (Finnis 1998a, 110)

This identification of divine contemplation as just another act that ought to be pursued unites Grisez, Boyle, and Finnis with Henry Veatch (1962, 66–8) and Jean Porter (1986, 55–68) in holding that the contemplation of God cannot be the primary *form* of this life's eudaimonia. These thinkers, without seeking to denigrate the contemplation of God or the importance of religious commitment, partake of the contemporary reluctance to affirm the Aristotelian/Thomistic

claim that this life's eudaimonia is primarily rational activity directed to its highest object (God) and secondarily rational activity in morally directing one's actions.<sup>21</sup>

Finnis, for example, argues that *beatitudo imperfecta* is best understood in terms of "practical reasonableness in action" (1998a, 110). He also argues that contemplation seems too narrow to sustain eudaimonia inasmuch as there are other aspects of eudaimonia, and inasmuch as the contemplation of God presupposes moral virtue (1998a, 109–10). And he notes that "Aquinas never treated contemplation as an organizing principle of social and political theory" (1998, 109). But if Aquinas had identified divine contemplation as the organizing principle of the state, he would have been treating the state as a religious organization and the Church as irrelevant.

To deny the primacy of divine contemplation causes several additional normative problems. *One of these* is that it eliminates a way to prioritize goods according to their relationship to eudaimonia. As a result, eudaimonia becomes pluralistic and egalitarian with no objective criterion for assigning priority to one's various pursuits of eudaimonia. Without an eudaimonic principle of adjudication, basic goods cannot be anything but incommensurable, thereby offering scant guidance in cases where one must choose between basic goods. As Henry S. Mather (2002) explains: "If certain goods are rationally incommensurable, no one of those goods is superior to the others as a matter of reason. This is what rational incommensurability means" (376).

Incommensurability thus eliminates the ability to adjudicate choices on the basis of an objectively superior good, e.g., the common good of one's community, whether it be that of one's marriage, family, business, society, or even the state. For this reason, Mather (2002) argues that the incommensurability of goods offers legislators no rational principle of prioritizing goods, and preferring, for instance, toleration, welfare assistance, or absolute rights (364–88). Incommensurability thereby leaves legislators with only subjective preferences in the determination of policy.<sup>22</sup>

This analysis of Mather, however, succeeds as a criticism of the GBF paradigm only on the supposition that the common good of the state is just another incommensurable good. It is unclear, however, whether this assumption is necessarily part of the GBF paradigm, since this paradigm identifies the common good as the point of the moral life and as constitutive of integral human fulfillment. As put by Finnis: "Practical reasonableness directs us towards a common good that even philosophy can set no narrower than 'the common good of the whole of human life'" (1998a, 123). The common good that is established by virtuous action is thereby identified by Finnis as integral human fulfillment. By making this identification, Finnis is not arguing that we live for the state: the political common good is not the only one. There are many

common goods nestled harmoniously within each other according to virtue and neighborly love (1998a 122–23).

Even so, Finnis and the GBF paradigm retains its identification of the contemplation of God as just one of the many incommensurable goods worth pursuing in this life. But if divine contemplation unites one to God and if union with God is greater than any other good, it would be a mistake to place this good on par with any other good—or to otherwise deny its superiority—as entailed by the doctrine of incommensurability.

Incommensurability thereby precludes identifying one form of eudaimonia to be superior to other forms. It thus makes incoherent Aristotle's claim that contemplating god is the primary form of eudaimonia and acting prudentially is the secondary form of eudaimonia, since these identifications require identifying contemplative activity as superior.

Incommensurability also precludes assigning priority not only to the contemplation of God but also to religious worship and its obligations. It thereby precludes religious obligations from overriding all others. God is thereby no more important than any other object of practical reason. And any obligation toward God becomes just one more obligation, no more binding than any other. But to equate one's obligations to God with one's other obligations would be unjust insofar as it ignores the truth about who God is and how one is related to Him.

*Incommensurability causes another key problem*, namely, its reduction of divine contemplation to just another incommensurate good undercuts the ability to sustain the First Amendment rights to free religious exercise as enumerated, for instance, in the Constitution of the United States.<sup>23</sup> For by forbidding laws that infringe on the free exercise of religion, the *Constitution* is privileging religious worship in the tacit admission that obligations to God override all others (Lemmons 2005; K. McConnell 1990).

*Yet another key problem with denying the primacy of eudaimonic contemplation* is that when eudaimonia is no longer primarily constituted by the contemplation of God, either human activity and finite objects must be deemed sufficient for eudaimonia, or eudaimonia must be dismissed as totally unattainable. Either way, the meaninglessness wrought by intense suffering cannot be adequately countered; and, natural law ceases to be able to motivate moral behavior.<sup>24</sup> Perhaps this is the reason why an age that loses its God-centeredness eventually rejects reason's priority (Dupré 1993, 5–6).

If, however, Grisez, Boyle, and Finnis were to abandon their commitment to the incommensurability of basic goods, they could uphold the supremacy of religious obligations without compromising the objectivity of basic goods or the absolute prohibition of acting against them. They would also gain a way to use the objectivity of basic goods to prioritize them—as did Aquinas, who argued

that bodily goods are not to be preferred to spiritual goods (*S.T.* II-II.25.7).



*To recapitulate:* It remains to be seen whether the eudaimonic pluralism first proposed by the GBF version of natural law will evolve along lines set forth by Finnis in his 1998 book on Aquinas. Nevertheless, we can conclude that while the GBF paradigm is able to explain moral responsibility, culpability, and the ability of natural inclinations to serve as moral parameters, its warrant for the universality and indefeasibility of moral obligations is troubled by its inability to identify a good of which indefeasible and universal obligatoriness can be successfully predicated per se in this life.

This version of natural law is also weakened by its distinction between the first principle of practical reason and the first principle of morality, by its characterization of basic goods as incommensurable, by its failure to identify the contemplation of God as the primary—and overriding—form of eudaimonia in this life, and by its corresponding inability to provide an adequate juridical foundation for religious liberty.

## Notes

1. Finnis noted that his intensive study of Aquinas “. . . confirmed my previous understanding of the foundational principles (and Aquinas’ subscription to them), and led me to think one-sided or wrong some common beliefs about his social and political thought (including some I held)” (1998a, ix).

2. See, for example, Nigel Biggar and Rufus Black (2000).

3. Grisez et al. (1987, 106): “*This is to be done* because it probably will realize a certain benefit—that is, instantiate such and such a basic good. . . . Thus, one way the basic goods function as principles of actions is through being known as ultimate rational grounds (principles of practical reasoning) for proposing actions to be done for certain benefits (anticipated instantiations of those goods).”

4. Grisez, Boyle, and Finnis (1987) lists many basic goods, including the maintenance and transmission of life, knowledge and esthetic experience, excellence in work and play, peace of conscience and consistency between one's self and its expression, harmony within oneself and with others and God(s). [This list drops—without an explanation—a staple of earlier lists, namely, ‘practical reasonableness.’ I assume that this was done in order to articulate more fully the distinction between the amoral basic goods and the moral obligations required by practical reasonableness which, for example, “demand fairness, forbid revenge, exclude doing evil to achieve good” (1987, 127).] The basic goods are “aspects of the

fulfillment of persons” which serve as basic reasons for acting because their fulfillment rationally motivates one to act. Thus the knowledge of basic goods forms the first principles of practical reason.

5. For an extensive discussion of this point see Robert P. George (1992b, 31–44).

6. Finnis (1980, 92–3). This dismissal of a preset hierarchy of eudaimonic goods has generated much criticism; for example, see Hittinger (1987) and Pannier (1987). For a response, see Robert George (1999).

7. Finnis (1980, 86): “Remember: by ‘good’, ‘basic good’, ‘value’, ‘well-being’, etc. I do not mean ‘moral good’, etc.”

8. Cf. Finnis (1998a, 106): Aquinas retains the idea of eudaimonia or human flourishing; because, given the multiplicity and diversity of intelligible goods, there is a need to bring unity and determinacy into willing.

9. Finnis, Grisez, and Boyle, in their 1987 update, admitted that formulating the first principle of morality in terms of inclusivistic choice or basic goods was not the best formulation; they wrote (1987, 128): “Our current attempt to formulate the first principle of morality is: In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfillment.” Finnis explains: “The first moral principle makes the stronger demand, not merely that one be reasonable enough to avoid pointlessness, but that one be entirely reasonable in one’s practical thinking, choice and action. It can be formulated: in voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will towards integral human fulfillment (that is, the fulfillment of all human persons and communities)” (1998b).

10. Cf. Staley (1993). If Staley were to be correct and this formulation of natural law was not a form of moral eudaimonism, then either moral obligations could not be indefeasible, or normativity would be rooted in basic goods that could no longer be characterized as nonmoral. If the latter option is taken, then this formulation would succumb to the same difficulties confronting voluntarist naturalism (as described earlier in chapter 2).

11. Grisez, Boyle, and Finnis (1987, 101): “The reality of free choice is incompatible with the supposition—for instance, of Aristotle—that there is a single natural end of human life.” This point echoes Finnis’ 1980 argument that human fulfillment is too narrowly interpreted in terms of rational activity: “human beings ought to be considered as persons] who constitute themselves through their own self-determination. . . . We see then that it is not enough to say that fulfillment lies in the use of reason. This is true—fulfillment does lie in the use of reason, but it also lies in the use of our human faculties for physical survival and well-being, for play, and for aesthetic experience (Finnis, 1980, 34–5). In *Aquinas*, Finnis argues that Aquinas identifies human fulfillment with “virtue in action. And that means practical reason in action, successfully extending its directiveness to all one’s emotional and voluntary dispositions and activity” (1998a, 107; citations omitted). He also downplays the significance of Aquinas’s identification of imperfect beatitude as primarily the contemplation of God and secondarily moral virtue (1998, 109–110).



12. Grisez, Finnis, and Boyle (1987, 132–3): Integral human fulfillment requires a community of all persons, past, present, and future that is inaccessible to human beings. At 133: “integral human fulfillment is an unrealizable ideal.”

13. Cf. Finnis (1998a, 126): Aquinas identifies the obligation to love neighbors as oneself as the specificatory principle of natural law.

14. Germain Grisez (1983, 205–62): “(1) One should not be deterred by felt inertia from acting for intelligible goods. Corresponding virtue: energetic or diligent; vice: sluggish or slothful. (2) One should not be pressed by enthusiasm or impatience to act individually for intelligible goods. Corresponding virtue: team spirit; vice: going it alone or being over committed. (3) One should not choose to satisfy an emotional desire except as part of one's pursuit and/or attainment of an intelligible good other than the satisfaction of the desire itself. Corresponding virtue: self-control or discipline; vices: lustfulness, greed, fanaticism, jealousy. (4) One should not choose to act out of an emotional aversion except as part of one's avoidance of some intelligible evil other than the inner tension experienced in enduring that aversion. Corresponding virtue: courage or perseverance; vice: irresolution or squeamishness. (5) One should not, in response to different feelings toward different persons, willingly proceed with a preference for anyone unless the preference is required by intelligible goods themselves. Corresponding virtue: fairness or disinterestedness; vice: favoritism or selfishness or prejudice. (6) One should not choose on the basis of emotions which bear upon empirical aspects of intelligible goods (or badness) in a way which interferes with a more perfect sharing in the good or avoidance of the bad. Corresponding virtue: sincerity, clearheadedness, or having a sound set of values; vice: superficiality, frivolity, or childishness. (7) One should not be moved by hostility to freely accept or choose the destruction, damaging, or impeding of any intelligible human good. Virtue: patient or forgiving; vice: vengeful or resentful. (8) One should not be moved by a stronger desire for one instance of an intelligible good to act for it by choosing to destroy, damage, or impede some other instance of an intelligible good. Corresponding virtue: reverence; vice: craftiness, expediency.”

15. Wolf's argument against the unsurpassable character of morality presupposes that moral obligations need not be unsurpassable. If this presupposition is denied, then whatever self-perfection is identified as supreme becomes the ground of unsurpassable obligations. The result would be the absurdity of an amoral morality.

16. Susan Wolf (1982) tries to block the attempt to recast morality along lines of self-perfection by arguing that agreement about the constituents of well-roundedness is unlikely, and even if agreement were possible, the failure to achieve well-roundedness does not seem to be a moral matter. Presupposed by her argument is the identification of self-perfection with achieving well-roundedness, rather than the identification of self-perfection with some process, e.g., acting rationally. Wolf's argument depends upon a tacit consequentialism. Remove this tacit presupposition and the argument fails.

17. Cf. Finnis (1999, 86–7) wherein he argues that the *ought* of the *Bonum* Principle is not a moral ought, and that the moral sense of ought “is reached . . . when the absolutely first practical principle is followed through, in its relationship to all the other first principles, with a reasonableness which is unrestricted and undeflected by

any subrational factor such as distracting emotion.”

18. Finnis (1998b), in his encyclopedia article on natural law, identifies the first principle of practical reason as proscribing pointlessness, while identifying the first moral principle as being “entirely reasonable in one’s practical thinking, choice and action.”

19. The GBF account of natural law cannot identify the first principle of practical reason with that of morality until it distinguishes the *Bonum* Principle and the objects of natural inclinations as two different kinds of first principles of practical reason. For unless these are distinguished, the identification of the *Bonum* Principle as morally obligatory would plunge the GBF paradigm of normativity into the difficulties of voluntarist naturalism encountered earlier in chapter 3.

20. Grisez, Boyle, Finnis (1987, 132): “Integral human fulfillment is not an object of efficacious will. Morally good will, however, is specified (through the integral directiveness of practical knowledge) by the integral appetibility of all the basic goods. Ideally, the fruit of such good will would be integral human fulfillment. Hence, a person of good will wishes (in accord with unfettered practical reason) for the realization of this ideal, and this wish rectifies the will in choosing.”

21. “But that perfect happiness is a contemplative activity will appear from the following consideration as well. We assume the gods to be above all other beings blessed and happy; but what sort of actions must we assign to them? Acts of justice? Will not the gods seem absurd if they make contracts and return deposits, and so on? Acts of a brave man, then, confronting dangers and running risks because it is noble to do so? Or liberal acts? To whom will they give? It will be strange if they are really to have money or anything of the kind. And what would their temperate acts be? Is not such praise tasteless, since they have no bad appetites? If we were to run through them all, the circumstances of action would be found trivial and unworthy of gods. Still, every one supposes that they live and therefore that they are active . . . what is left but contemplation? Therefore the activity of God, which surpasses all others in blessedness, must be contemplative; and of human activities, therefore, that which is most akin to this must be most of the nature of happiness” (*N.E.* X, ch. 8 #1178b8-22). Aristotle thus clearly identifies divine contemplation as the highest and best form of eudaimonia. This means that practical reasoning can be eudaimonic only to the degree that it is akin to contemplative reasoning in transcending the self in virtuous excellence. That is to say that practical reasoning is only analogously eudaimonic, if we accept Aristotle’s analysis—as did Aquinas with the caveat that the gods in question are the separated substances (*In N.E.* X lecture 12 #2121 (1993, 633).

22. Mather (2002, 376-7): “When good A and good B conflict, and a citizen must pursue one good or the other, a choice must be made. An assertion that the goods are rationally incommensurable, however, does not imply anything as to who should make that choice, whether it should be the citizen or the state. The state might decide: to leave the citizen free to make his or her own choice, to prevent the citizen from pursuing good A, or to prevent the citizen from pursuing good B. *If the alternative instantiations of goods that can be pursued by the citizen are rationally incommensurable, none of the state’s alternatives is required by reason or prohibited by reason. As far as reason is concerned, the state’s officials are free to make a subjective choice.* Because the goods

and instantiations at stake are rationally incommensurable, the citizen can have no rationally compelling ground for objecting that the state imposed the wrong choice on him or her, just as the state officials can have no rationally compelling ground for claiming that they made the correct choice.” [emphasis added] At times, Mather seems to be tacitly arguing that since evil is the contrary of good, the incommensurability of goods entails an inability to identify their contraries as evils. Consider this claim at 377: “Incommensurability, by itself, does not even imply that it would be wrong for lawmakers to coercively impose their own value ranking on citizens in every situation where conflicting goods or instantiations are incommensurable.” This claim presupposes that such coercion would not be proscribed as evil, presumably because incommensurability makes it impossible to identify the absence of coercion as a good preferable to the good of uniformity.

23. For arguments that the First Amendment was established as a way of respecting the supremacy of God, rather than as a way of promoting human tolerance see, for instance, R. Lemmons (2006); Michael McConnell (1990); Benjamin Hart (1988); Stanford Cobb (1902).

24. See chapter 12: An Untenable Theistic Teleology?



## ***Part Two***

### **Thomistic Normativity**

One question frames the chapters in this part: Can Aquinas succeed where others have failed and establish the indefeasibility and universality of basic moral obligations?

Let us begin by recapping the findings of Part One. So far we have learned that the normativity of indefeasible obligations cannot be based simply on intuitions, the will (divine or human), the set of natural inclinations, indispensable social goods, autonomous virtues, or eudaimonic pluralism. These findings place certain parameters on the principle of normativity. Let us list these according to the previous chapters.

Chapter 1 on rational intuitionism showed that the inability of intuitions to suffice for normativity requires the principle of normativity to be able to specify both universal and particular moral obligations in ways accessible to human beings unfamiliar with moral philosophy.

Chapter 2 on Kantianism and divine prescriptivism showed the need for two additional parameters. First, it showed that the inability of the human will to be both the source of human freedom and the source of moral obligation requires the principle of normativity to be a good other than the rational will. This good must also be an end so necessary as to indefeasibly obligate per se (self-evidently) the means of its achievement, without overwhelming the will and precluding the possibility of immoral actions. Second, this chapter showed that the ubiquity of moral indefeasibility requires that the good that generates indefeasibility be universally knowable. Since all do not know God as the lawgiver, God's will cannot be the source of indefeasible moral obligations.

Chapter 3 on voluntarist naturalism and chapter 4 on the indispensable social goods showed that the universally knowable good that generates indefeasible obligations must be good for the whole person, i.e., perfective of the whole person and not just good qua an aspect of the person, whether that aspect be the end of a natural inclination, a basic good, or one's membership in society. Not only personalism but also eudaimonia must thereby be integral to the normative theory that we seek.

Chapter 5 on the autonomous virtues and chapter 6 on the GBF paradigm of natural law showed that the eudaimonic good must be an end attainable by all, since the impossible does not bind. For this reason, if virtue were the source of indefeasible obligations, only saints would have moral obligations because sinners lack the virtuous habits necessary for fulfilling the obligation to be virtuous. Likewise, the eudaimonic good cannot then be some maximal form of self-perfection but must be a minimal form that binds one to act morally without also binding one to act as if one already has virtuous habits. At the same time, this eudaimonic good must obligate the acts that develop the virtues. For the same reason, since integral human fulfillment cannot be attained in this life, it cannot bind moral agents here and now.

As a result of these lessons, we have learned that the principle of natural law's indefeasible obligatoriness must be a minimal form of self-perfection, or eudaimonia, that binds at all times and places because moral agents can attain it at all times and places.

The question that thus confronts this second part of the book is whether the natural law formulation given by Aquinas possesses these characteristics and is able to be the basis of universal and indefeasible obligations. We will see that Aquinas identified the source of indefeasible obligations with a minimalist eudaimonia consisting of lovingly contemplating God while also loving neighbors as oneself. We begin this argument, in chapter seven, by reexamining the nature of eudaimonia and investigating the structure of self-evidence and practical reasoning. During this process, we shall see not only how Aquinas sought to base his natural moral law upon a self-evident norm that could not be denied without irrationality, but also how he sought to instantiate this norm in the natural law prescriptions to love God and neighbor. Chapter eight then explicates how Aquinas privileges the obligation to love God and neighbor. Objections to this interpretation of St. Thomas is deferred to Part Three, and the normative specifications of the love precepts is deferred to Part Five.

## *Chapter 7*

# **Aquinas on Truth, Goodness, and Eudaimonia**

*This chapter considers how Aquinas explains normative indefeasibility. We begin with recapitulating indefeasibility's need for eudaimonic necessity.<sup>1</sup> Then we discuss how there are degrees of obligation; the eudaimonic logic of moral obligation; and, the epistemology of truth, certitude, and self-evidence. After discussing the Cartesian epistemological revolution and Aquinas's coup, the chapter establishes how the principles of practical reason are also the principles of morality. The chapter concludes by arguing that there are various ways to express the insight embedded in the Bonum Precept.*

### **Recapitulation: Indefeasibility and the Need for Eudaimonia**

One of the most intractable features of morality is its claim that culpability is possible. But culpability would be impossible if indefeasible obligations did not exist here and now. Accordingly, even moral relativists must assume that it is possible to act immorally by failing to discharge an obligation that is here and now recognized as inescapable.

In Part One, we saw that the here and now indefeasible obligatoriness, presupposed by culpability, has led some theorists to identify either the heart or the mind as the sole basis of morality. However, when the heart is identified as the ground of obligatoriness, obligation is whatever the heart feels. Changes of heart thereby change the obligation. Indefeasible obligatoriness then becomes impossible: for the heart cannot bind itself to an obligation against itself. As a result, culpability becomes impossible: to change the heart is to change one's moral obligation.<sup>2</sup> Likewise, when the mind is identified as the ground of

obligatoriness, culpability also becomes impossible. For then obligation becomes whatever the mind decides to make it. Accordingly, whatever the mind decides ought to be done is what ought to be done: to change one's mind is to change one's obligation.<sup>3</sup>

Between grounding obligatoriness in the mind or the heart, the contemporary world struggles as it assumes that morality is either a function of the heart or the mind. This dichotomy, however, fails to realize that culpability necessitates that obligatoriness be grounded in objective goods rather than in the heart or the mind. When the ground of obligatoriness is an objective good, it cannot be changed by the whims of heart or mind. Only then is obligatoriness indefeasible—as required by culpability.

This requirement of culpability makes morality a function of both heart and mind: the mind must recognize the objectivity of good's obligation and the heart must remain free—even while being motivated to act for that good. The heart thus must be the will; for it is the will that remains free even while being attracted to whatever the intellect identifies as good. Hence, to ask whence obligatoriness is to ask for the identity of the good that is able to suffice for moral obligatoriness, while leaving the will both motivated and free in its pursuit of the good. John F. Crosby (1986) put the question in this way: “the finite morally relevant goods toward which I often act in fulfilling my obligation cannot entirely explain my obligation; or rather, while they explain *what* I ought to do (or the content of my obligation), they cannot explain the imperative force with which I am bound. Where, then, is the good which can explain this binding force?”

According to Aristotle and Aquinas, there is only one good that suffices for moral obligatoriness, because there is only one end that the will cannot but seek, namely, goodness. Aristotle called this good eudaimonia; Aquinas called it beatitude<sup>4</sup>; we call it happiness. [I shall use Aristotle's terminology in order to emphasize that this apodictically necessary, or indefeasibly obligatory, good is neither a feeling nor an object known only through Christian revelation.] To identify eudaimonia as the good which suffices for moral obligation is to identify eudaimonic necessity as moral necessity.<sup>5</sup> And, since every human seeks eudaimonia, the identification of moral necessity with eudaimonic necessity means that moral obligations are universally binding within and across cultures.<sup>6</sup>

Since this is the case, any act is obligatory insofar as it connects to eudaimonia. Acts that are indispensable for eudaimonia are indefeasible, i.e., morally obligatory<sup>7</sup>; while acts that are either unrelated to eudaimonia or merely facilitators of achieving eudaimonia are not as necessary, since eudaimonia is attainable without them. In other words, since acts are undertaken as ways of attaining ends, the obligation to perform any act is only as necessary as the end.



Since only eudaimonia is indefeasible, the obligation to undertake any act is determined by whether or not that act is indispensable for attaining eudaimonia: indefeasible and affirmative prescriptions are predicated only of those acts that are indispensable for attaining eudaimonia—as, indefeasible and negative proscriptions are predicated only of acts necessarily contrary to eudaimonia. Any act that enables eudaimonia to be better attained is supererogatory, while any act unnecessary for eudaimonia is not morally proscribed, and its contrary is not morally proscribed. For this reason, what pertains to the excellence of eudaimonia is a matter for the counsels of perfection.<sup>8</sup> Therefore, all obligations are necessary to the degree that they pertain to attaining eudaimonia.

### **Degrees of Obligation and the Logic of Moral Obligation**

If, as the preceding section argued, *to-be-an-end is to-be-obligatory to some degree*, and if there is only one end (eudaimonia) that is universally necessary, then all other ends and actions are obligatory to the degree that they make this ultimate or eudaimonic end realizable. Ends that are not necessary for attaining eudaimonia but that conduce to a fuller achievement of eudaimonia are supererogatory. For example, becoming a priest in order to dedicate one's life to loving God and neighbor is not a moral obligation, even though such a life excels in enabling one to achieve the eudaimonic good.

To predicate obligations according to their eudaimonic necessity can be formalized in the following ways.

- (1) For any *X*, if and only if eudaimonia cannot be attained without *X*, then *X* is a good that is morally obligatory.

This formulation of moral prescription treats as irrelevant whether *X* is an indispensable constituent of eudaimonia or an indispensable means to eudaimonia. Either way, eudaimonia cannot be attained without here and now doing or pursuing the morally obligatory *X*.<sup>9</sup>

- (2) For any *Y*, if and only if *Y* opposes morally obligatory goods, *Y* is morally evil.

This formulation relies upon the first, since Aquinas says, “The quest of a good is the reason for shunning the opposite evil” (*S.T.* I-II.25.2c); and, “affirmation of one thing always leads to the denial of its opposite” (*S.T.* I-II.100.7 ad 1). Moral evil is thus defined as opposed *here and now* to the morally requisite good. This is in accordance with Aquinas's moral logic of considering

prescriptions as including proscriptions: “To do good is more than to avoid evil,” says Aquinas, “and therefore the positive precepts virtually include the negative precepts” (*S.T.* II-II.44.3 ad 3). He continues: “In those observances to which man is bound as under a duty, it is enough that he receive an affirmative precept as to what he has to do, wherein is implied the prohibition of what he must avoid doing” (*S.T.* II-II.22.1 ad 3).

To define moral evil as deliberate acts that are incompatible with morally obligatory goods permits the toleration of unintended evils. This is in accord with Aquinas’s claim that the presence of evil does not preclude all forms of eudaimonia (*S.T.* I-II.5.3c), and with Boethius’s claim that even within prison, happiness is possible.<sup>10</sup> Eudaimonia need not be perfect in order to be experienced in *some form*. If eudaimonia were impossible apart from perfection in all respects, then happiness would elude all in this life, since the exigencies of this life preclude perfect eudaimonia. “Life,” as Elbert Hubbard (1856–1915) put it in *A Thousand and One Epigrams*, “is just one damned thing after another” (1982, 127).

Thus, since the happiness of this life need not exclude every evil, the evil eudaimonically proscribed must be defined as the contrary to what is morally requisite. Furthermore, it is possible that the evil that is proscribed as immoral may actually coexist with the eudaimonic state, since happiness in this life is a habitual state resulting from the enduring activities of one’s good character, and since a wicked deed does not necessarily erode the goodness of one’s character—which is not to say that one’s good character and the happiness of this life are compatible with every wicked deed.

The possible coexistence of this life’s eudaimonia and imperfection does not, however, excuse choosing and acting for that which opposes or weakens eudaimonia. Eudaimonia is opposed or weakened by deliberate actions that cannot be in any way moral. If it were possible for deliberate actions to be morally good while failing to be eudaimonic, then the moral goodness of those acts would be drawn from an end other than eudaimonia. But Aquinas argues, in *S.T.* I-II.1.4, that ultimately human beings have only one end. Thus, the necessity of every end is ultimately drawn from the necessity of eudaimonia; and the absolutely necessary is identified as the morally obligatory.

(3) For any act, it is impossible that it be both morally prescribed and proscribed here and now.

It is not possible for any deliberate action to be both morally prescribed and proscribed here and now because either an act conduces to eudaimonia or it doesn’t.

Consequently, the identification of moral acts with eudaimonia entails (1)

that contrary acts cannot both be obligated for the sake of eudaimonia; and (2) that if, for some reason, an act ceases to be necessary for eudaimonia, it ceases to be morally requisite while the obligation to remain ordered to eudaimonia continues. For example, the obligation to return borrowed weapons ceases when the owner seeks their return in order to harm others. In such a case, returning the weapons would not only harm their owner but also possibly others as well and as such would be contrary to the goodness requisite for eudaimonia. In this way, the eudaimonic basis of moral precepts conditions obligations upon the contingencies of human life. As a result, if an obligation becomes impossible to fulfill, it is no longer obligatory, as Aquinas says: “no man is bound to do what he cannot duly accomplish” (*S.T.* II-II.68.1c).

This means that implicit within every predication of obligation is the moral agent. Thomistic ethics reads moral precepts such as “Honor thy parents” or “Do not bear false witness” as obliging the hearer either to act in a certain way for a certain end or to avoid a certain act. These examples show that moral predications are not dependent upon their grammatical form. Indeed, English grammar can be deceptive. Consider: “the newborn ought to be changed.” The newborn is not the one being obliged. The moral-subject is tacit: the person responsible for childcare ought to change the diaper. Since the moral-subject of a prescription or proscription can be tacit, moral obligations can be expressed as commands in the forms “Do this” and “Don’t do that,” or as judgments of conscience in the forms “I ought to do this” and “I ought not do that,” or as universal moral prescriptions in the form “One ought to do this” and “One ought not do that.” Accordingly, obligations are not merely imperatives, but precepts that *assert* that (1) a person, (2) is being obliged, (3) to act, or not act, in a certain way. The predication of obligation includes the assertion that a certain subject has a certain obligation to perform or not perform certain actions.

The implicit assertion within every prescription, and every proscription, makes it possible for eudaimonic predications of obligation to be true, or false, because every moral obligation asserts that something must be done, or not done, by a certain subject in order to achieve eudaimonia. If the obligation asserted is not indispensable for eudaimonia, then the obligation is not moral. If the indefeasible obligation is being predicated to something contrary to eudaimonia, then the predication is false. For example, it is false to assert, “children ought never be loved.” Falsification occurs when moral obligation is predicated of something that is either contrary to eudaimonia or not indispensable for attaining eudaimonia. The truth of the moral predication can be determined by evaluating whether the predication is self-evident, or validly derived from true and self-evident norms.

## Truth and Certitude

Self-evidence within Thomism differs from the contemporary analytic view of self-evidence found, for instance, in Kant. The analytic view is that a claim is self-evident when the definitions of terms suffice to make the claim's truthfulness known. The Thomistic view is that definitions are a necessary but not sufficient condition for self-evidence: claims are self-evident if and only if the terms' definitions accurately refer to the thing itself without the mediation of a third or middle term. Let us then call this Thomistic form of self-evidence "natural," since it holds that it is the thing or the object—and not the knower—that is responsible for a self-evident unification of subject-predicate. St. Thomas explains this point in *Truth* 14.1c where he differentiates between the immediate and the mediate determination of the intellect by an intelligible object:

An intelligible object acts immediately when the truth of the propositions is unmistakably clear immediately to the intellect from the intelligible objects themselves. This is the state of one who understands principles, which are known as soon as the terms are known, as the Philosopher says [*P.A.* I, 2, 72a18]. Here, the *very nature of the thing itself immediately determines* the intellect to propositions of this sort. The intelligible object acts mediately, however, when the understanding, once it knows the definitions of the terms, is determined to one member of the contradictory proposition in virtue of first principles. This is the state of one who has science.<sup>11</sup> (Emphasis mine)

In other words, the difference between understanding self-evident claims and derived claims lies in whether the referents of the terms' definitions suffice to make the truth of the proposition known. In such cases, the intellect's assent to the subject-predicate relationship is unmediated and underived. Accordingly, such an assent is not optional: it is a forced intellectual assent.<sup>12</sup> This means that to reject a claim that is understood as naturally self-evident would require one to be inconsistent with one's own understanding; it would require doing violence to one's own mind; it would be irrational. Assenting to the truthfulness of naturally self-evident claims is the only rational option.

Furthermore, since naturally self-evident propositions express a subject-predicate relationship that is immediately given by the thing, the proposition remains necessarily true as long as it expresses the nature of that thing. This means that whenever a proposition expresses an essential fact about the thing's nature, e.g., triangles have three sides or man is a rational animal, the proposition is necessarily true.<sup>13</sup> And, it is known as such from the intelligibilities of its terms that include the referent (E. Simmons 1961). These terms are taken from the thing, itself, through the mediation of phantasms, but not through the

mediation of a third intelligibility expressed in a middle term.

Therefore the acid test for the natural self-evidence of a proposition, or a propositional element within a precept, is whether the referential intelligibilities of its terms *suffice—without mediation by a middle term*—for the truthfulness of the subject-predicate relationship. When these two conditions are present, the subject-predicate relationship *necessarily* arises from the thing itself. In such a case, the assertion of that subject-predicate relationship is self-evident for whoever knows the thing itself.

**Self-evidence is useless as a criterion of truth: false propositions may seem—and often have seemed—self-evident (D. J. O'Connor 1968, 67).**

If *the things* signified by the subject and predicate terms are not known *to us*, then the natural self-evidence of the claim is not known *to us*. Aquinas (*S.T.* I.2.1c) illustrates this point by arguing that while God's existence is self-evident to God, it is not self-evident to us because we do not adequately know God. The reference of terms must be adequately known in order for a claim to be self-evident to us.<sup>14</sup>

Although insufficient knowledge of a reference precludes knowing its predication as self-evident, it need not preclude knowing its truthfulness. For in such cases, the truthfulness of the claim can be known through a formal demonstration. For example, I can construct this syllogism to “prove” to one who doesn't know “man” or “rational animal” that “man is a rational animal.”<sup>15</sup>

- (1) Every man is an individual with a sentient body and a rational intellect.
- (2) Every individual with a sentient body and a rational intellect is a rational animal.
- (3) Therefore, every man is a rational animal.

This syllogism is *sound*: every premise is true, and its structure is valid. But it is, strictly speaking, illustrative rather than demonstrative insofar as it is “demonstrative” only to those who do not know what is signified by “rational animal.” To those who do know, this syllogism is not, strictly speaking, demonstrative insofar as there is no mediation by an intelligibility other than that of the minor and major terms; after all, the intelligibility of “rational animal” includes that of “man.” Thus the need of a particular person for a “demonstration” does not suffice to determine whether a claim is naturally self-evident. Even naturally self-evident claims must be “demonstrated” to those who do not know that which is signified by the terms, for without knowledge of the term's signification, none can grasp the necessity of the subject-predicate relationship.

Predications that are necessitated by the referential intelligibilities of their terms are not reducible to psychological obviousness: claims may be obvious and not self-evident. For example, it may be obvious to me that killing the innocent is wrong, yet Aquinas identifies it as a derived natural law precept (*S.T.* I-II.95.2).

The distinction between psychological obviousness and natural self-evidence has not been widely appreciated. For example, D. J. O'Connor criticizes natural self-evidence as being "useless as a criterion of truth. False propositions may seem (and often have seemed) self-evident" (1968, 67). This criticism would be valid, only if obviousness sufficed for natural self-evidence. But if that were the case, then claims expressing prejudice would be not only obvious to their speakers but also self-evidently true, that is to say, not only would their predications be necessary and unmediated by a middle term, but they would also lack counter-instances. Racial prejudices, for instance, cannot be self-evident because there are many cases where members of a race do not exhibit the prejudicial characteristic. The predication of some despised characteristic cannot then be necessary or self-evident.

Therefore, since false claims cannot be necessary, and since referential self-evidence requires unmediated and necessary predication, it is impossible for any false claim to be self-evident. This means that natural self-evidence suffices as a criterion of truth in those cases in which one's knowledge of a thing necessitates—without reliance upon a middle term—a certain predication. However, since this form of self-evidence relies on understanding the referents of a proposition's terms, it suffices as a criterion of truth only when its referents are understood. Only in such situations would it be irrational to reject the truthfulness of a self-evident claim.

If, then, it were possible to identify a self-evident norm, that norm could not be denied without irrationality. It would be a condition of rationality. It would be indubitable. And, any morality based on that norm would also be indubitable as long as consistency with that norm is preserved. That such an indubitable first principle is the basis of Aquinas's morality is established in the next few sections.

### **Certitude: The Cartesian Revolution and Aquinas's Coup<sup>16</sup>**

Since the days of Descartes, philosophers have largely given up the search for certitude and have rejected the perennial conviction that the human mind is capable of discovering the way things really are. Contemporary philosophers are not likely to agree, for example, with Aristotle's conviction that the senses are adequate for revealing the external world and its essential features. For between contemporary philosophers and Aristotle lies the shadow of Descartes. Descartes argued that the senses are inadequate and that ideas, rather than the

external world, are first known. This Cartesian argument became the touchstone of modern and postmodern philosophy as philosophers puzzled about how to insure that our ideas are not deceptive when only our ideas are known. Answering this epistemological question has been the central quest of modern philosophy. Descartes attempted to resolve this epistemological conundrum by basing all knowledge upon a claim so simple that none could be mistaken about the terms' definitions nor, thereby, be able to deny the claim without irrationality; hence, his "*Cogito ergo sum*." This claim predicates a self-evident relationship between thoughts and their thinker. This relationship had been used against skepticism by Augustine, except he formalized it in these terms: *If I am deceived, I am*. Such claims irrefutably prove that at least one thing could be known with certitude: "thinking" or "being deceived" are unintelligible without their respective subjects (hence, the tacit reliance on the second mode of self-evidence). Although the positing of this self-evident claim as the first principle of thought renders whole scale scepticism untenable, it cannot guarantee the accuracy of subsequent thought; it cannot even preclude solipsism. Descartes knew this and thus went on in his *Meditations* to prove the existence of a good God who would not allow us to be deceived about the nature of the external world and who gave us the cognitive tools to perceive the world correctly.

This answer by the Father of Modern Philosophy has not been the final word. It could not be for subsequent atheists and agnostics. Without a benevolent Creator underwriting the human ability to apprehend things, how can one be sure that one's cognitive powers are apprehending reality correctly? Modern philosophy thus looked within the mind and within characteristics of thought in order to find a ground of certitude. The philosophies of Immanuel Kant and Edmund Husserl are perhaps the best examples of this Cartesian revolution.

For three hundred years, various models have been proposed for resolving the epistemological riddle about the external world arising from the Cartesian revolution. Decades ago, Etienne Gilson persuasively argued that modern philosophy's preoccupation with its epistemological nativity must ultimately result in its stillbirth. Gilson pointed out that it is impossible for one to proceed from knowing only one's ideas to knowing the world. Indeed, Gilson's analysis has been confirmed by the contemporary dismissal of correspondence theories of truth as requiring the impossibility of knowing outside of one's own ideas, and its embrace of coherence theories of truth relying upon falsification procedure. So the best certitude that post-Cartesian philosophy can now provide is fallibilism, i.e., something is tentatively true insofar as it has yet to be disproven. Hence, the philosophy launched by Descartes is now unable to quench the doubt that perhaps its truths are not really certain because they are liable to falsification. Kai Nielsen puts it thus: "How a rational person could

expect anything other than a fallibilistic view of the world seems quite mystifying to us” (1991, 42).

Thus, without the noetic of realism and without the benevolence of God, post-Cartesian philosophy has not made much progress in understanding human thought and language. Rather, progress has been made by the biological sciences: neo-Cartesians, after all, cannot assimilate information about the world until it has established how that information is possible. The experimental sciences are not likewise troubled: scientific advances have been made and are continuing to be made by those who, for example, begin with the fact that mental incapacities result from strokes and then proceed to determine how that incapacity occurs. Such advances have given the lie to the Cartesian starting point: the first known is not an idea but extra-mental reality; ideas are formulated to make sense of a reality already encountered.

But abandoning philosophy’s Cartesian incarnation does not require abandoning the Cartesian insight into the form of absolute certitude, namely, that it requires that the principle of thought be rationally undeniable. Nor, does it entail forgetting the lesson of modern philosophy’s history, namely, that sensations and ideals only suffice for fallibilism—not certitude. Thus from the Cartesian experiment and from its impact upon subsequent philosophy, we may learn that the principles of rationality (such as the *Cogito*) need not be the ground of certain knowledge of the world. Only a principle of rationality that structures reason’s contact with the extra-mental world could suffice to provide reason with other than subjectivist and fallibilistic grounds for knowledge. Without such a ground, the Greek-medieval notions of “truth,” “certitude,” and “universality” as characteristics of knowledge cannot endure—as the genesis of fallibilism from the ashes of Cartesianism has shown. Let us call such a principle of rationality that so structures reason’s contact with the extra-mental world that it cannot be rejected or denied without irrationality, a principle of *objective* rationality.

Aquinas identifies such principles of objective rationality as primary or first principles of *reason*<sup>17</sup> that are naturally known as self-evident. He, like Aristotle, identifies such a principle of certitude by arguing that the first principle of thought is the understanding that extra-mental being has a reality that cannot be simultaneously affirmed and denied. For example, a moving object cannot be—in the same way—stationary; I may not know WHAT the object is, but THAT it is moving cannot be denied and affirmed simultaneously.<sup>18</sup> This first principle of thought underpins all human claims as a constitutive principle of reason. It was formalized by Aristotle as the Principle of Non-contradiction; Aquinas expresses it this way in *S.T. I-II.94.2c*: “the same thing cannot be affirmed and denied at the same time.” This first principle of thought cannot be denied without violating a condition of rationality, namely,



consistency: the self-contradictory can neither exist nor even be conceived.<sup>19</sup> [Hence, the certitude of the Cartesian *cogito* presupposes the Principle of Non-contradiction: thinking cannot be affirmed while a thinker is denied.] The denial of the Principle of Non-contradiction violates another condition of rationality, namely, the awareness of reality or being.

Rejection of the Principle of Non-contradiction thus involves not only inconsistency but insanity insofar as the essence of insanity is to be divorced from reality, i.e., to so mistake one's ideas for reality that one is unable to acknowledge the existence of a world not of one's own making. For example, it would be insane to sincerely argue that the color purple is lethal. Rationality and all coherent thought depend on the Principle of Non-contradiction. This principle enables human experience to be meaningful: birds are not bees, the cruel are not loving, et cetera. Therefore, Aquinas, by establishing the Principle of Non-contradiction as his first principle of thought and as his principle of certitude, identifies a realist and self-evident proposition that cannot be denied without irrationality.

But the Principle of Non-contradiction does not insure the viability of natural law insofar as natural law predicates obligations and obligations cannot be derived from the Principle of Non-contradiction nor from any other declarative assertion—as David Hume made perfectly clear. Within Thomism, some have wished to argue that natural laws are derived from the nature of things, i.e., that obligations arise from natural descriptions. If Aquinas had thought that this was the case, then he would have considered the Principle of Non-contradiction to suffice as the first principle of practical reasoning. There would have been no need to posit the *Bonum* Precept (good is to be done and pursued, and evil is to be avoided) as the *first* principle of practical thought and morality. But it was necessary to posit a different first principle of practical reasoning, because the object of practical reasoning is not the object of speculative reasoning and, according to Aquinas, it is the object that determines the activity.

Moreover, by positing the *Bonum* Precept—the obligation to pursue and do good while avoiding evil—as the first principle of practical thought, Aquinas established an irrefutable realist foundation for moral certitude. That he intended to do so can be shown by his claim that natural law directs humans to their first acts (*S.T.* I-II.91.2 ad2), and by his analogous treatments of being and good, the Principle of Non-contradiction, and the *Bonum* Precept. In *S.T.* I-II.94.2c, Aquinas argues that “being” and the Principle of Non-contradiction are to the speculative reason as “good” and the *Bonum* Precept are to the practical reason.<sup>20</sup> The two principles are analogous, for eight reasons.

(1) Both are based upon what first falls into the apprehension of either the speculative or practical intellect.

(2) Both are characterized as first principles of either speculative or practical thought. As first principles, all other human thoughts are based upon them, although not necessarily as premises.

(3) Neither “being” nor “good” is defined according to the mind’s reaction. “Being” is not defined according to the mind’s affirmation or denial, and “good” (or “evil”) is not defined according to its prescription (or proscription).

(4) The predicates of these claims are unintelligible without intelligent beings: affirmation and denial are acts of persons just as obligations bind persons to act in certain ways. These predications are relations that are predicated according to their suitability (*Truth* 1.1c): being’s relation of suitability to the intellect is called “true,” while being’s relation of suitability to

the appetite is called “good.”<sup>21</sup> And so, the

**“[W]hatever the practical reason naturally apprehends as the [human] good (or evil) belong to the precepts of the natural law as something to be done or avoided” (S.T. I-II.94.2c).**

knower and the desirer belong to the intelligibilities of the true and the good. This enables these predications to be self-evident in the

second mode: the essential nature of the true and good involves a relation to the knower and the desirer such that what is true must be affirmed and its contrary denied, while what is good must be attained and its contrary avoided. So being’s suitability for being known by the intellect and good’s suitability for being attained by the appetite give rise to two self-evident propositions for those who understand being’s cognitive relatedness and its appetitive relatedness, even though they are not found within the definition of what is known or what is desired.

(5) Just as the Principle of Non-contradiction expresses the first judgment of speculative reason about the limits of affirmation and negation, the *Bonum* Precept expresses the first judgment of practical reason about the limits of obligations.

(6) Just as there can be no assertions contrary to the Principle of Non-contradiction, there can be no obligations contrary to the *Bonum* Precept.

(7) The *Bonum* Precept functions in practical reasoning in ways similar to the ways the Principle of Non-contradiction functions in speculative reasoning. Indeed through the analogy with speculative reason’s Principle of Non-contradiction, St. Thomas is teaching that the *Bonum* Precept is the first principle of practical reason by implicitly containing all other practical judgments inasmuch as they concern good or evil, just as the first principle of speculative reason implicitly contains all speculative judgments inasmuch as

they concern being.

(8) Furthermore, the analogy shows that, just as the Principle of Non-contradiction places truth restrictions upon all other propositions of speculative reason (e.g., it precludes predicating existence and nonexistence of the U.S. Congress at the same time and in the same respect), the *Bonum* Precept places certain restrictions or parameters upon all other prescriptions of practical reason (e.g., it precludes prescribing the pursuit of evil; for it is only insofar as something appears good that it possesses the intelligibility of “pursue-ability” whereby it can be prescribed).

But if the *Bonum* Precept is to perform the same functions for practical reason as the Principle of Non-contradiction performs for speculative reason, it is necessary that good be as real as being. If good is only approval or some other subjective feeling, then the *Bonum* Precept cannot establish a natural law morality.

Good, moreover, can be objective without committing the naturalistic fallacy of G. E. Moore (2005). Moore argues that the good cannot be defined in terms of a natural attribute; because, if good is defined in terms of N, then the question whether “N is good” remains open with the possibility of affirmative and negative answers. Such open possibilities show that N is not the definition of good. This “open question argument,” for example, shows that good cannot be defined as the pleasurable, because this definition leaves open the question of whether the pleasurable is good inasmuch as some pleasures are good and some are not.

Many have assumed that the natural law commits the naturalistic fallacy. Aquinas’s eudaimonic morality does not do so. For Aquinas, goodness is desirability, and desirability is goodness. Thus Aquinas would meet the question of whether desirability is good affirmatively: there is no case in which the desirable would be per se bad—although there are many cases in which the desirable can be sought in a wicked fashion. For example, amusement is always good, but seeking amusement through cruelty is wicked.

The distinction between the formality of desirability and its embodiment enables Aquinas to consider the desirable as always good—even when its embodiment is so deficient in goodness that it is morally proscribed: X may be desirable/good but not good/desirable enough to qualify as an object of moral pursuit, e.g., cruel amusements. Nevertheless, the formality of desirability as good and the formality of good as desirable makes their identification tautological, thereby closing Moore’s open question and avoiding the naturalistic fallacy. Moreover, since desirability is the relation of suitability between the self and some object, this definition of good preserves the realist foundation of practical reason and the *Bonum* Precept.

## Conditions of Practical Reason and Morality<sup>22</sup>

*“For since it belongs to reason to direct; if an action that proceeds from deliberate reason be not directed to the due end, it is, by that fact alone, repugnant to reason, and has the character of evil” (S.T. I-II.18.9c).*

### First in Practical Reasoning *and* Morality?

Moral reasoning is constituted by the rational consideration of whether certain acts and objects are indispensable for an indefeasible end. When this is the case, reason dictates a moral norm or renders a moral judgment. The first principle that reason dictates is identified by Aquinas as the first principle of morality: “Good is to be done and pursued, while evil is to be avoided” (S.T. I-II.94.2c). This identification writes morality into the structure of practical rationality and enables Aquinas to claim that “moral acts and human acts are one and the same” (S.T. I-II.1.3c).

But it is difficult to see how the *Bonum* Precept can be the first principle of practical thought. The *Bonum* Precept self-evidently predicates obligations of the very intelligibilities of good and evil. How, then, can it serve as the basis of both moral *and* immoral practical choices?

Interpreters of Aquinas have been deeply divided over this issue ever since Germain Grisez (1965) argued that the first principle of thought could not also be the first principle of morality. His argument was simply that the same principle could not be the origin of both practical thought and morality, because the principle of morality must offer specific guidance unique to moral thought and be the principle from which all other natural law precepts are derived. Thus Grisez assumes that since immoral and moral acts are equally rational, then the first principle of practical reason cannot also be the first principle of morality.

While I agree that the first principle of practical reason is the principle of both immoral and moral acts, I do not agree that this entails that the first principle of practical reason lacks moral import.<sup>23</sup> Neither does it entail that immoral acts are as fully rational as moral acts. In brief: the moral import of the first principle of practical reason is that it is morally obligatory to act according to reason and not according to emotions or feelings. To act according to reason requires identifying—and then honoring—the truth about whether particular goods are morally permissible, while refusing to focus only upon their desirability.

Those who argue that the vicious are as rational as the virtuous have defined practical rationality in terms of a process for attaining ends, rather than in terms of attaining ends that are intelligible insofar as they are objectively good. For instance, in *Reasonably Vicious*, Candace Vogler defines practical

rationality as merely calculative: “Let A and B be actions of different types. One has reason to A only if one takes it that A-ing is a means to (or part of) attaining (or making it possible to attain) a further end, B-ing, and one wants to B (for no particular reason or because B-ing is pleasant, useful, or fitting)” (2002, 149). This definition, which Vogler also identifies as the standard view of practical rationality in contemporary philosophy (149), does not differentiate between ends being pursued: the vicious who excel in their vice make “no error of practical reason” (6), not even if he is an excellent torturer (201).

This model of practical rationality thereby assumes that the end’s identity makes no difference to rationality, i.e., that practical rationality is not interested in the truth about one’s ends. But this is absurd: none knowingly pursues an illusory end. No sane adult sits in pumpkin patches awaiting Charlie Brown’s Great Pumpkin. That ends must be real is acknowledged by Vogler,<sup>24</sup> but her definition of practical rationality in terms of calculations unfortunately does not.

Furthermore, Vogler’s version of practical rationality assumes that all ends are equivalent. But if human nature has dictated that there is some end to which one cannot be indifferent, Vogler’s formulation is woefully inadequate. For then the pleasant, the useful, and the fitting would have to be evaluated in relationships to nature’s end. Such evaluations would entail that only those calculations that adopt fitting means to nature’s end would be rational. Any reasoning involved in adopting means that fail to advance that end would be irrational. For instance, eating poisonous substances as a means of furthering life is irrational; exploiting others as a means to achieving their friendship is also irrational; acting against the truths known by reason as a means of acting rationally is also irrational.

Such acts are also immoral according to the norm that one must act in accord with reason’s awareness of truth. And, this is the obligation prescribed by the *Bonum* Precept, namely, one is to act in accordance with reason’s awareness of good and evil—and not to ignore one’s knowledge of good and evil by acting, for example, only in accordance with feelings. The obligation to practical rationality is thereby quintessentially a moral obligation. It is ignored at the cost of being both immoral—and irrational.

Irrationality, after all, does not mean the failure to reason: we do not call squirrels irrational—even when they run into the road in front of vehicles that crush them. Rather, irrationality is bad reasoning; and, in the practical realm, it is vicious reasoning, i.e., the reasoning that occurs when the will refuses to allow the intellect to function correctly and command the act in accord with truth. For this reason, the *Bonum* Precept obligates the will to accord with reason rather than choosing against what reason knows; a will at variance with reason is evil—even when reason is wrong.<sup>25</sup>

Immoral actions, on this account, are actions that either abandon reason’s

moral knowledge in favor of passion's desire for a particular good or spurn reason's knowledge for the sake of the will's malice, which is nothing other than an egotistical refusal to submit to what is known by the self as good. Either way, reason knows better and expresses its better judgment in the voice of conscience. The conflict between the judgment of conscience and the judgments of malice or passions shows that the latter judgments are unsound and not fully rational insofar as they fail to instantiate what reason knows is true. This failure is culpable because reason knows better or ought to know better—as the judgments of conscience show. Ultimately, reason knows better because reason knows the truth about the goods being sought and whether a physical or a sensual good is being preferred to what's really good, e.g., reason knows that, regardless of its appeal, snorting cocaine ought not be preferred to grading midterm exams.

Immoral acts are thus against the truths known by reason and as such are not only irrational but also culpable. In brief, culpable irrationality occurs when one acts according to rational principles (such as the *Bonum* Precept) while refusing to apply those rational principles correctly in a particular case. One place where Aquinas seeks to explain the nature of immoral acts is *S.T.* II-II.25.7c. In this crucial article, Aquinas argues that immorality consists in loving the goods of the body more than the goods of the person; for example, would be immoral to prefer the pleasures of a nap to rescuing a stranded friend.

It is, moreover, necessary to hold that the *Bonum* Precept is both the first principle of practical reason and the first principle of morality because, if this were not the case, then the act of practical reason wherein it expresses the *Bonum* Precept could not be a human act insofar as every human act has moral significance (*S.T.* I-II.18.9c). Nor could moral acts be grounded in the first principle of practical reasoning insofar as moral obligations cannot be generated from non-moral prescriptions.

By obliging action to accord with reason's awareness, the *Bonum* Precept also binds humans to act in accordance with reason's recognition of the degrees of necessity. For since it is the necessity of the end that determines its obligatory force: a good is obligatory only insofar as it is a eudaimonic necessity; and evil is to be avoided only insofar as it is good's contrary. Accordingly, the *Bonum* Precept's self-evident predication of affirmative and negative obligations asserts that obligations are dependent upon the goodness and evil of their objects. In

**The *Bonum* Precept expresses the most basic intelligibility of practical reason's decisions, namely, that the end sought should be good and known as such, while what is evil should be avoided.**

other words: “Good only insofar as it is good is to be done and pursued, and evil only insofar as it is contrary to good is to be avoided.” Now, since this predication only makes explicit what is implicit within the *Bonum* Precept, it is equivalent to the *Bonum* Precept. I shall thus call it the “*Bonum* Equivalence.”

The *Bonum* Equivalence is not the only way in which the *Bonum* Precept can be formulated. Other formulations of the *Bonum* Precept are possible because the *Bonum* Precept is a self-evident precept, which makes manifest nothing other than the relational intelligibility of obligations to goods having the intelligibility of an end; while also making it manifest that evil has the intelligibility of an end's contrary. If self-evident obligations are predicated of subjects according to the second mode of per seity, then the intelligibility or *ratio* of those subjects cannot be other than ends. If this is so, then the *Bonum* Precept expresses nothing other than the full intelligibility of ends and their prescriptive obligations as well as full intelligibility of evil as the good's contraries to be avoided.

Aquinas's eudaimonic understanding now comes to the fore inasmuch as absolute obligations can only be prescribed of eudaimonia—which is also the perfect good, i.e., the good with the formality of perfect desirability. Therefore any precept that expresses the full intelligibilities of good and evil is only logically distinct from the *Bonum* Precept differing from it only according to the concept used to access the *full* intelligibilities of good and evil. In other words, there are various formulations of the *Bonum* Precept that signify the same reality as the *Bonum* Precept through different conceptual frameworks. Such *Bonum* formulations have the same truth conditions as the *Bonum* Precept.

Indeed I contend that it is because the *Bonum* Precept has various formulations that Thomists have interpreted it differently. For example, Ralph McInerney interprets the *Bonum* Precept as giving “the formality under which the object is sought or pursued: as complete, as perfective” (1982, 43). He continues: “The first and most common precept states that we should pursue what is truly perfective of us and avoid its opposite” (47). Mortimer Adler understands the *Bonum* Precept in terms of what is *really* good and *really* evil: “Hence the natural moral law, or what is the same, the first principle of the practical reason is: Seek the real good, avoid the real evil” (1942, 217) And, Fr. Johnson (1963, 363) claims that the force of the *Bonum* Precept is to pursue particular goods that relate to the last end.

Such various formulations of the *Bonum* Precept are necessary because, since good's intelligibility is desirability and evil's intelligibility is as good's contrary, it takes a certain progression in human understanding to completely unpack the full intelligibility of good and evil. Diverse expressions of these full intelligibilities are only logically distinct from the *Bonum* Precept. Hence the terms of the *Bonum* Precept function as placeholders for equivalent expressions

already tacit within the intelligibility of the *Bonum*'s terms. Precepts that express the full formality of the *Bonum* Precept are *Bonum formulations*. These formulations—as *Bonum* Equivalences—not only identify the forms of moral obligations but also the conditions of practical rationality.

### ***Bonum* Formulations**

The first formulation of the *Bonum* Precept is given in *S.T.* I-II, 94, 2c as “Good is to be pursued and done and evil avoided.” This formulation presupposes not only the apprehension of good and its contrary, but that the apprehensions are either self-evidently prescriptive or proscriptive. Since the *Bonum* Precept asserts the self-evident relatedness of prescriptions with goodness and proscriptions with good’s contrary, this precept has a second formulation already introduced as the *Bonum* Equivalence, “Good, insofar as it is good, is to be done and pursued; and evil, insofar as it is contrary to good, is to be avoided.” As the *Bonum* Equivalence makes clear, the *Bonum* Precept and its various formulations predicate obligations of goods and of their contraries; the obligatory necessity of those predications reflects the necessity of the good as an end. Ends identifiable with the full intelligibility of goodness are per se apodictically necessary; ends instantiating limited goodness are not: good insofar as it is good is to be done and pursued, etc.

Another way of expressing the *Bonum* Equivalence is by noting that every good done or pursued is loveable and every evil is detestable.<sup>26</sup> “Every agent acts for an end,” explains Aquinas (*S.T.* I-II.28.6c), “the end is the good desired and loved by each one. Wherefore it is evident that every agent, whatever it be, does every action from love of some kind.” Thus, the desire presupposed by every pursuit, or doing, of the good is an act of love. Moreover, since goodness is the only cause of love (*S.T.* I-II.27.1c), something is loveable only insofar as it is good and hateful only insofar as it is evil. “[J]ust as good is the object of love,” says Aquinas (*S.T.* I-II.29.1c), “so evil is the object of hatred.” Accordingly, the *Bonum* Equivalence may be formulated as “Good insofar as it is good is to be loved, and evil insofar as it is good’s contrary is to be detested.” I call this formulation the *Love Formulation*.<sup>27</sup>

The *Bonum* Precept, the *Bonum* Equivalence, the Love Formulation, and any other *Bonum* formulation—as prescriptive—presuppose reason’s apprehensions of good and evil; they, therefore, presuppose this fourth formulation: “Good as apprehended by reason is to be pursued and done, and evil as apprehended by reason is to be avoided.”<sup>28</sup> This fourth *Bonum* formulation is operative in St. Thomas’s discussion of virtue as being in accord with reason, since the quintessential moral obligation is to accord with reason (*S.T.*



I-II.19.5c). Thus, I call it the *Virtue Formulation*.

These formulations, like the *Bonum* Precept, are also conditions of rationality, insofar as it is irrational to love evil insofar as it is evil and to hate good insofar as it is good, or to pursue the evil apprehended as such by reason, or to avoid the good apprehended as such by reason. Some, however, may wish to argue that these formulations are not principles of rationality insofar as it is not irrational to pursue a sensual good identified by reason as evil, e.g., adultery. Such cases, however, reinforce that it is a condition of rationality to pursue only that which is identified by reason as good: if, for example, extramarital sex were not identifiable as somehow good, then it would be neither desirable nor pursued. For this reason, in *S.T.* I-II.94.2c, Aquinas identifies desirability as goodness. Accordingly, it is only because reason can recognize sensual goods as goods that one can act rationally in their pursuit. Nonetheless, Aquinas argues that reason also recognizes, for example, that the goodness of sensual pleasures is not greater than the goodness of spousal love, and that one distorts this recognition by preferring the “goodness” of adultery to the goodness of spousal love. Such distortions, as untrue to reason’s own judgments, violate one’s rationality; they are immoral; they violate the *Virtue Formulation* and, by doing so, violate every *Bonum* formulation.

Therefore, since St. Thomas did not mean that whatever reason prescribes as a good ought to be pursued and done, since reason can prescribe as the conclusion of a practical syllogism a good known to be immoral, e.g., to pursue the good of alcohol in an intemperate way, the *Virtue Formulation* presupposes that the good known by reason is truly good. Indeed practical reason knows good under the intelligibility of truth.<sup>29</sup> Rationality requires adherence to known truths. It is thus irrational to defy the truth in order to indulge passions or any type of feeling. Accordingly, there is this fifth formulation, which I shall call the *Truth Formulation*: “The truth about the good known by reason is to be pursued and done, while its contrary is to be avoided.” Aquinas relies upon the *Truth Formulation* when he enters the particular goods of natural inclinations into the moral order because their attainment is ordered by reason.<sup>30</sup> The *Truth Formulation* is also operative in the critical identification between natural law as an ordinance of reason and as an effect of eternal law; (*S.T.* I-II.93.2c): “For every knowledge of truth is a kind of reflection and participation of the eternal law . . . Now all men know the truth to a certain extent, at least as to the common principles of the natural law.” This identification of natural law principles with the truths of the eternal law removes natural law from the realms of arbitrariness and ethical relativity. For truth is the boundary of reason and its natural law.

Violations of the *Truth Formulation* are irrational insofar as reason contradicts itself in enabling us to pursue what is known as evil or to avoid what

is known as good through rationalization. It is not only irrational to transgress against known truths but it is—within an ethics founded upon conditions of rationality—immoral.

The Truth Formulation, by taking account of the true good, presupposes that reason apprehends the good here and now known as truly suitable for a person. For this reason, the inclinational goods need not always be pursued, even when their contrary is always forbidden. For example, suicide is always forbidden, while pursuing life at all costs is not obligatory. What then is the criteria identifying that an inclinational good must be pursued? And why did Aquinas list the three kinds of inclinational goods in *S.T. I-II.94.2c*? The answers to these questions require noticing that the threefold listing of inclinational goods in *S.T. I-II.94.2c* is a listing of goods that are naturally commensurate with human persons. These goods are essentially related to persons, that is, to every human person—including oneself. Hence, a presupposition of *S.T. I-II.94.2c* is that the *Bonum* Precept applies to the self: that is “the good to be pursued or done and the evil to be avoided” is to be done or pursued or avoided *by me*. Aquinas is thus presupposing that his readers will supply the awareness that the *Bonum* Precept applies to themselves and, as a consequence, will identify inclinational goods as being naturally suitable to *oneself* and not just to *one's inclinations*. This seems so obvious—even today—that it hardly seems worthy of being mentioned. But the neglect of this *personal* aspect of the *Bonum* Precept and of the goods identified as the objects of the natural inclinations has been responsible for the popularity of voluntarist naturalism and the likelihood that philosophers will base their ethics, not upon the

**“[A]ll desire the fulfillment of their perfection and it is precisely this fulfillment in which the last end consists” (*S.T. I-II.1.7c*).**

person, but upon the lesser goods of particular inclinations. Since the intelligibility of true good is taken from its desirability as suitable to the person, there is a sixth *Bonum* formulation, the *Personhood Formulation*: “The true good of the person apprehended by reason ought to be pursued and done, and its contrary harming a person avoided.” The Personhood Formulation is operative when St. Thomas states in *S.T. II-II.47.6c* that “[t]he end of moral virtues is the human good.” This formulation, by using personhood as the criterion for true goods and evils, is central in giving natural law its disinterested character, because every human is equally a person. Violations of the Personhood Formulation are irrational insofar as such violations deny the personhood of the other.

The personal context of the *Bonum* Precept, moreover, emphasizes that

every good or evil being subsumed under this precept not only relates to oneself in some way but relates to one's own happiness. Indeed, Aquinas only mentions the *Bonum* Precept after he has argued that the good for which law prescribes is one's *personal* happiness, which necessarily involves sharing in the happiness of *one's* community (*S.T.* I-II.90.2). To notice that adherence to the *Bonum* Precept requires apprehending how various inclinational ends are good for oneself as a human person enables one to pursue or do these goods for one's own sake—as good for me.<sup>31</sup> For intrinsic to the nature of good is a relation to oneself whereby the thing desired exists as suitable for oneself. For this reason, the goods that one seeks for oneself not only expresses a love of self but also reveals one's conception of one's own nature and the requirements of that nature. Since the Personhood Formulation presupposes that *whatever* is truly and indispensably good for the person possesses indefeasible necessity, and since such indefeasible necessity is eudaimonic necessity, and since eudaimonia is the last end, there is the seventh *Bonum* formulation: “The last end is to be pursued and attained, and its contrary avoided.” This *Last End Formulation* is self-evident, since the last end possesses the full intelligibility of good; the last end “stands in the same relation to things appetible, as the first principles of demonstrations to things intelligible” (*S.T.* I-II.10.1c). The Last End Formulation is also operative in assigning moral culpability to the will which intends a proximate end that is disordered relative to the last end.<sup>32</sup>

Furthermore, according to Aquinas, the last end is identifiable as self-perfection, “. . . since all agree in desiring the last end: since all desire the fulfillment of their perfection, and it is precisely this fulfillment in which the last end consists” (*S.T.* I-II.1.7c). Aquinas also says, “. . . since everything desires self-perfection, that which one desires as the ultimate end is desired as the perfect and complete good of oneself” (*S.T.* I-II.1.5c).<sup>33</sup> Accordingly, the Last End Formulation is equivalent to the eighth formulation of the *Bonum* Precept, namely, “Self-perfection ought to be pursued and done, and its contrary, self-destruction avoided.” This *Self-Perfection Formulation* is presupposed by natural law's precepts regarding the goods and evils of particular natural inclinations, i.e., these are prescribed or proscribed by practical reason as components or contraries of the individual's natural last end. Accordingly, violations of the Self-Perfection Formulation involve the irrationality of violating reason's goal-directedness.

Self-perfection, moreover, is not a solitary affair. If it were, it would not require, for example, education. Nor would humans be social animals in need of community. Aquinas recognizes that each human being is a part of some community and that, as such, the individual flourishes best when a part of a flourishing community (*S.T.* I-II.92.1 ad 3). The communal nature of flourishing means that self-perfection occurs through the common good. Accordingly, there

is a ninth *Bonum* formulation: “The common good ought to be pursued and done, and its contrary avoided.” This *Common Good Formulation* is also operative, although unexpressed, when St. Thomas explicitly identifies the last end as the common good, and when he argues that whatever is prescribed for the sake of the final end has the nature of law.<sup>34</sup> The Common Good Formulation is also a condition of rationality insofar as it makes no sense to think that one could flourish when the common good whereby one flourishes is destroyed. The Common Good Formulation is also operative in recognizing that the equality of persons should be established and preserved and that personal interactions ought to be according to justice. Justice establishes and preserves equality (*S.T.* II-II.79.1c & ad 2): equality is established by paying or meeting debts or obligations, and equality is preserved by declining to inflict injury on neighbors, i.e., by declining to deprive them of their rights. These integral parts of justice, namely the prescriptions to repay debts and to not harm, are the immediate dictates of natural reason.<sup>35</sup> Nonetheless, there is no justice formulation of the *Bonum* Precept; because justice is a particular good which, while identifiable as a common good (as well as a true good of the person), is not convertible with that formality: the common good is not exhausted by justice. Yet that justice ought to be done is self-evident because justice—as a constitutive part, or instance, of the common good—essentially instantiates the intelligibility of the common good. That this is the case can be seen if it is remembered that injustice harms the person, and what harms the person diminishes mutual flourishing or the common good.



Therefore, the *Bonum* formulations or equivalences, by delineating the full intelligibility of what is being prescribed/proscribed by the *Bonum* Precept, make whatever can be subsumed under their formality obligatory to the degree of its goodness: for, in this life, every good instantiates goodness to some degree without instantiating it fully. In this way the *Bonum* formulations function as principles of practical rationality. It is irrational to act against the common good, one’s own perfection, truth, love, and/or goodness. It is also immoral. Proscriptions opposing these eudaimonic goods can be called the *Bonum Proscriptions*.

## Notes

1. The significance of Aquinas's considerations of the last end in the opening questions of the *prima secundae* was brought to my attention by William VanderMarck, "Ethics as a Key to Aquinas' Theology," (1963). In this article, VanderMarck argues the importance of appreciating that the final end is the principle of every truly human act; and he explains traditional inattention to this point by noting that the first section of the *prima secundae* had been historically dismissed by philosophers as pertaining only to the Beatific Vision.

2. Another problem with grounding obligatoriness in desires is that it reduces practical rationality to sheer instrumentality. Such a reduction entails that only what is external to reason can motivate; reason's ability to understand the intelligibility of goodness cannot motivate. Motivation is thus determined by one's sentimentality, feelings, physical reactions, or psycho-physical profile. The consequent loss of freedom compromises culpability; for no moral fault can be predicated of those who lack the motivation to act morally. Immorality thus becomes the domain of psychology.

3. Another argument against grounding indefeasible obligatoriness within autonomous practical reason is that if the Kantians were right, then there could not be different degrees of obligatoriness without there also being different degrees of rationality, which would compromise freedom and diminish culpability. But some practical acts are less obligatory than others. For example, the "obligation" to use shampoo rather than bar soap for washing one's hair is less obligatory than being honest. If both acts are equally rational but not equally obligatory, the ground of obligation cannot be autonomous practical reason.

4. The first questions of the *prima secundae* establish that there is only one last end and that this end is *beatitudo* or happiness.

5. I've made this argument before, see Lemmons (1992b).

6. To identify moral necessity as the necessity of eudaimonia is to resolve one of the puzzles of the modern age that, as noted by Elizabeth Anscombe (1958), acknowledges the law-like character of morality without explaining its source.

7. Ralph McInerny (1980, 5) seems to concur: "Thus, it seems that the precepts of natural law are general directives toward the ultimate end . . . or aimed at constituents of the ultimate end."

8. *S.T.* II-II.140.2 ad1: "Now things pertaining to excellence come under the counsels of perfection rather than under precepts of obligation."

9. A factor complicating these formulations is that they must account for those eudaimonic goods that Aquinas does not consider to be morally obligatory, e.g., supererogatory goods, or goods that enhance eudaimonia without also be an essential part of eudaimonia. An heroic act would be an example of a supererogatory good, whereas physical well-being would be an example of a good that enhances eudaimonia without also being essential to it.

10. Boethius *Consolation of Philosophy* (1969).

11. In this context, “science” signifies a habit of deriving conclusions (*S.T.* II-II.1.4c): “conclusions are held by the habit of science.”

12. Aquinas differentiates between the intellectual freedom that occurs when the intellect does not clearly see a proposition's truthfulness and the intellectual determination that occurs when that truthfulness is clearly seen in *S.T.* I-II.17.6c: “But we must take note that the act of the reason may be considered in two ways. First, as to the exercise of the act. And considered thus, the act of the reason can always be commanded: as when one is told to be attentive, and to use one's reason. Secondly, as to the object; in respect of which two acts of the reason have to be noticed. One is the act whereby it apprehends the truth about something. This act is not in our power: because it happens in virtue of a natural or supernatural light. Consequently in this respect, the act of the reason is not in our power, and cannot be commanded. The other act of the reason is that whereby it assents to what it apprehends. *If, therefore, that which the reason apprehends is such that it naturally assents thereto, e.g., the first principles, it is not in our power to assent or dissent to the like: assent follows naturally, and consequently, properly speaking, is not subject to our command.* But some things which are apprehended do not convince the intellect to such an extent as not to leave it free to assent or dissent, or at least suspend its assent or dissent, on account of some cause or other; and in such things assent or dissent is in our power, and is subject to our command” (emphasis mine).

13. See Peter Hoenen, S.J. (1952, 50–1): “The nexus between the subject and predicate affirmed *as being* in these *per se* judgments is as invariable and necessary as the essences themselves. St. Thomas, in . . . (*De ver.*, q. 23, a. 4, ad 1), describes this nexus as ‘the necessary mutual relationship of terms in a proposition such as “Man is rational” or “the whole is greater than its part.”’ In *Contra Gentiles*, II, 36, he calls the nexus an ‘order’: ‘The necessity of the order which the predicate has to the subject’ (*necessitatem ordinis qui est praedicati ad subiectum*)” [*sic*].

14. See *S.T.* I.2.1c: “A thing can be self-evident in either of two ways; on the one hand, self-evident in itself, though not to us; on the other, self-evident in itself, and to us.”

15. Aquinas's (*S.T.* I-II.94.2c) own example of a self-evident claim that may not be self-evident to all is “Angels are not circumscribed in place.” It is also possible to construct a syllogism that appears to prove this self-evident claim: (1) All that is circumscribed in place has a body. (2) No angel has a body. (3) Therefore, no angel is circumscribed in place. If this syllogism truly proves through the mediation of the middle term that claim (3) is true, then claim (3) could not be self-evident. But if claim (3) is not self-evident, then the term “having a body” would be extrinsic to the definitions of the terms in claim (3). But not having a body is intrinsic to the definition of angels, just as having a body is intrinsic to being circumscribed in place. And so, to one who understands the nature of being circumscribed in place and the nature of angels, it is self-evident that these are mutually exclusive. Or, as St. Thomas writes (*S.T.* I-II.94.2c): “to one who understands that an angel is not a body, it is self-evident that an angel is not circumscriptively in a place.”

16. This section and the following sections of this chapter include revised excerpts from Hayden (1988).

17. First principles of thought are other than first principles of the sciences.

18. I owe this example to Dr. Dennis Bonnette of Niagara University.

19. For Aquinas's extensive commentary and defense see his *Commentary on the Metaphysics of Aristotle* Bk. 4, lessons 6–10, n. 596–668.

20. I am indebted to Joseph Boyle for focusing my attention upon this text's analogous treatment of being and good.

21. *De Veritate* q. 1, a. 1c: "Convenientiam ergo entis ad appetitum exprimit hoc nomen bonum, ut in principio Ethic. dicitur: bonum est quod omnia appetunt. Convenientiam vero entis ad intellectum exprimit hoc nomen verum."

22. For a very interesting and illuminating treatment of the relationship between practical reason and morality see *Ethics and Practical Reason*. Ed. Garrett Cullity and Berys Gaut (1997).

23. I've made this point previous see Hayden (1988, 144-5). Also see John Finnis (1992, 137).

24. Candace Vogler (2002, 162): "In calculative deliberation, standards not produced by your thinking but somehow set in or by the practical tasks, are what determines whether your practical thinking went well or miserably failed."

25. The key arguments are found in *S.T. I-II.19.1-10*, especially article six.

26. Some may wish to argue that the contrary of love is indifference. But if this were so, then being opposed to willing another's good would not be love's contrary. Yet, as pointed out by Aquinas (*S.T. I-II.29.2 ad 2*): "Love and hatred are contraries if considered in respect of the same thing."

27. If the proportional love prescribed by the Love Formulation is compared with the proportional love prescribed by the love precepts (and explicated in chapter 16), it becomes apparent that the only difference is the degree of specificity attained by the love precepts.

28. Cf. *S.T. I-II.19.1 ad 2*: "Bonum per rationem representatur voluntati ut obiectum; et in quantum cadit sub ordine rationis, pertinet ad genus moris, et causat bonitatem moralem in actu voluntatis. Ratio enim principium est humanorum et moralium actuum."

29. *S.T. I.79.ad 2*: "... obiectum intellectus practici est bonum ordinabile ad opus, sub ratione veri. Intellectus enim practicus veritatem cognoscit, sicut et speculativus; sed veritatem cognitam ordinat ad opus."

30. *S.T. I-II.94.2 ad 2*: "*Omnes inclinationes* quarumcumque partium humanae naturae, puta concupiscibilis et irascibilis, *secundum quod regulantur ratione*, pertinent ad legem naturalem, et reducuntur ad unum primum praeceptum, ut dictum est. Et secundum hoc, sunt multa praecepta legis naturae in seipsis, quae tamen communicant in una radice" (Emphasis mine).

31. *S.T. I-II.10.1c*: "Wherefore man wills naturally not only the object of the will, but also other things that are appropriate to the other powers; such as the knowledge of truth, which befits the intellect; and to be and to live and other like things which regard the natural well-being; all of which are included in the object of the will, as so many particular goods."

32. *S.T. I-II.21.1 ad 2*: “. . . in peccato voluntatis, semper est defectus ab ultimo fine intento, quia nullus actus voluntarius malus est ordinabilis ad beatitudinem, quae est ultimus finis: licet non deficiat ab aliquo fine proximo, quem voluntas intendit et consequitur. Unde etiam cum ipsa intentio huius finis ordinetur ad finem ultimum, in ipsa intentione huiusmodi finis potest inveniri ratio rectitudinis et peccati.”

33. Translation mine: “. . . cum unumquodque appetat suam perfectionem, illud appetit aliquis ut ultimum finem, quod appetit, ut bonum perfectum et completivum sui ipsius” (*S.T. I-II.1.5c*).

34. *S.T. I-II, 90, 2 ad 3*: “Sicut nihil constat firmiter secundum rationem speculativam nisi per resolutionem ad prima principia indemonstrabilia, ita firmiter nihil constat per rationem practicam nisi per ordinatioem ad ultimum finem, qui est bonum commune. Quod autem hoc modo ratione constat, legis rationem habet.”

35. *S.T. I-II.100.5 ad 4*: “That a man should not do harm to anyone is an immediate dictate of his natural reason: and therefore the precepts that forbid the doing of harm are binding on all men. But it is not an immediate dictate of natural reason that a man should do one thing in return for another, *unless he happen to be indebted to someone*” (emphasis mine). Also see *S.T. I-II.100.7 ad 1*.



## **Chapter 8**

# **Privileging the Love Precepts<sup>1</sup>**

*This chapter argues that the love precepts are uniquely privileged by the natural law formulated by Aquinas. They are self-evident, specificatory principles that are foundational for the entirety of natural law, as well as for the virtues. The love precepts also prescribe the acts that essentially constitute the eudaimonia of this life, namely, loving God and neighbor. As a result, Aquinas's natural law is based on the obligations owed to persons; it is thus essentially a personalist natural law.*

*The argument proceeds in three stages. The first stage establishes that the love precepts not only instantiate the Love Formulation of the Bonum Precept, but also establish criteria for specifying all other moral obligations, including those of the virtues. The unpacking of these specifications, however, is reserved for Part 5 of this book. The second stage explicates the self-evident nature of the love precepts, thereby establishing that they are basic norms of natural law. The third stage argues that the primacy of the love precepts arises from their prescription of what best constitutes eudaimonia.*

### **The Love Precepts as *Bonum* Instantiations and Specificatory Principles**

In the previous section, we saw that the practical reason prescribes for the sake of the good while also proscribing good's contrary, and this is tantamount to prescribing that the good be loved and its contrary detested, since to will and seek the good is to love the good. The previous section thus argued that the Love Formulation is equivalent to the *Bonum* Precept: "Good insofar as it is good is to be loved, and evil insofar as it is good's contrary is to be detested." This formulation not only identifies love to be the morally obligatory response

to good, but also obligates that love be proportional to the good encountered. Accordingly, God is to be loved above all, and those like oneself are to be loved like oneself. In this way, the love precepts instantiate the Love Formulation of the *Bonum* Precept and structure practical rationality. In other words, it would not be rational to deny that one's neighbor is like oneself and to refuse to love that neighbor as one loves oneself. Nor would it be rational for those who know the goodness of God to refuse to love Him above all. The love precepts are thereby privileged as instantiating the Love Formulation.

There is another way in which the love precepts are privileged by the *Bonum* Precept and the *Bonum* formulations, namely, insofar as these presuppose that the good to be pursued and done is to be pursued and done by those who can act otherwise. The presumption of freedom that underpins morality means that the moral agent can choose between according with the *Bonum* Precept and *Bonum* formulations or with some opposing good.

Aquinas, moreover, explains that we must choose between alternative goods, because we can conceive of ourselves as primarily physical beings or as primarily spiritual beings (*S.T.* I-II.29.4 and *S.T.* II-II.25.7c). For example, those who consider themselves primarily physical beings do not identify the pursuit of moral truth as a paramount good. In this, they err. They also become more likely to assign too much importance to physical characteristics. And, since human beings differ dramatically from each other in their physical characteristics, those who define themselves—and others—in terms of the body often succumb to racism, ethnic divisiveness, chauvinism, and other prejudices that identify those physically unlike the self as unequal/inferior to the self. Materialistic self-conceptions also breed selfishness as the self realizes that material things cannot be universally shared.

On the other hand, the conception of oneself as being primarily a spiritual person enables one to realize “that ‘being human’ is more fundamental than the differing capacities and perspectives that distinguish human beings from each other” (Gilbert Meilaender 2009, 91). This realization enables one to also realize that “the body is the place of personal presence” (Meilaender 2009, 103). Love thus requires the recognition that material goods are for the sake of the person and never vice versa. Hence, the self-conception whereby one recognizes that one's humanity is primarily in terms of spirituality or personhood enables one to recognize the hierarchy of goods: corporeal goods are to be subordinated to personal ones, that is, what's good for one's entire person. Hence, for example, avoiding pain is not as important as education.

If one deceives oneself about one's own nature by conceiving of oneself as primarily a corporeal being, then one's priority for pursuing goods will not be correct, and neither will one's self-love. This is the genesis of immorality. Aquinas explains:

Now the good look upon their rational nature or the inward man as being the chief thing in them, wherefore in this way they think themselves to be what they are. On the other hand, the wicked reckon their sensitive and corporeal nature, or the outward man, to hold the first place. Wherefore, since they know not themselves aright, they do not love themselves aright, but love what they think themselves to be. But the good know themselves truly and therefore truly love themselves. (*S.T.* II-II.25.7c)

Thus, according to Aquinas, accurate self-love involves not only knowing oneself to be mortal, corporeal, and spiritual but also subordinating corporeal goods to the good of the entire person as known by reason. To will good is to love.<sup>2</sup> Accordingly, proper self-love prefers the goods identified by reason as suitable for oneself as a person over the goods suitable for oneself as a body: proper self-love, for example, gives greater priority to the good of interpersonal love rather than to the pleasures of lust, which myopically ignores the interpersonal character of sex.

Accurate self-love thus recognizes the hierarchical character of goods, and that one's love for them ought to accurately reflect the degree of their goodness. As St. Thomas states: "Good is the cause of love, since each thing is loved according to the measure of its goodness."<sup>3</sup> This means that good, insofar as it is truly good, ought to be loved—just as its contrary, insofar as it is truly evil, ought to be hated.<sup>4</sup> In other words, the will is obligated to love what is good insofar as it is good and to be repelled by what is evil insofar as it is evil; and this obligation is nothing other than the Love Formulation of the *Bonum* Precept.

The Love Formulation thus obligates that none, for example, should love red wine as much as a person or hate physical pain as much as moral fault. Indeed a person who would rather lie than endure discomfort is acting immorally; just as those who allow their love of drink to outweigh their love of their families act immorally.

A person acts immorally when seeking a private good at the expense of the common good, because the act would involve a refusal to love what is more lovable.<sup>5</sup> Accordingly, one is free to paint pictures of one's house on a high hill, but not as a morally-permissible alternative to filling sandbags to protect one's town from rising flood waters.<sup>6</sup> For in cases of communal emergency, the failure to act for a community's common good is a refusal to love that common good.

It is also a failure to love oneself properly, since the common good is a good in which one participates with others. The love of the common good thus includes referring one's own good to the common good and seeing oneself as a member of one's community, that is, as being part of the common good. The common good is properly a good shared by friends united by the love of that

common good. As such, it is a participatory good. As a result, the common good can be said not only to be superior to one's private good but also to be a whole in which the self is an invaluable part. To love the common good more than strictly private goods is thus to honor the truth about the participatory nature of the common good and the truth about one's own nature. It is to realize that one flourishes not as an unconnected island but as part of a community; and hence, that the pursuit of the common good obligated by hierarchical love is not only a gift of self to others but also a gift to oneself. The warrior, then, who rushes to the aid of his community is not only putting his life on the line for others but also to save what is integral to his own life. He is thereby seeking the common good.

Action for the sake of the common good becomes morally obligatory when the common good cannot be otherwise attained and preserved. Hence, when one's assistance in sandbagging against the flood waters is not needed, one is not morally obligated to sandbag. From this, it follows that the proper love of the common good and of oneself need not preclude pursuing one's private interests. For instance, if one is not a fire fighter, it would be morally permissible to paint a picture of the town fire fighters hard at work fighting a blaze at the local electrical plant. After all, obligations of love obligate actions only when the failure to act vitiates the requisite love.<sup>7</sup> Thus, those who act for the common good when such an act is not necessary to preserve their beloved common good are choosing a supererogatory act—and maybe even an heroic act. As Nathan Hale said before his execution in 1776, "I only regret that I have but one life to lose for my country."

If proper self-love requires loving good in proportion to its degree of goodness, then God—once identified as the perfect good—is to be loved above all. Or, as Aquinas puts it: "... true self-love [*diligit*] consists in directing oneself to God" (*S.T.* I-II.100.5 ad 1). If, however, God is not identified as the perfect good, then the term "God" and the term "above all" function as placeholders signifying that goods are to be loved according to the degree of their goodness. But this is to prescribe proportionate love, which has already been shown to be not only a function of proper self-love but also a requirement of practical rationality as embodied in the *Bonum* Precept and its Love Formulation.

If proper self-love is tacit within the *Bonum* Precept's personal context (as

**"For there is nothing more lovable than virtue, nothing that more allures us to affection, since on account of their virtue and uprightness we feel a sort of affection even for those whom we have never seen" (Cicero *De Amicitia* viii #28 1959, 139).**

just argued), then the proper love of others like oneself is also tacit insofar as proper self-love is impossible unless one wills to oneself those goods proper to one's nature as a human being. The enduring love of those goods suitable to oneself qua human is a love of one's own nature as a human being. This love of human nature cannot be itself—that is, a love of human nature—if it were not to include other instantiations of human nature. To love one's own human nature is to love a nature that is found in other beings than oneself. In this way, proper self-love extends love to all embodying human nature.<sup>8</sup> And, just as our love of our own human nature requires willing good to ourselves, this love involves willing good to those who are as human as we are.

It is irrational to refuse to extend love to other human beings insofar as such a refusal denies the truth that human beings have the same human nature that we love in ourselves. Recognition of this nature causes goodwill—unless there is some impediment, such as the other being an enemy of some kind. But even enemies are to be loved—albeit not as one's enemy but as instantiating human nature.<sup>9</sup> This means that even enemies are owed a minimal level of love that would preclude, for instance, torturing them to death or refusing to feed prisoners. Rationality's obligation to accord with the truth means that other human beings are to be loved as human beings.

Moreover, Aquinas argues that likeness is a cause of love<sup>10</sup>; we naturally love those unified with ourselves as another self<sup>11</sup>: “when a man loves another with the love-of-friendship, he wills good to him, just as he wills good to himself: wherefore he apprehends him as his other self, in so far, to wit, as he wills good to him as to himself. Hence a friend is called a man's other self” (*S.T.* I-II.28.1c).<sup>12</sup>

As a result, we naturally love those closest to us more than strangers. The conditions of rationality thus require honoring this truth about love and loving those closest to oneself more intensely and with a greater priority.<sup>13</sup> In the words of Aquinas:

[W]e should measure the love of different persons according to the different kinds of union, so that a man is loved more in matters touching that particular union in respect of which he is loved. . . . Accordingly, we must say that friendship among blood relations is based upon their connection by natural origin, the friendship of fellow-citizens on their civic fellowship, and the friendship of those who are fighting side by side on the comradeship of battle. Wherefore in matters pertaining to nature we should love our kindred most, in matters concerning relations between citizens, we should prefer our fellow-citizens, and on the battlefield our fellow-soldiers. (*S.T.* II-II.26.8c)

Thus the moral obligations predicated according to proper self-love specify obligations to others according to their unions with the self and their nature as other-selves which, at the very least, means loving others as being persons of

a rational nature. Any failure to so love is a failure to fulfill one's obligations and involves treating the other unjustly,<sup>14</sup> for it involves violating the truth that others are to be loved as other selves according to their union with self and the matter at hand, e.g., a battlefield or an election. It is possible that the bond of time and place may make the stranger in need the closest neighbor; hence, the obligation to succor strangers.<sup>15</sup> In cases of emergency, there is no general rule for determining which neighbor receives priority. "And, if of two, one be more closely connected, and the other in greater want, it is not possible to decide, by any general rule, which of them we ought to help rather than the other, since there are various degrees of want as well as of connection: and the matter requires the judgment of a prudent man" (*S.T.* II-II.31.3 ad 1). If there is no emergency, the ones most united to oneself in the matter at hand are the ones to be loved the most.<sup>16</sup>

Therefore the obligations specified by proper self-love can be summarized in the love precept: "love thy neighbor as thyself." This precept designates not only that other beings like oneself are to be loved but that those who are most united or "nigh" to us are to be loved more.<sup>17</sup> Indeed St. Thomas writes: "It follows from the very words, 'Thou shalt love thy neighbor,' that those who are nearer are to be loved more" (*S.T.* II-II.44.8 ad 3). Thus, the word "neighbor" provides a criterion for ordering the priorities of love such that others are to be loved according to their union with self, with the closest being loved more than others in matters concerning that union with self.

Any resulting inequality of loves is natural: "For since natural love is founded upon natural unity, that which is less united with one, is naturally loved less."<sup>18</sup> As natural, the love based upon degrees of union with self is a proper subject for a natural law precept that deals with natural love based on self-love. In this way, "neighbor" in the second love precept serves as a place-holder signifying human beings in relation to oneself. Hence, although Aquinas considers every human being to be one's "neighbor in humanity," closer neighbors are to receive priority—and that is the reason why the precept states "love thy neighbor as thyself" rather than "love others as oneself."<sup>19</sup> The second love precept thus includes all the various love-unions with their varying levels of intensity that result from different kinds of similarities to self.

It is made clear in *S.T.* II-II.27.2c that St. Thomas does intend to predicate the intensity of various love-unions according to their relation to the self. Indeed, as already noted, one ought to love the closest the most, and that gives priority to the love of self, since one's own substantial unity is greater than unions with other humans (I.60.3 ad 2) and since to love oneself most is to always seek the good and to never do evil as a means to good. Thus Aquinas's sense of "most" is really our sense of "proper." The existence of this obligation to love oneself most or properly means that St. Thomas considered it necessary

for natural law to respect the order of love established by nature, that is, not only the order of natural love for the ends of natural inclinations but also for other people.<sup>20</sup> After all, within the slightly different context of *S.T. I-II.94.2c*, St. Thomas writes that “Wherefore according to the order of natural inclinations is the order of the precepts of natural law.”

Aquinas’s claim that self-love ought to be greater than the love of other humans is not to be understood as justifying selfishness or loving oneself more than God. Such loves are immoral, since they negate true self-love for three interrelated reasons.

First, since immoral self-love proceeds from the self-conception of oneself as being primarily a corporeal entity rather than a rational one, it is untrue to one’s nature. As such, it rejects the truth about oneself and contravenes—as does every immoral act—the *Bonum* formulations. To pursue what is contrary to one’s own nature is to desire what is contrary to reason and is to hate what one really is—as Aquinas points out in *S.T. I-II.29.4 ad 1*.

Second, immoral self-love despises the hierarchical nature of good and seeks the lower at the expense of the higher—in the words of Aquinas: “The love of self which is the principle of sin is that which is proper to the wicked, and reaches to the contempt of God, . . . because the wicked so desire external goods as to despise the spiritual goods” (*S.T. II-II.25.7 ad 1*).

Third, to love others selfishly by using them for one’s own benefit or to sacrifice one’s soul for another human being is to deny their humanity, as well as to establish an inequality that denigrates the natural equality of every human person. Selfish love is thus dishonest and a violation of one’s own nature as a rational being. The obligation to love oneself most is thus an obligation to honor always one’s rational nature and to be dedicated to living and loving according to the truths known by reason—especially the truth that other rational natures deserve to be loved for their own sake. In this way, Aquinas anticipates Shakespeare’s *Hamlet*: “This above all: to thine own self be true, and it must follow, as night the day, thou canst not then be false to any man.”

Therefore, since the pursuing and doing of any proper good or the avoiding of any wickedness is an act of self-love, and since honoring the truth about oneself requires honoring the truths of human nature even when incarnated in another, and since one’s love of others increases as they are united to oneself, the *Bonum* formulations reach their greatest degree of specificity concerning the treatment of oneself and others when instantiated in the second love precept “Love thy neighbor as thyself.” Likewise, since the obligation to do and pursue good while avoiding evil is proportional to the degree of goodness or evil being instantiated, and since love is the human response to goodness, and since God is the highest good, the *Bonum* formulations reach their greatest degree of specificity concerning proportional love when instantiated in the first love

precept, “Love God above all.”

The great degree of specificity found in the love precepts identifies them as basic principles of practical reason able to subsume all other obligations and thereby to be the first principles of morality. As Aquinas points out:

Even as all benefits conferred on our neighbor, if we consider them under the common aspect of good, are to be traced to love, so all hurts considered under the common aspect of evil, are to be traced to hatred. But if we consider these same things under certain special aspects of good or of evil, they are to be traced to certain special virtues or vices, and in this way also there are various kind of benefits. (*S.T. II-II.31.4 ad 2*)

Thus under the umbrella of the love precept’s prescription of beneficence understood generally, i.e., understood under “the common aspect of good,” fall the prescriptions of all other virtues and the proscriptions of all other vices.

**“[E]very virtue is the order of love . . . commonly so called . . . insofar as each cardinal virtue requires ordinate emotions; and love is the root and cause of every emotion” (*S.T. I-II.62.2 ad 3*).**

**Every virtue “depends in some way on love, insofar as it depends on the will, whose first movement consists in love” (*S.T. I-II.56.3 ad 1*).**

In other words, since the obligations of love specify adherence to the truths about oneself, neighbors, and God, the love obligations inculcate the habits of virtue. This is especially the case because the emotions of love can easily lead one away from the truths of love. This occurs, according to Aquinas (*S.T. I-II.58.5*), when one’s dispositions identify an object of desire as good when it is not. For instance, emotions may tempt one to consider others simply as means to self-gratification. But the obligations of love instill the virtues because they forbid considering others to be only objects of self-gratification.

Moderating the desire to seek self-gratification requires temperance. It may also require fortitude as one refuses to allow the fear of loneliness and ostracism to lead one to stray from the truth about oneself, others, and God. Prudence is instilled by the love precepts because these precepts obligate not simply goodwill but also acts of beneficence that take into account another’s unique circumstances and personality. Neighborly love also forbids the egocentric refusal to acknowledge that others, as persons like oneself, must be treated fairly, that is, in accord with the demands of justice. In these ways, the precepts of loving neighbor, self, and God instill the virtues.



Another argument that love grounds virtue is taken from the nature of self-actualization. This argument can be formulated in various ways that emphasize that the last end of happiness is the self-perfection of being fully actualized.<sup>21</sup> Actualization requires virtuous action.<sup>22</sup> Without the love of God, there is neither a cognitive nor affective union with God; because only love can sustain the effort it takes to achieve knowledge of the object that best actualizes our cognitive powers. Without neighborly love, neighbors are not treated virtuously: for virtuous actions require willing good to the neighbor for the neighbor's own sake, and such a will is nothing other than the intention of proper love. Hence, love not only motivates virtuous acts as well as self-actualization, but also forms the intention present in every virtuous act. Thus love and the love precepts are correctly privileged as grounding virtuous acts. It is the love of God and neighbor that best enables one to act virtuously and achieve the happiness of self-perfection.<sup>23</sup>

### **The Love Precepts as Self-evident Principles**

Aquinas identified the love precepts as natural law's self-evident principles in the following text:

Thus in response to the first [objection] it must be said that those two precepts [Thou shalt love the Lord thy God, and Thou shalt love thy neighbor, as stated in Matt. xxii. 37, 39] are the first and common precepts of natural law, that are self-evident to human reason, either through nature or through faith. Wherefore all the precepts of the Decalogue are referred to these as conclusions to common principles." (S.T. I-II.100.3 ad 1)<sup>24</sup>

This identification of the love precepts as self-evident through both faith and nature signaled not only Aquinas's conviction that harmony exists between natural law and Christian morality, but also that terms can be understood in different ways, i.e., according to nature or according to faith.<sup>25</sup> Consequently, this text is asserting that whether the term "God" is understood as the ultimate cause of all that exists or as a sacred Trinity, God ought to be loved above all. Likewise whether the term "neighbor" is understood as another self or as one to be loved in relation to God with Christian charity, neighbors ought to be loved as oneself.

Why did Aquinas identify the love of God and neighbors as the self-evident ground of morality? Was it the inspiration of Scripture? Perhaps, since he does cite the words of Christ from *Matthew* 37–40 which grounded the entire Law upon the obligations to totally love God and to love neighbors as oneself. Or, was it Aquinas's deep familiarity with Cicero's arguments that love underwrites civilization and that all men are brothers.<sup>26</sup> Further exploration of Aquinas's

motivation is beyond the scope of this book as is further inquiry into the theological significance of his identification of love as the basis of natural law. The focus of this book on the foundations of natural law precludes discussing the impact of those foundations upon Christianity and Christian believers.

Within the orbit of natural law, it is difficult to underestimate the profundity of Aquinas's identification of the love precepts as natural law's self-evident first principles. A morality grounded in self-evident obligations of love heals the breach between knowledge and affection. Why be moral? Because love demands it. Love of ourselves obligates flourishing through morality; love of the good obligates pursuit of moral goodness. Love of ourselves also demands not only that we pursue what is really good for ourselves—as articulated in the *Bonum* Precepts and its formulations—but also that when we see ourselves in others, we love those others as we love ourselves—not with the same degree of intensity nor the same level of concern, but with the same kind of goodwill that one has for oneself. This goodwill wishes for others to flourish as it wishes for oneself to flourish. Love forbids that we look without compassion or concern upon those like ourselves, that is, our neighbors in place and time, nationality, creed, age, sex, occupation—and humanity. Love also demands that good be loved in proportion to its goodness and that the perfect being be loved the most. Love forbids placing mortal goods above immortal ones. It forbids taking greater care of things than persons: no washing one's car while one's infant drowns in the bucket of water.

Why are these the self-evident demands of love? Let us recall that within Thomism, self-evident claims have a subject-predicate relationship that draws its necessity from the existence of things. Predication of causality exemplifies such self-evidence. Love is caused by goodness.<sup>27</sup> Accordingly, it is self-evident to reason that any individual good is lovable to the degree of its goodness. Honoring this truth obligates loving good insofar as it is good—as expressed by the Truth and Love Formulations of the *Bonum* Precept. In other words, the causality of goodness suffices for grounding the claim “Good is to be loved insofar as it is good.” Since there is no need for a middle term to unite goodness and lovable, the claim that “Good is to be loved insofar as it is good” is self-evident. Whatever instantiates that claim is also self-evident. Accordingly, the claim that “Perfect goodness (God) is to be loved above all” instantiates “Good is to be loved insofar as it is good”; both claims are self-evident. This means that the first love precept prescribing the love of God above all is self-evident.

The causality of the good responsible for the self-evidence of the second love precept is the goodness of one's own existence. An essential aspect of this goodness is the goodness of being a human self. This goodness can be found not only in oneself but in any other instantiation of human being. As a result,

just as the goodness of being a human self causes a love of self that seeks to benefit oneself, this goodness when instantiated in other human selves causes a love that seeks to benefit the other selves. Accordingly, it is self-evident that, as one is obligated to love oneself and will proper goods for oneself, one is obligated to love other selves and will proper goods to them.

Another essential aspect of the goodness of one's own existence is its very personalness; it is mine—it is one with me. Personal goodness causes a love that could be called unitive in order to distinguish it from the proportional love caused by the ontology of goodness. Unitive love is caused by goodness being united to oneself. As a result, any good united to myself is lovable to the degree of its union. Accordingly, it is self-evident that those closer are more lovable: one's own child, for instance, is more lovable than the stranger's child. Honoring this truth requires loving the closest the most; so doing does not abate the truth that strangers are other selves to be loved as one loves one's own self. These truths are self-evident inasmuch as they are caused by the ontological and personal character of one's own existence. In other words, it is self-evident to reason that, as the goodness of one's own existence obligates the willing of proper goods for oneself, it obligates the willing of proper goods for all united to one's own existence according to the degree of union.<sup>28</sup> In brief: it is self-evident that "Neighbors are to be loved as oneself is to be loved."

**"Every agent acts for an end . . . Now the end is the good desired and loved by each one. Wherefore it is evident that every agent, whatever it be, does every action from love of some kind"(S.T. I-II. 28.6c).**

### **Love Precepts as Foundational Principles**

However, even if it be granted that it is self-evident that neighbors are to be loved as oneself and that God is to be loved above all, the self-evidence of these love obligations is not sufficient to establish that they are the proper foundation of natural law. They may be only two of many basic claims in natural law. Their identification as natural law's foundation requires not only self-evidence but also the ability to function as the ground or normative principle of all other obligations concerning God and neighbors.

That this is the case can be seen in three ways. *One way* involves simply explicating how the love of God grounds all the obligations concerned with God, and how loving neighbors as oneself grounds all the obligations concerned with others. Although these explications will be reserved until the following chapter, we should note that Aquinas explicitly argued that the love precepts are the tacit principles of the Decalogue's moral precepts, which then may serve as

principles for deriving more particular natural law obligations (*S.T.* I-II.100.3).

The *second way* involves recognizing that morality—by its very nature—involves obligations to others. Neighbors, understood as those who are human like oneself, and God are the only others. Hence, the love precepts prescribing proper actions toward God and neighbors are foundational—that is, if it be granted, as the next chapter argues, that they suffice for grounding all obligations concerning God and neighbors.

Against this argument, the objection can be raised that human beings also have obligations toward animals, plants, the environment, and man-made objects. These obligations towards beings lacking in human subjectivity, however, are subsumed under the obligation to love beings in proportion to their goodness (this obligation underwrites the obligation to love God as the perfect good above all). Although the obligations of proportional love are especially weak when they stem from the ontology of beings less than human, the obligations of neighborly love frequently supervene upon those of proportional love. In other words, though a toddler's "artwork" lacks an ontology sufficient to bind human beings to any course of action. The obligations of neighborly love supervene upon the child's artwork so that one does not insult its "artist" by tossing it into the garbage in the child's presence. Likewise, although a statue, a geographical feature, or a bug lacks sufficient ontology to obligate being preserved for its own sake, neighborly love may obligate preservation for the sake of other human beings. As a result, there is, for instance, an obligation to preserve the Statue of Liberty, Niagara Falls, and butterflies. Supervenience also occurs with the obligation to love God above all: love of the creator obligates love of the creature. Failure to care for the ecosystem is thus not only a failure to care for what is important to human survival and well-being, but also a failure to honor the handiwork of God. Accordingly, obligations to care for the ecosystem are not only grounded in neighborly love but also in the love of God.

The *third way* to privilege the love precepts centers upon morality's ability to obligate certain courses of action; hence, the key question: why should I be bound to treat others in certain ways? To ask this question is to ask about the nature of obligation. According to natural law, obligation arises from reason's recognition that an act is necessitated by its end; without this act, this end will not be attained. Hence, every obligation arises from the end's necessity. If the end's necessity is indefeasible, so is the obligation. We call such indefeasible obligations "moral obligations." Accordingly to ask why the self is bound to fulfill moral obligations is to ask for the identity of the end indefeasibly necessary.

This end is none other than eudaimonia, i.e., the self's happiness. Moral obligations are the indefeasible obligations of one's own happiness. So the self

is bound to be moral by the end of personal happiness. This end is the object of self-love. Hence, it is self-love that obligates morality. Any precept expressing the very nature of self-love is thus the principle of all moral obligations. The precept to love neighbors as thyself expresses the nature of self-love as grounded in the proper appreciation of one's rational nature; and, the precept to love God above all expresses the nature of self-love as grounded in the requirement of reason to love whatever is good to the degree of its goodness. Thus, proper self-love identifies the obligations to love God and neighbor to be the foundational principles of morality. As such, Aquinas was right to privilege them.

#### **The Love Precepts as Eudaimonic Obligations**

The preceding section argued that Aquinas's privileging of the love precepts as the foundation of natural law was insightful, given the relationship of truth to morality. In this section, I argue a stronger claim, namely, that Aquinas was right to privilege the love precepts because the love of God and neighbor *best* constitute the eudaimonia of this life.

The argument that eudaimonia includes loving God and neighbors appropriately is not complex, given that eudaimonia includes acting in accord with the truths known by reason. For grasping the truth that God is the perfect good and the truth that others—as beings like oneself—are neighbors enables one to know that God deserves to be loved above all and that neighbors deserve to be loved as oneself. These loves as according with the truths of reason are thereby eudaimonic.

However, since every virtuous action accords with reason, every virtuous action is eudaimonic. Hence, the eudaimonic character of loving God and neighbor is not enough to privilege the love precepts as the foundation of natural law. Privileging requires the love of God and neighbor either to be the basic human motivator and/or to be the chief constituent of eudaimonia and/or to be sufficient for attaining other constituents of eudaimonia, e.g., external goods and friends. There are three ways to argue that this is the case. The first is through a *reductio* argument taken from selfishness, the second is through

**“Happiness is only in loving”  
(Tolstoy 2002, 444).**

**“Happiness Stems From a  
Loving Heart” (adage).**

**“[T]o desire happiness is  
nothing else than to desire  
that one's will be satisfied”  
(S.T. I-II.5.8c).**

**The fullest possible actuality  
is relational. To live fully is  
to live in love.**

ontological poverty, and the third is from the nature of the common good.

*The Argument from Selfishness.* This argument is a *reductio* argument that begins by assuming that happiness primarily consists in the acquisition of some object, rather than in the self-giving love characteristic of neighborly love and the love of God. We then ask if the lives of those who are consumed by the selfish acquisition of material objects or power are happy. Is it the case that power and material objects suffice for contentment (which is surely an effect of being happy)? Or, is it the case that power and material objects cause a restless seeking for more of the same? Is it the case that power and material things bring us into greater self-realization and enable us to extend our horizons—to become more than we are? Or, is it the case that the pursuit of such objects cause our humanity to shrivel up into disdain, loneliness, and other forms of misery? Is Scrooge a realistic image of possessiveness and selfishness? If so, possessiveness and selfishness counter the self's potentials and hinder happiness. They cannot then be happiness. Consequently, other-centeredness must either be happiness or be necessary for happiness. And, since other-centeredness is possible only through love, the love of others—whether of God or neighbor—must constitute happiness or be its necessary means.

*The Argument from Ontological Poverty.*<sup>29</sup> Human nature is ontologically needy: unless certain goods are attained, we literally die or we die of loneliness. Attaining these goods requires us both to know and to seek what is other than ourselves. According to Aquinas, love grounds all seeking. To live without loneliness thus requires knowing and loving what is other than ourselves. Others can be known and loved in two ways: through the love-of-concupiscence, which evaluates others not as other selves but as means to self-gratification, or through the love-of-friendship, which evaluates others as like oneself. Only the love-of-friendship is properly ecstatic. Thus ontological poverty of human nature identifies happiness with the other-centeredness characteristic of love-of-friendship. This means that natural law ought to privilege the other-centered obligatoriness of neighborly love.

Another version of this argument considers that the only cure for one's ontological poverty is union with goods greater than oneself: one's own good of self-perfection is too limited to satisfy the will's thirst for perfect goodness. The self's happiness thus requires self-transcendence.

Furthermore, self-perfection requires acting according to reason and its truth, including the truth that the individual is a part of a community whose good is greater than his own. Outside of a community, loneliness plagues the solitary adult. For this reason, the happiness of an individual is found within a perfect community's happiness.<sup>30</sup> Indeed the individual flourishes through being

united to others and vice versa.<sup>31</sup> This bond of mutual flourishing is the common good. Clearly, then, the common good can neither be reduced to the good of an individual nor be conceived as an aggregate good consisting of the sum of individual happiness atomically conceived.<sup>32</sup>

The individual consequently must make the community's happiness his own<sup>33</sup>; he must enlarge his own desires to include the common good. Such an enlargement identifies one's own good with the common good (but not conversely: the common good cannot be reduced—not without destroying its very commonality—to the good of one, even though it includes the good of one). Indeed, “. . . a human being finds the fulfillment of himself by adding to the fulfillment of others.”<sup>34</sup> Self-fulfillment or self-perfection can result from seeking another's good; because when one acts for good—even the good of another—one perfects oneself. Thus Aquinas writes:

The goodness of any part is considered in comparison with the whole, . . . Since then every man is a part of the state, it is impossible that a man be good, unless he be well proportionate to the common good: nor can the whole be well consistent unless its parts be proportionate to it.<sup>35</sup>

The good of the part depends upon the common good and, conversely, the common good depends upon the good of its part. This means that one's own good which constitutes personal happiness is only adequately considered in relation to the community of which one is a member. One's self-perfection intrinsically requires a flourishing common good. Happiness, self-perfection, or attainment of the last end requires the common good, or more precisely, it requires the communion of friendship. The common good is man's last end.<sup>36</sup> Hence, Aquinas argued in *S.T.* I-II, 90, 2c that every law prescribes for the common good.<sup>37</sup> For that argument, as previously explained, proceeded through the mediation of the individual's last end of happiness.

Therefore there is no inconsistency in man's last end being identified as the common good or as self-perfection. Either way, the last end is happiness or human perfection attained through the common good.<sup>38</sup> And, if the end of natural law is the love-of-friendship, then the common good of natural law is also the love-of-friendship. For it has been shown that the common good which is the end of law is a communal good. And it is through love-of-friendship that community is established.

Moreover, since the love-of-friendship is an altruistic love, the identification of this love with the common good identifies two aspects of the common good; namely, a communion in and through love, and a providential concern for the community's true goods. Love not only perfects the self but does so by subordinating the self to the good for oneself and others. Consequently, when the good is common to two or more, the subordination to the common good

establishes equality between those committed to the common good.<sup>39</sup>

Such equality enables them not only to participate in community, but also to achieve the perfection of moral virtue (when the unifying good concerns living well as human beings) or the perfection of unsurpassable understanding (when the unifying good is contemplating God himself). Either way, there is no fulfillment apart from loving the good, giving oneself to love, and uniting oneself with others in mutual love of the good. Humans are, after all, social beings and cannot flourish apart from the love-of-friendship that brings the person to perfection.

It is a law of human nature that self-gift as the key to self-fulfillment; hence, Wojtyła named it the “law of the gift.”<sup>40</sup> This law explains not only how self-perfection exists in and through love, but also how love enables individuals to participate in the common good and to identify their perfection with the common good.<sup>41</sup> Indeed, both self-perfection and the common good of natural law are found within the love-of-friendship for one’s fellow humans and for God. Hence, ontological poverty necessitates the privileging of the love precepts.

*The Argument from the Common Good.* The third argument reflects upon *S.T.* I-II.90.2c, wherein Aquinas argues that every law directs to the last end of reason, which is the universal happiness or the common good. This identification of universal happiness with the common good establishes the common good and communal happiness as this life’s eudaimonia. But, since love is that which unites individuals into communities,<sup>42</sup> love of the common good is also constitutive of this life’s happiness. There are two common goods in this life: God and human communities; the two loves that establish communities around these common goods are the love of God above all and the love of neighbor as oneself. Thus, love of God and love of neighbor as oneself are constitutive of this life’s eudaimonia. Aquinas was right to privilege them.

## Notes

1. Contemporary natural law theorists are beginning to recognize the obligations of love as basic. See, for example, Jean Porter, *Natural and Divine Law: Reclaiming the Tradition for Christian Ethics* (1999); John Finnis, *Aquinas: Moral, Political, and Legal Theory* (1998a, 126ff); and myself, Lemmons (1992a), and under my maiden name Hayden (1988). Feminist ethics has also privileged love and care, for instance see Sara Ruddick, “Care as Labor and Relationship” (1998) and Michael Slote, “Caring in the Balance” (1998). Love is also basic within Taoism according to Simone Weil, who argues that the Taoist prescription of “non-active action” is nothing other than the



attentiveness of love, which is as central to compassion as compassion is to justice (Richard H. Bell 1998, 91–9). And, of course, love has always been basic within Christian morality. For instance see Edward Collins Vacek, S.J. *Love, Human and Divine: The Heart of Christian Ethics* (1994); Paul J. Wadell, C.P. (1989); *The Love Commandments: Essays in Christian Ethics and Moral Philosophy*. Ed. Edmund N. Santurri and William Werpehowski (1992); Francis J. McGarrigle, S.J., *The Two Commandments of Christ* (1962).

2. *S.T.* I-II.29.4c: “. . . to love a man is to will good to him.” Also see *S.T.* II-II.23.1c; *S.T.* I-II.46.2c; and *S.T.* II-II.27.2c.

3. *S.T.* II-II.26.2 ad 1: “Et hoc modo bonum est causa diligendi: quia unumquodque diligitur in quantum habet rationem boni.”

4. *S.T.* I-II.29.1c: “So, therefore, in the animal appetite, or in the intellectual appetite, love is a certain harmony of the appetite with that which is apprehended as suitable; while hatred is dissonance of the appetite from that which is apprehended as repugnant and hurtful. Now, just as whatever is suitable, as such, bears the aspect of good; so whatever is repugnant, as such, bears the aspect of evil. And therefore, just as good is the object of love, so evil is the object of hatred.”

5. *S.T.* II-II.26.4 ad 3. And see *S.T.* II-II.26.4 ad 3: “Now the common good is always more lovable to the individual than his private good, even as the good of the whole is more lovable to the part than the latter’s own partial good.”

6. It would be morally permissible to paint pictures and not participate in filling sandbags if the flood is threatening someone else’s community and not one’s own. For this reason, those who travel to help strangers in distant communities fill sandbags or otherwise battle disasters are performing supererogatory deeds.

7. *S.T.* I.60.5 ad 1: “. . . each part naturally loves the whole more than itself: and each individual naturally loves the good of the species more than its own individual good.”

8. The recognition that another person is a human just like oneself motivates goodwill and acts of beneficence has been shown by three studies: Kristen R. Monroe, M. C. Barton and U. Klingemann, “Altruism and the Theory of Rational Action: Rescuers of Jews in Nazi Europe,” (1990); Samuel P. Oliner and Pearl M. Oliner, *The Altruistic Personality: Rescuers of Jews in Nazi Europe* (1988); Kristen R. Monroe, “John Donne’s People: Explaining Differences Between Rational Actors and Altruists through Cognitive Frameworks,” (1991). For a philosophical treatment see Mary Hayden, “The Paradox of Aquinas’ Altruism: From Self-Love to Love of Others,” (1989).

9. *S.T.* II-II.83.8c: “. . . we are bound to love our enemies, namely, that we must love in them their nature, not their sin; and that to love our enemies in general is a matter of precept, while to love them in the individual is not a matter of precept, *except in the preparedness of the mind*, so that a man must be prepared to love his enemy even in the individual and to help him in a case of necessity, or if his enemy should beg his forgiveness. But to love one’s enemies absolutely in the individual, and to assist them, is an act of perfection.”

10. *S.T.* II-II.114.1 ad 2: “Every man is naturally every man’s friend by a certain general love; even so it is written (Ecclus. xiii. 19) that ‘every beast loveth its like.’” *S.T.* I.60.4c: “Now it is evident that what is generically or specifically one with another, is the one according to nature. And so everything loves another which is one with it in species, with a natural affection, insofar as it loves its own species.” Also see *S.T.* I-II.27.3c.

11. *S.T.* II-II.27.2c: “But the love, which is in the intellective appetite . . . denotes a certain union of affections between the lover and the beloved, inasmuch as the lover deems the beloved as somewhat united to him, or belonging to him, and so tends towards him.” *S.T.* I.60.4 ad 3: “Natural love is said to be . . . of that good which one wills for oneself, and in consequence for another, as united to oneself.” *S.T.* II-II.25.4c: “. . . just as unity is the principle of union, so the love with which a man loves himself is the form and root of friendship. For if we have friendship with others it is because we do unto them as we do unto ourselves, hence we read in the *Ethic* ix. 4, 8: *the origin of friendly relations with others lies in our relations to ourselves.*” Also see the argument in *S.T.* I-II.28.1 that union causes love and constitutes love and is an effect of love. For a fuller treatment for how love unites individuals into community see Mary F. Rousseau (1986). Also see *S.T.* II-II.23.1c; *S.T.* I-II.28.1 ad 2; and *S.T.* I-II.27.3.

12. Also see *S.T.* I-II.25.14c: “. . . the love with which a man loves himself is the form and root of friendship.” *S.T.* I-II.27. 3c: “For the very fact that two men are alike, having, as it were, one form, makes them to be, in a manner, one in that form: . . . Hence the affections of one tends to the other, as being one with him; and he wishes good to him as to himself.”

13. *S.T.* II-II.31.3 ad 1: “For it must be understood that, other things being equal, one ought to succor those rather who are most closely connected with us.”

14. *S.T.* II-II.44.8 ad 1: “A man gratifies more the person he loves more, so that if he loved less one whom he ought to love more, he would wish to gratify more one whom he ought to gratify less, and so he would do an injustice to the one he ought to love more.”

15. *S.T.* II-II.31.3c: “. . . in certain cases, one ought . . . succor a stranger in extreme necessity, rather than one’s own father, if he is not in such urgent need.”

16. *S.T.* II-II.26.8c: “. . . we should measure the love of different persons according to the different kinds of union, so that a man is loved more in matters touching that particular union in respect of which he is loved. . . . Accordingly, we must say that friendship among blood relations is based upon their connection by natural origin, the friendship of fellow-citizens on their civic fellowship, and the friendship of those who are fighting side by side on the comradeship of battle. Wherefore in matters pertaining to nature we should love our kindred most, in matters concerning relations between citizens, we should prefer our fellow-citizens, and on the battle field our fellow-soldiers.”

17. *S.T.* II-II.45.7c: “The mode of love is indicated in the words *as thyself*. This does not mean that a man must love his neighbor equally as himself, but in like manner as himself.”

18. *S.T.* I.60.4 ad 2; translation mine: “Cum enim dilectio naturalis super unitatem naturalem fundetur, illud quod est minus unum cum eo, naturaliter minus diligit.”

19. *S.T.* II-II.44.8 ad 3: “It follows from the very words, ‘Thou shalt love thy neighbor’ that those who are nearer are to be loved more.” The obligation to love the closest the most echoes natural love; *S.T.* I.60.4 ad 2: “For since natural love is founded upon natural unity, that which is less united with one, is naturally loved less.”

20. *S.T.* I.60.4 ad 3: “Natural love is said to be . . . of that good which one wills for oneself, and in consequence for another, as united to oneself.”

21. *S.T.* I-II.3.2c: “Est enim beatitudo ultimo hominis perfectio. Unumquodque autem intantum perfectum est, inquantum est actu: nam potentia sine actu imperfecta est. Oportet ergo beatitudinem in ultimo actu hominis consistere.” Also see *S.T.* I-II.3.5. Aquinas argues this claim in I-II.1.5c: “It is therefore necessary for the last end so to fill man’s appetite, that nothing is left besides it for man to desire. Which is not possible, if something else be required for his perfection.” *S.T.* I-II.1.7c: “. . . all agree in desiring the last end: since all desire the fulfillment of their perfection, and it is precisely this fulfillment in which the last end consists.” *S.T.* I-II.2.7c: “Bonum enim quod sit ultimus finis, est bonum perfectum complens appetitum. Appetitus autem humanus, qui est voluntas, est boni universalis. Quodlibet bonum autem inhaerens ipsi, est bonum participatum, et per consequens particulatum. Unde impossibile est quod aliquod eorum sit ultimus finis hominis.”

22. *S.T.* I-II, 3, 5c; *S.T.* I-II, 4, 7c. Also see *S.T.* I-II, 5, 5c, which states that the imperfect happiness of this life consists of the natural operation of virtue.

23. For more detailed explications of the particular virtues see, for instance, Stephen J. Pope (2002); Romanus Cessario, O.P. (1991); G. Simon Harak S.J. (1993); Jean Porter (1990); Thomas S. Hibbs (1990); and Peter Geach (1977).

24. *S.T.* I-II, 100, 3 ad 1; translation mine: “Ad primum ergo dicendum quod illa duo praecepta [obj. one: ‘Diliges Dominum tuum, et Diliges proximum tuum, ut habetur Matt. 22’] sunt prima et communia praecepta legis naturae, quae sunt per se nota rationi humanae, vel per naturam vel per fidem. Et ideo omnia praecepta decalogi ad illa duo referuntur sicut conclusiones ad principia communia.”

25. See *S.T.* I.1.1c where Aquinas explains that knowledge is specified according to the principles whereby it is attained. For an in-depth treatment see Chapter 10; for the Alpha test for differentiating between things known by revelation and by natural reason also see Chapter 10.

26. A few pertinent texts: Cicero, *De Amicitia*, ch. 8, # 26, (1959, 139): “For it is love (*amor*), from which the word ‘friendship’ is derived, that leads to the establishing of goodwill.” Cicero (2005) *De Officiis*, Book One, c. XVI, n. 50–1, 53–4: “But it seems we must trace back to their ultimate sources the principles of fellowship and society that Nature has established among men. The first principle is that which is found in the connection subsisting between all the members of the human race; and that bond of connection is reason and speech, which by the processes of teaching and learning, of communicating, discussing, and reasoning associate men together and unite them in a sort of natural fraternity. This, then, is the most comprehensive bond that unites together men as men and all to all; and under it the common right to all things that

Nature has produced for the common use of man is to be maintained, with the understanding that, while everything assigned as private property by the statutes and by civil law shall be so held as prescribed by those same laws, everything else shall be regarded in the light indicated by the Greek proverb: 'Amongst friends all things in common.'" Cicero (2005) *De Officiis*, Book One, Ch. VII, n. 22–3, 23–5: "But, since, as Plato has admirably expressed it, we are not born for ourselves alone, . . . and since, as the Stoics hold, everything that the earth produces is created for man's use; and as men, too, are *born for the sake of men, that they may be able to mutually help one another; in this direction we ought to follow Nature as our guide, to contribute to the general good by an interchange of acts of kindness*, by giving and receiving, and thus by our skill, our industry, and our talents to cement human society more closely together, man to man." Cicero (2005) *De Officiis*, Ch. 6, n. 27–8, 293–5: "And further, if Nature ordains that one man shall desire to promote the interests of a fellow-man, whoever he may be, just because he is a fellow-man, then it follows, in accordance with that same Nature, that there are interests that all men have in common. And, if this is true, we are subject to one and the same law of Nature; and, if this is also true, we are certainly forbidden by Nature's law to wrong our neighbor. . . . [Some] people contend in essence that they are bound to their fellow-citizens by no mutual obligations, social ties, or common interests. This attitude demolishes the whole structure of civil society. Others again who say regard should be had for the rights of fellow citizens, but not of foreigners, would destroy the universal brotherhood of mankind; and, when this is annihilated, kindness, generosity, goodness, and justice must utterly perish."

27. The argument for this claim is in *S.T.* I-II.27.1.

28. On this point, I am seeking to refine Aquinas's claim in *S.T.* I-II.28.1 ad 2 that substantial union is the cause of self-love with his argument in *S.T.* I-II.27.1 that good is the *only* cause of love.

29. The phrase "ontological poverty" belongs to Frederick Wilhelmsen (1962).

30. See *S.T.* I-II.90. 2c.

31. *S.T.* I-II, 21, 3c: "It must, moreover, be observed that every individual member of a society is, in a fashion, a part and member of the whole society. Wherefore, any good or evil, done to the member of a society, rebounds on the whole society: thus who hurts the hand, hurts the man."

32. See Thomas D. Sullivan and Gary Atkinson 1985, esp. 257–9 where they argue that "strictly speaking, aggregate goods are not common goods, because aggregated goods cannot be possessed in common, cannot be fully shared. . . . A common good in the strict sense must be fully shareable . . . [and that sharing does not involve] depriving others of that very same good. Friendship is one such common good."

33. *S.T.* II-II.5.9 ad 3: "The common good is the end of each individual member of a community, just as the good of the whole is the end of each part."

34. Karol Wojtyła, "The Individual and the Common Good: Toward a Theory of Participation," (1981a).

35. *S.T.* I-II.92.1 ad 3.

36. *S.T.* II-II, 58, 9 ad 3: “The common good is the end of each individual member of a community, just as the good of the whole is the end of each part.” Also I-II, 90, 2 ad 3: “. . . ad ultimum finem, qui est bonum commune.” *S.T.* I-II.90.2 ad 3: “Just as nothing stands firm with regard to the speculative reason except that which is traced back to the first indemonstrable principles, so nothing stands firm with regard to the practical reason, unless it be directed to the last end which is the common good: and whatever stands to reason in this sense, has the nature of a law.”

37. “Moreover since every part is ordained to the whole, as imperfect to perfect; and since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness” (*S.T.* I-II.90.2c).

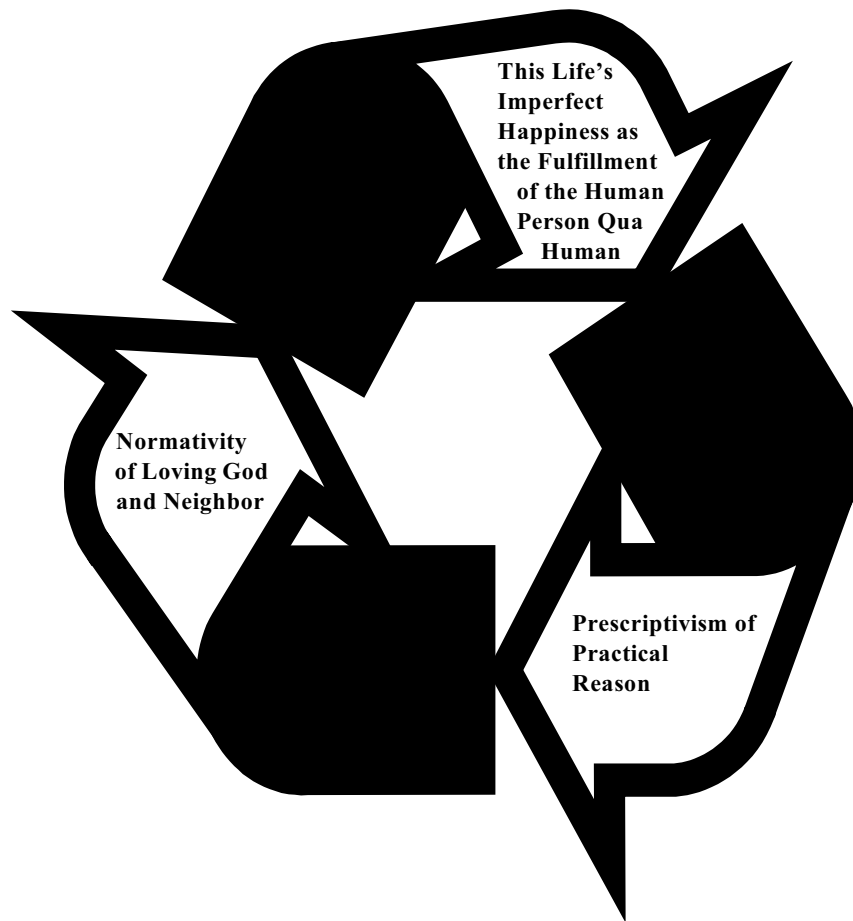
38. This emphasis upon the fulness of an individual’s happiness being achieved through the common good eliminates the need to engage in a lengthy digression about the relative importance of the common good vis-à-vis the individual good. This issue has been extensively explored by Fr. I. T. Eschmann (1945) and Charles de Koninck (1945).

39. Wojtyła *LR* 1981b, 28–9.

40. Wojtyła, *The Personal Structure of Self-Determination* (1993g): “. . . it is precisely when one becomes a fit for others that one must fully become oneself. This ‘law of the gift,’ . . . is inscribed deep within the dynamic structure of the person” (194).

41. Even the precepts of natural law concerning the so-called private goods, e.g., temperance, are ordered to the common good (*S.T.* I-II, 94, 3 ad 1).

42. Mary Rousseau (1986, 359). Also see *S.T.* I-II.28.1c.

**Diagram: Aquinas's Foundational Paradigm**

## ***Part Three***

### **Thomistic Puzzles**

One question frames these chapters: Is the interpretation of Aquinas advanced in the chapters of Part Two valid? We proceed by dealing with key objections according to the format of a modified disputed question. This format is familiar to students of Aquinas, since it was a typical format of exposition in the medieval period. It excels in its ability to handle disparate objections and their refutations in a concise and cogent fashion. Medieval disputed questions consisted of three parts: (1) a listing of various objections; (2) an explication of the author's own position; and (3) a refutation of the objections. The modified form unifies the objections with their refutations. We begin in chapter 9 with a synopsis of the previous chapter and a consideration of basic objections and responses, which will be followed in chapter 10 with a discussion of whether the relationship between obligation and teleology identifies personalist natural law as a Thomistic abomination.





## ***Chapter 9***

# **Basic Questions and Responses**

*This chapter opens with a synopsis of Thomistic principles established in the preceding chapters. It then considers a number of objections to my interpretation of Aquinas, while reserving until the next chapter the issue of whether Aquinas's version of natural law is nothing other than a Christian morality.*

### **Synopsis of Principles**

Love not only responds to goodness, it also seeks to further goodness. Thus, Aquinas taught that one's own ontological goodness causes a self-love that wills good to oneself and to others like oneself. But we are complex beings with many needs and desires; what is truly good for us needs to be discerned and to be sought even when contrary to one's feelings. For example, the good of education cannot be attained without fulfilling unpleasant duties, such as studying when the weather is beautiful. Indeed, the ontology of love obligates willing to oneself and to others what is truly good, rather than what is an apparent good or just a pleasurable good. In this way, love obligates doing good and structures the domain of morality. Love moves the practical reason to unite oneself and others with whatever is truly good in both the practical and theoretical arenas. Practical reason is thereby efficacious when successfully attaining true goods for oneself and for others. As such, practical rationality is providential and eudaimonic. In this way, providential rationality fulfills love; identifies the scope of morality as extending to the ends of life, including the contemplation of God; and thereby establishes a degree of happiness. After all, happiness is the activity of attaining the heart's desire of being united with perfect goodness in the practical and the speculative realms. In the practical

realm, perfect goodness consists of non-defective moral activity<sup>1</sup>; in the speculative realm, perfect goodness is nothing less than contemplating the first cause of goodness, namely God. Either way, eudaimonic activity is attaining and reposing the good. And since there is no repose without love, love is necessary for eudaimonia. Thus, the precepts of love—whereby reason attains a cognitive and affective union with God through contemplation and whereby moral acts are correctly ordered—enable eudaimonia to be experienced as a contented love.

If eudaimonia is a contented love, and if eudaimonic necessity is moral necessity, then the necessities of love are also moral necessities. That is to say the obligations of love are not only moral obligations, they are also the foundations for eudaimonic ethics. Hence, the precepts which best embody the requirements of love are foundational for eudaimonic ethics. Since the precept of neighborly love best embodies interpersonal obligations, and the precept of loving God above all best embodies the metaphysics of love, Aquinas was right to identify the love precepts as the primary principles of natural law—that is, he would be right if he can counter the following objections.

**Objection 1: *Whether Love Can Be Commanded.***

If love were not able to be commanded, an ethics based on prescriptions of love would be absurd. Nevertheless, it may seem that Thomism precludes the commanding of love insofar as it identifies the cause of love as goodness<sup>2</sup>—and not choice. Indeed, every act of the will stems from ends naturally loved as inclinational goods.<sup>3</sup> In this way, it may seem that the causality of goodness coerces love and thereby eliminates the freedom presupposed by the possibility of commanding love.

*Response:* Although every good naturally attracts the will and causes some degree of love, there is only one good that determines the human will, namely, perfect goodness. Aquinas identified perfect goodness with the happiness of the last end.<sup>4</sup> Imperfect goods are thus unable to determine the will. This means that, although imperfect goods are naturally loved according to their degree of goodness, the will remains free to either endorse or reject the natural love of any good. In brief: although an imperfect good naturally melts our heart somewhat,<sup>5</sup> we remain free to endorse or reject that disposition. We are free to harden our hearts—or to make our love passionate. And we make that choice by how we consider the object.

If we concentrate on the object's goodness, our love will be strengthened; if we concentrate on imperfections, our love will be diminished. For instance, though life is naturally loved, it is possible to focus on life's negatives to the degree that life is rejected in favor of death.

Herein is the heart of freedom: we are free either to endorse and strengthen our spontaneous loves by focusing on the goodness of their object or to impede or even destroy our loves by focusing on the imperfections or evils of their object.<sup>6</sup>

We are also free to ignore some good in favor of another: ice cream rather than spinach. And we are free to decide to abandon the consideration of any finite good: suspend the search for a new house indefinitely. Traditionally, these are called the freedom of specification and the freedom of exercise.<sup>7</sup> In other words, love is free because the imperfect character of

**“And the passion of love is not aroused suddenly, but is born of an earnest consideration of the object loved” (S.T. II-II. 27.2c).**

any finite good leaves us free to endorse, ignore, or reject our love for that good. Awareness of the imperfections of any finite good suffices to place the love of that good in the category of choice: shall I continue to love my spouse despite a plethora of faults, or shall those faults engage my attention and then my disdain or hatred? Shall I honor the ontological goodness of other human beings and love them as other selves, or shall I treat them merely as useful tools, as sources of self-gratification, or as cancerous cells to be terminated for being obnoxious? In brief, no love of any good encountered in this life need be endorsed.

But what does it mean to endorse a love? It means choosing to commit one’s freedom of exercise and specification to achieving love’s terminus.<sup>8</sup> As Aquinas put it: “[L]ove of that good, which a man naturally wills as an end is his natural love; but the love which comes of this, which is of something loved for the end’s sake, is the love of choice” (I.60.2c).

If what is loved is a person, one seeks a greater union with the other—either in order to satisfy one’s own wants, which is *love-of-concupiscence*, or in order to will the other’s good, which is *love-of-friendship*.<sup>9</sup> Only love-of-friendship wills good to another as to another self; only love-of-friendship honors the truth that the ontology of human beings identifies them not only as other selves but as united to oneself through the bond of nature, as well as through other bonds, such as, family, sports, and religion. Hence, the natural love of neighbors is none other than the love-of-friendship. This love is endorsed whenever one elects to focus on the similarities that unite oneself to others; this love is rejected whenever one elects to ignore those similarities or to focus on the differences that alienate or even destroy love. For this reason, we are free to love neighbors as oneself.

But if we choose to reject our natural love of neighbors, we must also deny the good(s) causing that natural love; that is, we must reject their humanity as

well as their relatedness to the self through any of the myriad unions that shape our lives. By so doing, we betray not only the truth about human ontology and human relatedness but also the truth about oneself that causes one's own proper self-love, which underwrites the pursuit of morality and happiness. Consequently, although love's causation by ontological and relational goodness establishes a responsiveness to the human reality of oneself and others, we are free to endorse it or to squash it. The wrong choice is not only culpable, it is forbidden by reason's awareness of the truth about oneself and others. This means that, since elected love results from the will's freely-chosen endorsement of natural love or from the choice to love what was naturally loved, elected love can be prescribed by reason as indispensable for happiness or the last end. In this way, any elected love can be commanded.

**Objection 2: *Whether Hatred Defeats Love.***

The ubiquity of hatred seems to disprove the possibility of a universal love underpinning the natural law and, thereby, the foundational character of the love precepts.

*Response:* If the objection were correct, then gross violations of neighborly love would not be condemned as "crimes against humanity." But genocide, ethnic cleansing, and other atrocities are condemned. Moreover, most of the nations of the world have declared that human beings "should act towards one another in the spirit of brotherhood" (Article One of the *Universal Declaration of Human Rights*); and that human beings have rights and inherent human dignity (preamble of the *International Covenants on Rights*).<sup>10</sup> To respect the dignity and rights of human beings is to will good to others as one wills it to oneself. It is an expression of neighborly love.

Moreover, Aquinas never argued that natural love precludes the possibility of any type hatred; rather, he explains hatred as the reaction to those who threaten one's good: "Everything naturally hates its contrary as such. Now our enemies are contrary to us, as enemies, wherefore this itself should be hateful to us, for their enmity should displease us. They are not, however, contrary to us, as men and capable of happiness: and it is as such that we are bound to love them" (*S.T.* II-II.25.8 ad 2).

Thus, enmity does not override the bond of human nature and the resulting obligations of neighborly love. For instance, neighborly love binds us to feed and clothe the prisoner of war lest he die, but it does not bind us to render his imprisonment pleasant—to do so would be Christian charity.<sup>11</sup> For this reason, the *Geneva Conventions* for the treatment of prisoners of war expresses only the natural law obligations of neighborly love.

**Objection 3: *Whether Loving Others as Oneself Is Selfish.***

To love others as oneself seems to assign a priority to self-love that is self-centered, and, as such, contrary to the other-centeredness that marks true love.

*Response*<sup>12</sup>: To love is to will good. Self-love is to will good to oneself; love-of-others is to will good to them. Self-love and love-of-others become opposed to each other when one wills a good to oneself that one should have willed to another. When self-love is unjust, it is selfish. In this way, traditional morality follows Aristotle (*N.E.* IX, ch. 8), and considers selfishness to be an act of injustice.

When one loves another by willing that other's good, one is loving that other in the same as one loves oneself because one must good to oneself to survive and to flourish. So it is not selfishness that motivates one to will another's survival and flourishing but rather recognition that just as survival and flourishing are important to oneself, they are important to others as well.

Furthermore, the love-of-self that is extended to others when their good is willed is a natural self-love repulsed by acts of selfishness. For since none can will what is truly good for the self without honoring the kind of being that one is, self-love requires honoring one's own nature as a human being and as a unique person or self. As a result, natural self-love is the very basis of treating others appropriately and loving them properly. On this point, Aquinas and Wojtyła agree that love requires honoring the complete truth about human beings and willing their good. Consistency thus requires willing to others the same goods that one wills to oneself and declining from willing to others the evils that one avoids for oneself. Hence, it is as natural to love those like oneself for their own sake as it is to love oneself. Moreover, since such a love necessarily opposes treating others with disrespect or unfairly, not all forms of love born of self-love are immoral.

Recognition that the other is like oneself warrants calling the other "neighbor." The insight of Aquinas is that all humans are neighbors in being alike in their essential natures as human persons; the insight of Wojtyła is the importance of recognizing that all humans are alike in being persons with an incommunicable subjectivity. Hence, both men hold that the quintessential moral obligation is to treat others appropriately, that is, according to their nature, which is also essentially one's own. All human beings are hence not only our neighbors, but also are equals. To love neighbors as oneself is hence to treat neighbors as one's equals. This is the fundamental moral intuition captured in the Golden Rule or the second love precept. It is the reason why children demand to receive slices of apple pie that are exactly the same size. It is also the reason why those who are apprehended as different from oneself are not treated the same as those who are apprehended as the same as oneself, as shown by every grade paradigm clique and by every racist. But then children

and racists are not known for their insights into their own essential identity; neither are they known for their sensitivity to how it would feel to be a disrespected person. Nevertheless, at least children can become aware and admit that if something would be horrible for them, it would be horrible for other children—just as the Golden Rule and the precept of neighborly love try to inculcate.

Aquinas sought to underpin this analysis of morally requisite love by analyzing the cause of love and identifying unity as a good that causes both the love of self and the love of those united to oneself by the bonds of humanity, neighborhood, common interests, mutual goals and commitments, likes and dislikes, and so forth.<sup>13</sup> To love those like oneself is to love them as equals with the love-of-friendship (*S.T. I-II.26.4*). In this form of love, the other is willed good for his own sake just as one wills good to oneself for one's own sake. Love-of-friendship is thus the neighborly love of benevolence prescribed by the Golden Rule and Aquinas's second love precept.

Like Aquinas, John Locke and Richard Hooker also based the obligation to love others on their likeness to self—only they stressed human equality, not unity, as the foundation of this love. Here are Hooker's words as cited by Locke:

[I]t is no less their duty to love others than themselves; for seeing those things which are equal must needs all have one measure; if I cannot but wish to receive good, . . . at every man's hands, . . . how should I look to have any part of my desire herein satisfied unless myself be careful to satisfy the like desire, which is undoubtedly in other men, being of one and the same nature: to have anything offered them repugnant to this desire must needs, in all respects, grieve them as much as me; so that, if I do harm I must look to suffer, there being no reason that others should show greater measures of love to me than they have by me showed unto them; my desire therefore to be loved of my equals in nature, as much as possible, imposeth upon me a natural duty of bearing to them . . . fully the like affection. From which relation of equality between ourselves and them that are as ourselves, what several rules and canons natural reason hath drawn for direction of life no man is ignorant. [*sic*] (1952, 119 §5)

This passage's use of human equality tacitly relies not only upon the universality of human nature as the source of human equality but also upon the reciprocity of the Golden Rule: just as one wishes others to respect one's humanity and to love oneself for one's own benefit rather than as a means to their well-being, so one should love others. Thus, human nature and its needs structure not only natural self-love but also the natural love of others.

In *Love and Responsibility*, Wojtyła (1981b) based the obligation to love others on human subjectivity. Human subjectivity enables a person to choose his own ends for his own sake. To honor the truth about human beings is thus

to honor them as ends for their own sake. To do otherwise is to treat them as mere means for one's own goals. It is thus to treat them unjustly; it is to treat them immorally.

[A] person must not be *merely* the means to an end for another person. That is precluded by the very nature of personhood, by what any person is. For a person is a thinking subject, and capable of taking decisions . . . This being so, every person is by nature capable of determining his or her aims. Anyone who treats a person as the means to an end does violence to the very essence of the other, to what constitutes its natural right. Obviously, we must demand from a person, as a thinking individual, that his or her ends should be genuinely good, since the pursuit of evil ends is contrary to the rational nature of the person. (*LR* 1981b, 27)

Hence, the love of self that refuses to give others the love that is due is selfish and unjust. The only alternative to such abuse is a love that wills good to others for their own sake.<sup>14</sup> Hence, since it is the nature of being a person that identifies the reduction to instrumentality as an abuse, it is also the nature of the person that identifies benevolence and beneficence as the morally requisite way for treating persons. Wojtyła in *LR* identifies this norm as the Personalistic Norm: "A person is an entity of a sort to which the only proper and adequate way to relate is love" (1981b, 41). Obligatory love thus seeks the good of the one loved by using the nature of persons to specify a person's well-being. In this way, others are loved as one loves oneself, that is, as a person to whom good is to be willed and never as a thing to be used. Therefore, since selfish love treats others as means to one's own ends rather than as another self to whom good is to be willed, selfish love fails to treat others as another self.

In conclusion, it is not the case that loving others as oneself is selfish. For to so love is to love others according to the nature that they share with oneself, that is, to will good to them as for their own sake and not for the sake of another. This is the basic insight that underpins the Golden Rule, the precept of neighborly love, and the Personalistic Norm

**Objection 4: *Whether Loving God Above All Can Be a Basic Natural Law Precept.***

It seems that the prescription to love God cannot be basic, since atheism, agnosticism, and the plethora of religions show that not all know that God exists and consequently the love of God is not possible for all. Since what is not possible does not bind, the prescription of loving God must not bind all. If it does not bind all, it does not seem to qualify as a basic natural law precept.

*Response:* The first love precept can be basic without also requiring God to be explicitly known and explicitly loved by all. The prescription of loving God above all only requires that good be loved insofar as it is good. Thus, if one

knows not God—understood as a proper name for the being who is perfectly good and the cause of all that is good—then as long as one loves goods insofar as they are good, one is fulfilling this precept. But if one knows God through philosophy or through Christianity, then one would be obligated to prioritize this love over others and to love God above all.

The love of God obligated through philosophy differs from the love obligated through Christianity insofar as philosophy knows God as the cause of all goodness and existence,<sup>15</sup> while Christianity knows God as the loving father who sent His son to save us. In this way, grace can both perfect and transcend nature without overturning it.<sup>16</sup>

A variation of this objection, however, requires a different response. The variation asserts that it is impossible for the first love precept to be basic because it cannot be self-evident.<sup>17</sup> And it cannot be self-evident because the existence of God is not self-evident to us but relies upon demonstrative argument, as Aquinas points out in *S.T. I.2.1*.<sup>18</sup>

Against this objection, it must be pointed out that the necessity of the subject-predicate relationship characteristic of self-evident claims eliminates the possibility of predicating existence self-evidently of any contingent being. Hence, if the objection were correct, no claim would be self-evident to us. Therefore, it must rather be the case that self-evident claims that are necessarily true prescind from existence. For instance, it is self-evident that a square has four exactly equal sides, even if it were the case that it would be impossible to draw or to build such a figure. So the prescription obligating loving God above all as the greatest good would be self-evidently true even if there were no such being. This means that those who know not God do not know that there is a being worthy of being loved above all; yet, they do know that if there were such a being, it would be obligatory to love Him above all. And this suffices to preserve the first love precept as basic and self-evident.

**“[S]ince God is the universal good, . . . it follows that from natural law angel and man alike love God before themselves and with a greater love” (*S.T. I.60.5c*).**

**“God, in so far as He is the universal good, from Whom every natural good depends, is loved by everything with natural love. So far as He is the good which of its nature beatifies all with supernatural beatitude, He is loved with the love of charity” (*S.T. I.60.5 ad 4*).**



**Objection 5: *Whether Love Can Be Eudaimonic Without Being Virtuous.***

Love seems to lack a virtuous habit. Thus if acts done from virtuous habits constitute eudaimonia, love cannot be eudaimonic. If so, the love precepts cannot be basic natural law principles.

*Response:* Eudaimonia may be identified with virtuous acts without precluding its identification with the acts of love. For all virtuous acts fall into at least one of three categories: those pertaining to God, those pertaining to neighbors, and those pertaining to oneself. Each category requires conforming to the truths known by reason about God, neighbors, and the self, namely, that these are persons to whom the appropriate good(s) are to be willed. To so will good is not only the quintessential act of virtue but the quintessential act of love. Thus, to act virtuously is to love God above all and to love neighbors as oneself.

Moreover, the absence of a virtue of natural love whereby God and neighbor are properly loved shows that such love is both natural to a person and prior to virtue. For according to Aquinas, the will does not need a virtue to incline to what is natural to it.<sup>19</sup> Indeed, in prescribing the love of neighbor and God, natural law prescribes that one is to honor one's natural loves for those like oneself and for goodness itself. Nevertheless, since those like oneself include strangers with whom one only shares the bond of humanity, and since natural love can be hindered by the failure to consider such bonds, Aquinas identifies affability as a virtue. Affability requires treating others with a friendliness that is never cold or indifferent.<sup>20</sup>

**Objection 6: *Whether the Love Precepts Can Be Indefeasible.***

It seems that the love precepts cannot be indefeasible because love necessarily lacks eudaimonic or moral necessity insofar as love is an act of the will, and Aquinas explicitly argues, in *S.T.* I-II.3.4c, that the last end cannot be constituted by the act of the will.<sup>21</sup> For if an act of the will suffices as the last end, then we would attain the last end simply by willing it. And in *S.T.* I-II.4.2, he argues that it is the very goodness of the last end that reposes the will; the will's act is not the end.

*Response:* The necessity of a precept arises from its relationship to the end, not from the act prescribed. For this reason, only those acts that are indispensable for attaining the last end are prescribed with indefeasible necessity. Moreover, in the texts cited by the objection, Aquinas is considering the identity of the last end rather than its attainment or possession. For the last end can be neither attained nor retained without love. Nothing is sought without being loved; nothing is able to be an end without reposing desire or contenting love when attained. For this reason, Aquinas defines the last end as the good which reposes the will.<sup>22</sup> Since repose is the enduring act of love, without love of the

good that reposes the will, that good would leave us cold, without contentment, without happiness. After all, goodness motivates and reposes the human heart only through love. Consequently, since eudaimonic or moral necessity is predicated of whatever essentially constitutes eudaimonia or of whatever is indispensable for the attainment of eudaimonia, eudaimonic necessity must be predicated of love: love is indispensable for attaining eudaimonia.

**Objection 7: *Whether the Prescriptions of Love Morally Obligate a Degree of Perfection Unattainable by Imperfect Humans.***

Since love has no limits and is satisfied with nothing less than perfection, the prescriptions of love seem beyond the capacity of natural man. As such, they seem to be beyond the scope of natural law, since the impossible does not morally bind.

*Response:* If natural law were to obligate the fullest perfection of love, it would not be able to function as a universal morality for the imperfect. But even though the perfection of love knows no boundaries, love obligates only its own preservation. Accordingly, love forbids actions or intentions contrary to itself, without also obligating perfection. For the love precepts do not prescribe perfect love, only fulfilling the intention to act lovingly when the failure to do so would be incompatible with good will. In other words, although neighborly love prescribes benevolence at all times, beneficence is prescribed only when benevolence could not be otherwise maintained. For instance, benevolence is incompatible with the refusal to render aid when that aid is sorely needed and can be given without any inconvenience to oneself. Accordingly, if one encounters a stranded colleague on the way to work, neighborly love obligates giving him a ride, especially in a snow storm. But it does not also obligate marrying him or leaving him the family fortune—even if one is single and without heirs. Furthermore, if it were the case that neighborly love is impossible for imperfect human beings, then the ubiquitous Golden Rule would not presuppose neighborly love.<sup>23</sup>

**Objection 8: *Whether Justice Is More Basic Than Love.***

In *S.T. I-II.100.3 ad 3* and *100.8c*, Aquinas argues that the moral precepts of the Decalogue are derived from precepts of justice. It thus seems that the precepts of justice rather than those of love are foundational for natural law. Indeed, many have assumed that justice is more basic than love.

*Response:* That the Decalogue's moral precepts can be derived from justice can be conceded without also conceding that they are not also derived from the

**“[T]he creative element in justice is love” (Tillich 1954, 83).**

love precepts. Indeed, the Decalogue's moral precepts instantiate both the obligations of love and those of justice. Whether one considers these derivative precepts under the intelligibility of love or justice depends upon whether one is considering them in their genus or species. Thus Aquinas states in *S.T.* II-II.58.8 ad 2: “justice [in a general mode] *is the love of God and neighbor* which pervades the other virtues, that is to say, is the common principle of the entire order between one man and another.” In other words, unlike justice, which when considered as a species of virtue is confined to the due good (as the virtue of pity, which is confined to the good of relieving distress),<sup>24</sup> love ranges over all goods—including the specifics of justice. Hence, justice, generally speaking, is an obligation of love.

For this reason, St. Thomas asserts the love precepts are the Decalogue principles: “Those two principles [the love precepts] are the first general principles of the natural law, and are self-evident to human reason, either through nature or through faith. Wherefore all the precepts of the Decalogue are referred to these, as conclusions to general principles” (*S.T.* I-II.100.3 ad 1).<sup>25</sup> As Decalogue principles, the love precepts serve as premises from which the Decalogue’s moral precepts can be derived. For example, the proscription of stealing falls under the second love precept, not only because this precept—in prescribing love—is prescribing the willing of goods to others but also because inherent in this affirmative prescription is the proscription against harming. Likewise, stealing is proscribed by love as an impermissible harm. Similarly, the prescription of honoring parents falls under the second precept, because love cannot countenance depriving another of his due. Thus, since parents are owed honor, love obligates honoring them. Therefore, the precepts of justice embodied in the Decalogue are derivable from the love precepts; because, unless the obligations of love are fulfilled undue harm results. In brief: one cannot love God and others with a love-of-friendship and either fail to discharge the debts prescribed in the affirmative precepts or perform actions proscribed as harmful in the negative precepts.

There are three additional arguments in support of the claim that the love precepts are more primary than the precepts of justice. First, those who argue that justice precedes love do so by noting that justice establishes an equality that is basic to human friendship.<sup>26</sup> With this argument, I have no quarrel: justice does pave the way for friendship. But justice does not establish the equality for the love prescribed by the second love precept: this equality is established by nature. Either one is human or one is not; every human is equally human and naturally loved as such. And so the love prescribed in the second love precept does not presuppose justice. In fact justice presupposes that one naturally loves other humans as one’s equals. The integral parts of justice presuppose that humans are equals insofar as its negative proscription of harm prevents

inequality, and the positive prescriptions of paying debts restores equality (*S.T.* II-II.79.1c and ad 2). But this presupposes that equality is something one cares about and ought to care about. Such caring is impossible unless one loves human equality, which cannot be loved unless the “humanness” which establishes that equality is loved. Thus, contrary to expectation, justice does not precede love; rather, love precedes justice. Indeed, love is more basic than justice and is its wellspring, since nothing is sought without being first loved.<sup>27</sup>

Secondly, the foundations of justice have been identified with the Golden Rule—understood as expressing that, assuming A and B not to differ in a morally relevant way, it is never “permissible for A to treat B in a manner in which it would be impermissible for B to treat A.”<sup>28</sup> In this way, the Golden Rule is understood as a “principle of impartiality” protecting the equality that is the basis of justice.

However, as pointed out by Paul Tillich, justice is not necessarily promoted by the Golden Rule: “For it may well be that one wants to receive benefits which contradict the justice towards oneself and which would contradict equally the justice towards the other one, if he received them” (1954, 79).

In order for the Golden Rule to necessarily promote justice, it is necessary to presuppose a proper self-love that seeks to love others as a human being like oneself, that is it is necessary to presuppose the second love precept. “Without the context of true self-love [obligated by the second love precept],” as I explain in “The Paradox of Aquinas’s Altruism,” “the Golden Rule could be used to justify treating others unjustly as long as one willed that such treatment be reciprocated, as is the case in sadomasochism” (1989, 77). In this way, the second love precept avoids the ugly possibility that one may evoke the Golden Rule to act unjustly either upon the supposition that one is being treated unjustly or upon the supposition that one prefers a certain treatment. If, then, the second love precept specifies that the equality entailed by the Golden Rule be not harmful, the second love precept provides the context whereby justice is protected.

Thirdly, if justice were more foundational than love, then the impartiality that characterizes justice would cover all cases of moral obligation and Kantian ethics would be superior to Thomistic ethics in so far as Kant bases morality on the impartial principle of treating humanity whether in oneself or another as an end and never purely as a means.<sup>29</sup> This principle of impartiality prescribes an abstract love of humanity, rather than a love of this particular human being united to oneself at this particular time, place, relation, and need as one’s closest neighbor.<sup>30</sup> Such an abstract or impartial love need not obligate one to care about the lost toddler at Disneyland, whereas the love precept forbids one from not getting the toddler to an official who can take charge of finding the parents. Justice may not demand caring for the lost toddler, but the precept of neighborly

love does. Since love specifies moral obligations where justice doesn't, love is more basic than justice.

Finally, that the love precepts are more foundational than the precepts of justice is ultimately shown by the end of the Decalogue inasmuch as the moral precepts of the Decalogue are natural law's central precepts. The end of the Decalogue, and thereby of natural law, is to order humans to their last end, i.e., the love of God and of neighbor.<sup>31</sup> Thus, since the love precepts prescribe what constitutes the natural last end, they dispose humans in a superior way than justice. For Christians, the foundational role of love is especially important insofar as they consider the Decalogue to be revealed by God in order to direct humans to their supernatural last end (*S.T.* I-II.91.4), which is none other than Christian charity. Accordingly, St. Thomas says that the end of the Decalogue is charity.<sup>32</sup> In this way, nature is preserved in beatitude (*S.T.* I.62.7c).

**Objection 9: *Whether Opposing Loves Are Prescribed by the Two Love Precepts.***

The love of God above all prescribes a proportional love based on the ontology of goodness, while neighborly love prescribes a unitive love based on proximity to the self. If so, it seems possible for loves to be at odds with each other: proportional love of the common good could, for instance, propel one to war against enemies, while unitive love propels one to prefer homemaking to war.

*Response:* This question raises psychological as well as metaphysical issues. Psychologically, Aquinas argued that unitive and proportional loves do not conflict because proportional love determines which good is to be willed to another, while unitive loves determine the intensity of love: "Every act should be proportionate to both its object and to the agent. But from its object it takes its species, while from the power of the agent it takes the mode of its intensity . . . Accordingly, love takes its species from its object, but its intensity is due to the lover" (*S.T.* II-II.26.7c). Intensely pursuing the good of those closest to oneself thus need not conflict with the ontology of love. Mothers, for instance, intensely pursue the good of their infants, even while loving God above all.

Nevertheless, this psychological treatment is not definitive: it does not suffice to eliminate all apparent conflict between the needs of those closest to oneself and the common good, for instance. Conflict resolution is possible only if the needs of those closest to oneself include the need for the common good and only if the common good is such that it takes precedence over other goods. Such is the case: none can flourish apart from the common good, and the ontology of the common good establishes it as a higher good that takes precedence over other goods. Thus, unitive love is best when it honors proportional love and seeks to enable neighbors to participate in the common good.

Furthermore, if unitive and proportional loves—properly considered—could conflict, Aquinas’s metaphysics of love and goodness would be destroyed. For his metaphysics considers goodness to differ only conceptually, but not ontologically, from being. If this were not so, the goodness of God could not be predicated on the perfection of His existence.

The ontology of love is ultimately quite simple. Love is caused by goodness, and goodness is existence. Existence thus causes love and establishes itself as an end, otherwise known as a good. Love of one’s existence is the ground of unitive love—as one loves one’s own existence and whatever promotes that existence. The beneficence of unitive love need not seek only to benefit oneself and those who benefit oneself. Indeed, unitive love is unsuccessful in uniting oneself to the goods needed by one’s mode of existence unless it acknowledges the requirements of human nature. This acknowledgment frees unitive love from egocentricity, since human nature cannot be known as a nature without also being known as a type that is instantiated not only in oneself but in others like oneself. The consistency demanded by rationality binds one to recognize that, just as good is to be willed to oneself as a human being, it is to be willed to other human beings; any instantiation of human nature deserves to be loved as one loves one’s own instantiation.

Love of one’s own existence also grounds proportional love, since love of the effect includes love of the cause. For this reason, Aquinas claims in *S.T.* I.60.5 that all naturally love God above all: all that is lovable in one’s own existence is found unsurpassably in God, who as the ultimate cause of being is the greatest benefactor. Thus love of one’s own existence transcends egocentricity and births loving God above all.<sup>33</sup> Furthermore, love of one’s own existence establishes a proportional love for the fulness of existence as found in the last end and in community life. Thus these are loved—not as means of self-gratification—but as higher goods to be preferred to self-gratification.

Thus, since proportional love is grounded in the unitive love of one’s own existence, proportional love and unitive love are not different loves; rather, unitive love signifies that aspect of love which seeks union with the good for oneself or another, while proportional love signifies that aspect which honors the ontology of good. Both of these aspects of love are found in every love, since love primarily signifies willing unification with a good according to the ontology of that good.

**Objection 10: *Whether the Bonum Precept or the Love Precepts Are Primary.***

The classical text on Aquinas’s natural law, *S.T.* I-II.94.2, identifies the *Bonum* Precept as morality’s first principle. Thus, it seems that the *Bonum* Precept—rather than the love precepts—is the principle of natural law.

*Response:* The objection assumes a dichotomy between the *Bonum* Precept and the love precepts alien to Aquinas's identification of the *Bonum* Precept as the first principle of practical reason. For if the *Bonum* Precept is the principle of practical reason, then its obligations are instantiated in every obligation of practical reason—including those asserted by the love precepts. And, if the *Bonum* Precept is also the first principle of morality, then its obligation is instantiated in every obligation of natural law—including those asserted by the love precepts. Thus, the *Bonum* Precept and the love precepts are related to each other as universal to instance. Accordingly, if it is also the case that the love precepts alone excel in instantiating the *Bonum* Precept, and if the obligations of the love precepts are indeed foundational for all other obligations of natural law—as I argue in the next chapter—then the love precepts can be the principle of natural law without depriving the *Bonum* Precept of its status as the principle of natural law.

It is possible for both the *Bonum* Precept and the love precepts to be the first principles of natural law, not only because they differ as universal and instantiation, but because there are two senses of primacy: (1) the priority of perfection and dignity, and (2) the priority of generation or disposition.<sup>34</sup> The love precepts, as immediately directing human beings to their last end, have the priority of perfection and dignity; whereas, the *Bonum* Precept—as the first principle of every human act—has the priority of generation. In other words, practical rationality originates in the *Bonum* Precept and perfects itself in the love precepts. The love precepts express the perfection of practical reason, because they prescribe the love that not only specifically orients one to the last end but that also unifies one with the eudaimonic goods of God and the common good.

Since the primacy of generation and the primacy of perfection are different senses of primacy, there is no inconsistency in identifying both the love precepts and the *Bonum* Precept as the primary principles of natural law. This is especially the case since the love precepts prescribe that which is the first act of the will (love) in relation to specific ends of love (oneself, others and God).

**Objection 11: *Whether the Oneness of the First Principle Precludes a Plurality of Primary Precepts.***

After all, *S.T. I-II.94.2 ad 1* argues that every moral precept is a precept of natural law as flowing from one first precept. This implies that both the *Bonum* Precept and the love precepts cannot both be the primary precepts of natural law. The oneness of the first principle also implies that the *two* love precepts cannot be the grounds of natural law.

*Response:* Aquinas argues that the natural law is grounded in the oneness of the *Bonum* Precept, since natural law obligates adhering to reason as

formalized in the *Bonum* Precept. The love precepts—as instantiations of the *Bonum* Precept—do not affect natural law’s grounding in the *Bonum* precept; rather, they presuppose it, as any instantiation must.

In regard to the objection that the love precepts cannot ground natural law because they are two, it must be noted that this objection would be warranted only if the love precepts lacked unity. But this is not the case. First of all, the love precepts are unified by the act that each regulates; for each regulates the will’s act of love. Secondly, the first love precept obligates a proportional love of God above all, while the second obligates a unitive love for one’s neighbors. Unitive love includes proportional love: whatever is most good for oneself is to be loved more than other goods. In this way, since the self is related to God as to the ultimate cause of the self’s existence and goodness, the second love precept includes the first: the self is not loved properly unless God is loved above all, i.e., unless the self and others are loved for God’s sake. In this way, proportional love obligates not only loving God above all but loving all for God’s sake. Proportional love thus anticipates Christian charity, which can be expressed in the commandment of neighborly love; because, according to Aquinas, “love of one’s neighbor includes the love of God, when we love our neighbors for God’s sake (*S.T.* I-II.99.1 ad 2).” Christian charity, however, not only subordinates neighborly love to the love of God, it wills to neighbors a divine friendship only possible through sanctifying grace. And this is to love others as children of God.

The reducibility of the first love precept to the second and vice versa can also be understood either by way of ascent or by way of descent:

The way of descent begins by noting that since neighbors and self can be loved as effects of the First Cause, the second love precept can be subsumed into the first so that the prescription of loving neighbor and self instantiates the love of God above all. Indeed it is inconsistent to love the First Cause while hating those beings who exist only as effects of that divine causality. Accordingly, since the first love precept obliges loving all connected with the First Cause as one’s love for a friend tacitly includes loving her children, the first love precept tacitly obliges that good be willed to neighbors and to oneself as to beings made by the Ultimate Cause. Now although this way of descent is similar to charity’s subsumption of the second precept of charity into the first precept, it is different: nature wills all to God, while charity also wills God and His friendship to all.

The way of ascent begins by noting that the seeking of self-perfection presupposed in the second love precept is ultimately only desirable—like any good—as an image participating in perfect Goodness.<sup>35</sup> Accordingly, self-perfection through the metaphysics of love requires the self-transcendence of loving God above all. After all, since love proceeds from how one perceives oneself and others, the proper love of others and of oneself requires willing goods according to the truth that we are primarily rational beings to whom spiritual goods (like loving God above all) are most appropriate. In this way, the second love



precept's obligation to will self-perfection as a good for the self and for others involves willing that the greatest good be loved above all. (Lemmons 1992, 59; edited)

If the natures of true love and the reducibility of the love precepts into each other proceed through the ways of ascent and descent, then it is only normative ease rather than necessity that is elaborated by the two love precepts. That such is not contrary to the mind of Aquinas can be seen in his claims that, within the order of charity (which preserves the order of natural law), the second precept includes the first as the means includes the end (*S.T.* II-II.44.2c and ad 4).

Finally, the oneness of the love precepts is also established by considering them conjunctively, that is, by considering them not as two distinct precepts but as two parts of one precept. This conjunctive consideration is indispensable for those who do not perceive the inter-reducibility of the precepts, insofar as no moral life is complete unless every being is loved appropriately, i.e., God above all and neighbors as oneself. The conjunctive consideration of the two love precepts emphasizes proportional love through the first love precept and unitive love through the second. Since these two aspects of love must be honored in every proper love, the oneness of the love precepts is preserved, and this objection arising from *S.T.* I-II.94.2 is met.

**Objection 12: *Whether Virtue Ethics or Natural Law Best Describes Aquinas's Ethics.***

There are two arguments that one ought to describe the ethics of Aquinas as a virtue ethics rather than as a natural law ethics. The first is that, since ethics pertains to the moral life, ethical systems should be identified by whatever is most proper to the moral life. Hence, since Aquinas argues that the virtues enable one to live the moral life and to achieve the secondary form of eudaimonia, his ethics is best identified as a virtue ethics. This argument can be called the argument from moral eudaimonia. The second argument holds that Aquinas identifies the moral judgment of what is to be done here and now as a singular judgment of prudence, and hence he is not identifying it as an instantiation of the natural law. His ethics is thus quintessentially prudential rather than an expression of natural law. This can be called the argument from moral judgment.

*Response:* The argument from moral eudaimonia takes the means of achieving happiness as sufficient for identifying an ethics. It then assumes that virtuous actions suffice for happiness. If one holds that the virtues develop as one adheres to the natural law, then there is only a verbal difference between labeling Aquinas's ethics as a virtue ethics rather than as a natural law. With this argument, I have no quarrel: ethics is for living, and there is no living

according to Aquinas's natural law without developing the virtues.

The argument from moral judgment has been made, most forcibly, by Daniel Mark Nelson in his 1992 *The Priority of Prudence*. Nelson does not deny that Aquinas uses the language of natural law, nor does he deny that prudence presupposes naturally known principles given by *synderesis* and natural law. Rather, he denies that naturally known principles provide "content for our moral deliberations."<sup>36</sup> The point of natural law is to provide "a causal explanation of what 'moves' practical reasoning."<sup>37</sup> Moving practical reason is not, for Nelson, the same as specifying moral action.

Nelson makes his case primarily by citing all those passages where Aquinas argues for the indispensability of prudence and the inability of certain general norms to cover every case. One, however, can grant these claims without also granting the inability of natural law to provide "content for our moral deliberations." As the preceding chapter has shown, natural law provides content in four ways: namely, through the *Bonum* Precept and its formulations; through the identification of whatever is indispensable for eudaimonia as morally obligatory; through the identification of whatever cannot be avoided without contravening neighborly or love of God as morally obligatory; and through identifying as immoral whatever contravenes the *Bonum* Precept and its formulations, eudaimonia, the love of God, or the love of neighbor. Therefore, since every deliberate action is undertaken for the sake of some good or love, it is not possible for the love precepts to ever be irrelevant in some particular instance of deliberate action.

Nevertheless, it remains for prudence to determine whether an individual act instantiates good, eudaimonic necessity, or love. In brief: moral judgment requires both natural law and prudence, because moral judgment occurs through a sound practical syllogism where the major premise comes from natural law and the minor premise from prudence.<sup>38</sup> It is thus not the case that one must uphold the indispensability of prudence at the expense of natural law.

## Notes

1. *S.T.* I-II.18.1c: "We must therefore say that every action has goodness, insofar as it has being: whereas it is lacking in goodness, insofar as it is lacking in something that is due to its fulness of being; and thus it is said to be evil: for instance if it lacks the quantity determined by reason, or its due place, or something of the kind."

2. *S.T.* I-II.27.1.

3. See, for example, *S.T.* I-II.10.1 & *S.T.* I.60.1.

4. The key questions on this point are *S.T.* I-II.1.1-7; *S.T.* I-II.3.8; *S.T.* I-II.5.3.

5. Every type of love begins with a certain adaptation to the good characterized by melting (liquefaction) that expresses a receptivity to what is loved (*S.T. I-II.28.5c*).

6. *S.T. I-II.13.6c*: “For man can will and not will, act and not act; again he can will this or that, and do this or that. *The reason of this is seated in the very power of reason.* For the will can tend to whatever the reason can apprehend as good, not only this, viz, to will or to act, but also this, viz, not to will or not to act. Again, in all particular goods, the reason can consider an aspect of some good, and the lack of some good, which has the aspect of evil: and in this respect, it can *apprehend any single one of such goods as to be chosen or to be avoided.* The perfect good alone, which is happiness, cannot be apprehended by the reason as an evil, or as lacking in any way. Consequently man wills happiness of necessity, nor can he will not to be happy, or to be unhappy.” *S.T. I-II.10.1 ad 3*: “Cum igitur voluntas sit quedam vis immaterialis, . . . respondet sibi naturaliter aliquod unum commune, scilicet bonum . . . Sub bono autem communi multa particularia bona continentur, ad quorum nullum voluntas determinatur.” *S.T. I.59.3c*: “Sed solum id quod habet intellectum, potest agere iudicio libero, inquantum cognoscit universalem rationem boni, ex qua potest iudicare hoc vel illud esse bonum.”

7. *S.T. I-II.10.2c*; emphasis mine: “The will is moved in two ways: first, as to *the exercise of its act*; secondly, as to *the specification of its act*, derived from the object. As to the first way, no object moves the will necessarily, for no matter what the object be, it is in man’s power not to think of it, and consequently not to will it actually. But as to the second manner of motion . . . if the will be offered an object which is good universally and from every point of view, the will tends to it of necessity, if it wills anything at all; since it cannot will the opposite. If, on the other hand, the will is offered an object that is not good from every point of view, it will not tend to it of necessity. And since lack of any good whatever, is a non-good, consequently, that good alone which is perfect and lacking in nothing, is such a good that the will cannot not will it: and this is Happiness. Whereas any other particular goods, insofar as they are lacking in some good, can be regarded as non-goods: and from this point of view, they can be set aside or approved by the will, which can tend to one and the same thing from various points of view.”

8. See *S.T. I-II.28.1* and ad 2.

9. See *S.T. I-II.28.3c* for a discussion of the ecstatic character of love. Also see *S.T. I-II.28.2* wherein Aquinas explains that intense love-of-friendship—when reciprocated—culminates in mutual indwelling through cognitive and affective acts.

10. For an extensive discussion of this point, please see chapter 18.

11. *S.T. II-II.83.8c*; emphasis mine: “. . . we are bound to love our enemies, namely, that we must love in them their nature, not their sin; and that to love our enemies in general is a matter of precept, while to love them in the individual is not a matter of precept, *except in the preparedness of the mind*, so that a man must be prepared to love his enemy even in the individual and *to help him in a case of necessity*, or if his enemy should beg his forgiveness. But to love one’s enemies absolutely in the individual, and to assist them, is an act of perfection.”

12. I treat this point extensively as Hayden (1989).

13. See *S.T.* I-II.28.1 ad 2 where Aquinas explains that the union that causes love of the self is the substantial union of form and matter and the union that causes love of others is the union of likeness.

14. Wojtyła *LR* (1981b, 28): “[L]ove . . . [is] the only clear alternative to using a person as the means to an end, or the instrument of one’s own action.”

15. *S.T.* I.60.5 ad 1.

16. See *S.T.* I.60.5c.

17. Many thanks to Thomas D. Sullivan for bringing this objection to my attention.

18. The argument that self-evidence is not possible unless the existence of the terms is self-evidently known was used by R. A. Armstrong (1966, 49): “In other words, employing S. Thomas’s own criterion (of requiring to know the meaning of the terms involved) [a claim] could only be self-evident if it is first known that God exists—and this we submit (in the ordinary sense of the term) is not self-evident. On the grounds of this difficulty alone, we are doubtful about the self-evidence of any principle which corresponds with this inclination [to know the truth about God].”

19. See *De Virtutibus in Communi* a. 5c. *S.T.* I-II.62.3 ad 1: “But the very nature of the will suffices for it to be directed naturally to the end, both as to the intention of the end and as to its conformity with the end.”

20. Aquinas discusses affability in *S.T.* II-II.114.1-2. In these articles, he identifies it as the virtue of being friendly to all, even to strangers. He argues that this virtue is obligated by justice because man is a social animal who is unable to live in community without joy and friendliness. He also argues that the ground of this virtue is the love that originates in the bond of being human.

21. For a discussion of this point see Hayden (1991).

22. *S.T.* I-II.1.5c.

23. For an extensive discussion of this point see chapter 18.

24. *S.T.* II-II.31.1 ad 3: “Dicendum quod sicut amicitia seu caritas respicit in beneficio collato communem rationem boni, ita iustitia respicit ibi rationem debiti. Misericordia vero respicit ibi rationem relevantis miseriam vel defectum.”

25. *S.T.* I-II.100.3 ad 1: “Ergo dicendum quod illa duo praecepta sunt prima et communia praecepta legis naturae, quae sunt per se nota rationi humane, vel per naturam vel per fidem. Et ideo omnia praecepta decalogi ad illa duo referuntur sicut conclusiones ad principia communia.”

26. See, for example, James V. Schall, S.J. (1975).

27. *S.T.* I-II.28.6c: “Every agent acts for an end . . . Now the end is the good desired and loved by each one. Wherefore it is evident that every agent, whatever it be, does every action from love of some kind.”

28. Alan Donagan (1977, 59).

29. On this point, I differ from Alan Donagan (1977, 64–5) who takes the obligation to love others as prescribing that humanity be loved for its own sake in a Kantian sense of treating humanity always as an end and never as a means. For a discussion of the differences and similarities between the views of Donagan, Aquinas,

and Kant, see Joseph M. Boyle (1984).

30. On this point, I differ with Cyril Harry Miron (1939) who, while acknowledging a natural altruism based on a shared humanity, interprets it as an abstract love of humanity.

31. *S.T.* II-II.122.5c: “Respondeo dicendum quod praecepta decalogi ordinantur ad dilectionem Dei et proximi.” Notice that the Latin word for love specifies the love of God and neighbor that is chosen by the will.

32. *S.T.* II-II.122.1 ad 4: “The precepts of the Decalogue pertain to charity[caritatem] as their end, according to 1 Tim i.5, ‘The end of the commandment is charity’: but they belong to justice, inasmuch as they refer immediately to acts of justice.” See also *S.T.* I-II.99.1 ad 2.

33. Aquinas distinguishes this natural love of God above all from charity in *S.T.* I.60.5 ad 4: “God, insofar as He is the universal good, from Whom every natural good depends, is loved by everything with a natural love. So far as He is the good which of its very nature beatifies all with supernatural beatitude, He is loved with the love of charity.”

34. *S.T.* I-II.68.8 ad 2. For more discussion see Lemmons (1992, 58–9).

35. *S.T.* I.44.4 ad 3 (emphasis mine): “All things desire God as their end, when they desire some good thing, whether this desire be intellectual or sensible or natural, i.e., without knowledge; *because nothing is good and desirable except inasmuch as it participates in the likeness to God.*”

36. Nelson (1992, 97). At 101: “Once again, these naturally known higher principles, the ends of human action, are so general as to be empty of material content.” At 88: “But natural law does not provide moral guidance.” At 99: Natural law “does not play the role of guiding conduct, of determining right and wrong, or of providing the kind of foundational moral imperatives from which one can deduce specific judgments.” Nelson is not alone in holding that nature under-determines morality, as shown by the extensive discussion below in chapter 11.

37. Nelson (1992, 105). At 97: “*Synderesis* serves the function of explaining how we begin to reason practically, but it does not provide content for our moral deliberations.”

38. Chapter 18 explicates the role played by the practical syllogism in moral diversity.



## *Chapter 10*

# **Whether Personalist Natural Law Is a Thomistic Abomination?**

*This chapter evaluates whether Thomistic natural law can be viable apart from Christian theology, while reserving until chapter 12 the issue of whether belief in God is necessary to motivate adherence to the natural law.*

More than one person has argued that, since Aquinas was a theologian and wrote theological texts, philosophical arguments cannot be extracted from those texts without distorting Aquinas's thought.<sup>1</sup> "Let us admit," wrote Anton C. Pegis, "that a theologically managed philosophy—philosophy used and shaped by the theologian in his world and for his purposes—is not philosophy" (1964, 39). Jean Porter took this argument further and argued that scholastics relied upon Scripture for the normative content of natural law; thus, "... the scholastic concept of the natural law, precisely because of its specifically theological character, does not yield the universally valid moral code that modern and contemporary natural law theorists have attempted to provide" (1999, 137). Additional support for the argument that natural law is actually a theological construct comes from Christian doctrine of Original Sin and the prevalence of human weakness, which seem to preclude the possibility of knowing and adhering to the moral law without grace and Divine revelations. Accordingly, Jacques Maritain (1940) and Oscar J. Brown (1981)<sup>2</sup> argue that no ethics can be adequate apart from Christian revelation and grace.<sup>3</sup> Furthermore, the argument that Aquinas's natural law is intractably Christian gains strength, if it is held (as I do) that the obligations to love God, neighbor, and self are basic to Aquinas's morality; *and*, if it is held (as I do not) that only Christian charity

obliges such love, as argued by Vernon J. Bourke (1951, 177–8), Etienne Gilson (1931) and Russell Hittinger (1987).<sup>4</sup> Finally, Aquinas, himself, seems to characterize natural law as nothing less than a theological construct when he defined natural law in terms of the Christian notion of eternal law.<sup>5</sup>

But if it were the case that Aquinas did not intend to expound a universally viable natural law, it would also be the case that he was extraordinarily insensitive to the turmoil and the intellectual unrest of his age. Let us recall some of the various factors that made the thirteenth century boil with diverse and discordant ideas:

- The discovery and translation of new Aristotelian texts that were periodically banned and then required by various universities throughout the thirteenth century;
- The establishment of new schools and universities, e.g., the University at Naples was founded in 1224 by Frederick II as an alternative to the papal university at Bologna;
- The medieval love of disputation, e.g., in 1240 King Louis IX sponsored a Jewish-Christian disputation in Paris;
- A keen awareness of alien cultures resulting from the Crusades, such as, the Children's Crusade (1212); the Fifth Crusade (1217–1221); the crusade of Frederick II (1229); the crusade of Thibault of Champagne-Navarre and Richard of Cornwall (1241–1242); the first crusade of Louis IX of France (1248–1252); and the second crusade of Louis IX (1270);
- The horrifying and victorious attacks by the Mongols in Persia (1218); Ryazan and Moscow (1237); Kiev (1240); Liegnitz and Mohi (1241–1242);
- The reports of the Franciscans Giovanni de Pian Carpino, who was sent to Kuyuk Khan in 1246 by Pope Innocent IV; and William of Rubruque, who was sent to Khan Mangu in 1254 for a disputation with Buddhists, Nestorians, and Muslims by King Louis IX of France;
- The explosion of Christian heresies claiming the mantle of Holy Scripture, e.g., the Cathars who argued that matter, the body, and sex were evil;
- The continuation of the erotic courtly traditions of love, popularized by Eleanor of Aquitaine in the twelfth century.

As a result, controversies ripped through society and challenged lovers of truth to find universal grounds of certitude and persuasion. Self-evidence makes such a ground possible. Accordingly, it is not surprising that Aquinas characterizes as self-evident not only the first principles of thought but also the first principle of natural law (*S.T.* I-II.94.2c).

That Aquinas intended to establish universal grounds of certitude and persuasion can be known not only from his reliance on self-evident first principles as the foundation of thought and action as well as the quiet rationalism of his writings, but also from his choice to join a radically new order of priests dedicated to the study, teaching, and preaching of truth. Evidently, from his youth, Aquinas was convinced that truth precluded all inconsistencies,



and that there could be no *real* conflict between nature and grace because he considered both to be, ultimately, the gifts of one God. No doubt, confidence that nature like faith can reveal its Divine Source inspired Aquinas's famous proofs for God's existence, as well as his classification of finite agency as being wholly the effect of both human and Divine causality. In this way, Aquinas could claim that within the diversity of beings there is a goodness and a oneness, traceable to God, that does not obscure individuality and differences but rather illumines uniqueness and beauty, thereby revealing the creativity, the kindness, and the serenity of God.

Aquinas heard, as it were, God speaking in two voices, namely, the voice of redemption and the voice of creation.<sup>6</sup> Accordingly, just as God's redemptive voice is distorted by any treatment of morality that suggests that the human condition requires neither grace nor the Cross, His creative voice is distorted when nature is understood as devoid of moral value and moral truth, inasmuch as His creatures would then be ill-formed and without direction. Any diminishment of either divine voice ultimately hinders both our understanding of God, and our understanding of *whom* God wanted to redeem through Christ.<sup>7</sup> To resonate and to expound the clarity of God's voice as incarnated in His Son, as well as embodied in His created images, was central to Aquinas's task. Thus, any argument that Aquinas would support the diminishment of God's voice entails denying Aquinas's intense dedication to expressing the unification of all things in God, whose oneness grounds the unity of truth as well as the harmonious character of nature and grace, or reason and faith, within all areas of human thought, including morality. Accordingly, neither nature and grace nor the natural moral law and Christian morality can be reduced to the other without denigrating God's causality and goodness.

What then to make of Aquinas's theological explanation of natural law as manifesting the eternal law? There are several possibilities ranging from ontological foundationalism and religious justification to epistemic priority. If the identification of natural law with God's eternal law was meant to signify that God is the author of nature, then it is a metaphysical claim about the ontological foundations of nature; as such, it is a philosophical claim rather than a specifically Christian claim. If the identification was made in order to reassure his Christian readers that the natural law tradition stemming from ancient Rome does not escape God's providence,<sup>8</sup> then it is a claim about the scope of Christianity rather than about the essence of natural law. And finally, if the identification was intended to advance the central claim of divine prescriptivism, i.e., that the natural law is not known until nature is known as God's handiwork, then Aquinas would not have argued that the eternal law is nothing less than God's providential plan known *per se* only by the blessed in heaven.<sup>9</sup>

Furthermore, if Aquinas had intended his reference to eternal law and

divine providence to place natural law only within the realm of Christianity, then he would not have argued that natural law is an inadequate guide to salvation.<sup>10</sup> Nor would he have stated that natural law is both knowable and binding to non-Christians:

Moral precepts derive their efficacy from the very dictate of natural reason. (*S.T.* I-II.100.11c)

The moral laws of the divinely revealed Ten Commandments, or Decalogue, belong to the natural law (*S.T.* I-II.100.1c); and “all ‘moral’ precepts belong to the law of nature”—even the moral precepts divinely revealed in the Decalogue to the Jews. (*S.T.* I-II.100.1c)

All know the truth to a certain extent, at least to the common principles of the natural law (*S.T.* I-II.93.2c); and, the most fundamental precepts of natural law are within the heart of every human. (*S.T.* I-II.94.4c & 6c)

All moral precepts are either derived from the moral precepts of the Decalogue, or derived from the obligations to love God above all and neighbors as oneself—as are the Decalogue’s moral precepts. (*S.T.* I-II.100.3c)

Natural law precepts bind even the Gentiles. (*S.T.* I-II.98.5c)

Human nature has sanctions for violating the rule of reason. (*S.T.* I-II.91.6c)

At no particular time, does the absence of grace necessitate a violation of the moral precepts. (*S.T.* I-II.109.8)

These texts conclusively show that Aquinas intended to expound a natural law morality that binds all human beings, and not exclusively Jews and Christians.

Arguments showing that Aquinas intended to establish the natural moral law as an ethical system binding all human beings do not however suffice to prove that he succeeded. It is, at the very least, conceivable that he failed, either because his ethics lacks whatever is essential to a viable natural law theory, or because his natural law tenets cannot surmount the formidable objections which with this section opened, namely, that his natural law claims cannot overcome their theological context, the prevalence of human wickedness, nor the moral teleology that identifies the last end as heavenly bliss.

### **Sin and Moral Insight: Epistemological Lessons of Moses’s Decalogue**

The argument that the theological context in which Aquinas explicated the natural law precludes identifying him as a natural law theorist or his ethics as a natural law receives its greatest support from Aquinas’s own identification of the Decalogue’s moral precepts as essential and central to his natural law (*S.T.* I-II.100.1). Aquinas believed that the Decalogue with its moral and ceremonial

precepts was revealed by God to Moses.<sup>11</sup> If, then, divine revelation of the Decalogue is indispensable for knowing the natural moral law, Aquinas's natural law formulation cannot be other than a Judeo-Christian ethics masquerading as humanity's code of conduct.

But, if this were so, then it would not be possible for the moral precepts of the Decalogue to be known by anyone who did not believe that God spoke to Moses. Piety towards one parents would not have been a common expectation in the ancient world nor would murder have been proscribed across the globe. Moreover, if Aquinas had considered divine revelation a necessary prerequisite for knowing the Decalogue's moral precepts, he would not have argued that these precepts are paradigmatic instantiations of the self-evident obligations to discharge one's debts and to avoid harming others.<sup>12</sup>

Nevertheless, Aquinas does write that the Decalogue was revealed "at a time when the natural law began to be obscured on the account of the exuberance of sin" (*S.T.* I-II.98.6c). These words, however, are ambiguous. Do

**Sin weakens  
moral insight into  
particulars.**

they mean that it is impossible for moral obligations to be known without believing that God spoke to Moses? Or do they mean that revelation focuses our attention on the moral salience of certain facts that sin would have us ignore or misconstrue?

In *S.T.* I-II.100.3 ad 1, Aquinas argues that the love precepts are principles of the Decalogue's moral precepts and that, as such, they need not be revealed in the Decalogue. This means that human wickedness had not yet made it necessary for God to reveal that one should love neighbors and God. Indeed, in *S.T.* I-II.99.2 ad 2, Aquinas argues that sin does not obscure the universal principles of natural law but only particular applications.<sup>13</sup> In such cases, the sinful applications are incongruous with their principles—even if their incongruity is not recognized until it is divinely revealed that the alleged entailment is not necessary. Consider, for instance, how racism blinded many Americans to the evils of segregated schools, restaurants, drinking fountains, bathrooms, and seats on buses. Such practices could not be reconciled with neighborly love—as the Christian preacher Martin Luther King Jr. argued so persuasively.<sup>14</sup> King's arguments, moreover, helped persuade not only Christians but also others that segregation was harmful and hence impermissible. For although the wickedness of racism obscured the evil of segregation, it could not obscure the obligation to avoid harming.

Sin cannot obscure the basic norms of Thomistic natural law because unlike other moral norms, they are self-evident, and known as true through the meaning of their terms. As a result, the epistemic status of primary and non-primary precepts differ: only the primary precepts are "written on the human

heart” and cannot be obscured by human wickedness.<sup>15</sup>

The inability of sin to obscure the universal norms of natural law means that it is not possible for any human being to be invincibly ignorant of the natural moral law—even if it also means that some humans may be invincibly ignorant of some aspect of morality due to factors beyond their control, e.g., being reared in accord with a deeply ingrained practice that is evil. As a result, even though invincible ignorance may excuse the practitioners of certain particular acts, none are excused from adherence to natural law.

Moreover, if this were not the case and the belief that the Decalogue was divinely revealed were a necessary condition for knowing the natural law, then all those who do not believe that God spoke to Moses would be totally ignorant of the moral law and would not be culpable for acting immorally in any way (since invincible ignorance excuses<sup>16</sup>). Furthermore, if belief in divine revelation were necessary for knowing the natural law, then it would not be possible for non-believers to come to realize that a certain practice is immoral without becoming believers in divine revelation. But, divine revelation is not necessary, for instance, for knowing that men and women are equals—even though the proclamation of that equality in *Genesis* 1:27 may lead some to believe in sexual equality.

If, then, divine revelation is unnecessary but helpful in enabling one to come into an awareness of a moral truth, moral knowledge honors a basic Thomistic distinction between the ability of objects to be known, i.e., their intelligibility, and the cognitive abilities of human beings whereby these objects are known. This distinction was used by Aquinas when he argued that “some matters connected with human actions are so evident, that after very little consideration one is able at once to approve or disapprove of them by means of these general first principles: while some matters cannot be the subject of judgment without much consideration of the various circumstances, which all are not competent to do carefully, but only those who are wise” (*S.T.* I-II.100.1c).

Aquinas does not simply distinguish between the intelligibility of objects and cognitive abilities, but he also argues that things can be known in more than one way and that the “sciences are differentiated according to the various means through which knowledge is obtained” (*S.T.* I.1.ad 2). He argues, for example, although both the astronomer and the naturalist may prove that the earth is round, the astronomer does so through mathematical considerations, while the naturalist uses considerations pertaining to the earth’s curvature, such as differences in the length of shadows cast at the same time in different places (*Ibid*). The differences in method between the astronomer and the naturalist arise from their use of different principles, e.g., the principles of mathematics versus sense perceptions of things like shadows. It is then the various principles

of knowledge that diversify the sciences.

The classification of knowledge according to its epistemology establishes a “means-test” that can be used to determine whether a moral precept is a sectarian precept relying upon faith. If the obligations of Aquinas’s morality are derived from principles knowable only through religious faith, then his morality is a divine law binding only believers.<sup>17</sup> If the norms are universally accessible, then his morality is a natural law binding all. Let us call this identification of principles the “Alpha test” and use it to determine whether something is known through faith or through nature.

Use of the Alpha test shows that Thomistic morality is actually a natural law morality that can be known by all. In the words of Aquinas: “Now since human morals depend on their relation to reason, which is the proper principle of human acts, those morals are called good which accord with reason, and those are called bad which are discordant from reason” (*S.T. I-II.100.1c*). Furthermore, since Aquinas understands the acts of reason to proceed from principles that are naturally known, i.e., that are self-evident, the acts of practical reason proceed from the Bonum Precept (*S.T. I-II.94.2c*) as well as from the love precepts which are the principles of the Decalogue’s moral precepts (*S.T. I-II.100.3 ad 1*). Since such naturally known principles do not presuppose faith, they identify his morality as a natural law binding all.

The Alpha test is useful not only in differentiating sectarian and nonsectarian moralities, but also in determining whether a particular person holds a conviction through faith or nature.<sup>18</sup> After all, as Aquinas points out: “. . . there is nothing to prevent a man, who cannot grasp a proof, accepting, as a matter of faith, something which in itself is capable of being scientifically known and demonstrated” (*S.T. I.2.2 ad 1*). Accordingly, it is possible that a particular person may believe something to be obligatory through faith, even though that obligation is knowable through nature. For example, a devout believer may hold that honor is due to parents only because God said so through the Decalogue; yet, insofar as the obligation of honoring parents is knowable without revelation, the obligation itself is a natural law.

Since this is so, God not only revealed in the Decalogue various precepts of divine law that could not otherwise be known, but he also revealed various natural law precepts that could otherwise be known. Accordingly, the context of a precept does not suffice to determine whether or not it is a natural law. A precept is a natural law, even within the context of the divinely revealed Decalogue, whenever the Alpha test identifies that precept to be based upon naturally-known principles. Thus, natural law is philosophical rather than theological. To assert this is not, however, to also assert that natural law cannot be treated theologically, insofar as anything can be treated theologically by examining it in relation to God, as Aquinas argues (*S.T. I.1.7c* and *ad 2*).

Accordingly, if something is being considered in relation to the God of Faith, or to the last end of the next life, then it is being treated theologically (Houser 1995). Since this is so, anything classifiable by the “means-test” as philosophical can also be treated theologically by adding a relationship to that which is revealed only through faith. Such a consideration does not undermine or distort the autonomy of philosophy—at least not within Aquinas’s thought: if sacred theology were to alter philosophical findings, then grace would overturn nature rather than presupposing it. That the harmony of nature and grace is echoed in the harmony of philosophy and theology is a cornerstone of Aquinas’s thought.

This means that philosophical claims need not be distorted either by being placed within a theological context or by being removed from it. It also means that the natural law presented in the *Summa Theologica* cannot be characterized as exclusively sectarian, since its primary precepts are intelligible through nature. Such intelligibility suffices for these precepts to be objective—even if they de facto become known primarily through a particular religious tradition. For example, the objectivity of arithmetic or the Pythagorean theorem would not be affected, even if these were to be known primarily through some Pythagorean cult. Likewise, even if natural law morality is known only to members of a particular tradition, its principles would still suffice for characterizing it as intrinsically non-sectarian, objective, and universally accessible.

Thus, since Aquinas’s Alpha test suffices for distinguishing obligations that are universally accessible from those that are purely sectarian, the criterion of whether a claim is universally accessible depends neither upon its textual context, nor upon the ends or purposes to which the claim is put. As a result, Aquinas’s natural law can be considered apart from the theological context of the *Summa Theologica* without being distorted. However, given the theological context of the *Summa*, no claim should be taken as philosophical without passing Aquinas’s own Alpha test.<sup>19</sup>

Furthermore, since the gist of the Alpha test is that the principles of knowledge specify the resulting types of knowledge, the obligations of natural law and those of faith are differentiated by their principles—even if those obligations can be expressed in the same words. Accordingly, Aquinas did not conflate natural law and revelation when he argued that the love precepts “[as stated in Matt. xxii. 37, 39] are the first and common precepts of natural law, that are self-evident to human reason, either through nature or through faith” (*S.T.* I-II, 100.3, ad 1).<sup>20</sup> The love-obligations to God, neighbor, and self can belong both to natural law and to Christian morality—without involving a reduction of one to the other—because God, neighbor, and self can be understood either according to the light of nature or the light of faith. The light of nature identifies God as the ultimate cause of existence, while neighbors and self are identified as beings sharing a common human nature; the light of faith

identifies God as the Redeemer and the giver of charity's friendship, while neighbors and self are identified as partakers of that friendship. Since love is specified by how the beloved is known, different types of love arise from considering God as the ultimate cause than arise from considering God as the Redeemer. Likewise, different loves arise from considering neighbors as fellow human beings than from considering them as the friends of God.

Both of these loves obligate loving God above all and neighbors as oneself. Hence, these loves harmonize with each other, while emphasizing different ways of seeing God and neighbors. As a result, Christians have, as it were, a double sight whereby they know and love God and neighbors by the light of faith and nature. The resulting double loves—and double obligations—enable Christian morality and natural law to reinforce each other without also being reducible to each other.

## **Moral Teleology and Eudaimonia**

Natural law is teleological: its indefeasible obligations are grounded upon the necessity of eudaimonia, the overarching last or ultimate end of human life. Ascertaining the identity of this end has been an explosive issue within Thomism.<sup>21</sup> It threatens to impale Thomist natural law on the horns of being either oxymoronic or without indefeasible necessity. For on the one hand, if the obligatory force of natural law is drawn from the heavenly vision of God (the Beatific Vision), then natural law's obligatoriness would be revealed only to the faithful and would be unknown to others—just as the Divine Prescriptivists argued in chapter 2. On the other hand, if natural law's end is this life's natural last end, then—upon the supposition that the natural last end lacks the necessity of the heavenly end—the necessity of natural law would be vacated, and moral absolutes would be nonexistent. Either way, Thomistic natural law would fail as a natural law: its end would be either supernatural or defeasible. This dilemma can be defeated by grabbing the second horn and arguing that natural law is based on an end that suffices for indefeasible obligations, even though it is other than the Beatific Vision. Before exploring this resolution in the next few sections, let us note that this dilemma presupposes that the Beatific Vision is an absolutely necessary end; and, if this were true, then salvation whereby attaining the Beatific Vision becomes possible could not be an utterly free gift of God—as all Christians hold.

### **Whether Thomism Permits a Natural Last End**

It is possible for Christians to argue that to identify any end of this life as eudaimonic is to betray not only Aquinas's identification of the ultimate last end

as seeing God face-to-face,<sup>22</sup> but also his argument that there is only one last end.<sup>23</sup>

A powerful, though ultimately flawed, version of this argument against a natural last end in Thomism has been advanced by Denis Bradley (1997). He, in effect, argues that a Thomistic natural law is impossible, since Aquinas's ethics is teleological and eudaimonic, and since only the heavenly Beatific Vision of God suffices for eudaimonia. Accordingly, Bradley argues human nature would be "in vain"<sup>24</sup> if there were no heavenly vision of God. Bradley supports his case against a natural last end by arguing that, since Aquinas offers a *philosophical* argument that only heaven's Beatific Vision of God is capable of completely quieting the intellect's drive to understand as well as the will's thirst for perfect goodness, philosophy identifies no natural last end.

But Bradley is only partially correct in characterizing as philosophical Aquinas's argument that nothing other than the heavenly vision of God suffices to fully satisfy our deep desires for perfect goodness and for perfect understanding of the First Cause. For although its premises are philosophical insofar as none of the premises are explicitly theological or scriptural, one of its *presuppositions* is not philosophical, but based upon Scripture and Divine Revelation in as much as the argument presupposes that heavenly bliss awaits the saved—and, according to Aquinas, this is knowable only from explicit revelation.<sup>25</sup> This means not only that the argument about what constitutes heavenly bliss is not purely philosophical, but also that the heavenly Beatific Vision can neither be used as a premise in a purely philosophical argument about whether there is a natural last end, nor be used as a premise in a purely philosophical argument that human nature would be "in vain" if there is no heavenly happiness.

In other words, the deep human desires for perfect goodness and for perfect understanding of the First Cause could not be recognized as *signs* of the Beatific Vision, if the Beatific Vision had not already been revealed. After all, the man who rejected Anselm's ontological argument on the basis of variations in human conceptions of God (*S.T.* I.2.1) is *not* a man who could consistently accept intellectual and volitional desires as sufficient *evidence* that heavenly bliss is the ultimate human destiny. Subjective and variable conceptions and desires are inadequate principles for establishing whether their objects exist independently of the self.<sup>26</sup> Thus, if the Beatific Vision had not been revealed as the destiny of the holy, the desires for perfect knowledge and perfect goodness could not be known as other than foolish whimsey—perhaps, as whimsical as wishing that rain were beer.<sup>27</sup> As Steven Long explains, the desire for good-in-general may become, under the influence of grace, a desire for the Beatific Vision; it is not naturally such.<sup>28</sup>

The elusiveness of perfect knowledge and perfect goodness, moreover,



does not preclude identifying the acts of practical and theoretical reason to be the end of this life. After all, such acts were identified—through the function arguments of both Plato and Aristotle<sup>29</sup>—as the end of this life. Aquinas likewise considers the acts of reason to be this life’s end insofar as they enable one to contemplate God and to act morally—even though, he also acknowledges that the limitations of this life designate this twofold natural end to be an imperfect form of happiness.<sup>30</sup> Therefore, it is clear that Aquinas holds that this life has an end—albeit an imperfect one. The end is imperfect because it cannot contemplate God perfectly, instead it can only contemplate God with various limitations.<sup>31</sup> Nevertheless, imperfect happiness contemplates the same being who is contemplated perfectly through heaven’s Beatific Vision. In other words, the primary end of this life and the next is God.

Furthermore, Aquinas would not support the attempt of some Christians to advance their religion by denying a natural last end: he could not do so without being grossly inconsistent or by arguing against the Christian view of human nature. This is because to deny the natural last end is necessarily to deny the

**“Imperfect happiness that can be had in this life, can be acquired by man by his natural powers, in the same way as virtue, in whose operation it consists” (S.T. I-II.5. 5c).**

existence of human nature. And Christians cannot consistently propose the nonexistence of human nature, since Christianity holds that Original Sin damaged human nature. As the Catechism of the Catholic Church puts it, in paragraph 419, “We, therefore, hold with the Council of Trent, that Original Sin is transmitted with human nature, ‘by propagation, not by imitation’ and that it is . . . ‘proper to each.’” Hence, since Christianity is committed to the existence of human nature, it must also be committed to that nature having a function and a natural last end.

In addition, if it is argued that this life lacks a natural last end, it must also be argued that Aquinas was wrong to characterize moral acts that are not deficient in intention, object, or circumstances as perfect.<sup>32</sup>

### **Whether This Life’s End Suffices as Thomism’s Moral Telos**

If it is granted that there is a natural last end of this life, it need not also be acknowledged that this last end suffices per se to ground morality. Dennis Bradley, for example, argues that the inadequacies characteristic of this life’s happiness suffice to deprive this life’s happiness of eudaimonic necessity, thereby entailing either the impossibility of moral eudaimonism or the impossibility of eudaimonic morality being other than a religious ethics. As put

by Bradley:

No autonomous philosophical ethics . . . can guide men to their ultimate supernatural end, and consequently not one of them can adequately clarify their natural . . . ends which can only be rightly understood in subordination to the ultimate end. . . . But to argue . . . that a Thomistic philosophical ethics can and should ignore man's supernatural end, suppresses the precise end-means relationship that structures Aquinas's own moral science. (1997, 492–3)

This argument mistakenly presupposes that the natural last end, or the end of a eudaimonic natural law, is neither constitutive of the ultimate last end, nor an indispensable means to that end. But heaven awaits only the morally good; hence, morally good, or perfect, acts are a necessary condition of attaining heaven—even though Aquinas argues that they are not also sufficient.<sup>33</sup>

Moreover, it is the contemplation of God that constitutes the best happiness both in this life and the next—even though the ways in which the contemplation occurs are vastly different. In other words, both the imperfect eudaimonia of this life and the perfect eudaimonia of next life unite us to the same being, namely, God. Thus it is not the case that these ends are mutually exclusive or even not ordered to each other as imperfection is ordered to perfection.<sup>34</sup> As put by Aquinas:

Man, however, has a twofold final good, which first moves the will as a final end. The first of these is proportionate to human nature since natural powers are capable of attaining it. This is *the happiness about which the philosophers speak*, either as contemplative, which consists in the act of wisdom, or *active, which consists first of all in the act of prudence, and in the acts of the other moral virtues as they depend on prudence*. The other is the good which is out of all proportion with man's nature because his natural powers are not enough to attain to it either in thought or desire. (*Truth* q. 14. 2c; emphases mine)

Aquinas predicates happiness/eudaimonia of acts other than the Beatific Vision, because happiness/eudaimonia is a perfect activity of reason and because reason can act perfectly in this life when engaged in contemplating God or when ordering human actions prudentially. The perfection of prudential acts is the perfection of practical reason; this perfection arises—not from the highest possible end of eternal life<sup>35</sup>—but from not being deficient in goodness. In other words, this perfection is none other than reason's wise ordering of human acts, that is, in accord with the truths about God and others so that one acts morally. This is what Aquinas calls imperfect beatitude.<sup>36</sup>

If Aquinas is correct that eudaimonic happiness is an analogous term that may be predicated of rational acts that are not the very best possible in all worlds, then the argument against the possibility of an eudaimonic Thomistic natural law fails: the teleological good that suffices for the indefeasibility of

natural law's obligations need not be heaven's beatific vision—nor even this life's contemplation of God. After all, as pointed out by Kevin Staley: “Aquinas does not appeal to contemplation as the highest good when demonstrating the rightness and wrongness of other actions” (1993, 122).<sup>37</sup> Indeed, contemplation in this life requires moral discernment:

Aquinas argues that special moral virtues are required for the proper use of speculative ones . . . A person can contemplate too much or at the wrong time, for example. But while too much of a good thing is possible, too much of that good in virtue of which all else is said to be good and right does not seem possible. So although Aquinas argues that contemplation is man's highest good, contemplation does not qualify as the highest good in a normatively relevant way—at least in the natural order of things. (Staley 1993, 121–2)

The need to discern the moral parameters of contemplation means that the good that grounds natural law is not a good of speculative reason but a good of practical reason. It is not the contemplation of God that grounds natural law, but the good of acting in accord with the truths known and commanded by practical reason. And this is nothing other than to act perfectly—without any deficiency in goodness; it is to act morally by discharging one's duties to others and to God; it is ultimately to achieve moral perfection through the virtues; it is to become a good person.

If the argument rejecting a natural last end had not failed, Aquinas would have had to repudiate several arguments of Aristotle: namely, the arguments that rationality identifies the human essence and that happiness is predicable of the excellent activities of reason as well as the argument that practical reason functions perfectly when it functions morally, i.e., without defect in commanding acts in accord with the truth. Predicating happiness of such activity, moreover, establishes the non-defective acts of practical reason as the most minimal form of eudaimonia. Let us call this minimalist eudaimonism “moral eudaimonism.” In the next chapter we shall see that this minimalist form of eudaimonia is fragile—too fragile to withstand intense suffering apart from the contemplation of God.

### **Is Moral Eudaimonism Inimical to Religious Faith?**

The ground of obligation in natural law is eudaimonia, as argued in both Parts One and Two. Natural law's adoption of eudaimonia as its ground for necessary obligations may arouse in the religious a deep fear: if acting morally can be this life's happiness, then isn't religious faith superfluous?

The moral eudaimonism of natural law would make religious faith superfluous only if it were the case that the essence of religion is constituted by moral obligations for the sake of happiness in this life and the case that natural

law is better than religion in facilitating the happiness of this life. Most religions deny both of these conditions. The first condition is rejected by those religions that define themselves by their deity or prophets rather than by their morality as well as by those religions that hold that the happiness of the next life far surpasses that of this life. For instance, not only does Hinduism define itself by its polytheism, and Islam define itself through allegiance to the prophet Mohammed, but these also hold that the happiness of the next life (if attained) far surpasses the happiness of this life. Furthermore, the second condition is rejected by those religions that deny that anyone can be happy in this life without assistance from religious faith—either because religious faith provides necessary motivation for acting morally, especially when suffering, or because divine assistance is necessary for acting morally. Aquinas, for instance, argues that moral excellence is not attainable without God’s grace: for, while one can resist any given temptation and be good, one cannot resist all temptations and achieve moral excellence without the help of God.<sup>38</sup>

Moreover, even though Aquinas teaches that happiness can be attained in this life (*S.T. I-II.5.3*), he characterizes it as necessarily imperfect relative to Christian bliss in two ways. First, he argued that the thirst to understand life that leads to God seeks to understand God completely without the constraints of finite concepts (*S.T. I-II.5.5*). Only the heavenly vision of God in the next life proceeds without finite concepts and totally satisfies the desires of the human heart and mind.<sup>39</sup> Secondly, Aquinas argues that only special graces make it possible to enter into a love relationship with God (*S.T. II-II.23.1,2*), based on special revelations whereby He communicates,<sup>40</sup> to believers, the secrets of His heart (e.g., the triune relationship between Father, Son, and Holy Spirit; His love for the world; the Son Who died, rose again, and established a Church; and the bliss that He gives to those who love Him). This love relationship or friendship is that of Christian charity, and it far surpasses the contemplative unions of natural reason and love.<sup>41</sup> As a result, the demands of Christian bliss render natural law an inadequate guide for Christians,<sup>42</sup> although perhaps not for others.<sup>43</sup> Thus, since everlasting life is more than a earthly moral life, the religious need not fear that the moral eudaimonism of natural law will render faith superfluous.

**“[L]ove is of God;  
every one who loves  
is begotten by God  
and knows God” (1  
John 4:7).**

Another reason why the religious need not fear the natural law is that it does not establish any particular religious faith. For although natural law binds *believers* in God to acts of natural religion (as set out in chapter 16), these acts are merely acts of justice whereby one discharges one’s obligations to the divine benefactor. As such, they are compatible with a

variety of religious beliefs. For instance, they characterize the traditional religious practices of both the ancient Greeks and Romans.

Another reason why Christians especially need not fear that natural law will make religious faith superfluous is that moral turpitude<sup>44</sup> makes revelation invaluable for ascertaining the details of the moral law. Aquinas accordingly argued that the moral law was revealed, as the Decalogue,<sup>45</sup> at the time of Moses to convict humans not only of being too proud of their abilities, but also of being too proud of their knowledge.<sup>46</sup> Its revelation showed humans that, despite their grasp of basic norms,<sup>47</sup> they did not fully know what they should have known, and, on the whole, they were not acting as they should be acting. The Decalogue consists of prescriptions of gratitude to benefactors (God and parents) and proscriptions of harm in deed, word, and thought that instantiate the obligations to love God and neighbors.<sup>48</sup> The proscription of coveting whereby others are harmed by one's thought remains particularly potent today as the human race continues to struggle with greed, racism, and other forms of prejudice. Fortunately, those of good will who fail to realize the viciousness of their own practices often need only to encounter the truth as lived by believers to see and to reject the viciousness of their own practices. This is the power of good role models, especially when they are facing down an evil practice, either by refusing to go along or by leading protests or by practicing civil disobedience. Moral leaders illuminate the good in such a way that they facilitate moral evolution. For instance, the American civil rights movement made its greatest advances by making it obvious that Jim Crow laws were harmful and therefore a violation of the obligations to love God and neighbor that, according to St. Paul, are written on the heart.<sup>49</sup>

Finally, there is a key difference between the love of God and neighbor as prescribed by natural law and by Christianity. Natural law prescribes that God should be loved as the providential font of good, while Christianity prescribes that He be loved as the font of eternal life and divine fellowship.<sup>50</sup> The different bases of these loves and their different modes do not render them antithetical; after all, they are prescribing the same being to be loved above all.<sup>51</sup> The obligations of neighborly love are likewise differentiated according to whether the standard is human nature (Love thy neighbor as thyself), or Christ (Love as I have loved you<sup>52</sup>). These loves are compatible—as explained by Aquinas:

Now self-love may stand in a threefold relationship to charity. In one way, it is contrary to charity, when a man places his end in the love of his own good. In another way, it is included in charity, when a man loves himself for the sake of God and in God. In a third way, it is indeed distinct from charity, but is not contrary thereto, as when a man loves himself from the point of view of his own good, yet not so as to place his end in this his own good: even as one may have another special love of one's neighbor, besides the love of charity which is

founded on God, when we love him by reason of usefulness, consanguinity, or some other human consideration, which, however, is referable to charity. (*S.T.* II-II.19.6c)

These differences would sunder the usefulness of natural law for Christian morality, if it were not the case that Christians believe that God is also the Creator and that Jesus Christ came to save human beings and restore their nature weakened by the Fall. The restoration and transcendence of nature offered by Christ means that from the perspective of Christianity, natural law is not a threat but expresses the Creator's providence.<sup>53</sup>

In any case, however *religious believers* resolve these questions,<sup>54</sup> it suffices for our purposes to note that natural law need not be inimical to any religious faith centered on the divine that also identifies the bliss of the next life as better than earthly joys. Neither must it be inimical to any religious faith holding that divine blessings make the moral life and earthly joys possible for all, and that love is the key to morality and life.

## Notes

1. See, for instance, Mark Jordan (1993, 233). Against this position, Ralph McInerny (1993b) recounts the famous 1933 debate amongst Thomists about whether a Christian philosophy is possible and argues that a philosophical ethics is possible: its relation to moral theology is as a lower berth is related the upper ". . . without a foot on the [lower] you will never get to the [upper]" (38).

2. Oscar J. Brown (1981) focuses upon the indefeasible normativity of moral rules and argues that faith supplies what is lacking in natural reason, since natural reason is incapable of elaborating "any but the most provisional and tentative of determinate moral rules"(58). Against this position, I argue that the self-evidence of moral precepts suffices for indefeasible obligatoriness without necessarily relying upon faith (see subsequent chapters).

3. For a discussion of such views see V. J. Bourke (1976).

4. Hittinger (1987, 157): "Revelation brings into effect the obligations to love and obey God above all else. Both are superordinate obligations, and neither is justified in, or by, the foundation explicated prior to faith."

5. *S.T.* I-II.91.2c: "It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law."

6. If God's creative and redemptive acts can be considered as two voices, then the tone of both voices, for Aquinas, can be nothing other than friendship: since God calls us to union with Him through Christian charity, which Aquinas explains is nothing other than divine friendship.

7. The need of Christianity for natural law was recently argued by Jean Porter (1999, 177): “Christian theology stands in need of a category of natural goodness apart from Christian revelation or grace. Without some such category, it is impossible to preserve the doctrine of the creation, except as a bare abstraction; this means that we cannot hold onto the idea of Christ as Redeemer either. The scholastic concept of the natural law is one way of giving social expression to that affirmation, and therefore to the fundamental doctrinal commitments of Christianity.”

8. Aquinas’s argument for divine providence in *S.T.* I.20.2 is twofold: first, God is the cause of all things; secondly, since being is good, and since to love is to will good, God wills good to all.

9. *S.T.* I-II.93.2c: “I answer that, A thing may be known in two ways: first, in itself; secondly, in its effect, wherein some likeness of that thing is found: thus someone not seeing the sun in its substance, may know it by its rays. So then no one can know the eternal law, as it is in itself, except the blessed who see God in His Essence. But every rational creature knows it in its reflection, greater or less. For every knowledge of truth is a kind of reflection and participation of the eternal law, which is the unchangeable truth, as Augustine says (*De Vera Relig.* xxxi). Now all men know the truth to a certain extent, at least as to the common principles of the natural law: and as to the others, they partake of the knowledge of truth, some more, some less; and in this respect are more or less cognizant of the eternal law.”

10. Aquinas: *S.T.* I-II.91.4c: “But since man is ordained to an end of eternal happiness which is inproportionate to man’s natural faculty . . . it was necessary that, besides the natural and human law, man should be directed to his end by a law given by God.”

11. Aquinas argues that the Old Law given to the Jews and revealed in the Decalogue contains three types of obligations: moral, judicial, and ceremonial. Only the moral obligations, called precepts of the natural law, bind the Gentiles. See *S.T.* I-II.99.2, 3, and 4, and especially *S.T.* I-II.98.5c: “The Old Law showed forth the precepts of the natural law, and added certain precepts of its own. Accordingly, as to those precepts of the natural law contained in the Old Law, all were bound to observe the Old Law; not because they belonged to the Old Law, but because they belonged to the natural law. But as to those precepts which were added by the Old Law, they were not binding on any save the Jewish people alone.” Also see *S.T.* I-II.100.1 and 3.

12. *S.T.* I-II.100.8c: “. . . the precepts of the second table contain the order of justice to be observed among men, that nothing undue be done to anyone, and that each one be given his due; for it is in this sense that we are to take the precepts of the Decalogue.”

13. See *S.T.* I-II.99.2 ad 2: “It was fitting that the Divine law should come to man’s assistance not only in those things for which it is insufficient, but also in those things in which human reason may happen to be impeded. Now human reason could not go astray in the abstract, as to the universal principles of the natural law; but through being habituated to sin, it became obscured in the point of things to be done in detail. But with regard to the other moral precepts, which are like conclusions drawn from the universal principles of the natural law, the reason of many men went astray, to the extent of judging to be lawful, things that are evil in themselves. Hence there was need

for the authority of the Divine law to rescue man from both these defects” (emphasis mine).

14. See, for instance, *A Letter from the Birmingham Jail*.

15. *S.T.* I-II.94.4c and 6c.

16. See *De Malo* qu. 3, a. 8, wherein Aquinas explains that culpable ignorance involves willing to be ignorant, being negligent about making the effort to know, and directly or indirectly willing something upon which ignorance follows, e.g., willing excessive drinking or not willing to resist a passion that would cause ignorance.

17. Aquinas held that divine law is divided into the Old Law and the New Law (*S.T.* I-II.91.5). The Old Law was given only to the Jews through Moses in preparation for the coming of Christ (*S.T.* I-II.98.4). Aquinas also argued on the basis of *Hebrews* 1.2 and 2.2 that these laws can be differentiated by how God communicated them to us; “. . . because in the New Testament ‘God hath spoken to us by His Son,’ whereas in the Old Testament ‘the word was spoken by angels’” (*S.T.* I-II.98.3c). Finally, Aquinas argued that only the Jews were bound by the Old Law per se: “The Old Law showed forth the precepts of the natural law, and added certain precepts of its own. Accordingly, as to those precepts of the natural law contained in the Old Law, all were bound to observe the Old Law; not because they belonged to the Old Law, but because they belonged to the natural law. But as to those precepts which were added by the Old Law, *they were not binding on any save the Jewish people alone*. The reason of this is because the Old Law . . . was given to the Jewish people, that it might receive a prerogative of holiness, in reverence for Christ Who was to be born of that people” (*S.T.* I-II.98.5c). Emphasis added.

18. N.B. *S.T.* II-II.1.5c: “[I]t is impossible that one and the same thing should be believed and seen by the same person. Hence it is equally impossible for one and the same thing to be an object of science and of belief for the same person. It may happen, however, that a thing which is an object of vision or science for one, is believed by another: since we hope to see some day what we know or believe about the Trinity, according to 1 *Cor.* xiii. 12: *We see now through a glass in a dark manner; but then face to face . . .* In like manner it may happen that what is an object or vision or scientific knowledge for one man, even in the state of a wayfarer, is, for another man, an object of faith, because he does not know it by demonstration.” *S.T.* II-II.1.4c: “Wherefore it is evident that neither faith nor opinion can be of things seen either by the senses or by the intellect.”

19. That philosophical arguments are within the *Summa* is not too surprising if we remember both that Aquinas wrote the *Summa* for medieval students of theology, who had already studied philosophy for years, and that Aquinas wrote with the hope of settling divisive issues with decisive rather than partisan or sectarian arguments. Indeed, Ralph McInerny (1993a, 25–38) argues that philosophy—Aristotelian philosophy, in particular—was indispensable in the construction of key arguments in the *prima secundae*.

20. *S.T.* I-II.100.3 ad 1; translation mine: “Ad primum ergo dicendum quod illa duo praecepta [obj. one: “Diliges Dominum tuum, et Diliges proximum tuum, ut habetur Matt. 22] sunt prima et communia praecepta legis naturae, quae sunt per se nota rationi humanae, vel per naturam vel per fidem. Et ideo omnia praecepta decalogi ad illa duo



referuntur sicut conclusiones ad principia communia.”

21. In the middle of the last century, this issue was debated in terms of whether there is a natural desire for the Beatific Vision. See, for example, Henri de Lubac (1946) and William O’Connor (1947, 1948, 1949a, 1949b, 1953).

22. *S.T.* I-II.3.8.

23. *S.T.* I-II.1.5.

24. Bradley (1997, 431): “The philosopher can only argue that if men do not attain the vision of God, then, men, lacking any possibility of attaining beatitude are ultimately creatures made ‘in vain.’”

25. See *S.T.* I-II.2.ad 4; *S.T.* I.1.1 and *S.T.* I.12.1.

26. On the other hand, if a necessary desire were identified as the ground for the existence of the Beatific Vision, and if that necessary desire could be identified as necessarily caused by none other than God, then it could be argued that since God would betray His own goodness by creating a necessary desire without also providing the possibility of satiating that desire in the Beatific Vision, the Beatific Vision must be possible. This argument would be philosophical; and, as such, it would be independent of Christian revelation about the nature of the Beatific Vision. Aquinas does not, however, make this argument. He settles simply for saying that the will’s natural desire for goodness is a sign of its ultimate end in the Beatific Vision, since it would otherwise be in vain. Perhaps Aquinas hesitated because the philosophical argument restricts God’s creative freedom by precluding the possibility that God created some desires in vain. Perhaps he hesitated because the argument restricts God’s redemptive freedom by arguing that nature would be in vain unless the Beatific Vision remained a possibility after Original Sin. Perhaps he hesitated because the argument would entail that all who lack the Beatific Vision would necessarily be frustrated and unhappy—even the unbaptized infants in limbo, who are as happy as humanly possible.

27. Thomas More’s butler wished rain were beer in Robert Bolt’s *Man for All Seasons*.

28. In the words of Steven Long, “But in and of itself this natural desire is not the desire for supernatural beatitude, for the good-in-general is neither naturally identical with, nor does it naturally include the divine good” (2000, 225).

29. Plato’s function argument can be found in the first book of the *Republic* (352b–353d), Aristotle’s in the first book of the *Nicomachean Ethics* ch. 7, 1097b23–1098a19.

30. *S.T.* I-II.1.8c and 5.3c. Also see the preceding arguments in this section.

31. Aquinas *S.T.* I-II.5.5c: “But every knowledge that is according to the mode of created substance, falls short of the vision of the Divine Essence, which infinitely surpasses all created substance.” I-II.3.8c: “Wherefore the intellect attains perfection, insofar as it knows the essence of a thing. If there an intellect knows the essence of some effect . . . it may be able to gather from the effect the knowledge that the cause is [but not the essence of the cause]. . . . Consequently, for perfect happiness the intellect needs to reach the very essence of the First Cause.” I-II.3.2c: “But in men, according to their present state of life, the final perfection is in respect of an operation whereby man is united to God: but this operation neither can be continual, nor, consequently, is

it one only, because operation is multiplied by being discontinued. And for this reason in the present state of life, perfect happiness cannot be attained by man.”

32. Cf *S.T.* I-II.18.3 ad 3: “However, an action is not good simply, unless it is good in all those ways: since ‘evil results from any single defect, but good from the complete cause,’ as Dionysius says.”

33. *S.T.* I-II.109.5c: “[M]an, by his natural endowments, cannot produce meritorious works proportionate to everlasting life; and for this a higher force is needed, viz., the force of grace. And thus without grace man cannot merit everlasting life; yet he can perform works conducing to a good which is natural to man.” Also see *S.T.* I-II.100.12c, wherein Aquinas argues that the moral precepts do not suffice to justify man before God.

34. It is important not to separate the two aspects of this life’s eudaimonia. In the next chapter I argue that the teleology of natural law requires a theistic eudaimonism.

35. *S.T.* II-II.47.2: “Wherefore it is clear that prudence is wisdom about human affairs: but not wisdom absolutely, because it is not about the absolutely highest cause, for it is about human good, and this is not the best thing of all. And so it is stated significantly that prudence is wisdom for man, but not wisdom absolutely.”

36. *S.T.* II-II.47.1 ad 3: “The worth of prudence consists not in thought merely, but in its application to action, which is the end of the practical reason. Wherefore if *any* defect occur in this, it is most contrary to prudence, since, the end being of most import in everything, it follows that a defect which touches the end is the worst of all” (emphasis mine).

37. Also see Staley (1993, 117–8).

38. *S.T.* I-II.109.8 ad 1: “Man can avoid each but not every act of sin, except by grace.” If this were not so, nature would be in vain (Ralph McInerny 1993b, 51).

39. *S.T.* I-II.3.8.

40. *S.T.* II-II.23.1,2.

41. *S.T.* I-II.91.4. Also *S.T.* II-II.23.1c: “[C]harity is the friendship of man for God.” *S.T.* II-II.23.5c: Charity’s “end is . . . the goodness of God; and the fellowship of everlasting happiness.” *S.T.* I-II.65.5 ad 1: “Charity is not any kind of love of God but that love of God, by which He is loved as the object of bliss, to which we are directed by faith and hope.” *S.T.* II-II.26.1 ad 1: “[C]harity tends towards the last end considered as last end.”

42. See *S.T.* I-II.109.5c: “Acts conducing to an end must be proportionate to the end. But no act exceeds the proportion of its active principle; . . . Now everlasting life is an end exceeding the proportion of human nature. . . . Hence man, by his natural endowments, cannot produce meritorious works proportionate to everlasting life; and for this a higher force is needed, viz., the force of grace. And thus without grace man cannot merit everlasting life; yet he can perform works conducing to a good which is natural to man.” Also see *S.T.* I-II.100.12c, wherein he argues that justification is other than following the moral precepts: it requires an infusion of grace.

43. *Lumen Gentium* n. 16: “Those who, through no fault of their own, do not know the Gospel of Christ or his Church, but who nevertheless seek God with a sincere heart, and, moved by grace, try in their action to do his will as they know it through the

dictates of their conscience—those too may achieve eternal salvation. Nor shall divine providence deny assistance necessary for salvation to those who, without any fault of theirs, have not yet arrived at an explicit knowledge of God, and who, not without grace, strive to lead a good life.” Also see the *Catechism of the Catholic Church*, which teaches that although Baptism is necessary for the salvation for those who have *heard* the Word of God, those who have not so *heard*—through no fault of their own—still receive sufficient grace to live moral lives and be saved. The explanation given, in the Catechism n. 1260, is that, as written in *Gaudium et Spes* 22.5, “‘Christ died for all, and since all men are in fact called to one and the same destiny, which is divine, we must hold that the Holy Spirit offers to all the possibility of being made partakers, in a way known to God, of the Paschal mystery.’ . . . It may be supposed that such persons would have *desired Baptism explicitly* [*sic*] if they had known its necessity.” A moral life is held to reflect the assistance of grace, see Pope John Paul II’s citation of *Gaudium et Spes* in *Veritatis Splendor* #3.2: divine Providence does not “. . . deny the helps that are necessary for salvation to those who, through no fault of their own have not yet attained to the express recognition of God, yet who strive, not without divine grace, to lead an upright life” (1996d, 676).

44. There are two main texts wherein Aquinas explains how knowledge of the natural law can be impeded by one’s own wickedness or one’s cultures, namely, *S.T.* I-II.94.6c and *S.T.* I-II.100.3.1.

45. In *S.T.* I-II.100.1c, Aquinas is careful to distinguish the moral precepts of the Decalogue from the ceremonial and judicial precepts and to argue that only the moral precepts belong to the natural law.

46. *S.T.* I-II.98.6c.

47. In *S.T.* I-II.94.6c, Aquinas explains that only the first and most general principles are always known. Also see *Romans* 3: 19–20: “[S]o that every mouth may be silenced and the whole world stand accountable to God, since no human being will be justified in his sight by observing the law; for through the law comes consciousness of sin.”

48. *S.T.* I-II.100.3 ad 1: “Those two principles [Love God above all; Love thy neighbor as thyself] are the first general principles of the natural law, and are self-evident to human reason, either through nature or through faith. Wherefore all the precepts of the Decalogue are referred to these, as conclusions to general principles.” St Paul concurred: *Romans* 13: 8–10: “Owe nothing to anyone, except to love one another; for the one who loves another has fulfilled the law. The commandments, ‘You shall not commit adultery; you shall not kill; you shall not steal; you shall not covet,’ and whatever other commandment there may be, are summed up in this saying [namely] ‘You shall love your neighbor as yourself.’ Love does no evil to the neighbor; hence, love is the fulfillment of the law.” Also see *Romans* 12: 9–10: “Let love be sincere; hate what is evil, hold on to what is good; love one another with mutual affection; anticipate one another in showing honor.” *Romans* 12: 17: “Do not repay anyone evil for evil; be concerned for what is noble in the sight of all. *Romans* 12: 21: “Do not be conquered by evil but conquer evil with good” (New American Bible 1992).

49. *Romans* 2: 14–15: “For when the Gentiles, who do not have the law, by nature observe the prescriptions of the law, they are a law for themselves even though they do not have the law. They show that the demands of the law are written in their hearts, while their conscience also bears witness” (*New American Bible* 1970). The Catechism of the Catholic Church (#1956) reinforces this teaching: “The natural law, present in the heart of each man and established by reason, is universal in its precepts and its authority extends to all men. It expresses the dignity of the person and determines the basis for his fundamental rights and duties.”

50. The key texts arguing that the natural love of oneself leads to naturally loving God above all are in *S.T.* I.60.3–5. This natural love of God above all is not charity; (*S.T.* I.60.5c): “Otherwise, if either of them loved self more than God, it would follow that natural love would be perverse, and that it would not be perfected but destroyed by charity.” Another key passage for our purposes is *S.T.* I.60.5.ad 4: “God, insofar as He is the universal good, from Whom every natural good depends, is loved by everything with natural love. So far as He is the good which of its very nature beatifies all with supernatural beatitude, He is loved with the love of charity.”

51. *S.T.* I-II.27.2c ad 2: “Something is required for the perfection of knowledge, that is not requisite for the perfection of love. For knowledge belongs to the reason, whose function it is to distinguish things which in reality are united, and to unite together, after a fashion, things that are distinct, by comparing one with the other. Consequently the perfection of knowledge requires that man should know distinctly all that is in a thing, such as its parts, powers, and properties. On the other hand, love is in the appetitive power, which regards a thing as it is in itself: wherefore it suffices, for the perfection of love, that a thing be loved according as it is known in itself. Hence it is, therefore, that a thing is loved more than it is known; since it can be loved perfectly, even without being perfectly known. . . . The same applies to the love of God.”

52. *John* 15:12: “This is my commandment: love one another as I love you.” Also relevant are the words of Christ in *Matt.* 25:40: “As you did it to one of the least of these my brethren, you did it to me.”

53. *S.T.* I-II.91.2c. Whether this identification of natural law with eternal law makes natural law essentially a form of Christian morality has already been discussed in a previous section of this chapter.

54. Jacques Ellul (1960, 114), for instance, argues that law “exists in order to signify something” in relationship to God. (116–7): “Regardless of its imperfections, law exists in order to remind us of three essential aspects of God’s righteousness . . . [1] Every just law and every just judgment is an announcement of Christ’s victory . . . [over demonic powers that would otherwise rule]; [2][and a prophecy of] the actual presence of God’s righteousness and the coming of His judgment; . . . [3] In the third place, law announces that God’s righteousness is objective.” Also see note 30 in chapter 14.

## *Part Four*

### **Classical and Contemporary Metaethical Challenges**

Three questions frame these chapters: (1) Whether the normativity, objectivity, and specificity of morality can be based on nature; (2) whether the theism of nature's teleology is irrelevant; and (3) whether the type of freedom, presupposed by natural law, exists. The first question is discussed in chapter 11, the second in chapter 12, and the third in chapter 13.



## ***Chapter 11***

# **Challenges to Natural Law's Normativity, Objectivity, or Specificity**

*This chapter considers three metaethical challenges to natural law, namely, that nature lacks the normativity, the objectivity, and the specificity requisite for moral obligations. We begin by considering David Hume's argument that prescriptions of what ought to be cannot be based on descriptions of what is the case. We will proceed to consider arguments against morality's objectivity mounted by J. L. Mackie, subjectivist metaethics, and subjectivist epistemology. Finally, we will consider the arguments that nature lacks sufficient specificity to establish an adequate ethics.*

### **David Hume and The Is-Ought Fallacy<sup>1</sup>**

Natural law bases its obligatoriness *somehow* upon nature. The legitimacy of this move was undercut by David Hume, the father of modern moral subjectivism. Here is the infamous passage from *Of Morals* Book Three in Hume's *Treatise of Human Nature*, which has done more than any other to discredit natural law in the eyes of moralists for the last few centuries:

I cannot forbear adding to these reasonings an observation, which may, perhaps, be found of some importance. In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the

ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an ought, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded, that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason. (Hume 1992, 469–70)

Hume thus claims that the movement from descriptive claims to normative claims is neither logical nor self-explanatory: descriptions about what is good do not entail the obligation to pursue that good. If one assumes such an entailment, one commits the “Is-Ought Fallacy.” Hume thus makes a basic logical point: what is not in the premises cannot be in the conclusion.<sup>2</sup> Obligations can thus be deduced only from obligations and not from descriptions

Thomistic natural law proponents have responded either by denying that Aquinas derives norms from descriptions, or by asserting that such derivations are legitimate. This controversy has flourished amongst Thomists mostly because opponents were using equivocal senses of “derivation.” “Derivation” has both a logical sense, whereby claims are related as premise and conclusion, and an ontological sense that conveys dependency. The latter sense enables one to say that concepts and claims may be derived from extra-mental entities, e.g., the idea of “cat,” and the claim that “cats are playful” may be “derived” from watching “Fluffy” and a ball of yarn. These diverse senses make it possible to claim that since morality depends upon nature, morality is “derived” from nature, while also asserting that Aquinas does not derive ought-claims from is-claims.

**“Since a precept of law is binding, it is about something which must be done: and, that a thing must be done, arises from the necessity of some end. Hence it is evident that a precept implies, in its very idea, relation to an end, insofar as a thing is commanded as being necessary or expedient to an end” (S.T. I-II.99.1c).**



Nevertheless, it is possible to read the quintessential text for understanding Aquinas's natural law, i.e., *S.T. I-II.94.2*, as violating the dictum against logically deriving *ought-claims* from *is-claims*. This text can be read as implying that all the ends of natural inclinations are goods; and, as such, they have normative entailments.<sup>3</sup> Such a reading, however, would convict Aquinas of deducing obligations from descriptions, if and only if descriptions of ends were not also descriptions of obligations. But if X cannot be an end without also being obligatory to some degree, to describe X as an end is nothing other than to describe an obligation to attain X.

A second argument exonerating Aquinas from committing the Is-Ought Fallacy is textual; it is based on Aquinas's identification of the first principle of morality as a self-evident obligation. The identification of this norm as self-evident means that its truth does not rely upon any type of logical derivation or deduction: it is not a conclusion but an irreducible primary.<sup>4</sup> Moreover, since this primary or basic norm is nothing other than the *Bonum Precept* (*Good is to be done and pursued, and evil is to be avoided*), it subsumes all other obligations or norms prescribing the pursuit of some particular good or the avoidance of some particular evil. In other words, all other moral norms or moral obligations are instantiations of this basic or primary norm—including those obligations to relate in a certain way to the good of a natural inclination. This means that derived norms or moral obligations ultimately rely on the practical syllogism wherein the major premise is either the *Bonum Precept* or one of its formulations, and a minor premise that identifies something as a good or as an evil. For example, the obligation to educate one's children is derived from the *Bonum Precept* obliging the pursuit of good and from a minor premise identifying education as good. Human nature thus enters into natural law arguments about moral obligations as the grounds for identifying particular goods (and evils). Thus, since the major premise in every derivation of moral obligation is none other than the *Bonum Precept* in one of its formulations, Aquinas's natural law does not commit the "Is-Ought Fallacy."

## A Problematic Universal Objectivity?

Natural law proclaims that its basic principles are as universal as human nature. Human nature, and the human ability to know that nature, are thereby held to guarantee the truthfulness of natural law's basic principles. Natural law thus presupposes the objectivity of knowledge and the reality of human nature. If these presuppositions were untenable, then natural law would be impossible. That these presuppositions are untenable is argued by J. L. Mackie's error theory, subjectivist metaethics, and subjectivist epistemology. In addition,

natural law would be impossible if human nature were an illusion.

### **Mackie's Error Theory<sup>5</sup>**

J. L. Mackie's error theory argues that, while analysis of moral language shows that it is ineluctably objective, its objectivity is mistaken.<sup>6</sup> According to Mackie, moral objectivity rests upon the error of attributing moral worth to the ability of an object to satisfy our desires rather than from the realization that it is the desire that makes the object good.<sup>7</sup> Thus Mackie answers the Euthyphro Question about whether something is good because desired or desired because good by identifying goodness with desire. In other words, desires are good, and to identify what gratifies those desires as *objectively* good is a mistake—a grievous, albeit near universal, error.<sup>8</sup>

In support of his error theory and its claim that moral objectivity is mistaken, Mackie appeals to two arguments: the argument from relativity, or disagreement, and the argument from queerness. His argument from relativity seems to be that since some basic moral judgments do not exemplify a widely accepted tacit and general moral principle, it is more plausible to hold that these judgments reflect—not reason's apprehensions—but an intuition or the sensitivity of a moral sense.<sup>9</sup> Support for Mackie's key premise that some diverse basic judgments do not exemplify a common principle can be drawn from the persistence of moral disagreement. If moral objectivity existed, then these disagreements either would not be enduring or would be resolvable through some sort of universally accepted decision procedure akin to that of science.

Unfortunately for Mackie's argument, persistent disagreements suffice as evidence against natural law only if those disagreements are necessarily interminable. Proving interminableness requires showing that disagreements result from necessarily incompatible moral principles. Showing that moral principles are necessarily incompatible requires showing that it is impossible for them to exemplify some common norm, moral value, or obligation. Consider, for example, that although the judgments of justice and the judgments of mercy may seem necessarily incompatible, both of these judgments flow from the more basic obligation to treat individuals appropriately. Life is complex and its complexity yields diverse judgments according one's focus upon various aspects of that complexity. Accordingly, for example, whereas civil justice considers an act and its punishment, mercy considers all extenuating circumstances. As a result, diverse judgments need not prove the existence of necessarily incompatible principles.<sup>10</sup> Mackie's argument from disagreement thus fails, until he can prove that some moral disagreements are necessarily interminable.

Furthermore, natural law offers a decision procedure for resolving disputes

by identifying harms and benefits as its moral criteria: whatever harms individuals, communities, and the human race is evil; whatever benefits individuals, communities, and the human race is good.<sup>11</sup> Of course, harms and benefits are not always apparent: the human reality is often not only too complex for facile judgments, but also obscured due to cultural passions or to propaganda of the wicked. For example, until the twentieth century, the blindness of chauvinism made female suffrage seem untenable. The intellect is not immune from the influence of desires and passions. Clashing passions are thus expected to fuel disagreements that last for centuries. Hence, persistent moral disagreements do not suffice as evidence against natural law, rather they provide evidence in its support.

Mackie's argument from queerness also fails against natural law. This argument is heavily influenced by a form of neo-Platonism<sup>12</sup> resting upon the assumption that moral objectivity requires the moral object to exist as such, that is, as a feature of the world:

Even more important, however, and certainly more generally applicable, is the argument from queerness. This has two parts, one metaphysical, the other epistemological. If there were objective values, then they would be entities or qualities or relations of a very strange sort, utterly different from anything else in the universe. Correspondingly, if we were aware of them, it would have to be by some special faculty of moral perception or intuition, utterly different from our ordinary ways of knowing everything else. (Mackie 2001, 268)

Objective moral values would be queer because "they would have to be intrinsically action-guiding and motivating" (Mackie 2001, 275). And, according to Mackie, there are no such entities—not even as supervenient upon natural objects:

Another way of bringing out queerness is to ask, about anything that is supposed to have some objective moral quality, how this is linked with its natural features. What is the connection between the natural fact that an action is a piece of deliberate cruelty—say, causing pain just for fun—and the moral fact that it is wrong? . . . The wrongness must somehow be "consequential" or "supervenient"; it is wrong because it is a piece of deliberate cruelty. But just what *in the world* is signified by this "because"? . . . How much simpler and more comprehensible the situation would be if we could replace the moral quality with some sort of subjective response which could be causally related to the detection of the natural features on which the supposed quality is said to be consequential. (Mackie 2001, 270)

No doubt, this argument that objective moral values would be too queer to exist works against some moralities. But the question before this book is whether it suffices to destroy the possibility of natural law. And the answer is that it does

not.

Natural law does not assert that the objectivity of morality requires positing queer moral entities in some sort of neo-Platonic maneuver. Rather, the morally requisite is whatever benefits human life as such, while the forbidden is whatever destroys human life as such. Although it is not always easy to identify what benefits and harms human life (e.g., does ritualistic drug use harm or benefit human life?), identifying these benefits and harms as good and evil does not involve the positing of any queer entities. Thus, for example, cruelty is wrong—not due to the adherence of some queer particle—but as wantonly harmful. It harms its victims by assaulting their rationality and their dignity as well as by leaving them in a worse state with increased pain, some kind of physical or psychological disability, or false beliefs (e.g., that none can be trusted). Cruelty also harms its perpetrators by hardening their hearts, by twisting their emotions and psyches away from caring about others, by hampering their ability to achieve true happiness, or by deepening false convictions (e.g., that their self-gratification is more important than respecting others). Queerness is thus not necessary for identifying moral goods and evils. Mackie’s argument from queerness thus fails as an attack against natural law.

Mackie, however, acknowledges that his argument against queer moral entities “may seem wide of the mark” for Aristotelians and Thomists (2001, 274). Thus, he argues that Aristotelian and Thomistic ethics succumb to error theory by being unable to ground—without an indefensible appeal to God—their “objective prescriptivity” (2001, 274–5).

But only Suarezian natural law theories ground their objective prescriptivity or obligatoriness in theism<sup>13</sup>—Thomistic ones do not. Rather, as this book argues, Thomism grounds its objective prescriptivity in eudaimonia understood as the goal or last end of human life. Mackie attempts to defeat this ground for objective prescriptivity:

The argument from relativity still applies: the radical diversity of the goals that men actually pursue and find satisfying makes it implausible to construe such pursuits as resulting from an imperfect grasp of a unitary true good. So too does the argument from queerness; we can still ask what this objectively prescriptive rightness of the true goal can be, and how this is linked on the one hand with the descriptive features of this goal and on the other with the fact that it is *to some extent* an actual goal of human striving. (Mackie 2001, 274–5)

Aquinas confronted a version of Mackie’s argument from relativity in his *Summa Theologica* (S.T. I-II.8.7c). Therein he distinguished the formality of the last end from its instantiations in order to argue that all desire the fulfilment of their perfection in which the last end consists—even though men differ in what they identify as constituting that perfection. By reiterating the latter

point—without establishing that “the radical diversity of goals” lack the formality of being self-perfective—Mackie’s argument from relativity fails against Aquinas. And it fails against the truth. For it is true that even the very wicked act so as to attain what they perceive as indispensable for their own good: for instance, Ted Bundy and Charlie Manson murdered for their own pleasures.

Mackie’s argument from queerness also fails, against Aquinas, since it presupposes that objective prescriptivity requires linking a supervenient property to a descriptive feature, whereas Aquinas’s treatment of the last end as the good necessarily desired by all does not need a supervenient queerness to be the ground of objective prescriptivity. For every end—insofar as it is an end—is prescriptive to the degree that it is an end; an end necessarily desired is necessarily prescriptive. Objective prescriptivity is thus nothing other than prescriptivity of an objective end. For instance, the end of a clean car obligates washing it, and there is no queerness about clean cars nor about the necessity of washing. Similarly, there is no queerness about the end of justice obligating the payment of one’s bills. Thus, for Mackie’s argument from queerness to succeed against Aquinas, Mackie would have to prove that there are no objective ends and that there are no necessary objective ends. This he has not done. Hence, his argument fails.

### **Subjectivist Metaethics**

Subjectivist metaethics claims that moral norms, values, and virtues originate—not in some objective state of affairs, e.g., natural inclinations or the universal vulnerabilities of human beings—but in the unique feelings, desires, or psychologies of an individual, people, or culture. These subjectivist grounds of morality are basic; they are not justified by rational appeals. Nor are they constant across cultures and tribal affiliations; hence, they necessarily entail *ethical relativism*, *moral pluralism*, *moral nihilism*, or *moral scepticism*. *Ethical relativism* not only denies the possibility of a common universal morality, but also asserts that it is possible for moral variability to be such that contradictory moral views need not be mistaken. For instance, according to ethical relativism neither those holding that abortion on demand is morally permissible nor those who hold that it is impermissible are mistaken. *Moral pluralism*, like ethical relativism, holds that some contradictory moral beliefs may be equally warranted, but limits the scope of legitimate differences so as to rule out some beliefs, e.g., belief in the justifiability of genocide. *Moral nihilism* holds that all moral beliefs are mistaken, while moral scepticism holds that moral beliefs may or may not be mistaken.

Subjectivist metaethics is incompatible with natural law or any other form of objective morality. In other words, although metaethics makes no normative

claims, e.g., about the morality of abortion, the chasm between objective and subjective metaethics is too great to be reduced to a single form of metaethics. If such were not the case, it would be possible for subjectivists and objectivists to agree, at the very least, on the meaning of moral claims. Consider the claim, “genocide is wrong.” Objectivists take this claim as meaning that genocidal acts possess some feature that requires the predication of wrongdoing; subjectivists take it as meaning that the person who is predicating wrongfulness of genocide is identifying genocide as repulsive, distasteful, or emotionally repugnant, i.e., as contrary to the speaker’s psychological disposition.

On this basis, an argument against natural law could be mounted. One could argue that natural law’s reliance upon objectivist metaethics and the incompatibility of objectivist and subjectivist metaethics proves that it is impossible for natural law principles, with their objectivist presuppositions, to be tacit within any subjectivist morality. If this were so, natural law could not be, even tacitly, universal.

This conclusion would follow *only if* there were subjectivist moralities that were common to a people<sup>14</sup>—rather than being merely an ethical viewpoint posturing as a morality<sup>15</sup>—and only if the *basic normative* claims of subjectivist moralities were incompatible with the basic normative principles of natural law, e.g., a subjectivist morality claiming that neighbors ought *not* be loved.

But as long as the basic principles of subjectivist moralities concur with those of natural law it remains possible that those subjectivist principles are due to natural law principles that are mistakenly identified with non-cognitive principles, e.g., feelings. For example, a basic natural law principle is that neighbors are to be loved as oneself. This requirement could be recognized by a subjectivist ethics that explains that recognition in terms of feelings or some other non-cognitive element. (In fact, this is what Hume does: he ascribes neighborly love to sympathy rather than to reason’s ability to recognize the requirements of human dignity.) In such cases, the basic principles of natural law are somewhat known but mis-attributed to non-cognitive “feelings.”

That it is necessarily the case that at least one natural law principle is tacitly operative within subjectivist moralities, namely, the principle that one should accord with reason, is shown by the fact that subjectivist moralists think that their morality does not reflect their own peculiar, whimsical imaginings but rather what is really the case, namely, that subjectivity *really* is the ground of morality.<sup>16</sup> In other words, subjectivist moralities necessarily presuppose that reason has succeeded in identifying a subjective basis for morality; and this presupposition, in turn, presupposes that one ought to believe what reason knows to be the case—that is, that one ought to accord with reason and assert that morality rests upon subjectivist grounds.

But the presupposition that one ought to accord with reason is basic within

natural law. Thus, since this basic natural law principle necessarily underwrites every assertion, it suffices to show, at the very least, that one basic natural law principle is tacitly presupposed by subjectivist moralities. Therefore, the very existence of subjectivist moralities does not suffice to disprove the universality of natural law.<sup>17</sup>

Although the phenomena of subjectivist metaethics and non-cognitive moralities need not rule out natural law, if they were true, natural law as an ethics would be impossible. For both deny that morality is a function of reason and identify morality as a function of a non-cognitive feeling that is biologically or psychologically innate. Contemporary moral subjectivism is still heavily influenced by David Hume. Hume not only popularized the Cartesian identification of ideas as that which is first known, but he also sundered the link between nature and obligation by introducing what has come to be called the Is-Ought Fallacy, i.e., the fallacy of deriving obligations from descriptions.<sup>18</sup> Hume considered morality to be a matter of sentiment and reason to be the slave of passion, thereby self-consciously opposing the tradition of a millennium, which identified morality as the voice of reason<sup>19</sup> and grounded morality upon a non-cognitive subjective state.

The core of Humean ethics lies in two claims: (A) motivating desires are the proper ground of morality; and (B) neither information nor reason motivates. Thomistic natural law accepts claim A, although only after modifying it to read (A\*) the will's desire for eudaimonia is the desire that motivates morality—and every freely chosen action. Thomism disputes claim B by arguing that (1) since the will desires perfect goodness, (2) its desire for any finite good is conditioned upon the attractiveness of that finite good.<sup>20</sup> (3) Reason is able to identify the advantages and disadvantages of every good encountered in this life; and, thus (4) reason is able to determine the degree of any good's attractiveness. (5) When reason focuses upon the attractiveness of any good, that good becomes desired by the will, while focusing upon the shortcoming of that good disengages and may even repulse the will. (6) Reason's focus on a good, if sufficiently intense, not only attracts the will's love but also engages feelings. For instance, when one learns that an old college roommate with whom one has had minimal contact through the years is undergoing serious surgery, one's initial benevolence will not intensify into such an intense longing to see the ex-roommate and to help the ex-roommate that one flies across country to help out, unless one begins to contemplate how wonderful a roommate that person was and studies old photos and relives old memories. (7) Thus, reason is able to motivate desire by providing information about a good's advantages and disadvantages. It is for this reason that no human being is helpless before his or her passions: for example, anger need not lead to violence, lust need not lead to sex, greed need not lead to theft, and pity need

not lead to generosity. Action of a certain kind need not result from the corresponding desire because we are free to distract ourselves and to decide not to focus on, for example, the infuriating, the sexy, or the better off, and choose, instead, to focus on whatever moderates our anger, lust, greed, or stinginess.

But if Humean ethics or any other form of moral subjectivism were correct, then it would neither be possible nor morally requisite to act against one's own feelings on the basis of reason or to use reason to change our feelings. But morality condemns those who fail to act contrary to their feelings, e.g., rapists or sadists, as well as those who fail to oppose their feelings, e.g., the envious or racist. Humean morality and moral subjectivism thus fail to provide a basis for the human ability to act contrary to feelings, or to change their feelings. Neither can Humean ethics and moral subjectivism explain how it is possible to proscribe certain feelings or how an obligation can bind over and against one's feelings. Such an inadequate morality and metaethics provide no basis for rejecting natural law.

That it is necessarily the case that moral subjectivism fails as a basis of morality—or even as a description of morality—can be seen from its inability to ground obligation. For to reduce morality to *one's own* non-cognitive state precludes the ability to *bind others* to act against their own “feelings.” If, for instance, to claim that genocide is wrong reduces to claiming that it hurts *my* feelings or transgresses against *my* psychological dispositions and, therefore, it “ought” to transgress against your psychological dispositions. As such, the claim about genocide is as much an expression of my non-cognitive dispositions as a Nazi's claim that genocide ought to be practiced against the Jews expresses *his* non-cognitive dispositions. So, either neither of us can obligate the other—even if our “feelings” are prescriptive as posited by R. M. Hare—or both of us are obligated by the other to accord with the other's “feelings.” In the first case, the Nazi's “feelings” cannot *obligate* me any more than my “feelings” can obligate him. In the second case, my “feelings” would obligate the Nazi to accord with my “feelings” and cease genocidal activities, while the Nazi's “feelings” would obligate me to alter my own “feelings” and begin exterminating Jews. Any morality that cannot proscribe genocide is not only worthless and pernicious, but also an immorality in disguise. Furthermore, on subjectivist grounds, it is absurd to be obligated by what is contrary to one's “feelings.” Thus, if moral subjectivism were true, either obligation would not be a feature of morality, or it would be imposed simply by utterances of another. Both disjuncts are false.

Other problems with moral subjectivism include the fact that it deprives morality of any rational basis for mediating moral disputes: for if morality is grounded upon non-rational/non-cognitive dispositions, then there can be no reasons for preferring a dispositional state.<sup>21</sup> Indeed, to switch moral positions



would be a betrayal of one's own prior dispositions. And there would be no alternative to settling conflicts through non-cognitive ways of altering dispositions, e.g., brainwashing, "reeducation" camps, or hypnosis. This would mean that those who can impose dispositional alterations upon others get to determine the group's morality—and, their victims would not even be able to declare that it was unjust of the manipulator to do so. Might would then be right—as the ancient Greek Thrasymachus argued in Plato's *Republic* 338c.

Furthermore, if moral subjectivism were true, none would be able to take the possibility of moral objectivism seriously. The identification of morality with rationality and with the idea that the powerful do not have the right to impose their perspective upon everyone would be experienced as a whimsical counterfactual—not as a paradigm worth pledging one's life, honor, and fortune to defend. But such a pledge was made by the signers of the Declaration of Independence. Thus, the very existence of the Declaration as well as the lifeblood of the millions who have fought against tyranny prove that the alternative to moral subjectivism can be taken most seriously.

A. C. Ewing identified additional problems with moral subjectivism:

Firstly, if this definition were correct, it would follow that a man could never be wrong in an ethical judgment unless he had made a mistake about his own psychology. Again, two people would never mean the same thing when they pronounced an action right or wrong, since either would just mean "It is approved (disapproved) by *me*." Indeed the same person would never mean the same thing by an ethical judgment on two different occasions, since each time he would mean "I *now* feel (or tend to feel) approval of this." Nor, if A pronounced the same action right as B pronounced wrong, would they ever really be in disagreement, for what A would mean is—I (A) feel approval, which is quite compatible with B feeling disapproval at the same time of the same act. Further, when I condemned, e.g., Stalin, I should not be talking about Stalin but only about my own feelings. These consequences would follow if the theory under discussion were true, and they surely constitute a conclusive *reductio ad absurdum* of the theory. (1965, 84; quoted in Garner and Rosen, 1967, 241)

These problems are intractable and suffice to prove that moral subjectivism fails not only as an ethics and as a form of metaethics, but also as a basis for rejecting the natural law.

### **Subjectivist Epistemology**

Even if it were granted that the phenomenon of morality is incompatible with moral subjectivism, natural law would not thereby be established. For natural law presupposes not only the objectivity of basic moral norms, values, and virtues, but also their universal certitude. But this would be impossible if subjectivist epistemology were true. Subjectivist epistemology claims that

objectivity and universal certitudes are impossible: subjectivism rules all our conceptualizations and designates truth to be a function of individual or group perspectives. In this regard, the influence of Thomas Kuhn cannot be underestimated. His *The Structure of Scientific Revolutions* persuaded many that the community—and not the ontology of nature—verifies knowledge.<sup>22</sup> In the words of Kuhn: “the notion of a match between the ontology of a theory and its ‘real’ counterpart in nature now seems to me illusive in principle” (1971, 206). Objective truth is illusory for Kuhn, because he considers theory to be necessary for the interpretation of perceptions. Perhaps, this point is best made by MacIntyre: “What each observer takes himself or herself to perceive is identified and has to be identified by theory-laden concepts. . . . Perceivers without concepts, as Kant almost said, are blind” (1984, 79). If this were correct, brute reality would not be knowable apart from the perspective given by some theoretical account developed by oneself or by one’s community.

If this were so, then extra-mental objects could not be known in themselves but only as interpreted by a prior conceptual framework. But this involves the incoherence of asserting that extra-mental objects can *only* be known through the perspective given by a conceptual framework, while also presupposing that the conceptual perspective is not itself an object that can only be perceived through a prior conceptual framework. Avoiding this inconsistency plunges subjectivist epistemologies into a vicious circle that precludes *acquiring* an initial framework.

Neither can subjectivist epistemologies be saved by claiming that certain conceptual perspectives are innate, for what is innate is either shared by many or by few. If by many, innate concepts would be more or less constant across the human species; such constancy would reduce all disagreements to simply a difference of perspective, thus there would be no substantive disagreements. But there are substantive disagreements. Therefore conceptual frameworks are not acquired through innate concepts found in the many. Neither are they acquired through innate concepts localized by groups. For if they were, then they would not be communicable to outsiders without the innate concept. This would mean that conceptual frameworks would be so privileged that they could neither be known nor communicated to those without the innate frameworks. If this were the case, human languages as the bearer of human conceptualizations would be untranslatable. But human beings are able not only to learn their native tongues, but also to translate the almost 6,000 different human languages currently being spoken (Raloff 1995, 117). With this statistic, I am not arguing that language is reducible to atomic associations with brute reality. Nor am I arguing that translations capture every nuance. Rather, I am arguing that the conceptualizations that produce human languages are neither innate nor private without reference to brute reality. And since no worthwhile epistemology would

entail the impossibility of translations, epistemologies that rely on non-referential conceptualizations fail as epistemologies. Consequently, subjectivist epistemologies fail as coherent and explanatory epistemologies: not all knowledge is reducible to a perspective given by a prior framework.

There are three additional arguments that subjectivist epistemologies fail to make natural law impossible. The first charges them with a fallacious move from the medium of knowledge to the object of knowledge; the second charges them with failing to recognize that moral objects are not like scientific ones; and the third charges them with making falsification impossible.

The *first argument* belongs to Gordon Barnes.<sup>23</sup> He argues that subjectivist epistemologies hold that the objects or contents of knowledge are subjective, because the means or the medium of knowledge is subjective. In short, the subjectivist begins by asserting that *how* we know is through subjective states, and then infers that *what* we know is subjective as well. Of course, this inference is invalid. It simply overlooks the difference between how we know something and what makes it true. Consider knowledge gained by testimony: the way that I know is that you told me so, but the fact that you told me so is not what makes it true. What makes it true is a fact that obtains in the world.

The *second argument* is that subjectivist epistemologies cannot be applied to morality without gratuitously assuming that the extra-mental objects of morality and science do not significantly differ and that they are known in similar ways. But is this really the case? Scientific knowledge may not be obtainable without experimentation because, as Kuhn most persuasively argues, nature seems mute and incomprehensible until appropriated by a theory. An apple falls from a tree; what does it mean? Is it a manifestation of gravity or of the return to natural place? In science, the language of nature may be only understandable within the context of a theory; pre-theoretical experience may be meaningless. If so, then this is the reason why science progresses through experiments, which are nothing other than experiences theoretically and, for the most part, artificially constructed.

But moral experiences are not meaningless prior to their appropriation by a theory. For example, theories and artificially-constructed experiments are not necessary to understand *that* child abuse is morally reprehensible. (If anything, moral theories are constructed to elaborate a non-theoretical insight into right and wrong, good and evil, moral and immoral acts.) It is a mistake to identify all moral knowledge as theoretical constructions and thereby to bring Kuhn's conflation of perceptual and theoretical frameworks into morality: while there may be no properly scientific experience that is not intrinsically structured by a theory, most human experiences of good and evil are not like that. It is for this reason that moral theories may be checked by brute reality in a way unavailable to scientific theories. For example, experiencing a man's tender and respectful

love unmasks the radical feminist characterization of male love as a morally impermissible form of male domination. Nature is not mute until given voice through some ethical theory explicated by the wise.

Moreover, if moral knowledge were inaccessible except through some theory, then only moral theorists *could* be ethical. In other words, subjectivism assumes that moral and scientific knowledge consist *only* of objects constructed by theory or by some kind of conceptual framework. But such a theoretical construct, properly speaking, is an object that takes its truth conditions from the theory/conceptual framework that warrants it. As a result, such a “theoretical” object is so totally dependent upon its role within a theory that it is inseparable from the explanatory success of the theory in which it is embedded; its truth-conditions are dependent upon the soundness of the theory. For this reason, such an object cannot be grasped by those who do not know the theory. So the question becomes whether all objects of science and morality are theoretical, or whether some of these objects have truth conditions that are not warranted by theory but directly by brute reality. Are there non-theoretical facts?

Consider the theory that identifies the cause of malaria as mosquitoes. The existence of mosquitoes is a non-theoretical fact—despite its role in a theory about malaria. Contrast it with the existence of prime matter. The existence of prime matter, unlike that of mosquitoes, is posited as necessary by a theory, namely, by the hylomorphic theory of Aristotle. As such, prime matter is a theoretical construct necessarily dependent upon Aristotelian physics for its truthfulness. Hence, if Aristotelian hylomorphism were to be falsified, it would also be false to predicate existence of prime matter. So the question before us is whether moral predications are more akin to predicating existence of mosquitoes or to predicating existence of prime matter.

Consider also an incident that occurred during the Bataan Death March: a pregnant Filipino woman was passing out food to the exhausted and dying American prisoners, when a Japanese soldier used his bayonet to gouge out her fetus.<sup>24</sup> No theory is necessary to know that such a wanton act of hatred ought not be done. Likewise, the human race’s experience with genocide sufficed for the recognition of its wickedness (and for its condemnation by the United Nations): no theory is necessary to know *that* genocide is wrong. Hence, it is not the case that all moral truths are theoretical as posited by the subjectivist noetic.

That the human race does indeed know *some* infallible moral certitudes can be shown by the transcultural coinage of terms signifying the immorality of certain acts, e.g., murder, theft, genocide, envy.<sup>25</sup> So even though as a species we may dispute about whether a particular act instantiates, for instance, murder or justice, we do not doubt that it is possible for murder or justice to be instantiated by certain kinds of acts. The existence of hard or confusing cases

does not preclude the existence of typical or easy cases in which it is certain that this act of genocide, for instance, is always and everywhere immoral. The existence of such infallible moral certitudes suffices to prove that morality does not fall under the subjectivist noetic.

*The third argument against subjectivist epistemology* is that since it requires conceptual frameworks to mediate our experience of brute reality, it is not possible for brute reality to falsify any claim.<sup>26</sup> Brute reality is thus unable to be a “neutral court of appeal for decision between rival theories” (MacIntyre 1988, 332). Accordingly, since no relevant observation would be theoretically neutral, any appeal to singular experiences would be in vain:

The problem is: how to describe the relevant examples. When individuals articulate to and for themselves the processes through which they proceed to action or when observers describe those processes in others, they cannot do so except by employing some particular theory-informed or theory-presupposing scheme of concepts, by conceptualizing that which they do or undergo or observe in a way which accords with one theory rather than another. There are no preconceptual or even pretheoretical data, and this entails that no set of examples of action, no matter how comprehensive, can provide a neutral court of appeal for decision between rival theories. (MacIntyre 1988, 332)<sup>27</sup>

Thus, if the subjectivist noetic were to characterize morality, then no singular experience—no matter how indisputable—would suffice to falsify one's own judgment. But this is absurd: it is tantamount to eliminating the referents of moral language.<sup>28</sup> For falsification presupposes that one can know that the referent of a claim does not exist as claimed. So, for example, “the earth is flat” can be falsified because the referent of “the earth” can be known as “not flat.”

Moral judgments are likewise liable to falsification. For although there has been much confusion about whether ethical precepts are merely imperatives, or exclamations without truth conditions, let it suffice for now to note that precepts predicate obligation of some act, e.g., “do not murder” proscribes the action of murder, as “one ought to return borrowed items” prescribes a certain action. These predications of obligation can be true or false. Consider, for example, “parents ought to love their children” and “parents ought to hate their children.” The first predication of obligation is true; the latter predication is false. Hence, the question is whether or not the truth-conditions of every moral claim depend upon a theory, as held by subjectivist epistemology, or whether some truth-conditions are independent of any theory.

Perhaps, it would be easier to ascertain the answer by considering the falsification of moral claims. Moral *prescriptions* are false when X ought not be done; moral *proscriptions* are false when X ought to be done (or, when X need not be avoided). Consider, for example, the claims “grandparents ought to be tortured to death” and “children ought not be loved by their mothers.”

Both claims are certainly false and can be known as such both independently of any theoretical apparatus and independently of how their falsification is justified. Likewise, even if we cannot adequately justify our certitude, we know that it is certainly false to claim that “genocide ought to be practiced” or that “African-Americans ought to be slaves.”<sup>29</sup>

If all moral truth were mediated by theoretical constructs, then the falsity of no proposition would be able to be known with certitude and independently of its theoretical warrant. Yet claims proscribing motherly love and prescribing the torturing of grandparents are known as certainly false independently of any theoretical apparatus. Hence, subjectivist epistemologies fail to describe moral knowledge.

### **An Illusory Nature?**

One objection that can be made against the argument that human nature entails natural law is that human nature is illusory. The grounds of this objection are many and discordant, ranging from the claim that humankind does not significantly differ from the other kinds of animals to claims that neither universals nor natures can exist. Although sympathy for the claim that human nature is not unique is spreading, the evidence for that claim cannot sufficiently counter the evidence in favor of the uniqueness of humankind: our technologies, our arts, our schools, our religions, our wars, and our *cruelties* mark us as being, at the very least, a unique kind of animal. The claim that neither universals nor natures can exist is usually supported either by metaphysical arguments that, since only individuals exist, universals and natures cannot be real, or by epistemological arguments that only the experimentally verified can be real. These latter concerns are beyond the scope of this book, which has assumed that the existence of moral phenomena is a sufficient warrant for assuming the uniqueness of humankind. This book has also assumed that human nature is characterized not only by rationality, sentience, free choice, emotionality, and a particular kind of physiology, but also that free rationality is responsible for our distinctiveness as beings.<sup>30</sup> Free rationality designates an intellect capable of formulating reasons for acting and a will capable of freely acting according to those reasons. I do not mean to suggest that the acts of intellect and will may not be impeded or even rendered impotent as occurs in drunkenness, madness, or youth. For the mind is like the lungs: a capacity that can be impeded without being destroyed, as shown by the need of some for additional education and by the need of others in comas for artificial respiration. Indeed, if human nature were a chimera, there would be no need for medicine to distinguish between human beings and cats, nor for priests to distinguish between adults and robots.

## The Indeterminacy Thesis

A key objection against classical natural law is that human nature is too indeterminate to be the basis of an objective and universal ethic. This indeterminacy thesis can be radical or moderate. The radical formulation denies the very possibility of natural law by arguing that nature is ambiguous and supports contradictory theories. Alf Ross puts it like this: "The noble guise of natural law has been used in the course of time to defend or fight for every conceivable kind of demand. . . . Is it nature's bidding that men shall be as brothers, or is it nature's law that the strong shall rule over the weak, and that therefore slavery and class distinctions are part of God's meaning for the world?"<sup>31</sup> Jean Porter puts it like this: "[I]nclinations of the human person are indeterminate . . . they can be expressed in ways that undermine the agent's attainment of her good, as well as in ways that promote it."<sup>32</sup> Opposing moralities can thus be grounded on human nature, according to Porter:

[T]here is nothing obvious about the claim that our basic tendencies to care, reciprocity, and non-maleficence should be given moral priority over other standing tendencies, or that our capacities for rationality and responsible freedom are morally the most significant aspects of our nature. Human beings are also naturally inclined to form hierarchically arranged social groups, to compete with one another for material necessities and social status, to vent aggression, and to seek sensual and sexual gratification even at the other's expense. These tendencies may be expressed in ways that are destructive and repugnant, but they can also take forms that are striking, attractive, even praiseworthy, and it is possible to envision a moral system that gives them priority over inclinations toward care and reciprocity. Such a morality would be an authentic natural morality, and yet it would look very different from the scholastic concept of the natural law.<sup>33</sup>

Nietzsche's ethics is thus, according to Porter, "a natural morality."<sup>34</sup> It differs from Christian morality in identifying different natural inclinations as having priority.<sup>35</sup> The radical version of the indeterminacy thesis thereby holds that human nature is so indeterminate that it is as compatible with Nietzschean ethics as it is with the Greco-Roman tradition of natural law.

The more moderate version, on the other hand, argues that human nature can establish some general moral parameters that are almost universally acceptable but not the specific norms characteristic of a single system of natural law and necessary for guidance in specific cases of choice.<sup>36</sup> Jean Porter (2005) puts it like this: "Because we are complex creatures, there can be a variety of adequate expressions of our nature . . . . There are many ways of being human, including a plurality of defensible and legitimate expressions of the basic inclinations of human nature."<sup>37</sup> The resulting natural law pluralism, however, is not also natural law relativism:

The intelligibilities of human nature inform social norms, and for that reason we can analyze and evaluate particular moralities in terms of their natural origins. . . . Yet, the intelligibilities of human nature underdetermine their forms of expression, and that is why this theory does not yield a comprehensive set of determinate moral norms, compelling to all rational persons.<sup>38</sup>

Thus, the moderate formulation of the indeterminacy thesis argues that since human nature is unable to specify “determinate moral norms” that are “compelling to all rational persons,”<sup>39</sup> human nature does not suffice to specify a single, global morality or jurisprudence.

### **Insights and Difficulties**

On the one hand, the indeterminacy thesis—in both its moderate and radical forms—is correct in holding that natural law does not entail moral and juridical uniformity across the globe. For, as chapter 18 argues, the practical syllogism permits the same universal norm to obligate different acts depending on the situation, e.g., the obligation to respect others can entail bowing in certain parts of the world and shaking hands in other parts of the world. Even in the same part of the world, different obligations can be generated from the same universal norm, e.g., respecting others can entail forgoing sexual relations when unmarried and engaging in sexual relations when married.

On the other hand, the indeterminacy thesis errs in several ways. First, the indeterminacy thesis errs by conflating the ability to compel the assent of rational persons with being rationally compelling. Emotional commitments and laziness, for instance, can prevent rational persons from assenting to rationally compelling arguments. So it is not the case that natural law argues that its particular norms and values are compelling to all rational persons. Rather, natural law argues that its particular norms and values are rationally compelling insofar as they instantiate basic, universal norms through the practical syllogism as argued in chapter 18.

Secondly, the indeterminacy thesis errs in attributing the impossibility of global normative uniformity to the indeterminacy of human nature. It is not that human nature is indeterminate, but rather that norms apply to particular cases through conditions that do not always hold. Consider, for instance, the norm obligating the return of borrowed weapons to their owner. This norm does not hold when the owner would be harmed by their return—as the Greco-Roman tradition of natural law and Aquinas himself recognized.<sup>40</sup> Indeed, the practical syllogism generates diverse particular judgements from the same universal norm depending on the particularities of a given situation.<sup>41</sup> The inability of particular norms to be uniform across the globe, therefore, does not defeat the Greco-Roman or the properly Thomistic tradition of natural law. It does, however, defeat the modern notion of natural law mounted by Grotius, who



sought to transform natural law into a single, uniform, and axiomatic system modeled on Cartesian mathematics.<sup>42</sup>

Thirdly, if either the radical or the moderate indeterminacy theses were true, it would be possible for opposing moral judgments about particulars here and now to be equally sound manifestations of the natural law. If this were the case, it would also be case that particular moral judgments do not pertain to what is harmful or beneficial to human beings. But natural law has traditionally held that particular moral judgments identify an act or an object as truly benefitting or harming an individual here and now. Consider the paradigmatic case of returning items to their owner. In any given case, the return will be either beneficial or harmful; and the borrower will be obligated to refrain from returning those items under conditions known to be harmful.

Hence, if it is the case that one's nature as an individual human being cannot provide a basis for ascertaining what is good for one as a person and what is harmful, then it is also the case that opposing judgments have been mistakenly placed in the moral domain. For instance, if one's nature provides no basis for adjudicating whether or not owning a dog would be beneficial or harmful, then whether to own a dog would not be a moral matter. But if owning a dog would harm one's health due to allergies or one's finances due to the expenses of keeping a dog, then it would be immoral on the assumption that such harms could not otherwise be mitigated. Hence, it is only those acts and those objects that are morally neutral that can pertain to the indeterminacy thesis, inasmuch as it is only those acts and objects that do not harm or benefit an individual.

This is not, however, to claim that benefit and harm are always apparent or apparent to all. Nor is it to eliminate the need for ethical reflection to determine whether benefit or harm is really being done here and now. Nor is it to claim that it is possible to be infallible in one's judgements. After all, for several millennia, women were judged to be inferior to men. Nevertheless, sexual equality is now recognized on the basis of human nature.

Finally, if I were to defend the radical indeterminacy thesis, I would do so, first, by arguing that human nature has two types of inclinations: the inclination to be reasonable by intending the intelligible good, and the inclination to maximize pleasure and avoid pain.<sup>43</sup> Then, I would argue that a radical indeterminacy between these two inclinations resides in the very heart of the human person. Finally, I would argue that human nature cannot provide a basis for adjudicating conflicts between the good and the pleasurable; and that since either inclination could be used to ground natural law, natural law cannot adjudicate the conflicts that arise between an ethics of good and an ethics of pleasure.

In response to this final argument in favor of radical indeterminacy, it

should be pointed out that the argument is not a strawman but one that pertains to the inner struggle of every human being trying to be mature. As such, the argument is particularly pernicious inasmuch as it asserts that there is no need to undertake this struggle: it is as natural and as moral to prefer pleasure to goodness as goodness to pleasure. Neither should be privileged over the other.

However, if this pernicious argument were correct, it would not be possible to be mistaken about a pleasure: whatever feels pleasurable would be as satisfactory as the good. But, as Plato argued throughout Book One of the *Republic*, mistakes are possible: pleasure is not its own criteria of success but is parasitic on the good, and hence the rational inclination towards the good must be privileged over the inclination to pleasure. For instance, the discovery of being manipulated dissipates the pleasures of romance and shows not only that pleasure supervenes on the good but also that the good is better than the pleasurable and that the inclination towards the good is to be privileged over the inclination to pleasure. The human heart is not plagued with radical indeterminacy. And Plato was quite right to give priority to the good over pleasure.

Like Plato, Aquinas prioritizes the good over pleasure and reason over feelings; but he does not likewise adopt the Platonic disparaging of pleasures. For Aquinas, the good is an analogical notion that can be predicated of pleasure as well as any benefit or happiness, since the good is predicated according to the standard of the perfect good which is beneficial in every possible way. This standard is one known by reason and loved by the will seeking perfect happiness. As a result, Aquinas is able to predicate goodness of pleasure while denying that pleasure is a sufficient good for determining human action. For example, the pleasures of cruelty do not justify it; neither do the pleasures of food, drink, nor sex. In all cases, the pleasure must be subordinated to whether or not it is harming the person. As a result, pleasures that are not evil must be moderate. In other words, Aquinas acknowledges that human nature establishes an objective hierarchy, whereby bodily goods are to be subordinated to the overall well-being of the person as known by reason. For this reason, the intellect—and not feelings—should rule the person; otherwise, the person makes mistakes and comes to grief.

Thus, the attempt to use human nature to establish the indeterminacy thesis and an objective moral pluralism rejects the Greco-Latin-Thomistic understanding that the most important part of human nature is its free rationality. Indeed, if all human drives were the equal of free rationality, it would be possible to argue that every human drive grounds an objective moral value without also offering a criterion for ordering them in ways that preclude conflict and advance the well-being of others. For instance, if this were the case, it would not be possible, for instance, to obligate the subordination of the sexual drive to the drive of saving lives. As one of my students put it, abortion is invaluable

because it permits his sex life to continue without the embarrassment of fatherhood. One shudders to think how many with AIDS think likewise, namely, that the health and well-being of others should be sacrificed to the satisfaction of mere sexual drives.

The priority of reason and will that is established by human nature refutes the indeterminacy thesis and the claim that human nature warrants an objective moral pluralism. For the priority of reason and will means that human activity is best guided by reason and will, which in turn means that human beings are best guided by what is known to truly promote individual well-being, which includes that which promotes the common good. In other words, the one who weighs all goods according to the objective truth about human persons cannot but recognize that others are persons just like oneself and that the standards of personhood are objective and universal in its basic principles, such as the obligation to choose what is known by reason as good for a person while avoiding whatever harms a person, whether oneself or another. And, this is nothing other than the Kantian principle of humanity (always treat humanity whether in yourself or other as an end and never purely as a means), or the Golden Rule (treat others as you would be treated and not as you would not be treated), or the obligation of neighborly love (love neighbors as oneself); for all of these are best understood as obligating acting in accord with what is objectively good for persons while avoiding what objectively harms persons. There is no indeterminacy here: the parameters of benefit and harm are objectively determined by human nature.

This is not to say that these parameters preclude a diversity of human choices: diverse choices may also be moral choices, since it is possible for diverse acts and objects to benefit human beings. There are thus many moral options, for morality does not obligate making the best choice but simply choosing to pursue good while avoiding evil. One can thus err without incurring moral fault. For instance, one may choose to marry one sibling when the other one would have been the better choice. Likewise, a different career or a college may have been the better option. Omniscience is not a moral requirement—at least in natural law theories.

We may be able to live without omniscience, but not without the wisdom that comes from reason's ability to discern what benefits and harms human beings here and now. As a result, the moral pluralism entailed by the indeterminacy thesis is mistaken. Natural law is established according to the inclination to accord with the truth known by reason about whether human beings are being harmed or benefitted in any particular state of affairs. Goods that are naturally commensurate to human nature are thus identified as inalienable rights and as self-evident goods or benefits, while their contraries are identified as evils to be avoided. Here then is the basis of universal and particular norms: the constancy

of human nature across the globe.

## Notes

1. I have made these points previously, see Lemmons (1992b).
2. Although characterizing Hume's argument as a logical one is the standard interpretation, there are other interpretations (Hudson 1970, 249–64).
3. *S.T.* I-II.94.2c: "Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance."
4. Self-evidence is extensively discussed in chapter 7.
5. Many thanks to David Clemenson, Gordon Barnes, and James Madden for feedback on this section.
6. Mackie (2001, 266) not only grants the objectivity of moral language, but he argues that linguistic and conceptual analysis cannot but "conclude that moral values at least are objective: that they are so is part of what our ordinary moral statements mean."
7. Mackie (2001, 272): "We get the notion of something's being objectively good, or having intrinsic value, by reversing the direction of dependence here, by making the desire depend upon the goodness, instead of the goodness on the desire."
8. If Mackie's identification of moral good with desire were the case, then it would not be possible to have bad desires. Nor would it be possible to proscribe following one's desire—not even if one's desire was to rape or to molest children.
9. Mackie (2001, 268).
10. This point was argued extensively in Part One.
11. St. Thomas has an organic conception of community that supports the claim that one who hurts the individual hurts the whole, since "one who hurts the hand, hurts the man" (*S.T.* I-II, 21, 3c).
12. Mackie (2001, 269): "Plato's Forms give a dramatic picture of what objective values would have to be."
13. See Knud Haakonssen (1996, 21).
14. Every morality is necessarily social because, if it were not, moral claims would be nonsensical, not only insofar as they evaluate the actions, motives, and intentions of others, but also insofar as they assert obligations that bind more than oneself.
15. It is part of natural law theory to claim that human nature is such that no community could long endure without adopting a natural law morality or a morality compatible with natural law.
16. I am presupposing that the subjectivist moralist is not a non-cognitivist. For a non-cognitivist cannot assert that it is true that morality is a subjective matter: non-cognitivism permits neither assertions nor truth-claims. As a result, non-cognitivists

have no argument against natural law.

17. As argued in chapter 18, the universality of natural law need not preclude the clash of moralities.

18. The infamous passage is in his *Treatise of Human Nature* Bk. 3, part one, section one (1992, 469).

19. Hume self-consciously sets out to destroy morality's traditional reliance upon reason, see *Treatise of Human Nature* Book 2, section 3 (1992, 413): "In order to shew the fallacy of all this philosophy, I shall endeavour to prove *first*, that reason alone can never be a motive to any action of the will; and *secondly*, that it can never oppose passion in the direction of reason."

20. The inability of any finite good to be perfectly good frees the will to incline or not to incline towards a certain good.

21. Garner and Rosen (1967, 317) argue that the major criticism of non-cognitivism has been its inability to explain why human beings attempt to prove or establish or give reasons for moral judgments.

22. Kuhn's argument that science advances only through generational paradigm shifts has been soundly criticized as historically inaccurate. For a brief discussion and references see Robin Horton 1982, 224–5.

23. Gordon Barnes, private communication, Summer 2002.

24. Hampton Sides (2001, 102).

25. That certain terms are coined to convey the immorality of certain acts was pointed out by Aristotle, *N.E.* II, ch. 6, 1107a9-26.

26. Postmodernism forgoes characterizing incoherent claims as false in favor of characterizing them as suspicious and liable to rejection in the future should less incoherent perspective be found. As put by MacIntyre (1988, 359): "The identification of incoherence within established belief will always provide a reason for enquiring further, but not in itself a conclusive reason for rejecting established belief, until something more adequate because less incoherent has been discovered."

27. Also MacIntyre (1988, 350): "The conclusion to which the argument so far has led is . . . that there is no other way to engage in the formulation, elaboration, rational justification, and criticism of accounts of practical rationality and justice except from within some one particular tradition in conversation, cooperation, and conflict with those who inhabit the same tradition. There is no standing ground, no place for enquiry, no way to engage in the practices of advancing, evaluating, accepting, and rejecting reasoned argument apart from that which is provided by some particular tradition or other."

28. For an argument that the elimination of referents eliminates the possibility of falsification see Brink (2001).

29. A related point: the infallible falsity of certain moral claims, e.g., "genocide is permissible," entails that any morality or ethics, per se, unable to acknowledge their falsity is also falsified. For no ethics is immune to the rules of logic; hence, any ethics is falsified either when it proscribes a good act, e.g., motherly love, or when it permits or prescribes an evil act, e.g., genocide, rape, or incest. For the goodness of motherly love or the wickedness of genocide, rape, and incest need no theoretical justification,

only the knowledge of their brute reality, i.e., what they really are.

30. For a defense of human nature and its relevance for natural law see Anthony J. Lisska (1996). For an Aristotelian treatment of human nature that engages contemporary arguments see David Braine (1992).

31. Alf Ross (1958, 258–9). The gist of this argument can also be found in the works of Plato; see *Republic*, Book One, n. 340d–341a; 343b–344d; and especially see the *Gorgias* 482d–486d.

32. Jean Porter (2005, 176).

33. Jean Porter (1999, 142–3) .

34. Porter (1999, 144).

35. Porter (1999, 144–5).

36. Jean Porter (2005, 335).

37. Porter (2005, 333). See also Porter (2005, 339): “[There is a] plurality of possible expressions of human nature at the level of social morality. For this reason, we cannot speak of the natural law at the level of determinate norms, but must speak of natural moralities in the plural.”

38. Porter (2005, 338).

39. Porter (2005, 338).

40. This example enters the natural law tradition through Plato’s first book of the *Republic* and stays there through its citation by Aquinas in *S.T.* I-II.94.4c.

41. See chapter 18 for an extensive discussion.

42. See Porter (2005, 28 note 33).

43. There are other ways to support the radical indeterminacy thesis. One could argue, for instance, that human nature inclines equally to selfishness and to altruism. This argument, however, usually reduces to one about the pleasures of selfishness and the pleasures of helping others and whether such pleasures are mutually exclusive and whether one is superior to the other. It thus presupposes that human nature is determined to pleasure. It thereby fails to presuppose an indeterminacy in human nature.

## **Chapter 12**

# **The Challenges of Agnostic and Atheistic Moral Eudaimonism**

*So far this book has argued that personalist natural law is not the same as Christian morality, that morally requisite love is other than Christian charity, and that—unlike Christian morality<sup>1</sup>—the obligation to love neighbors is not dependent on the obligation to love God. Does this mean that moral eudaimonism need not also be theistic? If so, the contemplation of God is irrelevant for eudaimonia, and those who are suffering do not need to contemplate God in order to retain their moral motivation. This chapter challenges these implications and argues that although agnosticism and atheism do not affect the normativity of eudaimonia, they do affect the ability to remain motivated when intensely suffering. Only trust in God enables one to act as one knows one should act when suffering becomes very intense.<sup>2</sup>*

### **Indispensability of Nature’s “God”**

The idea that adherence to nature’s way is a moral requirement, which disposes oneself for a better state in this life and the next, has been a staple of belief not only from time immemorial but especially since the days of Socrates (470–400 B.C.), the Buddha Gautama Siddhartha (560–477 B.C.), and Confucius (ca. 551–479 B.C.).<sup>3</sup> When natural law entered the Christian consciousness, it became the moral law intended by the Creator and reinforced by Him. As the Declaration of Independence instructs many of us: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their

Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.” It is difficult to underestimate the importance of God as the ultimate source of the natural law.

Indeed, in chapter 2, we saw that divine prescriptivism is a natural law tradition stretching back at least as far as John Duns Scotus (1266–1308) that has argued that, though natural law is the law of reason, its obligatory character is established exclusively by a freely given divine command and not by nature

**“Ivan . . . declared . . . there was nothing in the whole world to make men love their neighbours (sic). That there was no law of nature that man should love mankind, and that, if there had been any love on earth hitherto, it was not owing to a natural law, but simply because men have believed in immortality. . . . if you were to destroy in mankind the belief in immortality . . . love . . . would at once be dried up. Moreover, nothing then would be immoral, everything would be lawful, even cannibalism. That’s not all. He ended by asserting that for every individual . . . who does not believe in God or immortality, the moral law of nature must immediately be changed into the exact contrary . . . and . . . egoism, even to crime, must become, not only lawful but even . . . the most rational, even honourable (sic) outcome of his position” (Dostoevski 1922, 67–8).**

nor by reason. More recently, Elizabeth Anscombe (1958) echoed this warrant for natural law by arguing that the indefeasible binding force of morality makes no sense apart from a Divine Lawgiver. Various interpreters of Aquinas have also argued that without God or Christian grace the natural moral law would not be *law*, i.e., constituted by indefeasible norms.<sup>4</sup>

God is thus seen as guaranteeing the accuracy of the moral obligations specified through natural inclinations. No natural inclination can thus be corrupted without denigrating God (*S.T.* I.60.1 ad 3).<sup>5</sup> The Divine Lawgiver also insures that the guilty

are punished—if not in this life then in the next. Under this description, a coercive natural law is impossible unless God as the Divine Enforcer exists. Hence, Kai Nielsen argued that natural law is a myth, since “there is no evidence that there is such a God” (1964, 136).

Let us grant for the sake of argument that God does not exist: does natural law then evaporate as a morality and/or as a law with sanctions? Is Kai Nielsen right? Certainly not, as long as there is some divine element, e.g., karma or



spirits of some kind that enforces the morality of natural law. But what if the term “God” is taken not only as referring to a particular divine person, but also to any divine or eternal source of morality? Would the nonexistence of “God” eviscerate natural law?

Perhaps not: for nature contains forms of beauty and goodness that are exquisite to contemplate and more delightfully lovable than any bodily pleasure.<sup>6</sup> As long as reason is awed by nature, honoring the requirements of nature seems rational. Hence, as one who remains ever moved by the fragile beauty of flowers and sunsets, by the grandeur of the stars, by the order of the biochemical world, and by Diotima’s argument<sup>7</sup> that the beauty of just laws and institutions bespeak a form of goodness most beautiful, I do not wish to rule out the possibility of nature sufficing for motivating adherence to the forms of goodness as found in the natural law. After all, I know someone who heard music that was so beautiful that she became convinced that God exists.

Nevertheless, the route from transcendental beauty to the natural moral law seems too tenuous for an era without God, gods, or any kind of divine governance.<sup>8</sup> Beauty did not prevent Hume, for instance, from not only rejecting the existence of the divine, but also rejecting the contemplative function of reason and making reason the mere instrument of the passions.

Beauty also seems too fragile a basis for a morality that must outwit Nietzsche and his characterization of any morality that is not a creative expression of *the will to power* as being a slave morality, a herd morality, a morality for the weak and stupid, a morality against the real nature of things. For, according to Nietzsche, both the human will and all instincts thirst for power,<sup>9</sup> for mastership, and for supremacy.<sup>10</sup> In this regard, Nietzsche echoes the ancient Greek charge that the masses have invented natural law as a ruse to trick their superiors into *not* taking advantage of them. Hence, Calicles (like other ancient Greek proto-Nietzscheans) argued that natural law is bogus and ought not be obeyed by the superior man:

But if a man arises endowed with a nature sufficiently strong, he will, I believe, shake off all these controls, burst his fetters, and break loose. And trampling upon our scraps of paper, our spells and incantations, and all our *unnatural conventions*, he rises up and reveals himself our master who was once our slave, and there shines forth *nature’s true justice*. (*Gorgias* 483b–484a; emphases mine)

And so, the basic disjunction can be expressed as this question: Is it natural to seek unfettered power or to honor the good? Ought the will be bounded by the parameters of natural law or not?

One way to attempt to settle this question is by weighing the joys and miseries of conforming or defying natural law. To do this, however, is to concede the basis of natural law, namely, that it is rational to seek happiness

and avoid misery. This Nietzsche refuses to do: “Happiness and virtue are no arguments. But people like to forget—even sober spirits—that making unhappy and evil are no counter-arguments” (1966, 49 #39).

On the one hand, this claim of Nietzsche is so fantastical and so completely opposed to practical reason that it makes scant sense. If one of our children, for instance, focused on pursuing diverse ways of being miserable, would we not know that something is seriously wrong and seek help for her?

Practical rationality itself demands that the will seek what reason deems to be the way to happiness while avoiding what reason deems to be the way to misery. To say this, however, is to presuppose the possibility of happiness. But happiness is only possible in a universe intelligently ordered: without such order, reason cannot find the intelligibility it needs to function as a cognitive faculty. Hence Nietzsche’s rejection of happiness and virtue as arguments for morality flows from his rejection of an ordered universe. Although Nietzsche is correct in holding that natural law necessarily presupposes a universe that is intelligently ordered, he is mistaken to hold that our universe is not so ordered; for science and technology would be impossible if nature were chaotic. Chaos is unintelligible in its disorder.<sup>11</sup>

Nietzsche’s rejection of intelligibly ordered nature, moreover, is driven by his belief that such a universe would be underpinned by God: “God is in grammar.” With this belief, the natural law tradition concurs: it has long held that the universe is intelligently ordered by the divine. Is this belief necessary for natural law? Must natural law presuppose that nature is the effect of a divine cause? There are at least three questions here: (1) there is the ontological question: does natural law presuppose an ontology which would be impossible without divine causality?; (2) there is the epistemic question: it is possible to know natural law without knowing God?; and, (3) there is the question of adhering to what is known about the natural law: it is possible to follow the natural law without believing in God and entrusting ourselves to Him?

To the *first question*, I concede that the ontology required by natural law not only necessarily presupposes divine causality but also presupposes God, which is the involvement of an omnipotent, omniscient, and perfectly beneficent first cause. Without God, human nature could not be. And without human nature, natural law could not be.

But before ontological causes can be ascertained, the nature must be known. Hence, in response to the *second question*, chapter 10 above already argued that natural law can be known without knowing the ultimate cause of nature. After all, nature is a book that can be read by biologists, chemists, physicists, positivists, and phenomenologists—even when they do not see that it was written by God.

Moreover, some have upheld versions of the natural law without believing

in the divine. Ayn Rand, for instance, believed that metaphysics warranted natural law without also believing that metaphysics also warranted God's existence. Thus, although the deep structure of natural law necessarily presupposes an ontological dependence upon the existence of God, ontological dependence does not necessitate an epistemic dependence: natural law can be known without also knowing that God is the ultimate cause of nature.

The *third question* concerning adherence to the natural law is not so easily answered; for it is a question of motivation. On the one hand, it seems that if natural law can be known apart from knowledge of God, it should be possible for natural law to motivate adherence without explicitly appealing to God. We are, after all, motivated to act according to what reason perceives as true and good. Moreover, as an eudaimonic morality, natural law promises adherents fulfillment and happiness. But, on the other hand, natural law can motivate adherence without appealing to belief in God, only if fulfillment and happiness is possible without belief in God. This means that the third question cannot be answered without also determining whether eudaimonia must be theistic. If so, then adherence to the natural law requires *belief* in God—even though knowledge of God is not a prerequisite for knowing how one ought to treat one's fellow humans.

Two arguments can be made that eudaimonia must be theistic and that adherence to the natural law requires *belief* in God: the argument from suffering, and the argument from intellectual thirst.<sup>12</sup> After these arguments are considered, we will take up the objection that virtue or moral eudaimonism suffices to motivate adherence to the natural law.

## Theistic Moral Eudaimonism

### Argument from Suffering

Perhaps the strongest argument that belief in God is not necessary for this life's eudaimonia, and hence not necessary for natural law, arises from the "happy" lives of nonbelievers. For, as argued by Kai Nielsen (1990, 101), even atheists, such as John Dewey, and myriad Chinese Confucians are happy without God: "A man could be said to have lived a happy life if he had found lasting sources of satisfaction in his life and if he had been able to find certain goals worthwhile and to achieve at least some of them" (1990, 116). In other words, the intrinsic goods of life, health, love, and productive work, for instance, remain so even if there is no God. If Nielsen were to be right, not only would Aquinas and Aristotle be wrong in arguing that the primary form of eudaimonia is contemplating God, but contemplating God would not be necessary for the eudaimonia that grounds natural law. Moreover, if this were the case, finality and complete-

ness could characterize a life without God.<sup>13</sup>

But finality and completeness do not characterize a life without God; partly because, as Aquinas argues, suffering inescapably characterizes this life (*S.T. I-II.5.3*).<sup>14</sup> To consider the myriad evils of this life is to lament. In the words of Boethius:

I seem to see the wicked haunts of criminals overflowing with “happiness” and joy; I seem to see all the most desperate of men threatening new false denunciations; I seem to see . . . villains encouraged to attempt every crime in the expectation of impunity or even in the hope of reward for its accomplishment; and I seem to see the innocent deprived of peace and safety and even of all chance of self-defense. (1969, I.4, 524, 46)

To lament thus is especially to protest the suffering of the innocent. Scant comfort is drawn from knowing that the wicked suffer the intrinsic sanctions of natural law.

Rampant evil fosters a meaninglessness hostile to the moral life insofar as it seems hopeless to seek the good in a world of evil. When evil is seen to triumph in this world, meaning can only be restored by treating evil as an event in the greater narrative of goodness. Such narratives are written by religions such as Buddhism, Hinduism, Islam, Judaism, and Christianity. Atheistic existentialism also writes a narrative in which “self-creation” mitigates the angst in which one lives. All these narratives subordinate evil to good and, most importantly, provide a transcendent meaning through a “life-unifying objective.”<sup>15</sup> Russell Pannier explains that this objective “is an end which could be used to tie together every conscious moment of life, a purpose which could serve as an integrating force making a life a unitary whole” (1987, 450). Failure to identify such an objective gives rise to meaninglessness. Meaninglessness is a central theme of the twentieth century in the West: it is found in our art, in the hip culture<sup>16</sup> of cynicism and alienation—in short, especially in all places where God is absent and personal suffering is present. The most common experiences of meaninglessness arise from experiencing the pain of loneliness or from suffering either the death or the incapacitating illness of a beloved one.

The dispirited cry of the suffering is akin to the cry of one who sees the world as instantiating a “metaphysics of evil” whereby evil ultimately trounces good. Against the speculative or contemplative conviction that the world is designed to frustrate the good, no form of life or form of practical reasonableness offers any consolation. If anything, since practical reasonableness aims at procuring goods, despair is inescapable for anyone convinced of good’s ultimate impotence. For this reason, the meaning-creation of atheistic

existentialism does not suffice for eudaimonia: if it did, existential angst would not be inescapable. But dread necessarily haunts the existentialist, because the world is filled with suffering and lacks an intrinsic or transcendent meaning whereby evil is subordinated to good. Against this perspective, the life-unifying objective of meaning-creation for oneself or one's group offers scant solace. It cannot counter the lament of those who despair. Despair can be masked by wanton partying—as shown by those who reacted to the likelihood of dying during the Black Death in the fourteenth century by reducing all their desires to short-term corporeal pleasures.

But if the world is constituted to frustrate *evil* rather than the *good*, then no lament needs to end in despair. Only a “metaphysics of good,” or the conviction that the world is designed to enable good to triumph over evil, counters the inescapable sorrows of this life and makes eudaimonia possible. This is not to say that the world cannot look very dark: Who would not be tempted to despair at the coming of the Huns or when slavers ended the free existence of one's family or when totalitarian communism toppled one's government? However, if evil is ultimately impotent against the good, then the metaphysics of evil is false, and the metaphysics of good is true. One way that evil's ultimate impotence is shown is by nature's ability to recover after natural disasters, such as wild fires; or, by the body's ability to recover from injuries; or, as Ayn Rand points out in “The Ethics of Emergencies,” the success of insurance companies (1964a, 49).

Although proponents of the metaphysics of good need not be theists (Ayn Rand wasn't), religious belief in a transcendentally good and benevolent God is its most popular form. Aquinas explains that this is because the goodness of nature naturally leads one to know the existence of a Supreme Being. Thus it is only natural that the belief in a transcendentally good Being provides hope that evil cannot be permanent whenever one's world succumbs to evil. Belief in a good God provides a ready basis for rejecting any form of evil, especially when wicked governments wield their power to denigrate the human dignity of individuals. For this reason, the American *Declaration of Independence* appeals to God as the source of our inalienable rights.

Even though natural law does not need God in order to specify or enforce moral obligations, human beings *psychologically* need God (or, at least, the metaphysics of good) in order to be happy in a world where wickedness and evil are so prevalent. Such “happiness” requires that God, or the metaphysics of good, be the form through which events in the world are understood. In other words, “happiness” requires that we relate the world's myriad events to God, or to the metaphysics of good; we must have a contemplative spirit which sees the world's goods as manifestations of God's providence or as instantiations of the metaphysics of good, while seeing the world's evils as not overwhelming

God's providence or trouncing the metaphysics of good. Unless such contemplation becomes the life-unifying objective constitutive of our form of life, eudaimonic contentment cannot prevail over the immense suffering caused by evils personally encountered. Aquinas explains that since such evils are contrary to our wills, and the perspective that prevents these evils from overwhelming our peace is the conviction that *somehow* they are not against God's plans.<sup>17</sup>

Perhaps, however, the metaphysics of good need not be theistic in order to suffice for such eudaimonic equanimity while suffering. The atheist Nathaniel Branden thinks so:

It is a fact of reality that, in the course of his life, a human being will inevitably experience some degree of suffering; the degree may be great or small, depending on many factors; what is not inevitable, however, is the status that he will ascribe to his suffering, i.e., the significance he will give it in this life and in his view of existence. A person may preserve an unclouded sense of the value of existence, no matter what adversity or suffering he encounters; he may preserve the conviction that happiness and success are the normal and natural, and that pain, defeat, disappointment are the abnormal and accidental, the metaphysically *unimportant*—just as we rationally view health, not disease, as man's normal state. (1969, 215)

While this argument suffices to establish the metaphysics of good, and thereby the objectivity that makes natural law knowable, even to atheists, it attempts to solve the problem of personal suffering by deeming it metaphysically unimportant.

But while appealing to the metaphysics of good suffices to save the objectivity and universality of natural law, the metaphysics of good offers scant personal comfort when one is suffering. It does not suffice to motivate adherence to the natural law, if one should ever judge that eudaimonia has become personally unattainable.

But is it possible for one to judge eudaimonia to be personally unattainable? It seems so, given the possibilities of intense personal suffering and death. These possibilities seem to threaten the eudaimonic life. For this reason, both Ayn Rand (1957, 1013) and the ancient Stoic Epictetus argue for the permissibility of suicide.

On the other hand, Viktor Frankl argued—on the basis of his experience in the Nazi genocide camps—that meaning can be assigned to intense suffering even unto death and that meaning makes the suffering and the dying endurable, even if the meaning is nothing other than to die as a man and not an animal.<sup>18</sup> But is to die as a man merely to remain self-possessed and to retain self-control? Or is it to die while remaining faithful to all that made living worthwhile? If the obligations of the natural law are to bind even those who are intensely suffering

and who are dying, then those who suffer can still attain eudaimonia; they still have the option of acting virtuously. How so?

What, after all, is the point of virtue? Is it to be satisfied with oneself; or, is it to be in contact with what makes life worth living? It cannot be self-satisfaction, because otherwise we would neither need other humans to be happy nor find that self-transcendence is necessary for eudaimonia. The need for self-transcendence through union with other humans means that suffering and death can only be eudaimonic if it unites us to others in this life—or the next. But if relating to other humans in this life were sufficient for happiness, then spousal love would suffice for happiness. This is not, however, the case, since ultimately no human can suffice for another's happiness.

Hence, our only hope for being happy is union with the one perfect being, called God.<sup>19</sup> To hope for such happiness is to believe that God would never abandon us, that intense suffering and even death would not separate us from God, and that God loves us. To believe in God is thus to entrust one's self and one's sufferings and one's death to God. Only this belief suffices to preserve one's equanimity during intense personal suffering or the dying process. Only this belief permits intense suffering and dying to be eudaimonic. As Socrates said, "You too . . . must look forward to death with confidence, and fix your mind on this one belief, which is certain—that nothing can harm a good man either in life or after death, and his fortunes are not a matter of indifference to the gods" (*Apology* 40d, 25). Only such a theistic eudaimonism provides adequate motivation for adhering to the natural law in times of horrible suffering and death.

**"A person without God  
is adrift in time"  
(Lemmons 1992b, 52).**

Two further arguments can be sketched for theistic eudaimonia and its requirement of entrusting oneself to God. The first is that just as no singular act escapes God's knowledge or causality, no singular act escapes His goodness. If every act is touched by His goodness, then if some instance of evil could outweigh the good, God's goodness would be impotent relative to a finite evil. Therefore, God must compensate individuals for their unwarranted sufferings in this life by providing equal or greater rewards in this life *or* the next. That such a God does not prevent suffering does not indicate cruelty insofar as the benefit discounts the pain. For example, we do not consider our dentists cruel for injecting Novocaine: its compensation counts the pain naught. Nor do we consider the horrible pain of childbirth to outweigh the newborn's life. Accordingly, intense physical pain ending in death can only be compensated by tremendous graces given here and now. Hence, if the evil of physical pain is not to outweigh the omnipotent goodness of God, God must compensate individuals

here and now through grace for horrendous suffering, especially if it culminates in death. Aquinas seems to concur with this conclusion, for he writes in *S.T. I-II.69.2 ad 2*: “. . . although . . . the good sometimes do not receive material rewards in this life, yet they never lack spiritual rewards, even in this life, according to Matth. xix. 29 and Mark x.30: Ye shall receive a hundred times as much even in this time.”<sup>20</sup>

Another argument from suffering is theological, rather than, strictly speaking, philosophical. It begins with the specifically Christian consideration of the Lord’s love for those who suffer. This love is such that He unites Himself with the sufferers: whatsoever you do to the least of my brethren you do to me. The love of Christ is itself a great compensation for suffering. This is especially the case since by His Resurrection, Christ proved that there is life beyond the grave and thereby freed believers from the fear that this life is the only one. As Aquinas points out, “In not refusing to die for truth, Christ overcame the fear of dying, which is the reason men for the most part are subject to the slavery of sin.”<sup>21</sup>

If only God, and not the metaphysics of good, suffices to warrant the conviction that there is no case in which evil triumphs over the good, then the contemplation of God is indispensable for eudaimonia, since suffering inevitably threatens one’s own happiness in this life.

Moreover, to consider that the pervasive evil in this life cannot at any time overwhelm the goodness of God is to contemplate Perfect Goodness. It is therefore to consider the only being with sufficient goodness to quiet our restless hearts by compensating the sorrowful and by quenching the will’s thirst for perfect goodness. After all, nothing less than God can be perfect goodness. The contemplation of such a being is primarily eudaimonia. Yet since in this life neither the perfection of God nor the relatedness of things to Him can be fully comprehended, the contemplation of God is imperfect and incomplete. Nevertheless it is quintessentially eudaimonia, since it is reason’s most exemplary act. In this life, there can be no act more comprehensive or beautiful, insofar as this act is nothing other than relating all to the First Cause of goodness.

Therefore, appreciating the goodness of God as radiated in creation, and especially in providence, not only banishes the meaninglessness arising from this life’s suffering but also constitutes reason’s highest exemplary act. As such, the contemplation of God is essentially the eudaimonia of Aquinas’s natural last end as well as Aristotelian wisdom and the exemplary form of this life’s “happiness,” which is predicated analogously of *every* form of eudaimonia. To assert this is to assert that it is not enough for the contemplation of God to be a disconnected part of one’s life; one must see the totality of one’s life and its parts as related to God. It is the contemplation of God’s provident and



omnipotent—albeit mysterious—goodness that comforts in times of pain and suffering. If this is the case, then no form of life is properly eudaimonic unless the omnipotent providence of God is contemplated.

Therefore, since contemplating God is necessary for this life's eudaimonia, and since eudaimonia is the ground of natural law's obligation, contemplating God is morally obligatory. This means that those who *know* God and *refuse* to contemplate Him are morally culpable for not doing so. It does not, however, mean that those who know not God are morally culpable for their ignorance and their failure to contemplate that which they know not. The obligation to contemplate God is an affirmative precept, which means that it can only be violated by those who defy it—not by those who cannot satisfy it through not knowing God.

#### **Argument from Intellectual Thirst**

Lives of hardships and calamities do not seem to be universal. If so, it seems that belief in divine goodness is not indispensable for being motivated to adhere to the natural law. If so, eudaimonia would not require the contemplation of God. If so, it would be possible for some act other than contemplating God to be the eudaimonic act. *Prima facie*, this seems to be the case. For example, it seems possible for nonbelievers to be happy by centering their lives upon scientific discovery or dance.

However, this argument works only if the eudaimonic substitutes for contemplating God are neither ways in which God can be tacitly contemplated nor means towards the contemplation of God. But a life dedicated to scientific discoveries or to dance is not a life dedicated to what is unrelated to the contemplation of God. To be dedicated to scientific discoveries is to be dedicated to truth; to be dedicated to dance is to be dedicated to good dancing. Truth and goodness—no matter how limited—are reflections of God's infinite truth and goodness insofar as truth and goodness are only diverse, intelligible aspects of being,<sup>22</sup> and God as the cause of every being is also the cause of every truth and goodness. Aquinas's doctrine of the transcendentals thus entails that all who intentionally aim at truth and goodness—even if only in a certain respect—are aimed tacitly at God.<sup>23</sup> If no act that intentionally seeks truth and goodness can be characterized as unrelated to the contemplation of God, then to predicate happiness of such acts does not suffice to disprove that happiness is primarily contemplating God, because to contemplate the image—however imperfect—is to contemplate the original. Eudaimonic theism does not deny that happiness can be predicated of many different acts and many different forms of life; it only asserts that happiness becomes eudaimonic to the degree that it is related to the contemplation of God.

That truth and goodness become eudaimonic to the degree that they reflect

the divine or facilitate the contemplation of God can be seen from the inability of every truth and goodness to adequately serve as a vehicle for happiness. Knowing the truth, for example, about the systematic genocide of the Jews or about Charles Manson's form of life, is not eudaimonic. Neither is experiencing the merely ontological goodness of a virus, nor is undergoing random violence eudaimonic.

Such experiences ultimately leave one with unanswered questions; we yearn for a greater intelligibility whereby such disastrous events may be comprehended. If not every experience of truth or goodness can be eudaimonic, then eudaimonia is predicable only of those experiences which include unsurpassable intelligibility or comprehensiveness.<sup>24</sup> Such intelligibility is necessarily lacking in all cases of evil, insofar as evil is the privation of being and being is the principle of intelligibility.

Objects of unsurpassable intelligibility enable the cognitive act to be integratively comprehensive, complete, and final, insofar as such objects integrate or unify the many into one, without leaving out pertinent details, and while providing satisfactory explanations. As a result, an exemplary act of reason would be the act that provides the greatest degree of understanding. The most perfect exemplary act of reason would be one that attained truly unsurpassable comprehensiveness, completeness, and finality. Such a thought would provide the most superior explanation of all things through the ultimate or first cause.<sup>25</sup> It would be wisdom. It would grasp in itself the relation of all things to all things with a clarifying unity. It would provide life with meaning. It would be beautiful.

Beauty has been acknowledged as playing a key role in the development of science. John Timpane explains:

[S]ometimes the sheer beauty of a demonstration can render an argument compelling. Einstein's special theory of relativity gained acceptance not only by its power to explain observed phenomena but also by the elegance of the equation  $E=mc^2$ . Cell biologists wax rhapsodic over Erkki Ruoslahti's experiments showing that a certain molecule called integrin mediates the adhesion of cells to the protein fibronectin. Ruoslahti's work was of such beauty that other cell biologists found it extremely and immediately persuasive. (1995, 104)

Beauty, however, is unintelligible apart from goodness—as Plato argued.

Goodness has played a similar role in scientific developments, albeit largely unacknowledged. For example, scientists considered DNA understood when they could identify its overall goodness (i.e., what it was “good for”) and the goodness of its parts (i.e., their function). Likewise, flowers while enjoyable for their colors—are not understood until their reproductive goodness is known. Goodness, then, reveals the intelligibility of being. As such, goodness or being

delights as something beautiful when apprehended.

If every apprehension of beauty delights, then is life's happiness or eudaimonia predicable of every delightful cognition? Could, for example, eudaimonia be contemplating a flower? Though a flower may make one happy insofar the apprehension of any beauty delights, no flower suffices for human happiness or eudaimonia even if exhaustively understood. The intelligibility of flowers is not unsurpassable. As long as the cognitive object lacks sufficient intelligibility to be utterly unsurpassable, its delights are too limited for eudaimonia: the eudaimonic cognitive act is unsurpassable in its integrative comprehensiveness, completeness, and finality.

Thus, if one predicates eudaimonia of the contemplative delights of, for example, natural selection or the unified field theory of physics, one is either claiming that such contemplations are the best possible or claiming that they are analogous to the best possible. Either way, one presupposes the principle that the best form of contemplation would provide unsurpassable understanding of this world. This presupposition, in turn, necessarily presupposes that cognitive acts differ in their delightfulness according to their objects' degree of intelligibility or integrative comprehensiveness, completeness, and finality.

If this is so, then the only way in which one could argue against identifying the supreme form of happiness with an hierarchical theism is by arguing against the existence of God. Otherwise, one must acknowledge that, since cognitive joy increases as one's understanding increases with the degree of integrative comprehensiveness, completeness, and finality attained, contemplating God as the Ultimate Cause would be supreme happiness.

But is some degree of contemplating God necessary for eudaimonia? Or is it the case that the contemplation of anything that provides integrative comprehension, completeness, and finality is also sufficient for eudaimonic contemplation? Consider, for instance, if it were the case that natural selection, or another scientific theory, could explain everything, then it would mean that one would have to think the same thoughts over and over and over. The resulting boredom would be antithetical to eudaimonia. But such boredom would characterize the understanding of any theory or any finite thing that could be comprehensively grasped. Only persons retain the mysteries, which makes contemplating them and their actions delightful; because only persons have the subjectivity and incommunicability that necessarily exceeds our grasp. Consequently, if our eudaimonic contemplation is not to become boring, we must contemplate not a theory, not a finite object, but the infinite, divine personality.

Contemplation of God as First Cause and as a personal being requires connecting His causality to His personhood and realizing that He designed the world for our delight. Otherwise, we would find only that which contributes to

our survival as individuals and as a race delightful and beautiful. If it were not for God, Archibald Rutledge (1927) argues, we would not find sunsets and flowers so beautiful and delightful. God, the supreme being, the ultimate cause of all that is good, must love us. Contemplating God thereby includes contemplating this love. And in this contemplation, we see how all things—including ourselves—are related to God. This is the best form of eudaimonic contemplation: it is as comprehensive, complete, and final as possible, apart from divine revelation and the hereafter.

Such contemplation of God, moreover, only grows richer and more rewarding as its central insight extends to more things. Contemplating a thing's connection to God enables one's delight in that being's goodness to also become final, complete, and eudaimonic. The God-connection makes the enjoyment of any good final, because God is the ultimate explanation of all things. Thus, the will's love of perfect goodness enables it to rejoice more fully in the possession of any good when that good is seen as manifesting the supreme kindness of God—just as, for example, a woman's enjoyment of red roses intensifies as her love for the giver increases. Accordingly, romantic love intensifies its joy when experienced as a divine ordination. This God-connection also refreshes joy: for example, spousal love and joy dims when marriage is no longer seen as a God-given blessing. Joy, then, becomes more fulfilling, more meaningful, and more final when seen as linked to God and as manifesting His kindness.

Thus, the adoption of a God-focus as one's life-unifying objective enables joy to be final. The God-connection also makes joy complete; since the causality of God connects all existing things to Him, there is nothing outside the God-connection to bring one more happiness, which is not to say that there are not things outside the God-connection necessary for experiencing this happiness. The God-connection not only intensifies human joys, it also bestows a transcendent affirmation of their goodness, which is experienced metaphysically; the world itself becomes more wonderful. Thus, eudaimonic joy radiates appreciation of all in this life as God-connected. If every good is connected to God, then the contemplation of God through His effects can never become boring per se, since humans can comprehend neither the infinity of God nor the fullness of His effects—especially in this life.

Thus, the finality, completeness, and integrative comprehensiveness intrinsic to contemplating the delightful as an effect of God identifies that delight as eudaimonic. This makes degrees of eudaimonia possible as one's comprehension of God's causal role increases. Hence, although Aquinas asserts that perfect happiness is not possible in this life because God's essence cannot be seen (*S.T.* I-II.5.3 ad 2), he also asserts that a similar form of happiness is possible (*S.T.* I-II.5.3 ad 3). In addition, since the only contemplative object

capable of providing the finality and completeness of eudaimonia is God, the joys of contemplating something less than God—while they offer some degree of happiness according to the degree of intelligibility and beauty—cannot be properly eudaimonic. Such joys, however, approximate this exemplary form of happiness to the degree of their similarity to the finality, completeness, and integrative comprehensiveness of contemplating God.

*Therefore, although happiness as the contemplation of truth and goodness has various degrees, the only forms of contemplative happiness with sufficient finality, comprehensiveness, and completeness to truly be eudaimonic are those centered on God.* Thus, rather than proving that eudaimonia is not primarily predicated of contemplating God, the diversity of contemplative joys proves that, if God exists, the best form of eudaimonia cannot be other than contemplating God—i.e., the First Cause of Goodness and Being—since unsurpassable integrative comprehensiveness, finality, and completeness are only adequately attained through the contemplation of God. This means that, even though happiness is predicable of the lives of nonbelievers and even though happiness is predicable of acts seeking goodness and truth, eudaimonia is only properly predicated of acts unsurpassable in comprehensiveness, finality, and completeness. Since the contemplation of God is the only act that offers unsurpassable intelligibility; eudaimonia is primarily predicated only of contemplating God.

In other words, it is through the contemplation of God that one determines not only that the ultimate explanation of the world rests with one supreme being, but also that the Source-of-All-Explanation is good and loving. Hence, the joy (and the comfort) of contemplating God is eudaimonic. No other act of contemplation can be as comprehensive, final, complete, and joyful, because no other object can be the source of all-that-is.

Therefore, eudaimonic theism does not argue that, without God, none can be happy at all. Rather, it argues (1) that eudaimonic contemplation must be God-centered; and (2) that contemplating God is necessary for adhering to the natural law in times of trials and suffering. Apart from the contemplation of God, one would not know that nature and its requirements for happiness manifest God's creative goodness and generosity. Nor would one be able to counter the bitter bile and angst that arise with the conviction that the defenseless cannot but be fodder for the powerful. Only contemplating God prevents suffering from defeating and destroying one's moral motivation and eudaimonia.

## Agnostic and Atheistic Moral Eudaimonism Versus Theistic Moral Eudaimonism

The foregoing argues that—given intellectual thirst and experiences of deep suffering—confidence in the natural law requires contemplating God. This requirement of theistic eudaimonism as necessary for natural law *seems* inconsistent with those texts identifying eudaimonia with virtuous actions in the moral domain. However, this objection would be sound only if Aquinas considered moral eudaimonism to be possible without the contemplation of God. There are three arguments that moral eudaimonia requires the contemplation of God. These arguments begin with the requirements of wisdom, life-plans, and eudaimonia. Let us consider each of these in succession.

**First Argument from Wisdom:** If moral acts sufficed for this life’s eudaimonia, then moral acts would be unaffected by the absence of an explicit belief in God and/or by the absence of a metaphysics of good (whereby the contemplation of good is implicitly a contemplation of God). But we have seen that, without an explicit or implicit contemplation of God, none are able to escape being mired in the hopelessness and meaninglessness produced by undeserved suffering or by an unintelligible world. Hopelessness and meaninglessness leave practical reason mired in subjectivism—without any eudaimonic end or goal. It is a bitter world that offers neither hope for the suffering nor beauty for the inquisitive. Thus, since the wisdom garnered by a metaphysics of good and/or belief in God is necessary for the exemplary functioning of practical reasoning, moral eudaimonism does not suffice for eudaimonic forms of life.

**Second Argument from Life-Plans:** Eudaimonia is a complete form of life. No complete form of life can be attained without prudence. Prudence is the virtue whereby reason directs one to the right action at the right time and in the right way. The criteria of rightness regards not only particular acts at a certain time and place, but also the context of those acts for one’s life considered as a whole. This is because, as Ayn Rand explains in “The Objectivist Ethics”:

Man cannot survive, like an animal, by acting on the range of the moment . . . an animal’s consciousness cannot integrate its entire life span . . . Man’s life is a continuous whole: for good or evil, every day, year, and decade of his life holds the sum of all the days behind him. . . . If he is to succeed at the task of survival, if his actions are not to be aimed at his own destruction, man has to choose his course, his goals, his values in the context and terms of a lifetime. (1964c, 24)

To plan for a lifetime means that prudence cannot simply be considered in relation to this or that act. Prudential acts place one within a form of life.

Consequently, if the happiness that is prudence were unrelated to the contemplation of God, then the happy form of life would also be unrelated to the contemplation of God. But we have already seen that, according to the *argument from suffering and the argument from intellectual thirst*, eudaimonic happiness is predicable of only those forms of life that either explicitly or tacitly include contemplating God. Therefore, since prudence must organize the pursuit of those goods that complete one's life, and since the implicit or explicit contemplation of God must be one of those goods, the contemplation of God completes—and thereby enhances—prudential eudaimonism.

Moreover, since prudence is directed toward attaining the good life, it cannot operate without the wisdom of knowing what is and what is not within one's power. To discern this ultimately involves recognizing that much depends upon a transcendent being who cooperates or assists in enabling not only every human action, but also in making life plans fruitful. As Grisez, Boyle, and Finnis argue: "God emerges in the very exercise of human agency as one who directs human persons to act and brings about what is not within their power" (1987, 144). They explain that the reality of God's role in human action requires willing that our plans harmonize with His: "... harmony with the divine, ... will be thought to condition one's hopes of achieving every other purpose in life" (145). To harmonize with the Divine involves subordinating or conforming one's will to His<sup>26</sup>; and this involves loving God above all. Since loving God is part of contemplative eudaimonia, and since prudence requires acknowledging God's providence, prudential action becomes eudaimonic when united to the contemplation of God.

**Third Argument from Eudaimonia:** Eudaimonia is an activity final and complete within itself. Thus the degree to which an act is neither final nor complete within itself is the degree to which it fails to be perfectly eudaimonic.

Prudential activity is not a final act, but it is done for the sake of the end. The joy of being prudential is thus secondary to the joy of attaining the good sought. For example, the joy of being prudential in the buying of Christmas gifts is often secondary to the joy of buying gifts that light up faces with smiles (hence many risk having their presents returned in order to achieve that joyful surprise).

Furthermore, since we are motivated to act by what is not yet achieved, being prudent ceases to motivate or provide meaning for one's life once it is attained. One can, for example, easily imagine a wealthy and generous moral agent sighing when writing out yet another check for some worthy cause, "Is this all there is—to be a wallet for others?"

Aquinas explains this sense of emptiness when he writes that one is perfected by only what's higher. But, since human communities are constituted by equals, the perfection that totally quenches emptiness is found only in a relationship with God. Thus, prudential acts are not final acts; they are the means to the end of connecting with God. Therefore, since prudential activity is neither final nor complete in itself, it cannot suffice for the eudaimonic form of life.

*To recapitulate:* Prudential eudaimonism presupposes the contemplation of God, because contemplating God precludes the meaninglessness that renders prudence impotent by confirming the reality of Divine providence, while also providing the finality for which prudence acts. In these ways, prudential eudaimonism confirms theistic eudaimonism and the holism of Aquinas's vision.

### **Objection: Only a Few Can Contemplate God**

The eudaimonia that grounds natural law cannot require contemplating God, because such contemplation requires a degree of accuracy and finality inaccessible to all but metaphysicians or mystics. And, what is inaccessible for most cannot be an end for all (*SCG* III, c. 39).

**Response:** Although Aquinas argues that nothing less than the perfect contemplation of God as found in the Beatific Vision suffices for perfect eudaimonia, he does not intend to preclude *this life's* attainment of some minimal or imperfect form of eudaimonia. Hence, as Staley (1989) argues, eudaimonia is predicated analogously of this life's happiness and the next's. I have extended the analogous predication of eudaimonia to its imperfect instantiations in this life in order to explain Aquinas's claim that eudaimonia is primarily the contemplation of God and secondarily the perfect act of practical reason.

If eudaimonia is thus analogously predicated, then acts analogous to the perfect contemplation of God are eudaimonic—even if they are lacking in some degree of accuracy and finality. Accordingly, the objection would have to be conceded, if and only if even a minimal degree of contemplating God were inaccessible to most human beings.

If, however, contemplating God were impossible for most humans, then there would be no natural knowledge of God. Yet, Aquinas argues that such knowledge of God is universally accessible due to an almost intuitive grasp that, since order is intrinsic to natural processes, there must be an orderer.<sup>27</sup> This insight that God is the Ultimate Cause—if dwelt upon—brings the realization that all things are related to the providence of God. Such relatedness forms the



heart of the eudaimonic contemplation of God—as argued in this chapter. In other words, amidst the hardships of this life, eudaimonic joy is best found in knowing—however imperfectly—the providential goodness of the Ultimate Cause.

Therefore, since the natural knowledge of God is universally accessible, the eudaimonic contemplation of God *in this life* does not necessitate that all be metaphysicians or mystics—although eudaimonic joy does increase as the perfection of this contemplation increases.

## Notes

1. Christian morality unifies the love of God and the love of neighbor through Christian charity in such a way that neighbors and even enemies are loved as being related to God and for the sake of God (*S.T.* II-II.23.1 ad 2).

2. I've covered these questions elsewhere, see Lemmons (2010b).

3. For the Platonic perspective see, for example, *Phaedrus* 248c–249d; *Rep.* X, 618c, *Gorgias* 522e, *Phaedo* 113e–115b; for the Confucian perspective see, for example, *The Analects* (1996) v. 20.3: “The Master said, He who does not understand the will of Heaven cannot be regarded as a gentleman.” For an extensive treatment of Confucian ethics and its similarities to Socratic ethics see Jiyuan Yu (2005). Similarly, ancient Buddhism and Hinduism taught that the immoral suffer from the wheel of reincarnation to the degree of their immorality.

4. Francis X. Meehan (1947, 77): “Unmoored from its secure anchorage to the Absolute Being, morality loses all permanent objectivity, all necessity, universality, immutability. . . . Nothing can be judged finally and definitely to be moral or immoral, good or evil.” Oscar J. Brown (1981) argues that the absoluteness and universality of natural law requires support from theology or supernatural grace. Also see John F. Crosby (1986). Jacques Maritain “subalternates” ethics to moral theology in *Science and Wisdom* (1940, 81). For a discussion of such views see V. J. Bourke (1976). For a theological treatment of Aquinas's morality, see Paul Wadell (1992).

5. Clifford G. Kossel, S.J. (1957, 70): “Natural appetite is always right because it is nature, and though we may not know this, nature is a determination of Divine Reason. Natural appetite in turn determines and rectifies the primary judgements of practical reason.”

6. For Plato's characterization of these forms as participators in the divine forms see, for example, *Timeaus* 90c, *Gorgias* 493d–495a, *Phaedrus* 245c–257b.

7. Diotima's philosophy of beauty, goodness, and love was expounded in Plato's *Symposium*.

8. On the other hand, if beauty ultimately drives the desire to know for its own sake, and if contemplation suffices to ground the superiority of the intellect as Plato and Aristotle held, then the will would be subordinated to reason even in morality. This is a fact that Nietzsche knew and feared—hence, his attempt to dismiss the value of

knowledge: “‘Knowledge for its own sake’—that is the last snare of morality: with that one becomes completely entangled in it once more” (*Beyond Good and Evil* # 64; 1966, 79).

9. *Beyond Good and Evil* #36 (1966, 48): “Suppose, finally, we succeeded in explaining our entire instinctive life as the development and ramification of *one* basic form of the will—namely, of the will to power, as *my* proposition has it; suppose all organic functions could be traced back to this will to power and one could also find in it the solution of the problem of procreation and nourishment—it is *one* problem—then one would have gained the right to determine *all* efficient force univocally as—*will to power*. The world viewed from inside, the world defined and determined according to its ‘intelligible character’—it would be ‘will to power’ and nothing else—” [*sic*].

10. *Beyond Good and Evil* #230 (1966, 159): “That commanding something which the people call ‘the spirit’ wants to be master in and around its own house and wants to feel that it is master; it has the will from multiplicity to simplicity, a will that ties up, tames, and is domineering and truly masterful.”

11. The current ability to understand what has traditionally been described as chaotic states, e.g., boiling water, has arisen from our ability to identify as orderly what seemed disordered. For descriptions of the order found amongst various kinds of “chaos” see James Gleick, *Chaos* (1987).

12. Other arguments have been made; see J. L. A. Garcia (1996) and Charles Taliaferro (1996). These essays respond to Michael S. Moore (1996). Moore argues that reliance upon a belief in God not only fails to advance morality’s objectivity but harms that objectivity, since “. . . such beliefs . . . betoken a fundamentally anti-objectivist stance about morality” (1996, 260). In other words, if belief in God is ultimately necessary for grounding morality’s objectivity, then morality’s objectivity is compromised: if morality is objective, then it is knowable without God.

13. Thus, even if Nielsen’s objection succeeds, it is not the case that natural law would then be defeated, as some have argued, since we have already seen that eudaimonia can be predicated of a complete form of life, and such a form of life morally obligates loving one’s neighbors as oneself.

14. I’ve made this argument from suffering before; see Lemmons (1992).

15. The term is from Russell Pannier (1987).

16. Richard Lacayo (1994) identifies the current hip culture as one influenced by the baby boomers, where imitation of youthful rebels supplants imitation of the rich, who had defined hip culture in previous eras.

17. *S.T. I.113.7c*: “For grief and sorrow, according to Augustine, are for those things which occur against our will. But nothing happens in the world contrary to the will of the angels and the other blessed, because their will cleaves entirely to the ordering of Divine Justice; while nothing happens in the world save what is effected or permitted by Divine Justice.”

18. Viktor E. Frankl (1985, 88): “The way in which a man accepts his fate and all the suffering it entails, the way in which he takes up his cross, gives him ample opportunity—even under the most difficult circumstances—to add a deeper meaning to his life. It may remain brave, dignified, and unselfish. Or in the bitter fight for self-

preservation he may forget his human dignity and become no more than an animal. Here lies the chance for a man either to make use of or to forgo the opportunities of attaining the moral values that a difficult situation may afford him. And this decides whether he is worthy of his sufferings or not.”

19. For Aquinas’s arguments that God exists, see *S. T.* I.2,3. For an extensive treatment of these proofs see, for example, Dennis Bonnette (1972).

20. The possibility of here and now being compensated via grace for physical suffering has not received much attention. It is not typically mentioned in standard treatments of God and the Problem Of Evil; see, for example, *Reason and Religious Belief: An Introduction to the Philosophy of Religion* by Michael Peterson et al. (1991). However, Eleonore Stump (1993) argues that Aquinas considers suffering to be justified only when it conduces to the good of the sufferer.

21. *Compendium of Theology* ch. 227 (1947a, 273).

22. *S.T.* I-II.55.4 ad 1: “That which is first seized by the intellect in being: wherefore everything that we apprehend we consider as being, and consequently as one, and as good, which are convertible with being. Wherefore we say that essence is being and is one and is good; and that one-ness is being and one and good: and in like manner goodness.”

23. If this is right, then the wickedness of immoral or despicable acts arises from their failure to convey one to the what is really good and true. For example, although killing in anger appears good insofar as it rids oneself of an annoyance, it fails to attain true goodness because it destroys interpersonal equality, harms another, subjects one’s reason to passion, warrants punishment, and renders one socially untrustworthy and unfit.

24. Unsurpassable comprehensiveness is a key characteristic of religion according to Paul Griffith’s presentation “A Properly Christian Response to the Plurality of Religions,” *Society of Christian Philosophers* (1995).

25. Aquinas states in the prologue of his *Commentary on the Metaphysics of Aristotle* (1961): “. . . a knowledge of causes seems to be intellectual in the highest degree . . . that science is pre-eminently intellectual which deals with the most universal principles.”

26. Morally requisite conformity to the Divine Will is explicated in chapter 16.

27. *SCG* III, c. 38, n. 1 (1975, 125): “For there is a common and confused knowledge of God which is found in practically all men . . . due either to the fact that it is self-evident that God exists, . . . or, what seems indeed to be true, that man can immediately reach some sort of knowledge of God by natural reason. For when men see that things in nature run according to a definite order, and that ordering does not occur without an orderer, they perceive in most cases that there is some orderer of the things that we see.” This intuition forms the basis for arguments about the existence of God in *S.T.* I.2.3c.



## *Chapter 13*

# **The Challenges of Voluntarist Liberty and the Nietzschean Will to Power**

*This chapter considers whether freedom is diminished or enhanced by the obligations of personalist natural law. This discussion begins by considering two types of freedom, i.e., rationalist and voluntarist, and then proceeds to consider the challenges raised by Nietzsche.*

### **Types of Freedom: Rationalist and Voluntarist**

To moderns, evolution and technological advances have made nature seem infinitely malleable; a thing to be ruled, not a thing to rule over human beings. Thus, to base moral precepts upon nature appears to many to be simply absurd. Without the limitations of nature, culture becomes open to expressions as diverse as human imagination, daring, and technology can invent. From this perspective, natural law morality seems to be nothing other than an enslavement of human freedom to biological determinism: what nature has made let no human put asunder. Such a reduction of morality to nature repels human freedom and repudiates our mastery of nature. Hence, our culture rejects the givenness of existence and seeks to remake being according to our will. If one feels like a woman within a man's body, then an operation and supplemental hormones should be sought. If one feels like having a child of a certain sex or race, then a trip to the doctor and/or to a lawyer to negotiate with a surrogate mother can arrange it. If one can name it, technology seems to promise to do it either now or in the future. Within this context, any type of moral law obliging

adherence to the norms of nature seems not only absurd but oppressive.

To consider natural law as a limitation upon one's freedom is ultimately to presuppose that objective truths and goods constrain freedom and that the will should not be bounded by truth and goodness. Let us call this form of freedom "voluntarist liberty." Voluntarist liberty became entrenched in the West through nominalism's dismissal of human nature and through the theological voluntarism that sought to set God free from any kind of necessitation.<sup>1</sup> For instance, the influential medieval Franciscan John Duns Scotus (c.1266–1308) argued that since God's freedom is limited only by the impossibility of contradictions, God is free to dispense with the moral laws in the Decalogue's Second Table and obligate human beings to steal, murder, and covet. Within a few decades, his fellow Franciscan William Ockham argued that God's freedom is such that He could dispense with the moral laws of Decalogue's first table and morally require humans to hate Him (1979, 56–7). This voluntarist theology preserved traditional morality by basing it on God's command rather than on the nature of things. Another contributing factor to the popularity of voluntarist liberty is the understanding of rights as freedoms opposing governments and their laws, rather than as objective goods so necessary for human survival and flourishing as to preclude their usurpation by governments founded for the sake of survival and flourishing.<sup>2</sup> Although rights need not be understood in terms of voluntarist liberty, the antagonism of law and voluntarist liberty percolated into modern philosophy, primarily through Thomas Hobbes (1588–1679). Hobbes taught that freedom in the state of nature was unconstrained: each man had the right "even to . . . another's body."<sup>3</sup>

Those convinced that freedom is essentially unrestrained choice view reason as "tyrannical" in obligating the will to be bound by the truths known and by the "best option" identified by reason. Accordingly, I suspect that it is the desire for unbounded autonomy that underlies much of the widespread contemporary reluctance to embrace natural law's "rule by reason."<sup>4</sup> The protagonist in Dostoevski's *Notes from Underground* (1864) can be identified as one who found the *rule by reason* repugnant and akin to reducing oneself to a "piano key" playing a note that is rationally determined. From this perspective, freedom requires either acting randomly or defying reason's rule. Defiance was the option chosen by Dostoevski's protagonist; a man intent upon being free would, writes Dostoevski, "swear loud enough for the whole world to hear—swearing is man's prerogative, setting him apart from the other animals—and maybe his swearing would get him what he wanted, that is, it'd prove to him that he's a man and not a piano key" (1980, 114–5).

Were it the case that swearing and defying reason could prevent one from being an automaton, voluntarist liberty would be vindicated. But one does not escape being an automaton by always choosing to defy reason. Nor is the cause

of autonomy served by identifying one's greatest freedom with the greatest possible range of options; for then freedom and autonomy would be opposed to choices and commitments.<sup>5</sup> But if freedom means anything, it means being able to make choices and keep commitments; and, any definition of freedom diminished by choices and commitments—as is voluntarist liberty—is necessarily faulty.

Voluntarist liberty also fails because those who seek to maximize it by consistently defying reason find not greater freedom but a loss of freedoms. For instance, without adherence to reason's knowledge of nutrition, bodily health and mobility are hindered by excessive weight; and, without adherence to reason's knowledge that friendship requires honesty, goodwill, and benevolence, one is not free to share one's life with another, and loneliness chokes one's life. Moreover, the refusal to act according to reason will most likely result in acting according to desires and feelings centering on those desires that tend to lock one into those repetitive behaviors that seek to satiate what cannot be satiated—hence the beauty of temperance<sup>6</sup> and the need for self-help groups for those fighting the addictiveness of being locked into seeking satiation of physical desires, such as those concerning food, drink, or sex.<sup>7</sup> It is thus not reason that tyrannizes, it is desires running rampant.

Desires do not impede freedom when controlled by reason. But, as Aquinas explains,<sup>8</sup> reason's emotional control is not automatic but dependent on determining the images that cause emotions. For example, mention "Christmas" to adults, and only those who can imagine its joys will be happy; not so those who can only imagine the hassles of shopping, the waste of money on toys, and the horrible weather. Either way, it is one's image of Christmas that determine how one feels about it. This means that feelings can be changed by changing the image. It also means that one can retain the freedom to choose one's emotional state by choosing the images upon which one focuses. This is especially the case since all finite things are complex with positive and negative aspects, which can be known by reason and focused on in such a way as to cause corresponding feelings. Emotional freedom thus requires reason to manage feelings by contemplating freely chosen images. Furthermore, if it were not for reason, one could not but uncritically follow one's own emotions—including those dictated by images absorbed from one's environment. It is only through reason's ability to evaluate these images in light of objective truths, and to join with the will in determining the focus of one's thoughts, that one is free from having one's emotions controlled by those who specialize in creating images targeting the emotions, e.g., advertisers, politicians, and various interest groups.

**Freedom is maximized  
through the love of  
truth.**

Thus, human autonomy is strengthened rather than decreased by reason's control of the emotions.

Finally, voluntarist liberty identifies reason's tyranny with its ability to identify and prescribe objective truths and goods—as if knowing nature's requirements does not advance liberty. This view of reason denies that reason is a contemplative power able to recognize both the imperfections of nature and the various ways in which nature's requirements can be met. For instance, nature dictates that food be consumed, while leaving undetermined whether fish or poultry is to be the source of one's protein. Reason's ability to identify diverse sources of protein leaves us free to choose among them, while reason's ability to recognize that food is not sufficient for happiness makes hunger strikes possible. From this perspective, it is reason's grasp of truth that frees humans from being subordinated to nature, because reason can know that no good is so perfect as to necessitate the will's choice.<sup>9</sup> As put by Wojtyła in *LR*:

Truth is a condition of freedom, for if a man can preserve his freedom in relation to the objects which thrust themselves on him in the course of his activity as good and desirable, it is only because he is capable of viewing these goods in the light of truth and so adopting an independent attitude to them. Without this faculty man would inevitably be determined by them: these goods would take possession of him and determine totally the character of his actions and the whole direction of his activity. His ability to discover the truth gives man the possibility of self-determination, of deciding for himself the character and direction of his own actions, and that is what freedom means. (1981b, 115)

Reason's ability to discern the truth about the desirable objects which would otherwise claim him thus makes possible not only freedom from being determined by these objects, but it also makes possible the freedom of being able to determine oneself. Reason's grasp of objective truth thus results in what can be called the freedom of exercise and the freedom of specification—or the freedom of choice and the freedom of self-determination. Reason thereby makes possible the autonomy whereby one can act otherwise—even in regard to previous choices and commitments. Reason thus makes libertarian freedom possible. Since this freedom is dependent on reason, let us call it “rational freedom.”

Rational freedom's dependency on objective truth not only presupposes that the truth is loved but also that the self is loved in such a way that one chooses to be a lover of truth. In other words, embedded in every choice is a judgment about the object relative to one's self. For instance, the juicy grilled



steak is not only judged differently by the weight lifter, the computer programmer, and the vegetarian, but it is also judged differently when the one contemplating it is hung over, nauseous, or very hungry. The attractiveness of a steak is also influenced by its cost and by whether it will make others nauseous. To eat steak, or not, thus not only reflects the values that one holds dear, but also the recognition that the choice determines which aspect of oneself predominates, e.g., gratifying one's desire for a tasty pleasure or acting in accord with what reason knows would make a dinner guest more comfortable.

Free choice thus involves choosing an object in relationship to one's self and one's identity. Thus Rocco Buttiglione correctly argued that "the root of freedom is found in self-determination rather than in its indetermination toward external objects" (1997, 145). Or, as put by Aquinas, the quintessential free choice is the choice of whether or not to act in accord with the truth about oneself, i.e., that one is primarily, but not exclusively, a rational being—rather than primarily a physical being.<sup>10</sup> Only those who self-identify as a lover of truth and goodness are able to transcend the limitations of self and achieve the fullness of freedom.

The freedom to dedicate oneself to loving truth and goodness is the freedom to love not only oneself but also others according to the truth. It is the

**Love of truth and goodness  
actualizes human beings and  
sets them free to be all that  
they can be.**

freedom to transcend the limitations of egotistical self-concern and truly love neighbors and God appropriately. Such love not only presupposes freedom from the compulsions of egotism and the lower appetites, it also brings freedom into its own fulness of being by creating new avenues for the exercise of freedom, insofar as love and choice establish relationships that enable one

to find ever new ways to care for others. For instance, spousal love—like every relationship of care—establishes a relationship that gives members the freedom to care for each other in ways not otherwise possible.

The commitment of love expressed in such caring relationships, moreover, cannot be kept without continual self-growth in wisdom, patience, forgiveness, generosity, patience, and all the other virtues. Loving relationships require actualizing one's potentialities and thereby becoming more mature—and humane. Thus, Aquinas (*S.T.* I-II.27.2 ad 2; I-II.28.1 ad 3) was right to identify love as the highest human act in this life<sup>11</sup>; and, Wojtyła was right to say that "love . . . is indeed the actualization of the highest possibilities of man" (1980, 4). With full actualization, one is not only freer to act according to one's choice, one is freer to achieve more, to be more, that is, to exist more fully and to love

more perfectly. Relationships of love thus embody the perfection of freedom, and the perfection of freedom is embodied in perfect love.

Indeed, love and freedom interact in a spiral of ever deepening self-fulfillment and self-transcendence.<sup>12</sup> This spiral begins, according to Aquinas, with the will's necessary love of a perfect goodness that leaves it interested, but ultimately so undetermined by finite goods as to establish the freedom of exercise. The spiral begins turning when the self realizes that finite goods either benefit one's corporal existence or one's existence as a rational being. The spiral continues its turn as one chooses to love oneself either by primarily seeking self-serving goods or rational ones. This choice exercises the freedom of specification or of self-determination. At this point, the spiral either closes in on itself for those who selfishly make the self the focus of their choices, or it continues to radiate outward for those who transcend the myopia of self-concern and seek to love self, neighbors, and God in accord with the truth.<sup>13</sup> Such love actualizes one's potentialities as one seeks to know the good and do the good. In this respect, one can say that self-actualization occurs through moral choices. But only those who love without reservation and exceed the obligations of moral duty achieve utter self-transcendence, understood either as the pure ecstasy of being placed outside of himself (Aquinas *S.T.* I-II.28.3c), or as the fullness of self-giving. Such a state of perfect love is also the state of a perfect commitment that is utterly free. For if the commitment that brings self-transcendence is not also utterly free, the compulsive element refocuses attention on something other than the beloved good, and thereby not only draws one's attention to being compelled, but also thereby limits the degree of self-transcendence and the perfection of self-actualization by self-giving.

Perfect love and perfect freedom is not easy to attain; it is even hard to chose to accord with the basic demands of rational freedom—as anyone who has struggled to do the right thing knows. It is for this reason that the virtues are so prized: they are the good habits that make it easy to dedicate oneself to truth and goodness. Without these habits, one must struggle to subordinate the desires for pleasures, (whether physical, emotional, or egotistical) to truth and goodness as known by reason and loved by the will. And if one rejects living according to reason's knowledge of truth and goodness so as to better gratify the lower appetites or the will's egotistical pride, not only does one's will become malicious in its willingness

**“These two—reason and freedom—are corollaries, and their relationship is reciprocal: when men are rational, freedom wins; when men are free, reason wins” (A. Rand 1960, 66).**

to defy reason, but one is also increasingly subjected to the compulsions of lower appetites or to the blinders of being so self-serving as to be unable—and unwilling—to properly care for others. Unhappiness thus plagues those with malicious wills: they are like race horses born to fly but doomed by their own choices to plow bitter fields. Their freedom is so impoverished by the failure to love reason, truth, and goodness more than pleasure and egotistical selfishness, that it is reduced to the baseline for human beings, that is, the ability to act according to libertarian free choice in a particular instance—but only if sufficient effort is exerted to control desires and counter the will's sloth and malice. It is thus not the will's adherence to reason and the natural law that tyrannizes but lazy wills and unfettered desires.

The collapse of voluntarist liberty into the tyranny of desires suffices to

**“The truth shall set you free”(John 8:32).**

establish that voluntarist liberty promises what it cannot provide, namely, the absence of any kind of subordination. As explained by Wojtyła in *LR*: “Nature cannot be conquered by violating its laws. Mastery over nature can only result from thorough knowledge of the purposes and regularities which

govern it. Man masters ‘nature’ by exploiting more and more effectively the possibilities latent in it” (1981b, 229). The realization of possibilities brings one into greater self-realization and greater freedom by conforming with nature and its requirements: conformity with nature maximizes freedom, as any downhill skier or snowboarder can testify: one flies best down the hill by honoring nature's laws and realizing its possibilities. Life-long lovers can also testify that the liberties of romantic love require honoring the laws of love, which when violated are capable of destroying love.

Therefore, to recapitulate: reason and objective truths are not tyrannical for three key reasons. First, freedom requires reason to evaluate desires and their objects from the vantage point of truth and from the vantage point of their relationship to the self. Reason's evaluations of the advantages and disadvantages of these objects free the will from mistaking a finite good for the perfect good that it cannot help to love.<sup>14</sup> Second, it is only through rational deliberations that one can identify the full range and value of one's options, transcend the would be tyranny of desires and feelings, and achieve emotional self-control.<sup>15</sup> Indeed, reason enables one to choose one's emotional responses and achieve emotional self-control by being able to focus on either the attractive or unattractive features of any object. The rule of reason thereby frees one from being bullied by emotions or other feelings. Third, freedom flourishes best when it empowers one to achieve more and to become all that one can be. And, since none can achieve the fulness of being apart from loving relationships

based on objective truths and the goods as known by reason, objective truths and reason facilitate freedom rather than hindering it.

Swearing is thus neither the only nor the best way that Dostoevski's protagonist can demonstrate his freedom. A joyful and committed love of others unmarked by tyrannical desires is the best demonstration of freedom. Indeed, it is far superior to remorse, which also demonstrates human freedom by forcing one to admit—if only to oneself—that one could have and should have chosen differently.

### **Nietzschean Defiance and the Will to Power**

Against the preceding argument, Nietzsche would argue that *the will to power*<sup>16</sup> is superior to the will that subordinates itself to reason and the natural law. Happiness and virtue, unhappiness and vice, and the reasonable are irrelevant to the Nietzschean will's thirst for power, for mastery, for creating its own way. This is, of course, as any parent of young children has experienced, "toddler morality"; for toddlers deem reprehensible any thwarting of their wills. It matters naught if the thwarting accords with the order of nature, e.g., the harmfulness of playing with matches or the ability of afternoon sweets to impede the appetite for dinner.

That the exhilaration of efficacious willing is superior to any feelings of pleasure need not be denied by natural law. Indeed, the function arguments of Plato<sup>17</sup> and Aristotle<sup>18</sup> sought to establish that happiness is not a feeling but excellent activity over the course of one's lifetime. (For this reason, happiness is not the best translation of the Greek term *eudaimonia*. For happiness can be understood as simply pleasure and not as the joy of acting in accord with living well. The difference is significant: for immediate gratification is a pleasure that need not accord with living well or even with activity, for instance, drug-induced pleasures are essentially passive. Hence, I see no alternative but to use—and to continue to use throughout this book—the Greek word *eudaimonia*.) Plato and Aristotle agree with Nietzsche that efficacious action over a lifetime is superior to *feelings of pleasure*. But they do not agree that such action can be legitimately identified with the will to power; Plato, Aristotle, and the entire natural law tradition hold that efficacious willing requires adherence to the natural law.

In this debate about the nature of efficacious willing, the natural law tradition has focused on three arguments: the first is based on the nature of intelligence; the second on the emotions and impotence; and the third on loneliness, depression, and self-respect. Let us consider each argument in succession.

### The Argument from Intelligence and Altruism

The first argument from intelligence was mounted by Socrates against Thrasymachus.<sup>19</sup> Thrasymachus argued that power is best when unrestricted; Socrates countered by arguing that mistakes can be avoided only when desires are subordinated to knowledge and that such subordination requires power to seek the advantage of the ruled. In other words, intelligence requires the will to submit to nature's requirements.

The will's submission to nature's requirements does not enslave human beings, but rather frees the human being to live and live well. Centuries after Plato, a version of the argument from intelligence was made by Ayn Rand:

Man cannot survive, as animals do, by the guidance of mere percepts. A sensation of hunger will tell him that he needs food (if he has learned to identify it as "hunger"), but it will not tell him how to obtain his food and it will not tell him what food is good for him or poisonous. . . . He needs a process of thought to discover how to plant and grow his food or how to make weapons for hunting . . . his life depends on such knowledge—and only a volitional act of his consciousness, a process of thought, can provide it. (1964c, 21)

In other words, nature bites and only the choice to live rationally enables us to survive and to flourish. The code of values necessary for our type of being to flourish pertains to morality, i.e., natural law morality. Here is how the connection is made by Ayn Rand:

Man has been called a rational being, but rationality is a matter of choice—and the alternative his nature offers him is: rational being or suicidal animal. Man has to be man—by choice; he has to hold his life as a value—by choice; he has to learn to sustain it—by choice; he has to discover the values it requires and practice his virtues—by choice. A code of values accepted by choice is a code of morality. (1964c, 23)

Hence, reason honoring nature trumps wanton will.

Against Rand's argument, the Nietzschean only needs to reply that these arguments prove not that *every* person must accord with nature, but only that the masses must do so in order to provide the superior man with whatever is necessary for survival so that he may then use the masses as instruments in his will to power.<sup>20</sup>

The Nietzschean, however, may not so easily defeat Plato's argument from intelligence. For that argument is not based on survival, but on the inner requirements for the successful wielding of power: power can be successfully wielded neither in ignorance nor in defiance of the advantage of the masses. The collapse of European communism at the end of the twentieth century testifies to the truthfulness of Plato's latter claim: power must be altruistic to

long lasting. Furthermore, if it is the case that the requirements of natural law are also the requirements of practical rationality (as argued in chapter 7), there would be no exemption from the requirements of nature—not even for the Nietzschean.

### Argument from Impotence

The Nietzschean argument that the exhilaration of mastery, of defying conventions, of asserting one's will bests any conformity to reason presupposes that the ability to be masterful, to accomplish one's will is not dependent upon the emotional self-control that comes from conforming to reason's rule.

Contrary to this Nietzschean perspective, Plato argues that those who act apart from reason and its standards do nothing that they will (*Gorgias*, 466e). The will that defies the order of reason is necessarily not able to avoid harm and achieve good. A horse running blind, argued Aquinas (*S.T.* I-II.58.4. ad 3), cannot but fall and fall harder the faster it runs. In other words, only the will that conforms to reason can be efficacious. Any will that rebels against reason inevitably finds its autonomy compromised according to the degree of its rebellion.

Mild impediments often takes the form of habitually preferring a certain pleasure, e.g., an alcohol addiction or habitually avoiding a certain pain, e.g.,

sloth in regard to exercise. Either habit makes it difficult to act against a pleasure or in defiance of a pain. This difficulty in carrying out one's intentions is not only somewhat painful, it also reflects a diminished efficacy in one's ability to act. According to Plato (*Phaedo* 83c–d), the bad habit originates in the ability of physical pleasures and pains to be more intense than those pertaining to rationality. Impediments efficacy increases in severity according to

**A morality of according with nature enables one to be efficacious and to manage well (*Republic*, Bk. 1, 351b–c, 353e, and Bk. X, 619a–b).**

**Nature bites;  
rationality frees.**

the extent to which the will chooses to accord with feelings over and against reason. Indeed, the will's impediment may be so great that the person cannot act without being torn by conflicting desires.

Aquinas concurs,<sup>21</sup> but adds that feelings fall into two categories: those that are created by the intellect's reflections on various states of affairs and those that are aroused by the imagination or by the cogitative sense, which apprehends intentions especially of harm or benefit.<sup>22</sup> He calls the former "antecedent passion" and the latter "consequent passion."<sup>23</sup> An example of an antecedent

feeling would be the fear that immediately follows upon the apprehension of a snake or a spider, while the feelings of relief or embarrassment that follows upon the realization that the snake or spider is a rubber replicate is an example of a consequent feeling. The distinction between antecedent and consequent feelings is important for Aquinas, because he holds that we are morally responsible only for feelings consequent upon an act of reason.<sup>24</sup> Reason may either confirm and intensify feelings by intensely focusing upon them, or it may discredit and diminish them by focusing attention on something else. Accordingly, one who chooses to focus upon a rude action from a passing driver grows more enraged—and may even commit an act of road rage, while one who either chooses to focus on how frequently rude actions are unintended or chooses to think about something else, like one's favorite song on the radio, grows less angry and perhaps joyful. In this way, reason not only can sway feelings but also change them.

Now those who are convinced that reason should be “the slave of passion” rather than vice versa frequently fail not only to evaluate their feelings but to change those that are deemed inappropriate by reason. After all, taking charge of one's emotions requires exerting energy. But it becomes easier with practice. Failure to practice increases one's susceptibility to emotional enslavement and decreases the efficacy of one's will. This state can become so ingrained that the will can no longer easily move one to act in accordance with what reason has deemed best. This state is vicious. It is called the *fomes*

by Aquinas (*S.T.* I-II.91.6c); it is the state of being “ruled” by the *fomes*, i.e., by sensuality or feelings or passions. (These feelings include the emotions as well as physiological inclinations, e.g., sexual impulses.) In other words, when reason abdicates, desires and emotions dominate.

To be ruled by sensuality is to experience a loss of efficacy in that aspect of life *not* habitually governed by reason, e.g., the enjoyment of sweets unfettered by reason diminishes self-control over sweets. Accompanying such disempowerment is an indecisiveness and lack of ability to commit to reason's identification of the better course of action. The sensual rule thus signifies a lack of integration between the body and the mind, which precludes readily

**“True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting . . . and it is impossible to abolish it entirely. . . . Whoever is disobedient is fleeing from himself and denying his human nature, and . . . he will suffer the worst penalties”**  
(Cicero *The Republic III*, #XXII 2006, 211).

accomplishing what one deliberately chooses due to feelings to the contrary.

**Nature  
never  
forgives.**

Furthermore, the will's loss of efficacy is considered by Aquinas to be a sanction or punishment for violating the natural law, because the will rankles at any impediment to its motion, e.g., opposing feelings.<sup>25</sup> That reason and will become inefficacious and subject to the rule of feelings as the consequence of failing to live according to the natural moral law reveals Aquinas's insightfulness about human nature. Human nature is a complex system integrated into a harmonious unit only through the rule of reason—not the rule of sentient feelings. Without submission to reason, the various subsystems function autonomously: emotions become unruly and physical desires burdensome. The popular maxim “use it or lose it” thus also applies to the efficacies of reason and will. Disintegration begins not only with violations of the natural moral law, but also with the tendency to be guided by feelings even in nonmoral matters, like having another cookie when one is full. The will's efficacy thus requires taking charge of one's emotional life through submitting to reason's judgments about what is best and avoiding subordinating oneself to the pursuit of pleasure. Habitual submission enables one to achieve the self-integration that makes efficacy easy—and joyful, as becomes the state of virtue.

### **Argument from Loneliness**

The preceding arguments about how there can be no efficacious willing without reliance upon reason may not be adequate for defeating those Nietzscheans who use reason to subordinate pleasures and emotions to their desire for power over others. Such Nietzscheans defy the natural law claim that others are not fodder for one's manipulative schemes. Nietzsche, himself, argues that there is not one morality for all, and that the superior man ought not be judged by the same standards as the inferior man of the herd.<sup>26</sup> These Nietzscheans, by asserting the will to power, challenge the fundamental natural law disjunct, as enunciated by Ayn Rand (1964c, 23), that is, that the alternative offered by human nature is “rational being or suicidal animal.”

But is the will to power really a third alternative to Rand's disjunct? Perhaps not, if the writings of Nietzsche are any indication: “The thought of suicide is a powerful comfort: it helps one through many a dreadful night.”<sup>27</sup>

An argument that the will to power over and against subordination to reason's knowledge is ultimately self-defeating or suicidal can be drawn from the work of the psychologist Nathaniel Branden (1969). He points out that the human need to be efficacious is so strong that it is the basis of self-esteem. Self-esteem may be built upon understanding and honoring nature or upon manipulating others.<sup>28</sup> The self-esteem built upon nature is life-affirming,



confident, and joyous, since it is based upon one's own recognition of being able to handle successfully nature and her requirements. The self-esteem built upon the manipulation of others is insecure: it must always be fed by successfully asserting power over others. Such power is enhanced, albeit only temporarily, when the others are too afraid to resist. But such fear is alien to the trust that is the basis of love and friendship. Loneliness is thus inescapable. Nietzsche recognized that the will to power entails loneliness:

Today the concept of greatness entails being noble, wanting to be by oneself, being able to be different, standing alone and having to live independently. And the philosopher will betray something of his own idea when he posits: "He shall be greatest who can be loneliest, the most concealed, the most deviant, the human being beyond good and evil, the master of his virtues, he that is over-rich in will." (*Beyond Good and Evil* #212, 1966, 139)

But the loneliness that results from a lifetime of willing power breeds depression, and depression idles the will's assertiveness. Therefore, the will to power is self-defeating.

### Overview of Sanctions<sup>29</sup>

If Nietzsche were right and nature does not underpin morality, then there would be no natural sanctions for transgressions against natural law. But we have seen that there are such sanctions: alienation from others, depression, and a diminishment of efficacious willing. In addition, there is the remorse of a conscience that realizes not only that one has failed to act according to one's best lights, but also that one has squandered one's efficacy upon seeking pleasure or power. These sanctions ensure that unhappiness arises whenever one consistently fails to live according to reason and its truths—as psychologists attest.<sup>30</sup> Such unhappiness is not a Divine "lightning bolt," although—as an inbuilt reaction of human nature—it reflects the design of its Creator.

There is no necessity for one to encounter these sanctions of natural law in any particular order. For example, if one assumes that lying is okay when signing business contracts, one may not feel remorse before being sued or arrested. Likewise if one always yields to one's feelings in a particular aspect of one's life, one may experience sensuality's domination in that aspect before experiencing remorse of conscience or ruptured human relationships—as may be the case, for example, in the initial stages of sexual addiction. On the other hand, in one with a properly formed conscience, the three sanctions for

**Honor nature and flourish.  
Despise nature, break her  
laws, and misery will be  
yours.**

immorality may be progressive: if remorse of one's conscience does not motivate one to be moral, then one's immorality will increasingly affect others and hinder one's interactions with other humans. If the resulting pain fails to motivate a return to morality, then the persistent violation of one's own conscience increasingly weakens the ability to follow reason and the truth as well as the ability to accomplish what one wishes. The pain of being inefficacious is nothing other than the impotence resulting from sensuality's domination.

Regardless of how the sanctions of natural law are encountered, they will always be encountered. As the old adage states, "nature never forgives." And, as the psychologist Nathaniel Branden, an atheist, points out, "Man is free to act against the requirements of his nature, . . . but he is not free to escape the consequence: misery, anxiety, destruction" (1969, 234–5). Thus natural law does not need a Divine Enforcer for its coerciveness. Its sanctions suffice because, since the necessity of the natural moral law is the necessity of eudaimonia, the sanctions of natural law are increasing degrees of unhappiness for the immoral. Happiness, after all, is a greater good than any achieved by breaking the law, while the loss of happiness is a penalty greater than any incurred by obeying the law.<sup>31</sup> Hence natural law's inbuilt sanctions suffice for the coercive element of law. Accordingly, if there are additional sanctions to immorality (e.g., loss of eternal bliss), they do not concern a philosophical explication of morality: God's actions as a Divine Enforcer of morality do not eliminate the intrinsic sanctions of natural law morality built into the functional requirements of human nature.

### Summary

It is possible to argue against the possibility of natural law by claiming that it is mistaken about divinity, nature, and the human will. I have responded by granting—only for the sake of argument—that even if there were no divine enforcement of natural law, violators of the natural law would still suffer from three sanctions: the loss of efficacious willing, the loss of friendship, and remorse. For these reasons, the Nietzschean challenge fails: the will to power is not superior to the will bound by the natural law.

## Notes

1. See, for instance, A. B. Wolter (1990). Also see the appendix.
2. There are several reasons why rights are increasingly being seen as voluntarist liberties rather than objective goods, ranging from the popularity of utilitarianism and legal positivism, to the belief that only fear of punishment makes men good. For a fuller

treatment see chapter 15.

3. *Leviathan* ch. 14 (1985, 190).

4. Luc Ferry (1990, 1) confirms the popularity of the conviction that reason is tyrannical: “It is not unusual to read that totalitarianism is the effect of an unrestrained will to incarnate reason, or the universal, in the particular, as though reason must be suspected of violence, of tyranny with regard to the real—theories too widespread during the last decade for there to be a need here to identify their various formulators.” George Weigel (2005, 83) identifies as seminal to the rise of voluntarist liberty (or, the freedom of indifference) William of Ockham’s dismissal of human nature and identification of will as the defining human attribute: “If there is not such thing as human nature, then there are no universal moral principles that can be read from human nature. That means that morality is simply law and obligation, and law is always somewhere outside me. Law, in other words, is always coercion—both divine law and human law, God’s coercion of us and our coercion of one another. . . . With [William of] Ockham, we meet what Pinckaers calls the *freedom of indifference*. . . . Here, freedom is simply a neutral faculty of choice. And choice is everything, for choice is a matter of self-assertion, of power. Will is the defining human attribute. Indeed, will is the defining attribute of all reality. For God too is supremely willful, and the moral life, as Ockham understood it, was a contest of wills between my will and God’s imposition of His will through, for example, the Ten Commandments. . . . So here, in the fourteenth century, is beginning of what is often called today the autonomy project, whose modern prophet was Nietzsche: the idea that human beings are radically autonomous, self-creating ‘selves’ whose primary relations to one another are relations of power.”

5. Siobhan Nash-Marshall, conversation, spring 2002.

6. See *S.T.* II-II.180.2 ad 3: “. . . [the beauty of] temperance . . . restrains the concupiscence which especially darkens the light of reason.”

7. Self-help groups are not confined to problems arising from poor choices, but include other ones as well, for instance, those offering support for victims of cancer, chromosome deficiency, and Lou Gehrig’s Disease. One website that may be helpful is <http://www.mentalhelp.net/selfhelp/> (accessed on June 13, 2010).

8. See *S.T.* I.81.3 and especially ad 2. The relationship between the intellect and the sense appetites is complicated by the need for intellect to know through phantasms, the ability of phantasms to move sense appetites, and the ability of the cogitative sense to be moved by the intellect as well as by the sense powers; see, for instance, George Klubertanz (1952).

9. See *S.T.* I.82.2 ad 1: “The will can tend to nothing except under the aspect of good. But because good is of many kinds, for this reason the will is not of necessity determined to one.” Also see *S.T.* I.83.1-4; and, Rocco Buttiglione (1997, 154): “Freedom rests on the person’s relationship with the truth, enabling him not to be determined by circumstances.”

10. See *S.T.* II-II.25.7c: “For it is common to all for each one to love what he thinks himself to be. . . . Now the good look upon their rational nature or the inward man as being the chief thing in them, wherefore in this way they think themselves to be

what they are. On the other hand, the wicked reckon their sensitive and corporeal nature, or the outward man, to hold the first place. Wherefore, since they know not themselves aright, they do not love themselves aright, but love what they think themselves to be. But the good know themselves truly, and therefore truly love themselves.”

11. Cf. *S.T.* II-II.23.6 ad 1.

12. Cf. Wojtyła *LR* (1981b, 135–6), “The will aspires to the good, and freedom belongs to the will, hence freedom exists for the sake of love, because it is by the way of love that human beings share most fully in the good. This is what gives freedom its real entitlement to one of the highest places in the moral order . . . freedom is the means and love is the end.”

13. Cf. *S.T.* I-II.26.4c where Aquinas divides love into two types: love-of-a-means, i.e., love-of-concupiscence; and love-of-person-for-his-own-sake, i.e., love-of-friendship: “man has love of concupiscence towards the good that he wishes to another, and love-of-friendship towards him to whom he wishes good.”

14. *S.T.* I-II.1.1-8.

15. See Rocco Buttiglione (1997, 147): “The independence of the will from the emotional sphere is explained by its dependence on truth.”

16. Consider the poetry and inspiring beauty of the following passage from *Beyond Good and Evil* #260 (1966, 205): “The noble type of man experiences *itself* as determining values; it does not need approval; it judges, ‘what is harmful to me is harmful in itself’; it knows itself to be that which first accords honor to things; it is *value-creating*. Everything it knows as part of itself it honors: such a morality is self-glorification. In the foreground there is the feeling of fullness, of power that seeks to overflow, the happiness of high tension, the consciousness of wealth that would give and bestow: the noble human being, too, helps the unfortunate, but not, or almost not, from pity, but prompted more by an urge begotten by excess of power. The noble human being honors himself as the one who is powerful, also as one who has power over himself, who knows how to speak and be silent, who delights in being severe and hard with himself and respects all severity and hardness. . . . Noble and courageous human beings who think that way are furthest removed from that morality which finds the distinction of morality precisely in pity, or in acting for others, . . . faith in oneself, pride in oneself, a fundamental hostility and irony against ‘selflessness’ belong just as definitely to noble morality as does a slight disdain and caution regarding compassionate feelings and a ‘warm heart.’”

17. For Plato’s function argument see *Rep.* I.352b–353d.

18. For Aristotle’s function argument see *Nicomachean Ethics* I.1097b23–1098a19

19. Plato (1930), *Republic* Book One, 338a–340a, and especially 348d–350d.

20. Such a Nietzschean would be acting according to the rationale put forth in *Beyond Good and Evil* #44 (1966, 54). This rationale ridicules equality of rights, concern for the suffering, and tranquillity as values of the herd that ignore the reality that men need to be preyed upon in order to enhance the species. This idea of Social Darwinism was quite popular at the height of the Industrial Revolution.

21. *S.T. I-II.69.2ad 1*: “Although sometimes the wicked do not undergo temporal punishment in this life, yet they suffer spiritual punishment. Hence Augustine says (*Conf. I*): *Thou hast decreed, and it is so, Lord, —that the disordered mind should be its own punishment*. The Philosopher, too, says of the wicked (*Ethics ix.4*) *that their soul is divided against itself, . . . one part pulls this way, another that*; and afterwards he concludes, saying: *If wickedness makes a man so miserable, he should strain every nerve to avoid vice.*”

22. *S.T. I.81.3 ad 2*; *S.T. I-II.17.7*. For Aquinas’s argument that the emotions pertain to the sentient side of our nature see *S.T. I-II.22.1-3*. Also *S.T. I.78.4c*: “Furthermore for the apprehension of intentions which are not received through the senses [e.g., that something is harmful], the estimative power is appointed . . . man perceives [such intentions] by means of coalition of ideas. Therefore the power which in other animals is called the natural estimative, in man is called the cogitative . . . wherefore it is also called the particular reason, to which medical men assign a certain particular organ, namely, the middle part of the head.” *S.T. I.81.3c*: “Wherefore in man the sensitive appetite is naturally moved by this particular reason.” For an excellent Thomistic treatment of the cogitative sense, see George Klubertanz, S.J. (1952). Furthermore, it is interesting to note that recent research suggests that the emotions arise from the activities of two brain structures: the neocortex and the amygdala, which is located in the middle of the head (Goleman 1995, 13–26).

23. See *S.T. I-II.17.7* and 24.3 ad 1.

24. *S.T. I-II.18.9 ad 3*: “. . . the intellect and imagination represent such things as arouse the passions of the soul.”

25. *S.T. I-II.46.6 ad 2*: “[P]unishment consists in being contrary to the will, painful, and inflicted for some fault.”

26. See, for example, *Beyond Good and Evil* #221 (1966, 149): “Moralities must be forced to bow first of all before the *order of rank*; their presumption must be brought home to their conscience—until they finally reach agreement that it is *immoral* to say: ‘what is right for one is fair for the other.’” Also see #228 (1966, 157): “‘the general welfare’ is no ideal, no goal, no remotely intelligible concept, but only an emetic—that what is fair for one *cannot* by any means for that reason alone also be fair for others; that the demand of one morality for all is detrimental for the higher men; in short, that there is an order of rank between man and man, hence also between morality and morality.”

27. *Beyond Good and Evil* #157 (1966, 91). Also see #76 (1966, 81): “Under peaceful conditions a warlike man sets upon himself.” Also #225 (1966, 153): “Well-being as you understand it—that is no goal, that seems to us an *end*, a state that soon makes man ridiculous and contemptible—that makes his destruction desirable.”

28. Branden’s arguments can be found within his chapter 10, “Social Metaphysics,” of *The Psychology of Self-Esteem* (1969).

29. My treatment of natural law sanctions closely follows that of Aquinas. He, however, approaches these sanctions somewhat differently. In *S.T. I-II.87.1c* Aquinas argues that violations of the moral law subject man to three realms of punishment: one of which is inflicted by himself, namely a remorse of conscience; the others are inflicted

by his fellow humans and by God. Of the first, not much needs to be said other than remorse is a horrible feeling of shame. Humans punish moral violators either by the withdrawal of their friendship or by legal prosecutions. In this regard, it is important to note that the criminal codes of many countries primarily center upon those immoral acts that harm others, e.g., murder, theft, perjury, etc. Of the punishment inflicted by God for moral violations, the critical question is whether God's punishment is only extrinsic or also intrinsic to natural law. If only extrinsic, then immoral acts—invoking neither remorse of conscience nor interpersonal sanctions—do not incur a sanction until God acts; just as the perjurer does not incur jail time until the trial judge acts. Aquinas, however, while not disputing God's role as Ultimate Judge, also identifies an intrinsic sanction, namely, the usurpation of reason by sensuality (*S.T.* I-II.91.6c). Of interest are also *S.T.* I-II.90.3 ad 2, which states that the law has coercive power so that it is efficacious for inducing to virtue, and *S.T.* I-II.96.5c, which states that it is the contrary wills of the wicked that subjects them to the law.

30. For a sampling see M. Scott Peck's *The Road Less Traveled* (1978), and Nathaniel Branden's *Honoring the Self* (1983). Hugo Meynell also documents some of these psychologists—and notes their relevance for morality—in his excellent book, *Freud, Marx, and Morals* (1981).

31. This argument about the sufficiency of natural law's sanction is borrowed from Thomas Higgins (1958, 106–7), who placed it within the context of eternal happiness. I think, however, the argument stands even within the context of natural happiness, since Aristotle's function argument, which Higgins presupposes, establishes that human happiness is functioning rationally.

## *Part Five*

### **Love Precepts: Their Normativity and Specifications**

Three questions frame the following four chapters: What obligations are specified by the precepts of neighborly love and loving God above all?; Are these love precepts able to specify obligations in every case without sacrificing requisite moral flexibility?; and Can they really do the work of traditional natural law theory and specify virtuous acts as well as set the parameters of human law within the context of war and capital punishment? We proceed in chapter 14 to identify the properties of affirmative precepts in general and of the love precepts in particular, followed by an explanation of how the love precepts obligate the development of the virtues. Chapter 15 unpacks the normative specifications of the precept of neighborly love and identifies the overall policy implications for human law and natural law jurisprudence. Chapter 16 considers the specifications of the precept of loving God, both under the rubric of proportional love for the common good and under the rubric of loving God Himself. Chapter 17 applies the love precepts to the difficult cases of war and legal punishment.





## **Chapter 14**

# **Love's Normativity and Love's Virtues**

*Three questions focus this chapter: (1) When does one violate an affirmative precept?; (2) How can the universal prescriptions of love apply to highly contingent situations?; and (3) What are the virtues entailed by the love precepts?*

Affirmative precepts are odd insofar as they are obeyed as long as one is ready to act in accord with them when necessary. According to Aquinas: “[A]lthough affirmative precepts are always binding, they are not binding for always, but according to place and time. Wherefore . . . the affirmative precepts . . . are to be understood as to the preparedness of the mind, in the sense that man be prepared to fulfill them when necessary” (*S.T.* II-II.140.2 ad 2). One cannot remain in accord with an affirmative precept when acting or intending to act contrary to its prescription; nor when neglecting the prescription; nor when rejecting the precept’s obligation. Transgressions and omissions are both ways of violating an affirmative precept. In other words, any affirmative precept has an equivalent negative formulation: “Do this” is equivalent to “Avoid opposing this.” Accordingly, every affirmative precept prescribes not only being mentally prepared to act—and so acting—when the failure to act would contravene the prescription, it also proscribes tacitly whatever opposes its prescription. For instance, the precept of neighborly love obligates possessing an affectionate goodwill to all at all times, acting beneficently when the failure to so act would contravene affectionate goodwill, and avoiding harm.<sup>1</sup> Hence parents, for example, violate this precept not only when they will harm to their children by selling them for a profit, but also when they fail to educate them.

## Universal Applicability, Supersession, and “Relativism”

The love precepts are universal norms that apply in every case for three reasons. First, moral actions identify those actions that determine the agent’s character or how others are treated. The love precepts regulate not only how one treats others but also how one treats oneself.<sup>2</sup> Secondly, as Aquinas pointed out, every act of a human being is caused by the love of some end’s goodness.<sup>3</sup> Even hatred is caused by love insofar as hatred is directed towards that which attacks a good that is loved.<sup>4</sup> Wickedness is also an act of love insofar as it is an act that is directed towards a good—albeit, at the wrong time (e.g., humor during a solemn moment), or in the wrong place (e.g., playing chess during church services), or with the wrong people (e.g., adultery), or in the wrong way (e.g., family prosperity through abortion), or with a bad motive (e.g., giving the perfect gift as a set up for manipulation).<sup>5</sup> If there are no acts that are not underpinned by some kind of love, then the norms regulating love also regulate every act.

Finally, the love precepts apply universally, because the love prescribed by either love precept proscribes any defect in the goodness of one’s intentions, actions, and context for acting; because then love would be contravened. For instance, the thief who steals the coat of a homeless person on a bitterly cold night has not only contravened love in his intention to steal as well as in his act of taking the coat, but also in his disregard of the harm done by depriving the homeless person of a coat when it is so cold. If it is love that obliges one to intend the good and to do the good both in deed and in circumstances, then it is love that is obliging us to act morally. For, according to Aquinas, no act is moral unless it is good in all of its parts:<sup>6</sup>

[A] fourfold goodness may be considered in human action. First, that which, as an action, it derives from its genus; because as much as it has of action and being so much has it of goodness . . . Secondly, it has goodness according to its species; which is derived from its suitable object. Thirdly, it has goodness from its circumstances, in respect, as it were, of its accidents. Fourthly, it has goodness from its end, to which it is compared as to the cause of its goodness. (*S.T. I-II.18.4c*)

Deficiency in any of these aspects of good contravenes love, which seeks the fulness or perfection of good for oneself and for those like oneself. Intending or acting for such deficient goods is thereby forbidden by the precept of neighborly love and the precept of loving God since these instantiate the *Bonum* Precept and its formulations, insofar as these prescribe proportional love and

acting in accord with the truth known by practical reason. In brief: pursuing such deficient goods sins against truth and against love.

Furthermore, since morally good acts cannot be deficient in any of these aspects of goodness, the lack of deficiency is a lack of imperfection. We thus act perfectly when we act morally.

This is not to say that moral action is the highest activity or the most superlative form of activity or the greatest perfection. After all, perfection is an analogous term that can be predicated of whatever is not deficient as well as of whatever is unsurpassably superb. This means that moral eudaimonism is a minimal perfectionism: human actions are not immoral as long as they are not deficient in the goodness of their intention, the

**“A precept can be fulfilled in two ways: perfectly and imperfectly. A precept is fulfilled perfectly, when the end intended by the author of the precept is reached; yet it is fulfilled, imperfectly however, when although the end intended by its author is not reached, nevertheless the order to that end is not departed from” (S.T. II-II.44.6c).**

action itself (as defined by its object), and their circumstances. This also means that the moral obligations of love are minimalist as well; none violate the love precepts by failing to love to the greatest degree possible.<sup>7</sup> If this were not the case, it would not be possible to acknowledge supererogatory acts of love. But clearly there are such acts and such heroes, e.g., Raoul Wallenberg, who helped save many Jews from being killed by Nazis.

Identifying the basis of morality with the obligations of love means that every particular moral obligation instantiates the obligations of love to intend and do good when love would otherwise be contravened. This means that if it is ever the case that acting in accord with a particular norm would involve either intending or doing evil or failing to avoid the contravening of love, that particular norm would be superseded by the more fundamental obligations of love. Consider, for example, the precept that forbids theft. This precept identifies taking a surplus loaf of bread from its baker as immoral. However, this precept does not apply when the taker would otherwise die from starvation.<sup>8</sup> In such a scenario the baker is morally obligated by the norms of love to give the surplus bread to the one starving, because otherwise neighborly love would be contravened. As Aquinas puts it: “[W]hatever certain people have in *superabundance* is due, by natural law, to the purpose of succoring the poor” (S.T. II-II.66.7 ad 2).

On the other hand, neighborly love does not obligate the baker to share his life's sustenance with the beggar. It would be heroic or supererogatory for him

to do so: there is no greater love than to lay down one's life for another.

The adaptability of the love precepts to the exigencies of peculiar circumstances seems to throw Aquinas's morality into a type of relativism. As put by Aquinas: "[A]lthough there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. Accordingly, . . . in matters of action, truth or practical rectitude is not the same for all, as to the matters of detail, but only as to the general principles" (*S.T. I-II.94.4c*). If universal norms do not govern particular actions, then, perhaps, universal norms function as policies rather than as immutable precepts. This is the position of Vernon Bourke (1974, 65); he writes that ". . . the ethics of Thomas Aquinas are not grounded on a code of immutable precepts constituting the natural law" (1974, 65). Likewise, James A. Ross argues that, since different conclusions can be derived from the same primary moral norm, "the natural law principles of practical reason, do not function as universally true generalizations which are to be applied through universal instantiation; rather, they function as policies" (1974, 91). As policies, the obligations stemming from those universal moral norms are neither necessary nor certain—as Ross acknowledges (1974, 90). If, however, the love precepts function as policies, then the obligations dependent on them would be defeasible. But Aquinas identifies the love precepts to be the principles on which the moral obligations of the Decalogue are based,<sup>9</sup> and he identifies these obligations to be indefeasible.<sup>10</sup>

The variations in moral obligations and their sensitivity to particular situations need not be explained by treating the primary norms of natural law as policies, because this variability is explained by differences in the moral object. For example, when taking the property of another deprives him of what is due him, the act is theft. But when such taking is due to an appropriate fine, it "is not theft or robbery as forbidden by the Decalogue" (*S.T. I-II.100.8 ad 3*). Whether a particular act is harmful varies according to particular situations, which then become part of the moral act's object.<sup>11</sup> Such changes in the moral object changes which moral precept is applicable: is keeping another's car keys forbidden as unjust or prescribed as a kindness due to a friend who is drunk?

Deciding which moral norm is applicable requires not only identifying the moral object but also identifying which norm instantiates the obligations to do good and to not harm. The obligations to do good and not to harm are always applicable. And this is the reason why some natural law precepts can be superseded. For instance, the obligation to return borrowed weapons is superseded by the obligation not to cause harm—when returning the weapon would cause harm—precisely because the obligation to never harm is embedded in the always applicable precept of neighborly love. In other words, though the identification of particulars as harmful or as good varies according to the

situation, the overarching norm that prescribes good and proscribes harm remains constant.

Hence once something is identified as harmful, it is impossible for one to remain morally innocent while intentionally doing the harmful thing by either seeking the evil proscribed or omitting the good prescribed—even though the identity of what is harmful can vary according to the peculiarities of particular situations.

The overarching norm that prescribes good and proscribes harm—in its most universal form—is the *Bonum* Precept (Good is to be done and pursued; evil is to be avoided<sup>12</sup>). To do and pursue good while avoiding evil is to love

oneself and to love others.<sup>13</sup> Consequently, no act fails to instantiate the love precepts, since in every situation, love obliges the pursuit or doing of some good while avoiding harm. In this way, the love precepts not only specify every moral obligation, they also suspend as non-applicable certain particular obligations due to peculiar circumstances. For instance, the obligation to keep a promise for a child's play-date is

**“Now love is not confined to any particular kind of virtue . . . but . . . is included in every virtue, since every virtuous man loves the good proper to his virtue” (S.T. II-II.125.2c).**

superseded by the obligation not to infect a playmate with pink eye or strep throat. Such suspensions or supersessions thus reflect the always binding obligation to love. Therefore, the love precepts serve as natural law's principle of supersession, whereby “Thomistic relativism” remains within the parameters of loving God, neighbors, and self.

## Love's Virtues

The natural law defines virtue as the habit of according with the truths known by reason.<sup>14</sup> As put by Aquinas: “Virtue is constituted from this that the order of reason is established in the appetitive power, but vice arises from the fact that the movement of the appetitive power departs from the order of reason” (*De Malo* qu. 8, a. 1 ad 3). Hence, the cardinal virtues (justice, fortitude, temperance, and prudence) are those habits that develop by consistently acting in accord with the various truths known by reason. Cardinal virtues dispose one

to accord with the truths known by reason, that is, to adhere to reason's prescriptions and proscriptions. For this reason, Aquinas writes "just as the appetite is the principle of human acts, in so far as it partakes of reason, so are moral habits to be considered virtues in so far as they are in conformity with reason" (*S.T.* I-II.58.2c).

But why does acting in accord with reason's truths have an effect on our dispositions? What connects our appetites and emotions to acting in accord with reason? Why do we want to be good? Is it not because the good is loved as both Augustine and Aquinas recognized? For this reason, Aquinas cites Augustine's saying that "virtue is the order of love" (*S.T.* I-II.55.1 obj. 4). As the order of love, generally understood, virtue requires ordinate emotions "and love is the root and cause of every emotion" (*S.T.* I-II.62.2 ad 3). Since the love precepts prescribe the proper order of love, the love precepts prescribe that love must accord with reason's understanding of moral truth in particular situations. Adherence to the love precept thus not only makes one accord with reason in particular situations but also makes one virtuous in so far as "the good of moral virtue consists in conformity with the rule of reason" (*S.T.* I-II.64.1 c) and the rule of reason conforms to "the principles impressed on it by nature" (*S.T.* I-II.91.3 ad 2). These principles of practical reason are nothing other than the self-evident precepts of natural law.<sup>15</sup> Following the natural law inculcates the virtues, since "all virtuous acts belong to the natural law" (*S.T.* I-II.94.3c). This is the case even when the love precepts are taken to be basic principles of natural law.

**"Now man's good is to be in accordance with reason . . . Wherefore it belongs to human virtue to make man good, to make his work accord with reason. This happens in three ways: first, by rectifying reason itself . . . [through] the intellectual virtues; secondly, by establishing the rectitude of reason in human affairs . . . [through] justice; thirdly, by removing the obstacles to . . . this rectitude. Now the human will is hindered in two ways from following the rectitude of reason. First, through . . . pleasure [in] . . . something other [than] what the rectitude of reason requires; and this obstacle is removed by the virtue of temperance. Secondly, through the will being disinclined to follow . . . reason . . . [due] to some difficulty . . . [T]o remove this obstacle, fortitude of the mind is requisite" (*S.T.* II-II.123.1c; Emphasis mine).**

Consider, for instance, the virtue of *justice*. This virtue is concerned with maintaining and restoring equality.<sup>16</sup> As put by Aquinas:

For it belongs to justice to establish equality in our relations with others, . . . and it pertains to the same cause to establish and to preserve that which it has established. Now a person establishes the equality of justice by doing good, i.e., by rendering to another his due: and he preserves the already established equality of justice by declining from evil, that is by inflicting no injury on his neighbor. (*S.T.* II-II.79.1c)

In other words, the specific good required by justice and the specific harm forbidden by justice restore or maintain equality. As such, these goods and harms are more specific instances of the good prescribed by neighborly love and more specific instances of the harm proscribed by neighborly love. Just as justice's concern with equality is a specific way in which others are to be acknowledged as being like oneself. Justice towards others is thus a specification of the precept of neighborly love. For only a love for those who are human like oneself can consistently motivate the desire for justice.

Further specification of the precepts of justice can be found in the moral precepts of the Decalogue. The first three precepts, which forbid strange gods,

graven images, taking the Lord's name in vain, and which require keeping the Sabbath, obligate one to give what pertains to God only to Him.<sup>17</sup>

As a result, these precepts specify ways in which God is to be loved above all. Likewise, the next seven precepts specify obligations of neighborly love that concern paying what is due to one's parents (and, thereby to pay "all that is due for any special reason" to whomever it is due<sup>18</sup>) as well as avoiding harming by deed, word, and

thought.<sup>19</sup> After all, it is neighborly love that forbids harm and obligates paying debts.

Hence, it is neighborly love that specifies the obligations of justice, which when satisfied develop the virtue of justice. For this reason, justice in its generic form is nothing other than love—as acknowledged by Aquinas in his citation of Augustine in *S.T.* II-II.58.8 ad 2, "justice [in a general mode] is the love of God and neighbor which pervades the other virtues, that is to say, it is the common principle of the entire order between one man and another." As such, justice is the specification of the love precepts that establishes proper relationships and all the virtues—even those that are not concerned with others but with the subordination of the passions to reason. Aquinas accordingly argues that, although justice properly concerns what is another's "due," it can also be said

**"An unjust will . . . prevents the truth of real things from determining the actions of man" (Pieper 1965, 35).**

to govern what one owes oneself via “metaphorical justice” (*S.T.* II-II.58.2).

To identify justice both as a general mode of every virtue and as the instantiation of the love precepts is also to identify every virtue as the instantiation of the love precepts. This is especially the case since every virtue is based on love, as argued in chapter 8 on privileging the love precepts.

Justice, moreover, when considered in relationship to the common good is “legal justice” (*S.T.* II-II.58.5). To identify legal justice as an instantiation of the precept of neighborly love is to forbid communities from treating their members as mere instruments of achieving some goal. For to reduce neighbors to a mere means is not to treat them as neighbors like oneself, but as instruments—perhaps even as slaves. The precept of neighborly love proscribes enslavement and prescribes equality. To preserve equality and treat each other justly, both superior and subordinate community members must freely choose to commit to the attainment of a common goal that is good for both. This shared commitment to a common good preserves equality and makes relationships of love possible. As explained in *LR* by Karol Wojtyła:

[Love is] . . . the only clear alternative to using a person as the means to an end, or the instrument of one’s own action. . . . In any case, love between two people is quite unthinkable without some common good to bind them together. This good is the end which both these persons choose. When two different people consciously choose a common aim this puts them on a footing of equality, and precludes the possibility that one of them might be subordinated to the other. Both . . . are . . . subordinated to that good which constitutes their common end. (1981b, 28–9)

Shared subordination to the good not only preserves interpersonal equality but also subordinates the relationship to that good, thereby facilitating interpersonal love<sup>20</sup>—and, structuring the moral parameters of that relationship as required by neighborly love. In this way, the second love precept also protects human equality and promotes the virtue of justice within communities.

Love likewise facilitates the development of *fortitude* (*courage*). For although the virtue of fortitude can be mimicked in various ways,<sup>21</sup> the virtue of fortitude strengthens the will’s conviction so that one holds “firmly to the good of reason against every evil whatsoever.”<sup>22</sup> Fortitude conquers fear and enables one to endure. Endurance is thus the principle act of fortitude.<sup>23</sup> Hardships are best endured when endured for the sake of love. For instance, love of one’s child best enables the single pregnant mother to choose not to abort her child.



*Temperance* also takes root in love, since temperance withdraws one only from those pleasures “which are contrary to reason”<sup>24</sup> and since it is only when physical pleasures are seen as harming the self that they can be consistently forsworn. But there can be no forswearing unless there is a love of self that yearns for what is truly good. For this reason, Aquinas argued that, while both the virtuous and the vicious love themselves by willing good to themselves, they

differ in the goods that are primarily sought. The virtuous primarily seek the goods suitable to persons, while the vicious primarily seek pleasures suitable to the body.<sup>25</sup>

**The virtues arrange the obligations of love into a handy checklist for the moral life—and the spiritual life.**

*Prudence*, unlike the cardinal moral virtues (justice, fortitude, and temperance), is primarily an intellectual virtue,<sup>26</sup> whereby one excels in determining—and commanding<sup>27</sup>—the here and now good for oneself and others.<sup>28</sup> The act of prudence thus is an act originating in love that seeks the beloved good.<sup>29</sup> To love properly

requires insight into particular cases by considering how to further caring within the parameters of general moral principles; and this is the key act of prudence. As put by Aquinas: “[P]rudence . . . applies universal principles to the particular conclusions of practical matters” (*S.T.* II-II.47.6c); and, “Prudence consists chiefly, not in the knowledge of universals, but in applying them to action” (*S.T.* II-II.47.16 ad 3).

Consequently, in those difficult cases where the appropriate specific norm is not apparent, prudence brings the most basic moral principle to bear and discerns how the particulars of the case at hand lend themselves to loving neighbors as oneself and loving God above all other natural loves.

The love precepts thus structure the formation of prudence by setting the ends of human acts as loving God, others, and self. Prudence then seeks the means to accomplish these ends and to love in wisdom, truth, and joy. This is especially the case since these precepts set the parameters of love in personalist terms that require both contemplating God and caring about the other's well-being. Within the virtuous life, contemplation and caring fuse as the awareness of divine providence deepens one's reflections and enable caring to become more confident, committed, and serene. Without this fusion, one may succumb to the temptation of “excessive activism”—as put by José Gomez (2009, 31), or to the temptation of subordinating persons to the pursuit of some good deemed greater, e.g., the well-being of employees is not infrequently set aside for the sake of maximizing short-term profits.

There can thus be no better way to inculcate the virtues than loving self, neighbors, and God according to the parameters of the love precepts.<sup>30</sup> After all,

the virtuous want not only to be good but also to excel in doing good, because not only do they love the good, they also see that the good enables all to truly flourish.

## Notes

1. This distinction of preparedness indicates an order to the end that enables a precept to be fulfilled imperfectly. As Aquinas explained in *S.T.* II-II.44.6c: “A precept can be fulfilled in two ways; perfectly, and imperfectly. A precept is fulfilled perfectly, when the end intended by the author of the precept is reached; yet it is fulfilled, imperfectly however, when although the end intended by its author is not reached, nevertheless the order to that end is not departed from. Thus if the commander of an army order his soldiers to fight, his command will be perfectly obeyed by those who fight and conquer the foe, which is the commander’s intention; yet it is fulfilled, albeit imperfectly, by those who fight without gaining the victory, provided they do nothing contrary to military discipline.”

2. See chapter 8: Privileging the Love Precepts.

3. *S.T.* I-II.28.6. This article unites two lines of argument in Aquinas. The first line of argument is that perfect goodness is necessarily the only end of the will (*S.T.* I-II.1.1-8); and, consequently, all finite goods are attractive to the will, albeit not sufficiently so as to preclude free will (I.82.1.1 & 2). The second line of argument is that only goodness causes love (*S.T.* I-II.27.1), and love causes all actions (*S.T.* I-II.28.6).

4. *S.T.* I-II.29.2.

5. Cf. Aristotle, *Nicomachean Ethics* Bk. II, ch. 6, 1106b20–23.

6. *S.T.* I-II.18.4 ad 3: “[A]n action is not good simply, unless it is good in all those ways: since *evil results from any single defect, but good from the complete cause*, as Dionysius says (Div. Nom. iv).” Also *S.T.* I-II.18.1c: “[E]very action has goodness, in so far as it has being; whereas it is lacking in goodness, in so far as it is lacking in something that is due to its fulness of being; and thus it is said to be evil: for instance if it lacks the quantity determined by reason, or its due place, or something of the kind.”

7. Even Christian charity, which binds Christians to love as Christ loved, does not obligate dying for another—even though it acknowledges that greater love hath no man than to lay down his life for another. See, for instance, *S.T.* II-II.26.5 ad 3: “[W]herefore charity does not necessarily require a man to imperil his own body for his neighbor’s welfare.” Nor does Christian charity require one to sell all of one’s possessions for the sake of helping the poor, as Christ pointed out in Matthew 19:16.

8. *S.T.* II-II.66.7 ad 2: “It is not theft, properly speaking, to take secretly and use another’s property in a case of extreme need: because that which he takes for the support of his life becomes his own property by reason of that need.”

9. *S.T.* I-II.100.3 ad 1: “Those two principles [‘Thou shalt love the Lord thy God,’ and ‘Thou shalt love thy neighbor,’ as stated in Matthew 22:37–39] are the first general principles of the natural law, and are self-evident to human reason, either through

nature or through faith. Wherefore all the precepts of the Decalogue are referred to these, as conclusions to general principles." Also see Hayden (1988).

10. *S.T.* I-II.100.8.

11. When circumstances change the morality of an act, Aquinas characterizes those circumstances as part of the act's object; see *S.T.* I-II.18.3, 10, and 11; *S.T.* I-II.19.2; *S.T.* I-II.20.3.

12. The *Bonum* Precept was extensively discussed in chapter 7.

13. See chapter 8.

14. The key passage for understanding the relationship of natural law to the virtues is *S.T.* I-II.94.3. In this text, Aquinas argues that "since the rational soul is the proper form of man, there is in every man a natural inclination to act according to reason: and this is to act according to virtue." Also see *S.T.* I-II.56.6c and *S.T.* I-II.51.2: "the habits of moral virtue are caused in the appetitive powers, according as they are moved by the reason." In these texts, Aquinas is presupposing that reason is ruled by self-evident principles, as set forth in *S.T.* I-II.94.2.

15. *S.T.* I-II.94.2c: "[T]he precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason; because both are self-evident principles."

16. *S.T.* II-II.57.1 and 58.2.

17. *S.T.* II-II.122.1-4. Please note *S.T.* II-II.122.4 ad 1: "The precept about hallowing the Sabbath, understood literally, is partly moral and partly ceremonial. It is a moral precept [and a dictate of natural reason] in the point of commanding man to set aside a certain time to given to Divine things. . . . But, insofar as this precept specializes the time as a sign representing the Creation of the world, it is a ceremonial precept."

18. *S.T.* II-II.122.6c. Also see *S.T.* I-II.100.5c and ad 4; *S.T.* I-II.100.6.

19. *S.T.* I-II.100.5c. Also *S.T.* II-II.122.1.

20. "Man's capacity for love depends on his willingness consciously to seek a good together with others, and to subordinate himself to that good for the sake of others, or to others for the sake of that good" (*LR* 1981b, 29).

21. *S.T.* II-II.123.1c: "[P]erforming acts of fortitude without having the virtue . . . may be done in three ways. First, because they tend to that which is difficult as though it were not difficult . . . owing to ignorance . . . [or, being] hopeful of overcoming dangers . . . [or, having] skill [in escaping from danger]. Secondly, a man performs an act of fortitude without having the virtue, through the impulse of a passion . . . Thirdly, through choice, not indeed of a due end, but of some temporal advantage to be obtained . . . or of some disadvantage to be avoided."

22. *S.T.* II-II.123.4c.

23. *S.T.* II-II.123.6c.

24. *S.T.* II-II.141.1 ad 1.

25. *S.T.* II-II.25.7c: "Now the good look upon their rational nature or the inward man as being the chief thing in them, wherefore in this way they think themselves to be what they are. On the other hand, the wicked reckon their sensitive and corporeal nature, or the outward man, to hold the first place. Wherefore, since they know not

themselves aright, they do not love themselves aright, but love what they think themselves to be. But the good know themselves truly, and therefore truly love themselves.”

26. *S.T.* II-II.47.1.

27. *S.T.* II-II.47.8c: “[T]o command, which . . . consists in applying to action the things counseled and judged . . . is the chief act of the practical reason, and consequently of prudence.” The command is successful because prudence “presupposes the rectitude [of the appetites]” (*S.T.* I-II.57.4; I-II.58.5).

28. *S.T.* II-II.47.7c: “But it belongs to the ruling of prudence to decide in what manner and by what means man shall obtain the mean of reason in his deeds.”

29. *S.T.* II-II.47.1 ad 1: “[T]he will moves all the faculties to their acts. Now the first act of the appetitive faculty is love . . . Accordingly prudence is said to be love . . . insofar as love moves to the act of prudence.”

30. By directing towards the love of God and neighbor, prudence—as a natural virtue—directs one towards the end of this life; for the end of the afterlife one needs the infused virtues (*S.T.* I-II.63.3.ad 3). This is because while the natural virtues suffice for achieving a happiness “proportionate to human nature, . . . [the] happiness surpassing man’s nature’s . . . man can obtain by the power of God alone, by a kind of participation of the Godhead, about which it is written (2 Pet. i.4) that by Christ we are made ‘partakers of the Divine nature’” (*S.T.* I-II.62.1c). As Aquinas explains, “The reason and will are naturally directed to God, inasmuch as He is the beginning and end of nature, but in proportion to nature. But the reason and will, according to their nature, are not sufficiently directed to Him in so far as He is the object of supernatural happiness” (*S.T.* I-II.62.1 ad 3). It is only through God’s infusion of Christian charity that perfect union with God occurs, “since the beloved is, in a manner, in the lover, and, again the lover is drawn by desire to union with the beloved; hence it is written (1 Jo. iv.16): ‘He that abideth in charity, abideth in God, and God in him’” (*S.T.* I-II.66.6c). This appeal to charity causes much confusion, since so many do not realize that Aquinas identifies charity as an infused virtue beyond the capacities of nature. As he notes, “Though charity is love, yet love is not always charity” (*S.T.* I-II.62.2 ad 3). Love of self, neighbor, and God thereby differ according whether these are loved according to nature or according to Christian charity. Here is how Aquinas explains this point in relation to self-love: “Now self-love may stand in a threefold relationship to charity. In one way it is contrary to charity, when a man places his end in the love of his own good. In another way it is included in charity, when a man loves himself for the sake of God and in God. In a third way, it is indeed distinct from charity, but is not contrary thereto, as when a man loves himself from the point of view of this own good, yet not so as to place his end in this his own good: even as one may have another special love for one’s neighbor, besides the love of charity which is founded on God, when we love him by reason of usefulness, consanguinity, or some other human consideration, which, however, is referable to charity” (*S.T.* II-II.19.6c). The quest of *Ultimate Normative Foundations* to identify, explicate, and defend the theory capable of underwriting universal and indefeasible obligations across the globe has kept the order of nature distinct from that of Christian charity. Nevertheless, Christians worry that this distinction is untenable because all are called to happiness with God in eternity and

because Original Sin turns the rational will away from loving God above all. Aquinas is well-aware of these difficulties. Indeed, he argues that the rational will “unless it is cured by God’s grace, follows its private good, on the account of the corruption of nature” (*S.T. I-II. I-II.109.3c*). These words however are ambiguous: they could indicate either that without Christian charity, there can be no single act of loving God properly; or that without Christian charity God cannot be habitually loved properly. William A. Van Roo S.J., for instance, adopts the first reading: “The impossibility of a purely natural love of God above all things is universal in corrupt human nature” (1955: 73). But it is the second reading that is consistent with Aquinas’s argument that “Man can avoid each but not every act of sin, except by grace” (*S.T. I-II.109.8 ad 1*). If this were not the case, avoiding sin would be impossible without grace; and then, theists who despise God and their fellow human beings would not be guilty of violating the natural law, since the impossible does not bind. For this reason, Aquinas explains that “the good of nature, that is diminished by sin, is the natural inclination to virtue, which is befitting to man from the very fact that he is a rational being; for it is due to this that he performs actions in accord with reason, which is to act virtuously. Now sin cannot entirely take away from man the fact that he is a rational being, for then he would no longer be capable of sin” (*S.T. I-II.85.2c*). Thus, for Aquinas, rationality suffices to bind all to obey the natural moral law. Other tensions between Aquinas’s natural law theory and Christianity were extensively covered above in chapter 10.

Love Evokes Life  
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## **Chapter 15**

# **Neighborly Love: Personalist and Juridical Obligations**

*This chapter unpacks the specifications of morally requisite neighborly love. We proceed in four stages. First, we identify the normative parameters of love and differentiate them from supererogatory love. Second, we consider the key challenges arising from selfishness, from encountering those unlike oneself, from suffering, and from future contingencies. Third, we consider whether love suffices for inalienable rights. Fourth, we consider love and the foundations of human law.*

## **Supererogation and the Limits of Obligation**

The second love precept prescribes loving neighbors as oneself.<sup>1</sup> As an affirmative precept, this precept is satisfied as long as one is mentally ready to perform acts of love when the failure to so act would contravene the requisite love. The love that is prescribed has two aspects: (1) affection, and (2) a goodwill that necessitates acts of beneficence when the failure to act would contravene the goodwill. Affection can be prescribed because, although it is caused whenever another is experienced as being like oneself,<sup>2</sup> one always has a choice about whether to focus on how others are like oneself or how they are different. The precept is thus obligating one not to so focus on differences so as to dry up the well-spring of affectionate goodwill that arises from the recognition that another is like oneself. After all, every human being is alike in sharing the same specific nature, and this nature suffices to establish—according to Aquinas—every human being as a neighbor.<sup>3</sup>

Human beings, however, are not only like each other in sharing a common nature, but also in sharing a geographical location or a family or a country or a job or a club, etc. As a result, different intensities of love are caused, which increase as the degree of likeness and union with the other increases.<sup>4</sup> Thus, some are closer to oneself than others. The obligations of love thereby differ: the closest is to be loved the most.<sup>5</sup> As put by Aquinas: “It follows from the very words, ‘Thou shalt love thy neighbor’ that those who are nearer are to be loved more” (*S.T.* II-II.44.8 ad 3). Accordingly, although Aquinas considers every human being to be one’s “neighbor in humanity,” closer neighbors are to receive priority—and that is the reason why the precept specifies neighbors as the object of love rather than others.<sup>6</sup> Hence, family members are typically to be loved more than strangers. However, since a neighbor is the one unified with oneself, it is possible that the commonality of time and place may make the stranger in need the closest neighbor; hence, the obligation to succor strangers.<sup>7</sup> In cases of emergency, there is no general rule for determining which neighbor receives priority.<sup>8</sup>

Besides the identification of a principle of prioritizing one’s love obligations according to nearness, several additional elements of specification can be identified in the second love precept’s prescription of neighborly love. First of all, the prescription to love others as another self not only identifies union with the self as the principle of prioritization, it also identifies an obligation to extend affectionate goodwill to others, that is, to care about them for their own sake.<sup>9</sup> Secondly, since it is the love-of-friendship that affectionately seeks the good of another for the other’s own sake, the second love precept prescribes the love-of-friendship, rather than the love-of-concupiscence, which is the love of a means or an instrumental good.<sup>10</sup> As a result, the second love precept forbids contravening the love-of-friendship or affectionate goodwill.<sup>11</sup>

Neighborly love can be contravened either by transgressions that harm others in thought, word, or deed; or by omissions that refuse to pay what is owed to others.<sup>12</sup> Paradigmatic transgressions against love and omissions of loving acts are identified by Aquinas as the Decalogue’s moral precepts, since he argues that the Decalogue contains natural law’s paradigmatic obligations,<sup>13</sup> and that these are easily drawn from the obligations of neighborly love.<sup>14</sup> Hence, the precept of neighborly love forbids not only coveting, lying, theft, murder, and adultery as contravening harms, but also the refusal to give others their due, whether that due arises from a promise, an act of generosity,<sup>15</sup> or a union with oneself insofar as the natural love of oneself not only extends to those united to oneself but also obligates loving accordingly.<sup>16</sup>

The neighborly love owed to every human being due to the commonality of human nature rules out racism, sectarian hatred, religious coercion, and intolerance, while obligating solidarity towards those who are suffering and in



need of assistance. Solidarity thus obligates not only being mentally prepared to help those in need,<sup>17</sup> but also lending a helping hand when there is an emergency<sup>18</sup> or when one has the time<sup>19</sup> and goods<sup>20</sup> to spare for chronic or minor problems.<sup>21</sup> Even enemies are to be so loved<sup>22</sup>; hence, the obligation to care for prisoners of war. The failure to care—when one can—contravenes neighborly love by showing contempt for a person, who is one's neighbor in humanity.

But Aquinas's second love precept prescribes loving others as another self. This means that the love of others is being based on a self-love.<sup>23</sup> As put by Aquinas: "The love with which a man loves himself is the form and root of friendship" (*S.T. I-II.25.14c*). Self-love structures friendship because love wills good, and the good that one wills to oneself is the good that one wills to those like oneself. As put by Aquinas: ". . . when a man loves another with the love-of-friendship, he wills good to him, just as he wills good to himself: wherefore he apprehends him as his other self, in so far, to wit, as he wills good to him as to himself. Hence a friend is called a man's other self" (*S.T. I-II.28.1c*). To love another as another self does not necessitate loving neighbors as intensely as oneself<sup>24</sup>; rather, it involves affectionate goodwill whereby good is willed to others as to oneself.<sup>25</sup> Affectionate goodwill permits one to love another as intensely as oneself as long as it does not involve seeking to benefit the other through immoral acts.<sup>26</sup> Love is thus perfect—rather than obligatory—when love counts all but immorality as naught.

The criterion of whether beneficence is obligatory is whether its absence is contrary to affectionate goodwill. For instance, the refusal to wade knee-deep into a lake to rescue a drowning toddler is not compatible with affectionate goodwill, unless one is already giving a child emergency CPR. The minimal obligations of neighborly love thereby identify supererogatory acts as caring for others when inconvenience or risk is such that not acting does not inveigh against affectionate goodwill. For instance, the one who risks his life by plunging into icy water to save another could have refrained from the act while wholeheartedly desiring that the other live. The generosity of heroes is not obligatory; the intensity of their love goes beyond moral duty and makes them paragons of humanity. In brief: the minimal obligations of neighborly love lay a floor beneath which the good may not sink and upon which individuals must stand in order to perform supererogatory acts of love.

Furthermore, since neighborly love is predicated upon a self-love, and since a self-love involves acknowledging that the self is a person capable of acting for ends that truly benefit the self, the personalism embedded in neighborly love entails subsidiarity, which is the virtue of not only acknowledging the responsibility that others have for acting for their own sake but also facilitating the ability of others to so act. Education and collaboration thereby become

essential tools of neighborly love. For without them, none can learn how to better seek the good. Moreover, the affectionate goodwill characteristic of neighborly love promotes fellowship and when reciprocated establishes a degree of friendship as a common good.<sup>27</sup>

### **Practical Challenges: Selfishness and Loving the Unlike, e.g., the Mentally Incompetent**

Neighborly love specifies that neighbors are to be loved as one loves oneself. As a natural law precept, it recognizes that we naturally will to those like ourselves the goods that we will to ourselves. This is easy as long as the goods that we are willing to the others are goods that either do not diminish by being shared or that do not cost us anything. The ethical challenge here is the selfishness that would refrain from willing good to others when the good is diminished by being shared or when costly. For instance, it is easy to will that everyone learn to read but difficult when that volition entails willing the taxes necessary to pay for literacy education, since these taxes reduces one's discretionary income.

The counter to selfishness is to recognize that others share with oneself a significant degree of commonality, e.g., the commonality of human nature. Recognition of such commonality is the recognition that the other really is like the self and thereby harmed or benefitted by what harms or benefits the self. Hence, only those convinced that reading, for instance, is indispensable for their own well-being will be convinced that reading is so indispensable for those like themselves that taxes should be levied. Without this recognition of commonality, selfishness cannot be countered.

Such commonality or likeness to the self is able to counter selfishness in two ways. First, commonality—when reflected upon—suffices for love and motivates us to so want the well-being of the other that we want to avoid selfishness. Second, commonality establishes an equality violated by selfishness. Since selfishness attacks the basic human equality established by human nature, it is immoral. The counter to selfishness is thus the recognition that, since the other is like oneself, the other is one's equal and is as deserving of the good in question as oneself. Basic human equality and the norms of justice thereby not only protect love from selfishness, but also identify attacks on human equality as never permissible. Exploitation—especially as instantiated in slavery and genocide, for instance—can never be morally permissible but are always and everywhere immoral.

From this perspective, the evils of slavery and genocide are especially

horrifying. They not only violently violate the equality established by human nature but also violate the attacker's own nature. Slavery and genocide require the attacker to repress not only his own intellect's recognition that his victim is as human as he is but also the neighborly love naturally evoked by that recognition.

The other challenge to neighborly love is the difficulty in loving those deemed unlike oneself. Although there are myriad reasons for judging that another is unlike oneself (e.g., due to race, religion, culture, gender), these reasons need not obscure the truth that a human being is a human being. That is to say that being a member of the human race is so significant that all other differences are thereby rendered insignificant for the obligations of neighborly love. But what if the human being is too young or too infirm to act intelligently and freely? Is such a human beyond the scope of neighborly love?

The prescription to love others as oneself presupposes the recognition that others are like oneself in sharing the same nature as oneself. This nature is not simply the source of one's intelligent and free agency, it is also the source of one's life, maturation, and vulnerabilities.<sup>28</sup> Children, then, are like oneself because they are humans who mature over time. The mentally infirm are also like oneself because they have bodies vulnerable to the ravages of disease, injury, and age. Moreover, we too can suffer from mental impediments due to the lack of sleep, out-of-control emotions, drugs, or physical injuries. Such mental impediments do not per se suffice to eliminate one's nature as a human being: for otherwise, neither sleep nor the medicines designed for human beings would ever be able to restore one's intelligent free agency. Nor would advances in medicine ever be able to

**“[S]urvival has . . . a special status in relation to human conduct and in our thought about it, which parallels the prominence and the necessity ascribed to it in the orthodox formulations of natural law. For it is not merely that an overwhelming majority of men do wish to live, even at the cost of hideous misery, but that this is reflected in whole structures of our thought and language, in term of which we describe the world and each other. We could not subtract the general wish to live and leave intact concepts like danger and safety, harm and benefit, need and function, disease and cure; for these are ways of simultaneously describing and appraising things by reference to the contribution they make to survival” (H. L.A. Hart 1961, 188).**

cure Alzheimer's Disease or senility. Thus, since disease, injury, and age do not suffice to eliminate one's nature as a human being, they do not suffice to place any human being beyond the scope of neighborly love.

It is rather the case that human diseases, injuries, and age place individuals more firmly within the scope of neighborly love, because those suffering individuals remind us that we too are frail and that—as they now need the care of others—we not only needed such care in childhood but may also need it in the future. We are, as Alasdair MacIntyre argues, dependent rational animals (1999). Therefore, the obligation to love those like ourselves especially prescribes caring for the vulnerable and the infirm whenever the absence of such care opposes benevolence. The obligations of neighborly love thus extend to children and the mentally infirm (as well as to all others) according to the necessities of affectionate goodwill. Many acts of beneficence are thus required when the children or the infirm are one's own.

Therefore, it is not the case that the obligations of neighborly love extend only to those who are like us in being intelligent free agents; rather, these obligations also extend to all who share our human vulnerabilities.

### **Difficult Cases of Suffering**

The benevolence and beneficence required by neighborly love take their standard of what is good from *eudaimonia*, i.e., from what is indispensable for human flourishing. Clarity can thereby be gained in difficult cases by considering whether the act in question is naturally commensurate or whether it is contrary to well-being. This question alone suffices to differentiate the specifications of natural law from those of alternative moralities. For love—understood as obligating benefit and not harm—obligates that actions be evaluated according to whether or not they oppose or promote an end that is naturally suitable to the human person.<sup>29</sup> Life, for instance, is such an end.

Intending the contrary of this act is thus never permissible, and acting contrary to this end—for instance, by jumping on a grenade to save one's friend—is permissible only when justified according to the principle of double effect.<sup>30</sup> Death then can never be intended as the means of alleviating pain and suffering: the love-obligation to extend care forbids intending the death of even the dying. Though love forbids killing the innocent either by omission or by transgression, it does not also obligate undergoing excessively burdensome treatments that prolong life.<sup>31</sup> Love's prohibition of suicide and mercy killing can also be known from the obligation to love God above all, since loving God includes trusting the Lord of life and death with its timing.

Love never confuses killing with caring. Love especially condemns killing as way to reduce the costs of caring for those judged burdensome. In this regard, the physically and mentally disabled are at serious risk. Let us not forget

that, until President Ronald Reagan forbade hospitals from discriminating against the mentally disabled, surgery to prevent starvation was being denied to infants judged “better off dead.” Killing as opposed to the willing of life so intrinsic to love cannot, however, be a means of care. Hence, love identifies suffering as a problem to be solved through means other than killing.

The problems of suffering are both physical and spiritual. Physical suffering can be handled with pain medications and adequate physical assistance, e.g., seeing eye dogs and wheelchairs. It is more difficult to handle spiritual suffering, since it requires answering questions about the meaning of suffering—and life as well as about why oneself or another is suffering so cruelly. If adequate meaning can be assigned to one’s suffering, then physical pain can be borne according to the man who survived the worst of the genocide camps in Nazi Germany, Viktor Frankl.<sup>32</sup> To assign meaning to suffering is to transcend it; it is to refuse to define the value of a human life in terms of deprivation and meaninglessness. It is to frame suffering as a way to achieving a greater good—whether that greater good be regaining health, facilitating eternal salvation, witnessing to the truth that each human being is invaluable, becoming more kind, or enabling care-givers to grow in generosity and humanity. Love seeks to support the suffering by reinforcing that value does not arise from productivity or any other action but simply from one’s nature as a human being. Love cannot abide destroying or killing or otherwise reinforcing any feelings of worthlessness or meaninglessness that may arise in the suffering. Love sees euthanasia as the ultimate betrayal, i.e., as confirming that suffering has rendered someone’s life to be without value and worthy of elimination.

**“Sin is in the coldness of heart”  
(Keenan 2004, 60).**

Euthanasia and any other kind of killing innocent humans also violates the precept of neighborhood love by destroying the basis for love, namely, the recognition that human life is good and the basis of human rights. This is because to intentionally kill the innocent is to identify what is the antithesis of life as a good, thereby condemning the killer to the inconsistency of willing life as good for himself as a human being but not for others who are as human as himself. Such inconsistency leads the killer to deny that humanity suffices for human rights. And when humanity cannot underpin human rights, it cannot underpin the objectivity of good and evil. And when there are no objective standards of good and evil, the powerful rule remorselessly. No government by the people, for the people, and of the people can long survive without objective standards to rule the powerful. The values thus unleashed by any practice that kills the innocent, such as euthanasia or abortion, are contrary to the values

required by a free government. Perhaps, John Paul II put it best, “Disregard for the right to life, precisely because it leads to the killing of the person whom society exists to serve, is what most directly conflicts with the possibility of achieving the common good” (*Evangelium Vitae* #72.2; 1996b, 863).

### **Love and Future Contingencies: Space Colonies, Cloning, and Manufactured Humans**

Since the precept of neighborly love proscribes harm and prescribes affectionate goodwill, the natural law is able to adapt to any future realities. For example, when the moon is colonized, the precept of neighborly love will proscribe puncturing someone’s space suit or the colony’s atmospheric dome. Whatever is harmful in the future will likewise be prohibited by being subsumed under the harm proscribed by neighborly love. So if cloning humans ever becomes a reality, the natural moral law would forbid using them as “organ farms” insofar as every human being is another self to be loved as such.

Furthermore, the obligations of neighborly love rest on a proper love of self that includes loving and respecting human nature whether in oneself or in another—as Kant indicated in his imperative “to treat humanity, whether in your own person or in that of another, always an end and never as a means only” (1959, 47). Establishing whether or not human nature is present is matter of establishing whether life is present and establishing whether life is present is a matter of establishing whether or not the body exhibits *any* integrative activities, e.g., metabolic processes. The need to identify these integrative activities has been accelerated by the demand for transplanting organs. It has also been accelerated by the recognition that the absence of easily observed activities do not suffice as markers for death. If they did, it would not be possible for life to mimic death. But, as the 1968 Harvard Ad Hoc Committee on Brain Death pointed out, there are two cases in which a person may meet the criteria for brain death without being dead, namely, when the patient has “hypothermia or [is] under the influence of central nervous system depressants (barbiturates).”<sup>33</sup> How can it be that the activities of life could be absent in two different cases without the person being dead?

Obviously, in these two cases, the possibility of regaining the activities of life means that the source of life must still be present. This means that life cannot be identical with the absent activities and that in certain cases of hypothermia and barbiturate overdose a dead looking body is not dead. This means that the source of life must be other than the body. The ancient Greeks, followed by the early Christians, called this non-physical source of life “the soul.”<sup>34</sup> Only the soul explains the scientific fact that in certain cases of hypothermia and barbiturate overdose, the soul does not end its animation of the body, thereby enabling the body to regain the signs of life with proper

treatment. If then life is an activity of the soul shared with a receptive body, then other activities of the soul are likewise shared. This means that the inability of body to exhibit an activity does not mean that the soul loses the activity but only that the soul must wait for the body to become more receptive to being more fully animated by the soul. Accordingly, just as in cases of hypothermia and barbiturate overdose, the soul's activities cannot be expressed physically, so also in cases of mental impediments due to drugs, accidents, or genetics.<sup>35</sup> This means that at long as the soul is present, the removal of the physical impediment will enable the soul to restore the person's ability to function, whether physically or mentally. Two normative entailments for the future follow.

First, wherever there is a living human body, there is a living human being—and an animating human soul. Hence, if it were ever to become possible to manipulate human DNA so that one could manufacture humans who would be physically gifted but also too mentally incapacitated to freely choose their own ends, the presence of the animating soul would suffice to identify that manufactured being as being fully human, albeit somewhat disabled. As fully human with a human soul like oneself, the manufactured human being would be one's equal and would have the right to be loved. For mental disabilities do not place one outside of one's nature; nor do they place one beyond the scope of precept of neighborly love. Hence, neighborly love would not only obligate any manufactured human beings to be loved as other selves but also would forbid harming them by giving them the brain injuries that would preclude their ability to think for themselves and to choose freely their own ends.

The manufacturing of human beings would also be forbidden by neighborly love, even if the manufacturing did not cause mental incompetency. For manufactured beings are products made to satisfy the producer. As such, the act of manufacturing humans would be necessarily exploitative and an attack on basic human equality. No human being should live or die to satisfy another's desires. In vitro fertilization, for example, is a process of manufacturing human beings to meet—at best—the desires of would-be parents, and—at worse—the desires of a researcher for experimental material. As such, in vitro fertilization violates human equality and the obligations of neighborly love; it is thus immoral.

The immorality of in vitro fertilization also extends to the manufacturing of human beings for the benefit of others—even if it is to save a life. Offspring should be loved for their own sake, not for their ability to have their parts transplanted into a gravely ill sibling for sake of a possible cure. To value a baby or a child or a mate primarily for the ways in which they benefit oneself is contrary to benevolent and beneficent love prescribed by neighborly love. It is then always immoral.

The second entailment for the future following from the twofold capacity of the human soul to animate matter and to make possible intelligent and free agency is that no free and intelligent being is beyond the scope of neighborly love. So if we were to encounter free and intelligent agents from another galaxy, their souls would be like ours. And, we would be bound to love them as ourselves, i.e., to be good neighbors and extend a helping hand while never harming them. And if these beings were also beings with infirmities and bodies that mature over time, we would have additional reasons to love them as ourselves because we, too, are beings with infirmities and bodies that mature over time.

### **Love, Personalism, and Inalienable Rights**

Aquinas divides rights into natural or positive according to whether the object of the right is naturally commensurate or based on consent.<sup>36</sup> In this way, Aquinas provides an objective criterion for natural rights, namely, human nature. As a result, human rights are truly natural rights since they are not contractual but based on human nature.

Among these natural or human rights is the right to be treated as a human being. This right also originates in proper self-love, since that love seeks the goods proper to one's nature as human. This means not only that the self-love that extends to others like oneself is a love of persons, but also that being loved as a person is naturally commensurate to being a human being. But, since whatever is naturally commensurate is a natural right, being treated with love, that is, being the object of affectionate goodwill, is a natural right—even though Aquinas did not explicitly say so. This natural right to affectionate goodwill is nothing other than the right to be treated as a self to whom good is to be willed, not with cold-hearted efficiency, but with affection or caring about one's well-being. This is what it means to be recognized as a human person. Such a recognition cannot but be the most basic natural right.<sup>37</sup>

In this way, the Thomistic understanding of rights necessarily generates the natural right to be loved as a self—that is, to be loved as one who freely thinks and loves and determines his own goals and character. To be so loved is to be loved as a person. Such love respects the other as one who thinks and loves in freedom. For only love cherishes the beloved's subjectivity as a human being. For this reason, Karol Wojtyła formulated, in *LR*, the basic obligation as treating persons with love and identified it as the Personalistic Norm: "A person is an entity of a sort to which the only proper and adequate way to relate is love" (1981b, 41).



Aquinas and Wojtyła thus agree that the heart of natural law is a personalism that honors the obligations of love and abhors the denial of natural rights. Personalist natural law thereby prescribes that others are to be benefitted and not harmed. To seek the benefit of others is the essence of what Aquinas calls the love-of-friendship. It is this love that is the natural right of every human being. It is this love that establishes communities of mutual well-being and condemns associations that harm its members.

**Thomistic personalism identifies being treated lovingly as a basic right.**

Within communities of love, personalist natural law also obligates superiors to acknowledge the right of inferiors to participate in the decisions that affect their lives according to the principles of subsidiarity and collaboration as well as the right to receive care when in need according to the principle of solidarity. Personalist natural law also forbids treating any human being as an instrument for self-gratification or for the welfare of others or for the welfare of the community. Utilitarian considerations are thereby precluded from the natural law of love: no community of love—no matter how large or small—can bear to sacrifice the other for any reason. It is not loving to harm. Consequently, without such love, no individual is safe from being treated as the means to another's end.

Furthermore, the refusal to acknowledge that an "other" has this natural right to receive love and any requisite care, or beneficence, denigrates that "other" as less than human and rejects not only the reality of that individual's personhood but also interpersonal equality, which is the domain of justice. The refusal to bestow due care is thus unjust.<sup>38</sup> For example, parents who refuse to care for their child act unjustly and in violation of their child's right to receive care. Likewise, as the Geneva Conventions recognize, prisoners of war have the right to be fed and to receive adequate shelter. In this way, love subsumes justice and bestows a right to receive care upon those to whom one cannot will good without also bestowing care. Thus, as love requires justice, justice requires loving one's neighbors as oneself.

In addition to the right to care, the Thomistic natural law of love also requires honoring all those goods that are naturally commensurate to the human person as unalienable rights: no act of volition nor law is capable of making these naturally commensurate goods unsuitable to human nature. Aquinas, however, made no exhaustive list of these rights. Nevertheless, an incomplete list can be readily identified by a careful consideration of question ninety-four in the *prima secundae* of the *Summa Theologica* and question fifty-seven in the *Summa's secunda secundae*. In article two of question ninety-four, Aquinas

argued that the ends of the natural inclinations are self-evidently known as goods, and their contraries are known as evils. This means that, since the ends of natural inclinations are naturally commensurate to human persons, they constitute natural rights. Accordingly, there are the natural rights to life and self-preservation, to procreation and education of offspring, to living in society, and to pursuing the truth about God.

As constituted by essential and unchanging human nature, these rights are unalienable.<sup>39</sup> These unalienable, natural rights fall into two categories: interpersonal equality<sup>40</sup> and the objects of natural inclinations, e.g., life and community.<sup>41</sup> Since, then, rights are the objects of justice, it is the function of justice to maintain interpersonal equality by forbidding harm or to restore interpersonal equality by obliging the payment of what is owed.<sup>42</sup> Justice is obligated by love insofar as injustice contravenes love. Thus, love obligates respecting natural or unalienable rights.

Another way to argue this point is to consider the first article of question twenty-six of the *prima secundae*, wherein Aquinas argues that the objects of natural inclinations are naturally loved.<sup>43</sup> As such, they establish the parameters of proper love, and thereby establish the obligation to honor these naturally loved objects as unalienable rights.

Consequently, the natural right to affectionate goodwill establishes the natural right to requisite care, that is, to care in cases when the absence of care would be contrary to affectionate goodwill. The failure to honor another's rights, including the natural right to care, violates the norm of neighborly love and perpetuates harms; it is unjust. Thus, the precept of neighborly love specifies the right to affectionate goodwill and justice at all times as well as the right to beneficence whenever the failure to so act would contravene neighborly love.

It is, perhaps, unfortunate that the natural law tradition did not fully appropriate Aquinas's claim that neighborly love is a basic obligation and right of natural law, and that the naturally commensurate is the criterion of inalienable rights. On the other hand, the recasting of natural law in terms of rights—a process that probably began with Hugo Grotius<sup>44</sup>—has now been justified by love and its obligations, whether as formulated in terms of Aquinas's neighborly love or Wojtyła's Personalistic Norm.

## Love's Juridical Obligations<sup>45</sup>

The interpersonal nature of morally requisite love that requires loving others as one loves oneself may seem particularly ill-suited for the rough and tumble world of human law.

On the other hand, the gist of morally requisite neighborly love is the requirement to honor the subjectivity of other persons by enabling them to choose their own ends and act for them. This personalist demand obligates individuals to respect each other's inalienable rights, as argued in the preceding section. In this section, we begin by examining how love places personalist obligations on the community as a whole, and then proceed to examine the personalist obligations placed on the legislators and jurists who care for the community.

### **The State's Juridical Parameters**

Natural law jurisprudence has typically subordinated law and public policy to morality through the notion of the common good: whatever advances the common good is held to be a just and permissible public policy, while whatever counters the common good is held to be an unjust and impermissible policy.

This view of the common good is not the same as the utilitarian view of social welfare insofar, as the utilitarian notion of social welfare is not concerned with the welfare of every member of society, while the notion of the common good is. Indeed, Aquinas's notion of the common good identifies the welfare of the community with the welfare of individuals.<sup>46</sup> This view of the common good has been traditionally called "organic," as organisms flourish to the extent that each of its members also flourishes. It could also be called civic friendship or solidarity, insofar as the welfare of individuals requires caring for neighbors.<sup>47</sup> As a result, community life never sacrifices individual welfare; rather community life improves as it advances the flourishing of individuals. The symbiotic relationship between the common good and individuals is strengthened by the precept of neighborly love: communities never flourish at the expense of their members, and the love whereby members flourish binds them together into a flourishing community.

Since natural law is based on the requirements of human flourishing, and since justice sets the minimal conditions of that flourishing as respecting human equality by paying debts and not infringing on those rights that are naturally commensurate to human nature,<sup>48</sup> there can be no justice apart from the minimal conditions of flourishing. For this reason, Aquinas argues that human law is either derived or determined from the natural moral law.<sup>49</sup> The dependency of human law on justice, as found within the natural law, requires human law to acknowledge the inalienability of natural rights. As put by John Paul II, inalienable rights are fundamental principles of human welfare<sup>50</sup> and foundational principles of democracy.<sup>51</sup> For this reason, the United Nations Universal

**"The central problem . . . of the legal enterprise is the relation of love to power" (Noonan 2002,**

Declaration of Human Rights was characterized by John Paul II as “one of the highest expressions of the human conscience of our time.”<sup>52</sup> This natural law understanding of human rights underpins every political document that declares that individuals have rights that cannot be alienated or vitiated by social contracts. It thereby underpins, for example, the American *Declaration of Independence* and the *Universal Declaration of Human Rights*. It also underpins every document that acknowledges that legal rights do not exhaust a person’s rights, for example, the *Constitution of the United States of America*.

**“The democratic movement is the heir of Christian movement” (Nietzsche *Beyond Good and Evil* #202 1966,**

Inalienable rights declare that the values upon which human law is established are not created by social consensus or contract or legislative fiat, but rather they are natural and thereby objective. Failure to establish this bulwark against conventional values leaves a society, according to John Paul II, vulnerable to totalitarianism.<sup>53</sup> In *Evangelium Vitae*, he explains that within democracies, the denial of objective truths establishes the supremacy of the majority’s will and requires individuals to deny their consciences and act according to a law exemplifying ethical relativism.<sup>54</sup> Within such a democracy, there could be no inalienable rights, and individuals would become simply fodder for the majority’s will. Hence, according to John Paul II, free societies require a rule of law that acknowledges objective morality, inalienable human rights, and conscience.

Inalienable rights establish a key principle of jurisprudence that helps to determine whether juridical rulings are good or bad: good juridical rulings honor objective and inalienable rights—especially the right to religious freedom, which John Paul II understood “as the right to live in the truth of one’s faith and in conformity with one’s transcendent dignity as a person.”<sup>55</sup> Or, as John Paul II says in *Evangelium Vitae*: “[Civil law is to ensure] the common good of people through the recognition and defense of fundamental rights, and the promotion of peace and of public morality.”<sup>56</sup> Bad juridical rulings violate fundamental rights, peace, and public morality. As put by John Paul II:

The fundamental moral rules of social life thus entail *specific demands* to which both public authorities and citizens are required to pay heed. Even though intentions may sometimes be good, and circumstances frequently difficult, civil authorities and particular individuals never have the authority to violate the fundamental and inviolable rights of the human person.<sup>57</sup>

The obligation to never violate rights obligates those who make policies and

laws as well as those who enforce policies and laws to rely on prudence—albeit in different ways. The following two sections thereby specify the requisite prudential principles according to whether one is making the law or adjudicating it.

**Personalist Parameters for Lawmakers: Minimization of Harm and the Principle of Double Effect**

The key criteria for legislative juridical prudence are taken from the legislators' intention and from the nature of the juridical policy or law. In brief, the lawmaker or juridical policymaker must not only intend to promote the common good and protect inalienable human rights, but she must also craft legislation that actually accomplishes these goals—either totally, whenever possible, or partially, whenever the other is practically impossible. For instance, the attack on human life that occurs in abortion obligates legislators to seek to ban all forms of abortion. But since total bans are not possible in today's current climate, John Paul II argued that it would be permissible for a pro-life legislator or policymaker to support a partial ban on abortion.<sup>58</sup> This argument identifies three key conditions for supporting abortion laws or policies that only restrict abortion. First, the policy or law must be a last resort (because the political situation precludes a total ban). Second, the juridical ruling must be well crafted so that the number of abortions would actually decrease. And third, supporters must make their pro-life intentions known—presumably, to avoid the scandal that would arise if others were to perceive their support as somehow endorsing abortions in certain cases.

Underpinning this analysis are two principles: the principle that harm is to be minimized and the principle of double effect. The latter principle was firmly established in natural law jurisprudence by Aquinas, when he used it to justify killing in self-defense.<sup>59</sup> This justification identifies several necessary conditions that must be met before the evil resulting from an act can be tolerated.

One of these conditions is that the one assaulted must have no other recourse than to strike a lethal blow; he must “retreat to the wall” as the American legal tradition once put it.<sup>60</sup> Hence, a necessary condition for the principle of double effect is that the act in question must be a last resort. When this condition is not met, the good effect can be attained by an act that lacks the evil effect. Accordingly, if one can save one's life by escaping, there is no need to strike a lethal blow. In such a situation the refusal to escape involves the immoral intention to pursue the evil effect.

When, however, there are no viable alternatives, the other conditions of the principle of double effect establish that evil effects can be tolerated when the act in question also has an equal or greater good effect that alone can be

intended. Accordingly, it is morally permissible to strike a lethal blow in self-defense when the lethal blow is intended not to kill the aggressor but to stop the aggression. For that reason, once the aggressive act is stopped, the defender is obligated to call the paramedics rather than watch gleefully as life ebbs from the aggressor.

These indispensable five-fold conditions of the principle of double effect can be summarized as follows:<sup>61</sup> (1) the act in question has both good and bad effects; (2) the evil effect is not the means to the good effect; (3) the evil effect does not outweigh the good effect; (4) only the good effect is intended; and, (5) the act in question is a last resort because there are no other viable options. If any of these conditions cannot be met, it is not possible to do the act without intending the bad/evil effect.

Accordingly, the principle of double effect can never, for example, warrant genocide, for instance, since genocide cannot occur without intending the evil effect of extermination, and since that evil effect not only is the means for attaining any alleged good effect, but is also greater than any alleged good effect. On the other hand, the principle of double effect can permit lethal forms of self-defense when a lethal attack cannot be stopped by lesser means or by escape, however the defensive acts must stop upon the cessation of the attack (because otherwise the death of the attacker is intended).<sup>62</sup>

The principle of double effect thus permits policies and laws to be formulated that have both good and evil effects when the evil effect does not overwhelm or cause the good effect, and when only the good effect is intended. Thus, it is morally permissible to support policies or laws that restrict, rather than ban, all abortions because it is good to restrict abortions and because it is possible to intend only the rather substantial good effect of saving some lives while tolerating the evil effect of not being able to save all lives. If any one of the five conditions for the principle of double effect is unmet, a legislative act that produces an evil effect would not be morally permissible. For instance, if a policy or legislative act were to seek to restrict abortion by mandating vasectomies, the policy or law would be immoral—even if the vasectomies were reversible—since the good effect of eliminating the possibility of an abortion is achieved through the evil effect of destroying, either temporarily or permanently, the male reproductive capacity.<sup>63</sup>

Juridical prudence thus identifies two principles indispensable for legislators and policy makers. First, every juridical rule should protect or promote the common good and the inalienable right to life. And second, lesser evils should be tolerated in order to avoid greater ones only when such toleration is permissible according to the five-fold principle of double effect. Apart from these conditions, policies and legislative acts that tolerate or endorse evil should be denied support by every policymaker and citizen,<sup>64</sup> as well as

protested and opposed by “conscientious objection”<sup>65</sup> or “conscientious recusancy.” It is important to legally recognize the right of conscientious objection because human beings have not only an obligation to oppose evil but also, as John Paul II reminds us,<sup>66</sup> an essential right to avoid doing evil—and harming others. This *right of conscience* is nothing less than the right to act justly; it is the very heart of humane action and legal justice. Unless legally recognized, tyranny is inevitable. Hence, this right especially needs to be protected by laws that allow public officials and others, such as pharmacists, doctors, nurses, and hospital workers to practice the right of conscientious objection.<sup>67</sup>

But what should one do when conscientious objection is not an option? In *Evangelium Vitae*, John Paul II argued that no one can formally cooperate in another’s evil and that all should be willing to follow the example of the Egyptian midwives who refused to obey Pharaoh’s law requiring them to kill all newborn males.<sup>68</sup> “[F]ormal cooperation,” John Paul II continued in *Evangelium Vitae*, “occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it.”<sup>69</sup> John Paul II included within the parameters of juridical prudence the proscription of directly participating in the killing of an innocent as well as the proscription of sharing in another’s immoral intention. The disjunction here is not exclusive: the language of “direct participation” means that the case is beyond the scope of the principle of double effect. For no one can directly participate in the killing of the innocent without intending the innocent’s death.

### Personalist Parameters and Obligations for Jurists: The Limits of Cooperating with Evil

Judges and juries sometimes must adjudicate situations where the applicable law permits evil. Could such an act be morally permissible? On the one hand, it involves cooperating with a law that permits an evil effect, for instance, divorce. On the other hand, such cooperation furthers the rule of law and may well also further the well-being of children or spouses. So it seems that the principle of double effect would permit the judge to intend the good effect while tolerating the evil effect when issuing the divorce decree. Indeed, in his address to the Roman Rota on January 28, 2002,<sup>70</sup> John Paul II argued that, while all should avoid cooperating with the evil of divorce, it is permissible for lawyers to cooperate with those clients who are seeking divorce for reasons other than a rejection of the indissoluble sacramental bond, for instance, to protect the custody of children or to protect an inheritance as noted in the Catholic *Catechism*.<sup>71</sup> He also argued that judges may cooperate with unjust

divorce laws, “since the legal order does not recognize a conscientious objection to exempt them from giving sentence. For grave and proportionate motives they may therefore act in accord with the traditional principles of material cooperation.”<sup>72</sup> The absence of the right to conscientious objection would presumably be tantamount to those situations where recusal is not possible and the judge is left with no alternative but to issue a decision because he lacks the authority to declare the unjust law unconstitutional.<sup>73</sup> Under these conditions, issuing a decision would be a judge’s last resort and the principle of material cooperation would be nothing other than an instantiation of the principle of double effect.<sup>74</sup>

John Paul II, however, was not clear on whether a judge who could either recuse himself or appeal to conscientious objection must do so, or whether it would be morally permissible in such cases to use the principle of double effect or material cooperation to issue a decision. It seems to me that the principle of double effect or material cooperation permits the judge to issue such a sentence only when, overall, the legal system is just and when a significant good effect cannot be attained without tolerating the evil effect. However, in cases where the rule of law is absent or tyrannical, material cooperation is not possible. Material cooperation is especially impermissible under tyrannies in capital cases; because the only good that can result from the judge’s cooperation with the tyranny’s unjust laws in the sentencing of an innocent person is the judge’s livelihood—a rather insignificant good in relation to two great evils: acting as an agent of an evil regime and attacking the common good by intentionally sentencing an innocent to die.

Pope John Paul II is very clear on this point: “[C]ivil authorities and particular individuals never have the authority to violate the fundamental and inviolable rights of the human person.”<sup>75</sup> Quite right, Aquinas would agree, since juridical authority is ultimately a moral authority based on promoting a common good protective of individual well-being and the natural rights whereby one flourishes. Hence, since life, for instance, is not only naturally suitable for human beings but is also a pre-requisite for flourishing, it is evil to intentionally seek the innocent’s death. Consequently, the evil of intentionally sentencing the innocent to death can never be legitimately authorized: for evil can no more promote good than fire can promote ice.

John Paul II’s emphasis on a jurisprudence of inalienable rights updates the natural law jurisprudence of Aquinas by making it clear that both the common good and love obligate respect for human rights. This emphasis, moreover, clarifies the fundamentals of Thomistic jurisprudence insofar as Aquinas argued that the parameters of juridical prudence are established by an organic conception of the societal common good that honors individual well-being and natural law’s obligations of love. As a result, Aquinas and John Paul agree that



love not only forbids harming others and acting against the common good, it also permits the toleration of evil only when greater evils would be mitigated *and* the conditions of material cooperation or double effect are met.

Determining whether a certain set of contingencies meets, or fails to meet, the conditions for the principles of material cooperation and double effect requires determining whether the act in question is intrinsically evil, i.e., whether the evil effect is directly intended, whether the evil effect is a means for establishing the good effect, whether the evil effect outweighs the good effect, and whether the act in question is a last resort. Making these determinations requires the public official as well as the citizen to rely on objective morality, i.e., the natural law. For the natural law not only establishes the authoritative and obligatory character of human law, it also establishes that the parameters of juridical prudence include the organic and societal common good, which in turn includes honoring fundamental human rights, including the right to life, the right to avoid formally cooperating in evil, the right of conscientious objection, and the right to religious free exercise whereby one discharges one's unsurpassable duties to God.

## Notes

1. For a more extensive treatment of how this precept is based on the love of self, see chapter 8 on privileging the love precepts. Also see Hayden (1989).

2. *S.T.* I-II.27.3c.

3. *S.T.* II-II.114.1 ad 2: "Every man is naturally every man's friend by a certain general love; even so it is written (Ecclus. xiii. 19) that 'every beast loveth its like.'" *S.T.* I.60.4c: "Now it is evident that what is generically or specifically one with another, is the one according to nature. And so everything loves another which is one with it in species, with a natural affection, insofar as it loves its own species." The recognition that another person is a human just like oneself motivates goodwill and acts of beneficence has been shown empirically; see, for instance, Kristen R. Monroe, M.C. Barton, and U. Klingemann 1990, 103–22; Samuel P. Oliner and Pearl M. Oliner 1988; Kristen R. Monroe 1991, 394–433.

4. *S.T.* I.60.4 ad 2: "For since natural love is founded upon natural unity, that which is less united with one, is naturally loved less."

5. *S.T.* II-II.31.3 ad 1: "For it must be understood that, other things being equal, one ought to succor those rather who are most closely connected with us."

6. Cf. Ellen Frankel Paul, Fred D. Miller, Jr., and Jeffrey Paul eds., (1994); Nicholas Rescher (1975); Virginia Held (1995).

7. *S.T.* II-II.31.3c: ". . . in certain cases, one ought . . . succor a stranger in extreme necessity, rather than one's own father, if he is not in such urgent need."

8. *S.T.* II-II.31.3 ad 1. For a more extensive discussion see chapter 8 on privileging the love precepts.

9. *S.T.* II-II.23.1c: “. . . we love someone so as to wish good to him.” *S.T.* I-II.46.2c: “We love someone, insofar as we wish some good to be in him.” Also see *S.T.* II-II.27.2c; *S.T.* I-II.29.4c.

10. *S.T.* I-II.28.1c; *S.T.* I-II.26.4c: “I answer that, As the Philosopher says (*Rhet.* ii, 4), ‘to love is to wish good to someone.’ Hence the movement of love has a twofold tendency: towards the good which a man wishes to someone (to himself or to another) and towards that to which he wishes some good. Accordingly, man has love of concupiscence towards the good that he wishes to another, and love-of-friendship towards him to whom he wishes good. Now the members of this division are related as primary and secondary: since that which is loved with the love-of-friendship is loved simply and for itself; whereas that which is loved with the love of concupiscence, is loved, not simply and for itself, but for something else.”

11. It should be noted that many of the texts dealing with neighborly love are in the context of charity. This means that if something is not obligatory according to charity, then it cannot be obligatory according to natural law. For the precepts of charity are related to the love precepts as perfect to imperfect, since the obligations of charity are the obligations of the New Law, and the New Law is more perfect than the natural law (*S.T.* I-II.107.1-4). Consequently, since charity obligates benevolence at all times and beneficence only when the failure to so act would be contrary to benevolence, the obligations of neighborly love cannot be more stringent than these.

12. *S.T.* I-II.100.5c: “To his neighbors a man behaves himself well both in particular and in general. In particular, as to those to whom he is indebted, by paying his debts: and in this sense is to be taken the commandment about honoring one’s parents.—In general, as to all men, by doing harm to none, either by deed, or by word, or by thought.”

13. *S.T.* I-II.100.1c: “It is therefore evident that since the moral precepts are about matters which concern good morals; and since good morals are those which are in accord with reason; and since also every judgment of human reason must needs be derived in some way from natural reason; it follows, of necessity, that all the moral precepts belong to the law of nature.”

14. *S.T.* I-II.100.5.1c: “[T]he precepts of the Decalogue can be reduced to the precepts of love [dilectionis].” *S.T.* I-II.100.3.ad 1: “Those two principles [obligating the love of God and love of neighbor] are the first general principles of natural law, and are self-evident to human reason, either through nature or through faith. Wherefore all the precepts of the Decalogue are referred to these, as conclusions to general principles.” *S.T.* I-II.100.8c: “[T]he precepts of the second table contain the order of justice to be observed among men, that nothing undue be done to anyone, and that each one be given his due; for it is in this sense that we are to take the precepts of the Decalogue.”

15. *S.T.* I-II.100.7c: “Nevertheless it is a primary dictate of reason that man is a debtor in the point of rendering a service or kindness to those from whom he has received kindness, if he has not yet repaid the debt.”

16. *S.T. I-II, 27, 3c*: “For the very fact that two men are alike, having, as it were, one form, makes them to be, in a manner, one in that form: . . . Hence the affections of one tends to the other, as being one with him; and he wishes good to him as to himself.” *S.T. I.60.4 ad 3*: “Natural love is said to be of the end, not as of that end to which good is willed, but rather as of that good which one wills for oneself, and in consequence for another, as united to oneself.”

17. *S.T. II-II.32.5c*: “As love of our neighbor is a matter of precept, whatever is a necessary condition to the love of our neighbor is a matter of precept also. Now the love of our neighbor requires that not only should we be our neighbor’s well-wishers, but also his well-doers, according to 1 Jo. Iii.18: ‘Let us not love in word, nor in tongue, but in deed, and in truth.’ And in order to be a person’s well-wishers and well-doers, we ought to succor his needs: this is done by almsgiving. Therefore almsgiving is a matter of precept . . . *we are not bound to relieve all who are in need, but only those who could not be succored if we did not succor them.*”

18. The obligation of being mentally prepared to render assistance in life-threatening emergencies, even in relation to one’s enemies, is most clearly articulated by Aquinas in his treatment of Christian charity. All emphases in the following texts are mine. *S.T. II-II.25.9c*: “For some of the signs and favors [*beneficia*] of love are shown to our neighbors in general, as when we pray for all the faithful, or for a whole people, or when anyone bestows a favor on a whole community; and the fulfilment of the precept requires that we should show such like favors or signs of love towards our enemies. For if we did not so, *it would be a proof of vengeful spite*, . . . But there are other favors or signs of love, which one shows to certain persons in particular: and it is not necessary for salvation that we show our enemies such like favors and signs of love, *except as regards being ready in our minds, for instance to come to their assistance in a case of urgency*, according to Prov. xxv. 21: ‘If thy enemy be hungry, give him to eat; if he thirst, give him . . . drink.’ Outside cases of urgency, to show such like favors to an enemy belongs to the perfection of charity.” *S.T. I-II.108.4 ad 4*: “Those things which Our Lord prescribed about the true love of our enemies . . . may be referred to the preparation of the mind, and then they are necessary for salvation; for instance, that man be prepared to do good to his enemies, and other similar actions, *when there is need*. Hence these things are placed among the precepts. But that anyone should actually and promptly behave thus towards an enemy when there is no special need, is to be referred to the particular counsels.” The obligation to care for enemies has long been understood to apply even during war—as the eighth characteristic of neighborly love makes clear.

19. *S.T. II-II.31.2 ad 1*; emphasis mine: “Absolutely speaking it is impossible to do good to every single one: yet it is true of each individual that one may be bound to do good to him in some particular case. Hence charity binds us, though not actually doing good to someone, to be prepared in mind to do good to anyone *if we have time to spare*.” *S.T. II-II.31.2c*: “Therefore, since the love of charity extends to all, beneficence also should extend to all, but according as time and place require: because all acts of virtue must be modified with a view to their due circumstance.”

20. *S.T.* II-II.32.5 ad 2: “The temporal goods which God grants us, are ours as to the ownership, but as to the use of them, they belong not to us alone but also to such others as we are able to succor out of what we have *over and above our needs*.”

21. Cf. Jean Hampton (1993).

22. *S.T.* II-II.25.9c; emphasis mine: “For some of the signs and favors [*beneficia*] of love are shown to our neighbors in general, as when we pray for all the faithful, or for a whole people, or when anyone bestows a favor on a whole community: and the fulfillment of the precept requires that we should show such like favors or signs of love towards our enemies. *For if we did not so, it would be a proof of vengeful spite* . . . But there are other favors or signs of love, which one shows to certain persons in particular: and it is not necessary for salvation that we show our enemies such like favors and signs of love, *except as regards being ready in our minds, for instance to come to their assistance in a case of urgency*, according to Prov. xxv. 21: ‘If thy enemy be hungry, give him to eat; if he thirst, give him . . . drink.’ Outside cases of urgency, to show such like favors to an enemy belongs to the perfection of charity.” *S.T.* I-II.108.4 ad 4: “Those things which Our Lord prescribed about the true love of our enemies, . . . may be referred to the preparation of the mind, and then they are necessary for salvation; for instance, that man be prepared to do good to his enemies, and other similar actions, when there is need. Hence these things are placed among the precepts. But that anyone should actually and promptly behave thus towards an enemy when there is no special need, is to be referred to the particular counsels.” *S.T.* II-II.83.8c; emphasis mine: “. . . we are bound to love our enemies, namely, that we must love in them their nature, not their sin; and that to love our enemies in general is a matter of precept, while to love them in the individual is not a matter of precept, *except in the preparedness of the mind*, so that a man must be prepared to love his enemy even in the individual and to *help him in a case of necessity*, or if his enemy should beg his forgiveness. But to love one’s enemies absolutely in the individual, and to assist them, is an act of perfection.”

23. Proper self-love is not egocentric (*S.T.* II-II.19.6c and *S.T.* II-II.126.1c). Improper self-love involves contempt of God (*S.T.* I-II.77.4 ad 1) or preferring materialistic goods over spiritual ones (*S.T.* II-II.25.4 ad 3) or seeking what is immoral (*S.T.* I-II.29.4c). Also see Mary Hayden (1989). For an evaluative survey of the tensions between self-love, the love of others, and the love of God, see Martin Cyril D’Arcy, *The Mind and Heart of Love* (1956). This work is of particular interest because D’Arcy includes discussions of M. De Rougemont’s *Passion and Society*, Anders Nygren’s *Agape and Eros*, and Pierre Rousselot’s *Probleme de l’Amour au Moyen Age*. Pierre Rousselot’s work has been subjected to devastating criticism by Etienne Gilson in *The Spirit of the Medieval Philosophy* (1940, 289–303).

24. *S.T.* II-II.44.7c.

25. N.B. *S.T.* II-II.27.2 ad 1: “The Philosopher, by thus defining ‘to love’ [as goodwill], does not describe it fully, but mentions only that part of its definition in which the act of love is chiefly manifested.” *S.T.* II-II.27.2c: “But the love, which is in the intellective appetite, also differs from goodwill because it denotes a certain union of affections between the lover and the beloved, inasmuch as the lover deems the beloved as somewhat united to him, or belonging to him, and so tends towards him. On the other hand, goodwill is a simple act of the will, whereby we wish a person well,

even without presupposing the aforesaid union of the affections with him.” Also see *S.T.* II-II.23.1c.

26. *S.T.* II-II.26.4c. Only immoral acts are proscribed by neighborly love; hence, it is permissible to sacrifice external goods and even bodily life for the sake of another (*S.T.* II-II.26.4 and 5).

27. Union is an effect of love (*S.T.* I-II.28.1). For a fuller treatment see Mary F. Rousseau (1986).

28. Cf Alasdair MacIntyre’s *Dependent Rational Animals* (1999).

29. Recall this key passage in which the will naturally desires its object “. . . but also that which pertains to each power, and to the entire man. Wherefore man wills naturally not only the object of the will, but also other things that are appropriate to the other powers; such as the knowledge of truth, which befits the intellect; and to be and to live and other like things which regard the natural well-being; all of which are included in the will, as so many particular goods” (*S.T.* I-II.10.1c). These naturally willed/loved goods correspond to the ends of natural inclinations as given in *S.T.* I-II.94.2. As put by Aquinas (*S.T.* II-II.47.15c): “Now the right ends of human life are fixed: wherefor there can be a natural inclination in respect of these ends.” Cf. *S.T.* I-II.51.1 and 63.1.

30. See below in this chapter for a full discussion of the principle of double effect.

31. Traditionally, excessively burdensome medical treatments can be forgone as long as nutrition and hydration are given until they become harmful in the end stages of dying and as long as death is not intended. Mercy killing does not meet these criteria because the death of the patient is being sought. One way in which the medical profession has sought to distinguish between the forbidden and the permissible is to identify ordinary treatments as morally requisite and extraordinary treatments as optional. See, for instance, Thomas D. Sullivan (1977).

32. “I asked the poor creatures who listened to me attentively in the darkness of the hut to face up to the seriousness of our position. They must not lose hope but should keep their courage in the certainty that the hopelessness of our struggle did not detract from its dignity and its meaning. I said that someone looks down on each of us in difficult hours—a friend, a wife, somebody alive or dead, or a God—and he would not expect us to disappoint him. He would hope to find us suffering proudly—not miserably—knowing how to die” Frankl, *Man’s Search for Meaning* (1985,104)

33. Beecher, Henry K., M.D., et al., (1986). For discussions see D. Alan Shewmon (1997, 1998, 2001) and R. Mary Hayden (1982).

34. Those who believe in the soul—whether dualists or hylomorphists—agree that the human soul enables human beings to be intelligent and capable of free choice, even though they disagree whether the soul can only animate a certain kind of matter and whether a person’s identity essentially includes their individuated matter.

35. Establishing that the powers of will and intellect require both the soul and the body is beyond the scope of this book, but not beyond the scope of *Beast and Man: The Roots of Human Nature* by Mary Midgley (1995).

36. *S.T. II-II.57.3c*: “The natural right or just is that which is by its very nature is adjusted to or commensurate with another person.” *S.T. II-II.57.2c*: “[A]nother way a thing is adjusted or commensurated to another person, by agreement, or by common consent, when, to wit, a man deems himself satisfied, if he receive so much. This can be done in two ways: first by private agreement, as that which is confirmed by an agreement between private individuals; secondly, by public agreement, as when the whole community agrees that something should be deemed as though it were adjusted and commensurated to another person, or when this is decreed by the prince who is placed over the people, and acts in its stead, and this is called ‘positive right.’”

37. For an extended treatment of how personalism, as formulated by Karol Wojtyła, supports inalienable rights see Thomas D. Williams (2005).

38. Aquinas identifies the failure to extend care through mercy, pity, or liberality as unjust in *S.T. II-II.58.11*. He also notes that it is unjust to neglect the closer neighbor for another in *S.T. II-II.44.8 ad 1*.

39. Cf. *S.T. II-II.57.2 ad 1*, where Aquinas carefully notes that not all natural rights are unalienable because man’s nature is changeable. He then gives the historic example from Plato about it being unjust to restore weapons to their owners who are intent on using them for evil. Despite appearances, this text does not conflict with my argument, because it is clear from the example that Aquinas is not asserting that human nature in its essential characteristics is changeable but that it is possible for individuals to corrupt their nature to some degree, e.g., by having an unrighteous will. This article, moreover, must be placed in the context of *S.T. I-II.94.4* where Aquinas argues that only the general and universal precepts are indispensable. He also cites the same example about returning weapons to explain that, although the general precepts always apply, they apply in diverse ways according to the peculiarities of time and place. The relativism of Aquinas is discussed in detail in chapter 14.

40. *S.T. II-II.57.2*: “I answer that . . . the right or the just is a work that is adjusted to another person according to some kind of equality. Now a thing can be adjusted to a man in two ways: first by its very nature, as when a man gives so much that he may receive equal value in return, and this is called natural right. In another way . . . by agreement, or by common consent, when, to wit, a man deems himself satisfied, if he receive so much. This can be done in two ways: first by private agreement . . . secondly, by public agreement . . . this is called *positive right*.” *S.T. II-II.79.1c*: “For it belongs to justice to establish equality in our relations with others, as shown above (Q.58, a.2): and it pertains to the same cause to establish and to preserve that which it has established. Now a person establishes the equality of justice by doing good, i.e., by rendering to another his due: and he preserves the already established equality of justice by declining from evil, that is by inflicting no injury on his neighbor.”

41. The most famous list of what is naturally commensurate to human persons is found in *S.T. I-II.94.2*, which is the paradigmatic text of Aquinas on natural law. In this text, the objects of natural inclinations are identified as self-evident goods. But since these objects are naturally commensurate to a person, they fit the definition of natural rights advanced in *S.T. II-II.57.1* and 2.

42. *S.T.* II-II.79.1c: “For it belongs to justice to establish equality in our relations with others . . . and it pertains to the same cause to establish and to preserve that which it has established. Now a person establishes the equality of justice . . . by rendering to another his due: and he preserves the already established equality of justice . . . by inflicting no injury on his neighbor.”

43. *S.T.* I-II.26.1 ad 3: “Natural love is not only in the powers of the vegetal soul, but in all the soul’s powers, and also in all the parts of the body.”

44. See Stephen Pope (2005, 46), A. P. D’Entrèves (1970, 62), E. B. F. Midgley (1975, 159), and the appendix.

45. This section is a revised and excerpted section of a paper first presented as “Prudence and the Toleration of Evil,” *Public Policy, Prudential Judgment and the Catholic Social Tradition* 2006 at the University of St. Thomas in St. Paul and published as “Juridical Prudence and the Toleration of Evil: Aquinas and John Paul II,” *University of St. Thomas Law Journal* 4 (2006): 25–46.

46. See *S.T.* I-II, 90. 2. This is the key text wherein Aquinas subordinates every law to the common good, understood as constituted by the happiness of every individual. See also *S.T.* I-II.96.6c: “[E]very law is directed to the common weal of men, and derives the force and nature of law accordingly.”

47. The notion that civic or political friendship is the end of the state was argued by Aristotle in his *Nicomachean Ethics* 1155a24–26. See also *id.* at 1159b25–31, 1161a10–1161b10, and 1167a23–1167b3. See also Aquinas, *S.T.* I-II.99a.1 and ad 2: “[E]very law aims at establishing friendship, either between man and man, or between man and God.”; Michael Pakaluk (1994, 197–212) argued that America exemplifies this kind of friendship.

48. *S.T.* II-II.57.1–3. In *S.T.* I-II.94.2, Aquinas identifies the naturally commensurate as the object of a natural inclination. He divides these natural inclinations into three classifications: namely, the inclinations common to all things, e.g., self-preservation; the inclinations that humans share with the animals, e.g., procreation and the education of offspring; and the inclinations pertaining to reason, e.g., to live in community and to seek the truth about God. These inclinations are considered basic and the grounds of other inclinations; for instance, the inclination towards self-preservation grounds the inclination towards food, drink, and shelter. Furthermore, since the definition of natural rights, given in *S.T.* II-II.57.3c, is that which is “by its very nature . . . adjusted to or commensurate with another person,” the objects of all the inclinations enumerated in *S.T.* I-II.94.2c are natural rights, namely, life, procreation, parental education of children, living in community, and religious exploration. Natural law morality obligates that these rights be protected and that their contraries be avoided; hence, for instance, murder and sterilization as a means of population control are immoral. Natural law morality, however, does not obligate that each of these goods always be pursued; hence, it is not immoral to seek to save another’s life at the cost of one’s own as long as one does so without intending one’s own death. For an extensive and definitive argument that Aquinas’s view of rights anticipates the modern view, see Brian Tierney (1997).

49. *S.T. I-II.95.2*; emphasis added: “[H]uman law has just so much of the nature of law, as it is derived from the law of nature. . . . But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. . . . Some things are therefore derived from the general principles of the natural law, by way of conclusions; e.g., that *one must not kill* may be derived as a conclusion from the principle that *one should do harm to no man*: while some are derived therefrom by way of determination; e.g., the law of nature has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature.”

50. John Paul II, *Redemptoris Hominis*, #17 (1996c, 74–5).

51. John Paul II, *Centesimus Annus*, #47 (1996a, 637).

52. Pope John Paul II, Address of His Holiness Pope John Paul II to the Fiftieth General Assembly of the United Nations Organization 11 No. 2 (Oct. 5, 1995).

53. *Centesimus Annus* #46.2 (1996a, 635): “Authentic democracy is possible only in a State ruled by law, and on the basis of a correct conception of the human person. . . . Nowadays there is a tendency to claim that agnosticism and skeptical relativism are the philosophy and the basic attitude which correspond to democratic forms of political life. . . . It must be observed in this regard that if there is no ultimate truth to guide and direct political activity, then ideas and convictions can easily be manipulated for reasons of power. As history demonstrates, a democracy without values easily turns into open or thinly disguised totalitarianism.”

54. *Evangelium Vitae*, #69.1–70.1 (1996b, 859–60).

55. *Centesimus Annus* #47 (1996a, 67).

56. *Evangelium Vitae*, #71 (1996b, 861–2). In *Centesimus Annus* #47.1 (1996a, 637), John Paul II emphasizes some of these fundamental rights: “Among the most important of these rights, mention must be made of the right to life, an integral part of which is the right of the child to develop in the mother’s womb from the moment of conception; the right to live in a united family and in a moral environment conducive to the growth of the child’s personality; the right to develop one’s intelligence and freedom in seeking and knowing the truth; the right to share in the work which makes wise use of the earth’s material resources, and to derive from that work the means to support oneself and one’s dependents; and the right freely to establish a family, to have and to rear children through the responsible exercise of one’s sexuality.”

57. *Veritatis Splendor* #97.2 (1996d, 753).

58. *Evangelium Vitae* #73.3 (1996b, 864–5): “A particular problem of conscience can arise in cases where a legislative vote would be decisive for the passage of a more restrictive law, aimed at limiting the number of authorized abortions, in place of a more permissive law already passed or ready to be voted on. In a case like the one just mentioned, when it is not possible to overturn or completely abrogate a pro-abortion law, an elected official, whose absolute personal opposition to procured abortion was well known, could licitly support proposals aimed at *limiting the harm* done by such a law and at lessening its negative consequences at the level of general opinion and public morality (citations omitted).

59. *S.T. II-II.64.7* ad5.



60. *See, e.g., Bell v. State*, 17 Tex. Ct. App. 538 (1885).

61. I take these conditions as establishing that the act in question is not intrinsically evil.

62. The classical text for the exposition of the principle of double effect is *S.T. II-II.64.7*.

63. The effect of such vasectomies would only be compounded if they were freely chosen by the patient, because then the patient would be intending, either the permanent or temporary, destruction of his reproductive capacity; and, this is to intend not only the destruction of one's bodily integrity, but also the very means whereby a people survives.

64. *Evangelium Vitae* #73.2 (1996b, 864): "In the case of an intrinsically unjust law, such as a law permitting abortion or euthanasia, it is therefore never licit to obey it, or to 'take part in a propaganda campaign in favor of such a law, or vote for it.'" (quoting Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* #22 (1974)).

65. *Evangelium Vitae* #73.1 (1996b, 863–4; emphasis added): "Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a *grave and clear obligation to oppose them by conscientious objection*."

66. *Evangelium Vitae* #74.3 (1996b, 865): "To refuse to take part in committing an injustice is not only a moral duty; it is also a basic human right. Were this not so, the human person would be forced to perform an action intrinsically incompatible with human dignity, and in this way human freedom itself, the authentic meaning and purpose of which are found in its orientation to the true and the good, would be radically compromised. What is at stake therefore is an essential right which, precisely as such, should be acknowledged and protected by civil law. In this sense, the opportunity to refuse to take part in the phases of consultation, preparation and execution of these acts against life should be guaranteed to physicians, health-care personnel, and directors of hospitals, clinics, and convalescent facilities. Those who have recourse to conscientious objection must be protected not only from legal penalties but also from any negative effects on the legal, disciplinary, financial, and professional plane."

67. *Evangelium Vitae* #74.3 (1996b, 865).

68. *Evangelium Vitae* #73.1 (1996, 864) (referencing *Exodus* 1:17 in *The New American Bible* 59 (1987)).

69. *Evangelium Vitae* #74.2 (1996, 865).

70. Pope John Paul II, *Rota Address* (2002).

71. *Catechism of the Catholic Church: Modifications from the Editio Typica* No. 2383 (2d ed., U.S. Catholic Conf. 1997).

72. John Paul II, *Rota Address* (2002).

73. Fortunately, within the United States, it is not too difficult for judges to declare laws unconstitutional. For instance, a municipal judge in Austin recently declared unconstitutional the city ordinance forbidding the solicitation of "services, employment, business, or contributions from an occupant of a motor vehicle" (National Coalition for

the Homeless, *A Dream Denied: The Criminalization of Homelessness in U.S. Cities*, [http://www.nationalhomeless.org/publications/crimreport/casesummaries\\_2.html](http://www.nationalhomeless.org/publications/crimreport/casesummaries_2.html) (accessed October 22, 2010)). At the same internet site, see also the case summary entitled “State of Texas v. John Francis Curran,” No. 553926 (Tex. Mun. Ct. City of Austin 2005): “In 2003, the Austin police issued John Curran a \$500 ticket for holding a sign asking for donations at a downtown intersection. Curran is a homeless man represented by Legal Services Corporation grantee Texas Rio Grande Legal Aid. Although Curran did not contest his guilt, he fought the ticket on constitutional grounds. The ordinance, under which the police issued the ticket, prohibited people from soliciting “services, employment, business, or contributions from an occupant of a motor vehicle.” The municipal court judge declared the city ordinance prohibiting panhandling to be unconstitutional because the law violates the First Amendment, explaining that it is not “narrowly tailored in time, place, and manner.”

74. Neither the Catechism nor John Paul II explicates the traditional principles of material cooperation. But here is a typical account given by Thomas J. Higgins, S.J. (1958, 341): “In material cooperation one does not join the principal agent in his evil intent but nevertheless assists him by an act not in itself wrong. Thus one student gives notes to another who will use them to cheat in an examination. The general law of morality is that man must avoid evil as far as he can and the specific law of charity bids him to prevent his neighbor from doing wrong to the best of his ability [and, to the extent that prevention does not cause greater evils. . . . [Accordingly] the principle of double effect may be applied. Since the material cooperator does not intend the evil of the principal’s act, whenever his own act is good or indifferent and he has a proportionately grave reason for acting, his cooperation will be licit.” *See also* Austin Fagothey, S.J., (1976, 35–6) and Edwin Healey, S.J. (1942, 44–7).

75. *Veritatis Splendor* #97.2 (1996d, 753).

## ***Chapter 16***

# **Loving God: Proportional Obligations**

*This chapter divides into two parts. The first part considers that there can be no obligation to love God above all without an obligation to love in proportion to a being's goodness. The normative specifications of proportional love are discussed, especially in relation to the common good. The second part discusses the normative specifications of loving God above all, especially the obligation to be religiously tolerant.*

Unlike many contemporary natural law theorists, Aquinas considers the prescription of loving God above all to be a primary precept of natural law<sup>1</sup> arising from an awareness of God's providential goodness.<sup>2</sup> For Aquinas (*S.T.* I.13.8c), the term "God" signifies the one exercising providence over all. Hence, to be aware of God is not only to be aware that the ultimate cause of all that is good is a intelligent and loving being exercising providential care, but also that this supremely good and providential being deserves to be loved above all. In this regard, the specificity of this prescription must be noted; it pertains only to "God." The term "God" is not to be understood as a place-holder for any deity whatsoever or for whatever good is greater than other goods. After all, some deities—like the Olympian gods of ancient Greece—are imperfectly good. And, some common goods—for instance, the welfare of one's country—are unworthy of being loved above all: no country is perfectly good and able to meet the heart's desire for all eternity. Indeed, no good less than God is worthy of being loved *above all*. Furthermore, since Aquinas holds that

love is caused by goodness objectively considered,<sup>3</sup> it would be perverse to love a less perfect good as if it were a more perfect good. Dogs, for instance, ought not be loved more than human beings. This means that tacit within the prescription of loving God above all is a prescription of proportional love, whereby none are to be loved as much as God, and no lower good is to be loved in preference to a higher good.

The gist of the first love precept is thus that all are to love proportionately and that those aware of God are to love accordingly. The obligation to love proportionally entails three generic obligations: (1a) the preference of human beings to animals and things; (1b) the preference of environmental and ecological well-being to one's private pleasure; and (1c) the preference of the common good to one's private good. Each of these generic obligations is capable of generating more specific obligations due to local conditions, as discussed in chapter 18's treatment of moral diversity. The last generic obligation of proportional love that concerns preferring the common good over one's private good has such immense implications for political philosophy and jurisprudence that the section on the common good is divided into two parts. The first deals with the nature of every common good; the second deals with the nature of the common good that establishes a state. The second part is then further subdivided into sections on requisite basic public policies, just war, and punishments. *Ultimate Normative Foundations: The Case for Aquinas's Personalist Natural Law* then returns to those specifications pertaining only to God, namely, religious tolerance, loving all other humans, contemplating and befriending God, and natural religion.

## The Normative Specifications of Proportional Love

The first love precept, by prescribing that the greatest good be loved above all, prescribes that good is to be loved insofar as it is good. This prescription of proportional love entails preferring human beings over animals and things; preferring the environment, ecosystem, and planet over one's private pleasures; and, preferring the common good to one's private good (*S.T.* I-II.19.10c). Proportional love, in other words, makes obligatory a certain a hierarchy of priorities, which depend on a hierarchy of goods.

But how can good be hierarchical? According to Aquinas, "good" describes not only actions without privations but also existence itself (*S.T.* I-II.18.1). As a result, the proportional love prescribed by the first love precept specifies that other beings are to be loved according to the ontology of being. This ontology divides finite beings into two categories: those with an intelligent nature that enables them to freely choose their own ends, such as human beings;

and those that cannot choose their own ends, such as animals, plants, and inanimate objects. The obligations of proportional love require loving our equals as other selves and never as a being less than human. In other words, it obligates respecting human beings as their own ends and forbids ever reducing them to an instrumental good with only utilitarian value. Thus proportional love prescribed by the first love precept thus also prescribes loving every human being as another self. In this way, the first love precept includes the second.

The proportional love prescribed by the first love precept also entails that whatever is ontologically inferior to human beings be loved less than human beings and for the sake of human beings. Hence the obligations of proportional love proscribe prioritizing lower life-forms or the ecosystem over human beings, while also prescribing taking care of lower life-forms and the ecosystem for the sake of human beings, both now and in the future.

The most important ramification of this hierarchy is that the common good receives top priority. The common good receives this ranking because Aquinas does not identify the common good as communal, instrumental goods that enable community members to pursue their own private goods. The instrumental view of the common good is alien to Aquinas's thought. But it dominates our understanding—as shown by the popularity of asking *what's in it for me* whenever receiving invitations to join an organization or to form a relationship of any kind or to belong to a political union or country.

If the common good were only an instrumental good, then it would not be the case that the common good is a higher good deserving of being loved more than one's private good—as held by Aquinas and the classical natural law tradition. Nor would it be the case that it is natural to love one's family, one's friends, one's country more than oneself. Nor would it be the case that natural law obligates one to love any common good—whether of family, friendship, or country—more than oneself.

But human beings typically identify their families and their countries, for instance, as greater than themselves: worth the sacrifice of even one's life. Indeed, the witness given by those who have sacrificed their lives so that others may live and live well provides incontrovertible evidence that the common good is indeed greater than the self. It is also evidence that the many deem the common good to be important for their own flourishing. And they are right: for unless the common good is good for individuals, it would not be a good common to them. For instance, education is a common good that benefits both teacher and student.

That the common good is not only naturally loved but ought to be loved more than one's private good is argued by Aquinas in *S.T.* I.60.5. This text explains that the reason the common good is loved more than the self is that the self is related to the common good as a part to a whole—albeit not in the

contemporary utilitarian sense, which would regard parts as disposable and as replaceable, but in an organic sense where there could be no wholeness without the well-being of the parts. In short, the part-whole analogy attempts to convey not only the superiority of the common good but also the ability of the part to achieve its proper functioning and perfection by participating in community. Since only love builds community and since only the reciprocity and mutuality of friendship precludes the dispensability of parts/members of community, the part/whole relationship is properly constituted by a type of friendship, whereby the part achieves wholeness or completion by uniting the self to a community of friends who enable self-transcendence without reducing the self to an instrument for the advancement of the community. Though friendships are a whole greater than any part, they are not a whole that can exist at the expense of any part. For this reason, the community suffers to the degree that one of its members suffers and likewise flourishes to the degree that its members flourish.<sup>4</sup>

From this it follows that the proportional love prescribed by the first love precept obligates the following: that friendship be identified as the key common good establishing communities of any size, from spousal to national; that affectionate goodwill be extended to every community member; that community members never be mistreated; and that the common good be preferred to one's private good.

Furthermore, when members of a community are each equally dedicated to some common good, they are united to each other not only as friends but as equals. Dedication to the common

**“It is the common good which ensures the harmony between virtuous action and one's own good” (Osborne 2005, 231).**

good thus preserves equality within any kind of relationship or community.<sup>5</sup> Dedication to the common good also brings mutual joy or universal happiness into the relationship, since such dedication establishes a love that rejoices in the presence of the common good. Eudaimonic joy is thus never solitary, but universal. For this reason,

Aquinas's identification of the common good as the end of law is a claim that individuals are happiest in those communities formed by commitments to the common good.

These specifications of the first love precept are especially important within the context of the state. The following subsection thus discusses the political and legal entailments of loving the common good more than oneself.

### **Obligatory Common Goods and the Law**

The proportional love prescribed by the first love precept obligates loving in proportion to goodness. Since the common good is held to be a greater good than one's private good, the first love precept obligates loving the common good more than one's private good. But, as the preceding section argued, the organic nature of the common good precludes treating members of a community as instrumental goods. The happiness of members cannot be sacrificed for the sake of the common good insofar as the superiority of the common good rises, in part, from its ability to make individuals happy. As Aquinas argues in *S.T. I-II.90.1* and 2, every law prescribes for the sake of the common good, since law is an ordination of reason for the self's true happiness and since the self's true happiness lays in universal happiness understood as the self's ultimate end.<sup>6</sup> In this way, Aquinas identifies not only the happiness of the self with the common good but the common good with the self's true happiness. As a result, it is impossible for the common good to be attained at the expense of any member.

The ability of the common good to partake of the end at which all individuals aim—namely, universal happiness or the perfect good<sup>7</sup>—identifies the ordinations of reason for that end to be a natural law. These ordinations of reason may also be human laws if they are made and promulgated by those responsible for the common good.<sup>8</sup>

The reliance of human law on the teleology of the common good entails that legal obligations bind the conscience—if they be just.<sup>9</sup> Unjust laws fail to promote the common good by being opposed to the human good, by being opposed to proper procedures, or by being unfair in their demands.<sup>10</sup> Unjust laws cannot directly bind human consciences, although they may still bind the conscience indirectly if obedience is necessary to avoid scandal or disturbance.<sup>11</sup>

Justice is thus a necessary condition of law. It is not also a sufficient condition. For instance, it is just for a child to support a loving and aged parent, but it is not law in the United States as it is in China.<sup>12</sup> The sufficient condition of law is its relation to the common good. Law proscribes only what would destroy the common good or what would prevent it from being attained. Hence, according to Aquinas, human laws forbid—not all vices—but only those “without which the prohibition of which human society could not be maintained: thus human law prohibits murder, theft, and suchlike.”<sup>13</sup> Indeed, Aquinas stresses that law must tolerate lesser evils in order to prevent greater ones.<sup>14</sup> Likewise, human law prescribes only what pertains “to the common good.”<sup>15</sup> A certain minimalist thus characterizes thus Thomistic jurisprudence.

**“As there is for us no Christian state because the state has been ordered by God for tasks other than the propagation of faith, likewise law in our understanding cannot have a Christian content. Law, indeed, has been established for all, for those who believe and for those who don’t” (Ellul 1960, 13).**

There are two ways in which human laws are grounded on the natural law: (1) as strict derivations or instantiations of natural laws (e.g., the laws against murder); or (2) as determinations whereby a morally neutral object becomes identified as legally necessary (e.g., laws designating red lights as stop lights).<sup>16</sup> The minimalist of human law precludes its ability to serve as a morality; rather, it is the case that law is the subset of morality that pertains to justice and the community’s common good.

Furthermore, the teleology of law towards the common good requires equity, because it is possible that—in an

unusual case—an otherwise just law would harm an individual or hinder the common good.<sup>17</sup> To illustrate this point, Aquinas relies on Plato’s ancient argument about borrowed weapons<sup>18</sup>; one ought not return borrowed weapons to their owner when their return would cause harm.<sup>19</sup> Elsewhere, Aquinas specifies that prudence and its associated virtues play key roles in such cases.<sup>20</sup> By so doing, Aquinas identifies equity as an instance of juridical prudence where the moral obligation of avoiding harm is applied in a particular case to protect an individual from an injurious application of the law.

The harm that juridical prudence seeks to avoid includes not only individual harms but also attacks on the common good, as demonstrated in the famous case of *Riggs v. Palmer* 115 N.Y. 506 (1889). In *Riggs*, Palmer left the bulk of his estate to his grandson, who then murdered him with poison (508–9). Justice, the court decided, precludes allowing a grandson to profit from his crime, because the common good requires crime to be adequately punished and not rewarded (514). In this instance, American case law not only accorded with the insights of Aquinas and Pope John Paul II about the necessary relationship of morality and human law,<sup>21</sup> it also exemplified the judgment of juridical prudence. In such cases, although the law is not to be applied, it is not to be annulled inasmuch as that would vitiate its applicability in those situations were it promotes the common good.<sup>22</sup>

Human laws are primarily proscriptions forbidding actions that contravene the common good of society by harming individuals. Individuals are harmed: (1) when society fails to protect their lives and their belongings from others; (2) when society fails to respect their dignity as free human beings; (3) when society fails to provide structures that provide aid and assistance when



individual effort is not enough to procure life's necessities; and (4) when society fails to structure its policies to promote interpersonal associations, especially for the disadvantaged.

The first category of harms requires the proscription of acts that violate, either directly or indirectly, every human's inalienable right to life and the right to private property; for instance, abortion, medical malpractice, and theft need to be outlawed. The second category of harms necessitates laws guaranteeing free speech, the freedom of travel, the right to an education, privacy, and most importantly, religious freedom. After all, religious freedom is a prerequisite for loving God above all. The third category requires social policies that provide care with a human face to those unable to adequately care for themselves, especially children, the infirm, and the aged. The fourth category forbids laws that unduly burden the right to free association, such as laws outlawing labor unions or requiring excessive fees for marriage licenses.

It is within this last category that much

**Article 23 of the *International Covenant on Civil and Political Rights*: “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”**

remains to be done: there are tax codes that make marriages for the poor a hardship; zoning ordinances for residential neighborhoods that prohibit families from building additions for aged parents; laws that require infants be separated from their mothers so that their mothers may perform Workfare duties or jury duty; and within some countries there are laws criminalizing labor unions. Such laws must be overturned. It is immoral for public policies to impede the loving care of individuals; it is immoral for the state to institutionalize structures that impede the ability of individuals to care for each other. This means that the state ought to promote the family, since the inter-generational structure of the heterosexual family united in the bonds of blood as well as its bonds of love situate it as the organization best able to provide loving care to its weakest members, whether disabled, ill, or aged. For those without a caring extended family, a pro-family state should promote policies that facilitate the development of fellowships able to care for their own. The generosity and caring of faith-based communities may be ideal for this kind of development.

Reconciling this traditional explication of Thomistic jurisprudence with the interpretation of Aquinas's natural law in terms of love is the focus of the following sections.

### **The Common Good as Friendship: Law's Personalism**

In identifying the common good as the aim of every law, Aquinas is also identifying friendship as the aim of every law; because no good can be common without being shared, and no good can be shared without uniting participants in friendship. The type of friendship that results from reciprocal goodwill depends on the common good to which community members are committed. For instance, the love of truth may lead professors to share papers in conferences or to establish a school. Communities and their laws are thus thereby distinguished by their common goods,<sup>23</sup> e.g., the laws of the state differ from those of the Church.

**“[E]very law aims at establishing friendship, either between man and man or man and God” (*S.T.* I-II.99.1 ad 2).**

To be committed to a common good is to be committed to sharing that good with others, that is, to be committed to a fellowship centered on that good. It is then to be committed to participating in community. Although this commitment is never to be at one’s expense (for then the common good would be harmful rather than good), it does involve subordinating oneself to what is—in some sense—greater than oneself according to the requirements of proportional love prescribed by the first love precept. It thereby also involves realizing that the common good cannot be reduced to the private good of any community member or set of community members.

Certain goods cannot be common goods. It is especially important to note that pleasure cannot be a common good (Wojtyła, *LR* 1981b, 34–9). For pleasure or delight is a type of conscious experience arising from one’s own subjectivity; and, another cannot experience one’s own subjectivity.<sup>24</sup> Only the self can experience the world from the self’s perspective. One’s own subjectivity can never be another’s. It remains forever private, since a unique individuality ineluctably marks one’s awareness as one’s own. This is true even of love. For though love may unite two or more in the experience of pursuing or attaining the same good, the experience of each remains, at best, analogous to the others. Love does not enable one to take on the consciousness of another.

Consequently, in order for two or more to share in the same love or the same happiness, each must love or enjoy the same good. If one is delighted that another is delighted, then, strictly speaking, the delight isn’t communal or mutual, because each is being delighted by something different. Mutuality or commonality requires each to be delighted by the same thing; it requires that each loves the same good. The love of the same good is the love of the common good. This love, moreover, unites each to the other, since likeness is the cause of love. Love of the common good also makes communal or universal joy

possible, since the mutual attainment of the common good causes joy. Hence, without a common good, there can be no shared joy, since there would be nothing to unite two or more in the mutual pursuit of what causes joy when attained by each.

From this it follows that any relationship focused on attaining private delights becomes a relationship of trade or of taking turns at being delighted rather than a relationship of attaining together some good that brings mutual delight. Trading relationships cannot avoid being structured by the paradigms of power, which seek the other's delight only as a means of ensuring that the self's private delight is not endangered. Since the priority in these relationships of trade is the self and the self's delight (or, self-gratification), trading relationships are necessarily egocentric and, as such, not primarily concerned with the other. This reduction of the other to a pawn of one's private delight necessarily denigrates the equality of the other (and violates the natural moral law). Such an immoral denigration of the other is unavoidable in any relationship constituted to seek happiness apart from the mutual or common good(s) that effect it. Karol Wojtyła explains:

In any case, love between two people is quite unthinkable without some common good to bind them together. This good is the end which both these persons choose. *When two different people consciously choose a common aim* this puts them on an footing of equality, and precludes the possibility that one of them might be subordinated to the other. Both—(although there may be more than two people tied by a common end)—are as it were in the same measure and to the same extent subordinated to that good which constitutes their common end. (1960, 28–9)

In brief, only the individual dedication to attaining the same good by the members of a community preserves human equality within that community, or within any union of love, and makes possible not only communal happiness but also individual happiness.<sup>25</sup> Hence, since the common good requires mutuality, which requires equality, which requires equal dedication to the common good, such dedication is a moral requirement of the natural law.<sup>26</sup>

There are various ways in which one may fail in one's obligation to be committed to attaining the common goods of one's various communities. Wojtyła (1969, 50–1) identifies two attitudes whereby one refuses to engage with others in the pursuit of the common good, namely: "*Avoidance*" and "*Conformism*." *Avoidance* is the simple refusal to partake in a community's life; *conformism* is the projection of caring about the common good while remaining indifferent to it. Both *avoidance* and *conformism* originate within the conviction, according to Wojtyła, "that the community is taking away his self, and that is why he attempts to take his self away from the community" (1969, 52) I think that both *avoidance* and *conformism* spring not only from the failure to realize

that self-fulfillment/self-perfection requires living in community but also from the assumption (the faulty assumption) that disagreements harm community life. But, as spouses know, it is better to discuss disagreements about communal goods and attain reconciliation than to let disagreements fester and become sources of alienation. Opposition, in this sense, is an attempt to redefine the common good so that one can “participate more fully and effectively in the community” (Wojtyła 1969, 49). If so, such discussions of diverse perspectives of the common good(s) are a moral obligation, since they preclude the alienation that inhibits the self-perfection of living in community.

Moreover, the necessity of such discussions for fully participating in the common good morally obliges communities to be structured in such a way that “*dialogues of opposition*” are encouraged. In the words of Wojtyła: “the structure [of a community] must not only allow for the emergence of opposition, give it the opportunity to express itself, but also must make it possible for the opposition to function for the good of the community” (1969, 49). In other words, every community must choose a process of adjudication that furthers involvement with its specific common goods. For example, democracies adjudicate disagreements through the rule of law that specifies voting and judicial systems as the forums for promoting the common good through dialogues of oppositions; whereas, spouses usually adjudicate their differences by discussions that attain consensus.

**Striving for the common good enables one to transcend the limitations of the self and to become fully human.**

Consideration of these examples reveals that adjudication becomes gridlocked when opposing parties view each other—not as comrades dedicated to furthering the common good—but as enemies out to selfishly appropriate a community’s good(s). The common good is advanced only when adjudication presupposes a love-of-friendship, whereby each opposing party wills the common good to the other. Without such mutual dedication to the common good as the ultimate basis for adjudication, repression through *conformism* and/or *avoidance* becomes the way in which community members seek to prevent the disintegration of the community. But since disintegration occurs as community members disengage from the pursuit of the common good(s), and since repression of disagreements insures such disengagements, no community is preserved by the repression of disagreements. Therefore, since adjudication procedures are necessary for resolving the disagreements that hinder participation in the common good(s) of a community, not only are such procedures morally requisite but the freedom of opposition that is presupposed by such

procedures is also morally requisite. In the words of Wojtyła: “one has to recognize everyone’s fundamental right to act and thus everyone’s freedom to act, through the exercise of which the self fulfills itself” (1969, 40). The common good and its ability to perfect the self thus prescribe freedom for community members.

Aquinas, however, does not assert in *S.T. I-II.90.2c* that law prescribes the common good of every community, but that of the *perfect* community (under which all other communities are subsumed.) Before ascertaining the identity of the perfect community, let us review the criteria for identifying a common good already established: (1) The common good(s) of a community must be attainable by the members of that group; (2) the common good(s) must be attainable without violating the natural moral law; (3) the common good(s) must be communal and shared by the members of the group; (4) the common good(s) must either effect individual happiness when mutually attained or be an indispensable means to happiness by enhancing the self-perfection of the community’s members; (5) the common good(s) must be the good(s) that members of the group will through the love-of-friendship to each other, since love prescribes willing the other’s happiness and since communal happiness is none other than sharing the common good which delights and identifies that community; (6) the common goods must specify that for which a community exists, since it is the common good(s) through the love-of-friendship that establishes the various human communities; and (7) the common good of every community must offer an adjudication process for disagreements that respects individual freedom while promoting participation in the common good. To this list, Aquinas adds that the common good(s) of every community must be subsumable under the common good of the perfect community.

But what is this perfect community? Perfect communities—like perfection itself—are either communities lacking in nothing *necessary* for the happiness of this life or communities possessing all goods *superabundantly*. An example of the former would be a self-sufficient clan or city-state or country that enables members to meet their needs<sup>27</sup>; an example of the latter would be a community that leaves its members wanting *nothing*.<sup>28</sup> In this world, only the former or minimally perfect communities are possible.

The rule of law is essential to the functioning of minimally perfect communities and to the achievement of their common goods. As a result, it may seem that the natural moral law is subordinated to human law rather than human law being subordinated to moral law. However, if this were so, then human laws and their governments would transcend the parameters of the natural moral law, and neither morality nor communal friendship would be necessary in order to enable people to flourish. But without morality, the realities of human nature and love are trounced, and the people suffer greatly. There is no flourishing

apart from the norms of flourishing—as specified by the natural moral law. For this reason, human law is subordinated to the natural moral law insofar as it—like every law—prescribes for the sake of the common good, which is a communal good constituted, in part, by the neighborly love extended by community members to each other. Hence, the norms of neighborly love regulate not only every community but also the laws of every community.

Neighborly love not only establishes the moral parameters for the proper treatment of community members, but also unifies community members into some degree of friendship. A minimal degree would consist of good neighborliness. Some such degree of friendship is the ultimate common good sought by any community. If communities are friendships, then it is neither possible for any community to flourish at the expense of an individual member nor for any individual to flourish at the expense of the community. Partners in any love or any friendship flourish only when the love or friendship flourishes, since individual members of a group are not happy unless the group is happy. Eudaimonic or moral necessity thus proscribes as immoral not only the failure of individuals to be committed to the common goods of their various communities but also the harming of members by their community(s).

But members are harmed if their community treats them as mere instruments for social well-being, and denies their status as persons who are their own ends and who must be free to exercise their inalienable rights and participate in the common goods. These common goods enable citizens to achieve together what they cannot achieve on their own: adequate material goods; safety from predators, both animal and human; education; the arts; the virtues; a fruitful spiritual life; and, a self-transcending concern for the common goods. The ways in which these common goods are attained vary according to good; for instance, safety from predators requires a police force, while a fruitful spiritual life requires religious liberty. To achieve such goods requires that individuals be unified in seeking the common good.<sup>29</sup> Such unity is a product of love and political friendship.<sup>30</sup> For this reason, Aristotle holds that “friendship seems to hold states together” (*N.E.* VIII, ch. 1: 1155a22).

The juridical concern for human persons establishes a personalist jurisprudence committed to enabling the individual to flourish by protecting inalienable rights, social relationships, and community friendship. Personalist jurisprudence seeks to facilitate participation in the common good. It thus requires human law to permit the freedom and the *dialogues of opposition* whereby individuals make the common good their own. Personalist jurisprudence also thus forbids human law from harming individuals by violating their rights, especially the right of free association whereby individuals form various communities of love, such as families and faith-communities. After all, freedom is a prerequisite for love. “That which does not derive from freedom, that which

bears the marks . . . of determination and compulsion, cannot be acknowledged as love,” explains Wojtyła in *LR*, “[it] lacks [love’s] essential character” (1981b, 117). Thus to protect the freedom of individuals is to protect the bonds of love and the ability to love and pursue the common good.

By requiring human law to be a determination of personalist natural law, personalist jurisprudence also forbids harmful deeds.<sup>31</sup> The proscription of harmful deeds is nothing other than a prescription of justice. Hence, human law proscribes the injustice of harming neighbors by transgressing against their rights or by omitting to discharge one’s obligations (*S.T.* I-II.96.2c). Also proscribed is unequal treatment before the law: justice does not favor those with status but treats all according to their merits (*S.T.* II-II.63.1-4). Adherence to these proscriptions requires government to avoid the institutionalization of systematic forms of injustice. As a result, human law must tolerate various evils when their elimination would cause greater harm to its citizens<sup>32</sup>; for example, no house may be searched without a warrant identifying reasonable causes for the search, even though such warrants may allow some criminals to escape prosecution. Justice necessitates that human laws be constitutionally structured to protect its citizens from the intrusiveness of government. For example, the constitutional proscription against government censorship protects the free inquiry of citizens.

Institutionalized or systematic injustice arises not only from governmental interference but also from governmental failure to structure a socioeconomic context that prevents the systemic harm proscribed by the natural moral law. Thus, the natural moral law requires human law to forbid discrimination and the neglect of the unwanted. In addition, it is morally requisite that human law keep as its “prime directive” the principle of subsidiarity, which is the principle requiring that individual autonomy be maximized by allocating the greatest degree of power, freedom, and responsibility to the lowest level of organization possible. The principle of subsidiarity has the authority to be society’s “prime directive,” since this principle acknowledges that societal common goods are achieved by the participation of its members.

From the principle of subsidiarity, economic, political, and social entailments flow. Economically, the principle promotes free enterprise without allowing the exploitation of labor, the destruction of the biosphere, or the wanton disregard for consumer welfare. Politically, the principle of subsidiarity forbids government without the participation of its citizens, either directly or through representatives.<sup>33</sup> Socially, the principle requires acknowledging that, since the fundamental human need for love can only be experienced between individuals, government must protect both the familial bonds and the protocols whereby love is expressed, while not depriving those without such bonds the opportunity to experience love. For instance, governments should promote

inter-generational living whereby the elderly can receive care from their children, without leaving those without families capable of such care in institutions that have so fragmented the delivery of care so as to be exclusively bureaucratic and cold. “All these people can be helped effectively only by those who offer them genuine fraternal support,” says Pope John Paul II, “in addition to the necessary care” (1991, 19).

Any law or policy that unduly impedes loving one’s neighbor or that unduly harms individuals is a law in violation of the natural law. The criterion for undue harm is harm that could be avoided without violating natural rights or frustrating the common good. For instance, a law that forbids the worship of God would unduly violate a natural right as would a law that requires nursing mothers, or stay-at-home parents with preschool children, to perform jury duty, since in these situations the children need their parents more than the state needs them to be jurors. Likewise, a community that desperately needs a highway is obligated to build it where it causes the least harm. Building it across a thriving neighborhood would only be permissible if it were the only feasible location and if the harm done is minimized, e.g., by compensating the owners of the affected property.<sup>34</sup> Eminent domain practices would never be morally permissible, if it were not the case the individual members of a community were obligated according to the demands of proportional love to support their community’s welfare.

## **The Specifications Concerning God Himself**

The first love precept prescribing that God is to be loved above all not only tacitly prescribes a proportional love but also explicitly prescribes loving God. This love entails four generic obligations: loving one’s fellow human beings; tolerating religious differences; pursuing knowledge of God; befriending God, and, performing the acts of natural religion. Let us discuss each of these entailments in succession.

### **Loving Other Humans.**

The first love precept entails the obligation to love one’s fellow human beings. This obligation results because the love relationship established by the first love precept between human beings and God also establishes a bond between human beings. For, since we naturally love those who are like ourselves (*S.T.* I-II.27.3), we naturally love those who are like us in being created human beings by God. This relationship to God transcends all that separates and divides human beings: culture, race, language, values, country, and so forth. Loving God above all thus draws human beings together as comrades or colleagues or friends engaged in



a common pursuit with shared obligations. This commonality not only obligates the recognition of the other as a person like oneself, but also obligates loving the other as another self, as set forth in the second love precept. It thus also forbids treating human beings as if they were not human.

Thus loving God above all not only makes possible a civic friendship expressive of respect for one another as persons both locally and internationally, but also obligates respecting oneself and the other as related to God. It thereby obligates religious tolerance and forbids religious coercion. It also instills among believers a compelling reason for treating others lovingly, namely that God is watching them. This motivation for just behavior cannot be underestimated, especially in the United States, which under the influence of Protestant Christianity,<sup>35</sup> has avoided the large-scale corruption of government officials that has plagued various other countries: dishonesty is neither expected nor tolerated—as shown by the resignation of President Nixon. Indeed, natural law's God-centered hierarchical eudaimonism reinvigorates the classical Christian notion of vocation.<sup>36</sup> To see one's activities as a way of loving God precludes seeing and treating others as competitors in a "dog eat dog world." Adherence to the first love precept thus is a great benefit to society—especially because it provides an incredibly powerful basis for correcting civil injustices—as shown, for example, by the American political tradition of appealing to God for aid in difficult times.

### **Religious Tolerance<sup>37</sup>**

Although religious wars seem to justify the claim that religious belief causes intolerance, it is an oversimplification: religious wars are not simply religious but are also political and waged with the assumption that shared religious beliefs are indispensable for successful government. This assumption continues to fade in the wake of the American experiment that separated Church and State on the basis that a social contract establishes government and that religious duties are beyond the state's jurisdiction.<sup>38</sup>

The love of God prescribed by natural law, moreover, especially obligates religious toleration due to the special relationship between love and freedom. Freedom is not only a prerequisite of love but an on-going necessary condition of love, since love that is not free is not love, i.e., a free commitment to a person or a value. As explained by Wojtyła in *LR* (1981b, 117), love requires freely committing oneself when one could do otherwise. Without such free commitment, there is no love. Freedom thereby makes possible the deliberate commitment that expresses the psychological essence of love. Freedom also makes obligations possible: for where there is no possibility of doing otherwise, there can be no obligations. Obligations necessarily presuppose that one is free to act contrary to what is being obliged. Thus coercion—by seeking to

overcome the freedom to do otherwise—undermines both obligation and love. This means that the love precepts tacitly proscribe coercion and religious intolerance as conditions contrary to their prescriptions to love God and neighbor. Religious intolerance is accordingly proscribed—never prescribed—by the love precepts.

Besides freedom, the prescription to love God above all—in so far as it is a precept of natural law<sup>39</sup>—presupposes that God is known to human reason through considerations drawn from nature.<sup>40</sup> For Aquinas, this means that God is known as the providential cause of all that is good.<sup>41</sup> Nothing less is worth a love above all. This means that since love presupposes knowledge, only those who know God are bound to love Him; those who know not God are not so bound.

It is not possible to know whether another knows God. As the Akan language group in Africa<sup>42</sup> is wont to say: “‘Me kose kose wo mitirm,’ meaning ‘My real thoughts are in my own head.’”<sup>43</sup> Human subjectivity precludes reading the thoughts of others. The presumption must therefore be that those uninterested in one’s religion do not know one’s god(s). In which case, coercion cannot succeed as a pedagogical method. For, as explained by John Locke: “For no man can, if he would, conform his faith to the dictates of another. All the life and power of true religion consist in the inward and full persuasion of the mind” (1947, 26). The ways of truth are not the ways of force. Thus Locke continues: “if Truth makes not her way into the understanding by her own light, she will be but the weaker for any borrowed force violence can add to her” (52). In brief: coercion is unable to produce the conviction sought by its practitioners. Indeed, coercion and acts of intolerance hinder the considerations required for knowing God and for loving Him. As such, they are proscribed by love.

Another reason that religious intolerance is proscribed is that natural reason can recognize the possibility that knowledge of God might not be exhausted by knowledge acquired from nature: a providential God just might reveal Himself through special revelations that could not be known except through some kind of faith. As long as these special revelations do not deny the providential goodness of God, they would not be able to be adjudicated by natural reason. The inability to adjudicate between special revelations of God’s goodness means that it would be irrational for an individual—or for a state—to be intolerant.

Furthermore, the religious tolerance obligated by the love of God obliges the state to recognize that it is not always possible to establish certitude on the basis of human ingenuity and science. Some differences of opinion on the most important matter of God and religion thus need not be due to a failure of wit nor philosophical argument. Consequently, the religious tolerance entailed by the first love precept establishes a realm of freedom and commitment in thought

and act that is beyond the proper domain of the state. This recognition that religious belief transcends the powers of limited human reason and science establishes an inalienable bulwark for the freedom of belief and expression in general. In this way, the freedom necessitated by the first love precept becomes the best bastion of all civic freedom.<sup>44</sup> This is particularly the case since loving God above all precludes the extreme patriotism and obsessive love of country that would make the state the highest good and citizens the mere disposable instruments for advancing the state. It is then, perhaps, no accident that the twentieth century's most successful totalitarian states repressed religious freedom and persecuted religious believers.

Finally, even if it were possible for reason to use nature to establish a particular set of religious beliefs as true,<sup>45</sup> it would still be immoral to penalize those who refuse to hold any religious beliefs or those who practice whatever is considered to be a "false" religion. As long as they remain neighborly and nonviolent, their freedom to act as persons in accord with their intellect and their will must be respected. For as Wojtyła explained,<sup>46</sup> it is through the exercise of one's freedom that one determines oneself as a person and reveals the uniqueness of one's personhood that is to be loved and respected by others.

Tolerance thereby flows from a love for the other as a person and not from a love of their ideas or from a love of autonomy divorced from truth and goodness. It is for this reason that tolerance is a moral virtue that enables one to bear with neighbors—even when they hold "untrue" beliefs. To tolerate disagreements with others is thus to put up with error for the sake of neighborliness, that is, for the sake of neighborly love. In this way, the tolerance prescribed by neighborly love inculcates a respect of the human person invaluable for democracies based on such respect. As explained by Etienne Gilson:

[W]e tolerate [these men] . . . because, even though we know that their ideas are wrong, these men are our fellow countrymen with whom we have to live in peace just as they themselves have to put up with us. Aristotle used to say that two moral virtues are the very pillars of political life: justice and friendship, which is what we today call the "good neighbor policy." Tolerance is nothing else than a particular application to the needs of political life, of the moral virtue of friendship. (1952–3, 12–3)

It would accordingly be a category mistake to treat tolerance as an intellectual virtue based on scepticism or relativism. After all, the lack of certitude characteristic of scepticism and relativism necessarily entails the possibility that the opposition—however fanatical or wicked—may be right. As observed by Etienne Gilson: "Against political fanaticism, a philosophical relativism is the weakest conceivable protection" (1952–3, 15). Only truth exposes the fallacies

in fanaticism and the repugnance of wickedness, as put by Gilson:

Tolerance is a moral and a political virtue, not an intellectual one. As rational beings, our only duty towards ideas is to be right, that is to say, to seek truth for its own sake and to accept it as soon as we see it. As to error, whether it be found in ourselves or in the minds of other men, our only duty towards it is to denounce it as false . . . The two notions of “tolerance” and “intolerance” simply do not apply to the order of ideas. What we really mean by saying that we tolerate certain ideas is that we tolerate the existence of certain men who hold those ideas and that we respect their freedom of speech. (1952–3, 12)

Truth is thus not the enemy of tolerance but a best friend, especially when that truth is identified as the obligation to be tolerant out of love for neighbors and God.

This is especially the case since the knowledge that God is worthy of being loved above all comes through philosophical and theological arguments that one finds personally convincing or through revelation and grace. And, since it is impossible to know whether another has encountered (through reason or faith) evidence of God’s existence and goodness that they have found personally persuasive, it is impossible to determine whether anyone is in violation of their obligations to God. For those who lack awareness of God—through no fault of their own—are not culpable for not loving God. So, given the inability of human beings to judge the human heart, human law ought to be restricted to exterior acts.<sup>47</sup> From this, it follows that beliefs and actions pertaining to God do not fall within the scope of human law. In this way, obligations to God entail not only the civil rights to religious worship and to religious tolerance, but also to not be religiously involved.

Unfortunately, although Aquinas explicitly prescribes tolerance for the “rites of unbelievers”<sup>48</sup> and forbids religious intolerance for those who have never received the faith, he fails to realize that heretics also deserve freedom from coercion.<sup>49</sup> “[H]eretics should be compelled to keep the faith,” since keeping the faith is an obligation arising from a promise (*S.T.* II-II.10.8c). On this issue, Aquinas speaks, not as a natural law personalist, but as a nobleman’s son and as a religious believer approximately five hundred years before the American experiment in separating political and religious authority.<sup>50</sup> Aquinas lived during the age of crusades and feudalism, which established political alliances only through the personal vows given by vassals to their noble lords. These vows placed oneself, one’s family, and one’s own vassals at the disposal of the noble lord’s political agenda.<sup>51</sup> These vows were abrogated if the lord should be excommunicated by the Church.<sup>52</sup> Besides baptismal vows, marriage vows, and the vows of vassals, there were also the religious vows that removed one legally from society and placed one under canon law and bound one to a

life in a particular monastery or to a life of poverty in a religious order. Vows were the life-blood of medieval society and were seen as needing to be protected at all cost.

Seven hundred years later Karol Wojtyła could see what Aquinas could not, namely, not only the indispensability of freedom for religious belief and political society, but also the indispensability of inalienable rights.<sup>53</sup> In this way, Wojtyła reinforced the fundamental nature of subjectivity and the foundational character of his Personalistic Norm, thereby recasting natural law in terms of inalienable rights. Wojtyła's recasting of natural law in terms of freedom, love, and inalienable rights is the most prominent development in Thomism in the last several centuries. This is especially the case because it emphasizes Aquinas's own identification of natural law's foundation in love of God and neighbor. Wojtyła's personalism, moreover, influenced the Vatican II's *Declaration on Religious Liberty* (Weigel 1999, 163–6; Schmitz 1993, 114–5).

As a result, it is not surprising that, in 2000, the Catholic Church apologized for her members who had sinned against human rights.<sup>54</sup> Nor is it surprising that this Church continues to argue that the fundamental requirements of human nature universally justify freedom as well as immunity from external coercion on religious matters—even for heretics.

[T]he right to this immunity continues to exist even in those who do not live up to their obligation of seeking the truth and adhering to it. The exercise of this right cannot be interfered with as long as the just requirements of public order are observed.<sup>55</sup>

The caveat allowing public order to restrict the civil right to religious freedom is necessary in order to prevent “religious” groups from abusing human beings by treating them violently, e.g., the ancient practice of sati, or by denying vulnerable adults and children necessary and available medical treatment. After all, it would be inconsistent for a state established to promote human welfare to permit abuse of its members. This condition of public order is a sound principle of statecraft even though it can be used and has been used to violate human rights, including the right to religious freedom and worship. Mistaken applications do not necessarily negate principles.

Furthermore, the precept of loving God above all forbids treating the innocent violently and denying them the free exercise of religion, since it is contrary to loving God above all to mistreat the recipients of His providence.

In brief: the natural law of love not only forbids identifying religious obligations as political obligations, it also proscribes religious intolerance. After all, love of God requires loving His creatures as neighborly love forbids not only violations of religious freedom but also otherwise harming the innocent.

### Contemplating and Befriending God

Besides the obligation to practice religious tolerance, the obligation to love God above all entails the obligation to contemplate God: to love is to seek to know and to understand the beloved. Without contemplation, love is stillborn, or it stagnates and grows cold. To be obliged to contemplate God is to be obliged to continually seek the truth about God. It thus requires considering the possibility of divine revelation. This obligation to take seriously the possibility of divine revelation is not, however, also a moral obligation to become a believer: faith is a gift, an invitation to a close relationship with God. Consequently, the first love precept is violated not by unbelief but by the refusal to pursue that which one *knows* points towards faith, or the deepening of faith, in order to protect one's current belief status. Such refusals are antithetical not only to the love of God but also to the proper functioning of one's own mind, which seeks to understand and to love in accordance with one's understanding.

The love above all prescribed by the first precept also requires seeking to make God's ways one's own and seeking to make the world more beautiful, kind, gentle, and good. It is to be, as Plato put it, a friend of God's.<sup>56</sup> After all, one cannot love God and fail to advance His cause, namely, goodness both within oneself and one's world. That it is possible for one's friendship for God to be reciprocated, however, is knowable and achievable only through the infused virtue of charity.<sup>57</sup>

### Natural Religion

The precept to love God above all names the one who is to be loved most. The name "God" can be understood according to a special revelation identifying, for instance, the Trinity as known through Christian revelation, or Yahweh as known through Judaic revelation, or Allah as known through Islamic revelation. Or, the name can be understood as the Providential One as known through nature.<sup>58</sup> Only this last identification pertains to natural law and underpins the natural law precept to love God above all. For God is to be loved above all because He is the most good and the cause of all that is good. And, since it is a dictate of natural reason to make a return to benefactors, natural reason dictates that natural religion is a debt of justice.<sup>59</sup> In other words, every theist—according to how they conceive the ultimate principle of their good, i.e., God—ought to engage in acts of religion. In this context, religion is not for Aquinas a theological virtue directed to one's supernatural last end, but a moral virtue responding to the blessings of creation and to Divine providence.

There are four acts of natural religion: worship, service, prayer, and sacrifice. Worship and service are expressed in the same act, since "by the very fact that we revere and honor God," says Aquinas, "our mind is subjected to Him" (*S.T.* II-II.7c). Prayer is the way in which reverence and submission is

shown to God as the author of good (*S.T.* II-II.83.3c). Sacrifice is the offering of certain sensible things to God as an expression of human submission and worship (*S.T.* II-II. 85.1c). In *S.T.* II-II.85.1c, St. Thomas explicitly argues that offering a sacrifice to God, conceived as a divinity superior to human beings, is prescribed by natural law. This text is unsurpassed in showing the reasons why St. Thomas considered religious sacrifice to be prescribed by natural reason:

Natural reason tells man that he is subject to a higher being, on account of the defects which he perceives in himself, and in which he needs help and direction from someone above him: and whatever this superior being may be, it is known to all under the name of God. Now just as in natural things the lower are naturally subject to the higher, so too it is a dictate of natural reason in accordance with man's natural inclination that he should tender submission and honor, according to his mode, to that which is above man. Now the mode befitting to man is that he should employ sensible signs in order to signify anything, because he derives his knowledge from sensibles. Hence it is a dictate of natural reason that man should use certain sensibles, by offering them to God in sign of the subjection and honor due to Him, like those who make certain offerings to their lord in recognition of this authority. Now this is what we mean by a sacrifice, and consequently the offering of sacrifice is of the natural law. (*S.T.* II-II.85.1c)

From this text's argument that religious sacrifice as a dictate of natural reason belongs to natural law, certain presuppositions of St. Thomas can be enumerated. First, religious sacrifice is not a obligation of revealed religion but is due to any good god. Secondly, sacrifice as a sign of submission and honor acknowledges that the divine principle of good is an authority over oneself. Thirdly, the good god, to whom one sacrifices, cares about his human inferiors and provides help and direction. These characteristics of God can be found in most religions, according to Mircea Eliade (1987). This is not surprising since most humans have a general awareness of God as the principle of good.

Hence, according to natural law, man *owes* the acts of natural religion to his supreme and divine principle of good. As a result, the moral precepts of the Decalogue's first table are entailed by the first love precept inasmuch as "... the first three precepts are about acts of religion, which is the chief part of justice" (*S.T.* II-II.122.1c). Aquinas also considered these first Decalogue precepts as prescriptions of what is necessary for man to be correctly ordered to his end: the first precept proscribes man giving the honor due to God to another; the second precept proscribes doing what is injurious; and the third precept prescribes making a return to God for the benefits one has received from God.<sup>60</sup> Thus, the precepts of the first table are not only entailed by the first love precept because they are concerned about the acts of natural religion but because they direct us to God and thereby "... contain the very order to the

common and final good, which is God.”<sup>61</sup> Consequently, the first love precept by prescribing the love of God above all entails the Decalogue's moral precepts about honoring God.

Therefore, once one knows that God exists, natural law obligates the theist to love this Ultimate Cause appropriately. This means that nothing is to be loved “. . . more than God or contrary to God, or equally with God” (*S.T.* II-II.184.3 ad 2).

## Notes

1. *S.T.* I.60.5.

2. *S.T.* I-II.100.3 ad 1.

3. *S.T.* I-II.27.1c: “Love belongs to the appetitive power which is a passive faculty. Wherefore its object stands in relation to it as the cause of its movement or act. Therefore the cause of love must needs be love’s object. Now the proper object of love is the good; because . . . love implies a certain connaturalness or complacency of the lover for the thing beloved, and to everything, that thing is a good, which is akin and proportionate to it. It follows, therefore, that good is the proper cause of love.”

4. The common good is treated much more extensively below in the section on the specifications of neighborly love.

5. Karol Wojtyła, *LR* (1981b, 28–9).

6. *S.T.* I-II.90.2c: “[L]aw belongs to that which is a principle of human acts . . . the first principle in practical matters . . . is bliss or happiness . . . since one man is a part of the perfect community, the law must needs regard properly the relationship to universal happiness. . . . Consequently, since the law is chiefly ordained to the common good, any other precept in regard to some individual work, must needs be devoid of the nature of a law, save insofar as it regards the common good. Therefore, every law is ordained to the common good.”

7. *S.T.* I-II.2.8c.

8. *S.T.* I-II.90.1c.

9. *S.T.* I-II.96.4c: “If [the laws framed by men] be just, they have the power of binding in conscience . . . Now laws are said to be just, both from the end, when, to wit, they are ordained to the common good,—and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver,—and from their form, when, to wit, burdens are laid on the subjects, according to the equality of proportion and with a view to the common good.”

10. *S.T.* I-II.96.4c.

11. *S.T.* I-II.96.4c: “[L]aws may be unjust in two ways: first, by being contrary to human good, through being opposed to the things mentioned above. . . . The like are acts of violence rather than laws; . . . Wherefore such laws do not bind in conscience, except perhaps in order to avoid scandal or disturbance, for which cause a man should



even yield his right . . . Secondly, laws may be unjust through being opposed to the Divine good: such are the laws of tyrants inducing to idolatry, or to anything else contrary to the Divine law: and laws of this kind must nowise be observed, because, as stated in Acts v.29, *we ought to obey God rather than man.*”

12. Article 49 of the 1982 *Constitution of the People's Republic of China*, see <http://english.people.com.cn/constitution/constitution.html> (Accessed October 23, 2010).

13. *S.T.* I-II.96.2c.

14. *S.T.* I-II.96.2 ad 2.

15. *S.T.* I-II.96.3c.

16. *S.T.* I-II.95.2c: “But it must be noted that something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. The first way is like to that by which, in sciences, demonstrated conclusions are drawn from the principles: while the second mode is likened to that whereby, in the arts, general forms are particularized as to details . . . Some things are therefore derived from the general principles of the natural law, by way of conclusions: e.g., that one must not kill may be derived as a conclusion from the principle that one should do harm to no man: while some are derived therefrom by way of determination; e.g., the law of nature has it that the evil-doer should be punished; but that he be punished in this or that way, is a determination of the law of nature.”

17. *S.T.* I-II.96.6c. Also *S.T.* II-II.120.1c: “Legislators in framing laws attend to what commonly happens: although if the law be applied to certain cases it will frustrate the equality of justice and be injurious to the common good, which the law has in view . . . In these and like cases it is bad to follow the law, and it is good to set aside the letter of the law and to follow the dictates of justice and the common good. This is the object of *epikeia* which we call equity.” See also *S.T.* I-II.97.4c: “Now it happens at times that a precept, which is conducive to the common weal as a general rule, is not good for a particular individual, or in some particular case, either because it would hinder some greater good, or because it would be the occasion of some evil . . . Consequently he who is placed over a community is empowered to dispense with a human law that rests upon his authority, so that, when the law fails in its application to persons or circumstances, he may allow the precept of the law not to be observed.”

18. *S.T.* II-II.120.1; *see also S.T.* II-II.51.4.

19. Plato. *Republic* Bk. 1, 331c (1961).

20. *S.T.* I-II q. 57 a. 6; *see also S.T.* II-II q. 50–51. As Aquinas stated in *S.T.* II-II.56.2c: “All the precepts . . . that relate to acts of justice pertain to the execution of prudence.”

21. Pope John Paul II (1996b), *Evangelium Vitae*, #72, 131: “The doctrine on the necessary conformity of civil law with the moral law is in continuity with the whole tradition of the Church.” Aquinas argues the point at *S.T.* I-II q. 91.2c, by first establishing that natural law directs human reason to its last end: “Every act of reason and will in us is based on that which is according to nature . . . for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end.

Accordingly the first direction of our acts to their end must needs be in virtue of the natural law. Aquinas then argues at *S.T.* I-II.95.2, that the justice of human law is grounded on the natural law: “Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature . . . Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law.”

22. *S.T.* I-II.96.6 ad 1.

23. *S.T.* I-II.100.2c: “Since the precepts of the Law are ordained to the common good . . . the precepts of the Law must needs be diversified according to the various kinds of community.”

24. Wojtyła, *LR* (1981b, 24) based his personalism on the incommunicability of subjectivity: “The incommunicable, the *inalienable*, in a person is intrinsic to that person’s inner self, to the power of self-determination, free will. *No one else can want for me*. No one can substitute his act of will for mine.”

25. Chapter 7 argued that individual happiness requires communal happiness.

26. *S.T.* I-II.19.10c: “[A] man’s will is not right in willing a particular good, unless he refer it to the common good as an end: since even the natural appetite of each part is ordained to the common good of the whole.”

27. Cf. *S.T.* I-II.90.3 ad 3.

28. Needless to say, Aquinas identifies the only community that can be superabundantly perfect as the community of charity attained in the next life.

29. As put by the Preamble of the *U.S. Constitution*: “We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

30. For an excellent extended argument on this point see Michael Pakaluk (1994).

31. Civil law is restricted to the evaluation of deeds, since matters of the heart (e.g., feelings) are not accessible except through self-testimony. *S.T.* I-II.91.4c: “But man is not competent to judge of interior movements, that are hidden, but only of exterior acts which appear.”

32. *S.T.* I-II.101.3 ad 2: “A wise lawgiver should suffer lesser transgressions, that the greater may be avoided.” *S.T.* I-II.91.4c: “[A]s Augustine says, human law cannot punish or forbid all evil deeds: since while aiming at doing away with all evils, it would do away with many good things, and would hinder the advance of the common good, which is necessary for human intercourse.”

33. Cf. *S.T.* I-II.90.3c.

34. In 2005, the Supreme Court of the United States permitted the use of eminent domain to advance a city’s economic well-being in *Kelo v. City of New London*.

35. See Max Weber (2003).

36. For a discussion about the nature of vocation see Schuurman (1994).

37. Parts of this section were excerpted, with revisions, from Lemmons (2005).

38. Michael W. McConnell (1990); Sanford H. Cobb (1902); Benjamin Hart (1988); and, John T. Noonan, Jr. (1998). According to Francis Wilson (1949, 37), it was Roger Williams (1603–1682) who “introduced into American thought not only toleration but an effective application of the idea of the separation of church and state.”

39. The obligation to love God above all is also an obligation that binds Christians to divine fellowship. *S.T.* II-II.26.3c: “The good we receive from God is twofold, the good of nature and the good of grace. Now the fellowship of natural goods . . . is the foundation of natural love.” *S.T.* II-II.26.1c: “[T]he love of charity tends to God as to the principle of happiness, on the fellowship of which the friendship of charity is based.” *S.T.* II-II.23.1c: “Accordingly, since there is a communication between man and God, inasmuch as He communicates His happiness to us, some kind of friendship must needs be based on this same communication . . . The love which is based on this communication is charity: wherefore it is evident that charity is the friendship of man for God.”

40. Aquinas differentiates philosophy and sacred theology from their starting points and methodologies. Philosophy begins with nature; theology with revelation (*S.T.* I.1 ad 2): “Sciences are differentiated according to the various means through which knowledge is obtained. For the astronomer and the physicist both may prove the same conclusion: that the earth, for instance, is round: the astronomer by means of mathematics (i.e., abstracting from matter), but the physicist by means of matter itself. Hence there is no reason why those things which may be learned from philosophical science, so far as they can be known by natural reason, may not also be taught us by another science so far as they fall within revelation. Hence theology included in sacred doctrine differs in kind from that theology which is part of philosophy.” Also see the discussion on the Alpha Test.

41. Aquinas is renowned for giving philosophical arguments accessible to natural reason that God exists (I.2.3c), that God is good (I.6.1-3), and that God is providential (I.22.1-3).

42. “The word *Akan* refers both to a group of intimately related languages found in West Africa and to the people who speak them. This ethnic group lives predominately in Ghana and in parts of adjoining Cote d’Ivoire. . . . Best known among the Akan subgroup are the Ashantis. Closely cognate are the Denkyiras, Akims, Akuapims, Fantes, Kwahus, Wassa, Brongs, and Nzimas, among others,” writes Kwasi Wiredu (1990, 243).

43. Kwasi Wiredu (1990, 256).

44. Cf. Vaclav Havel (1996, 41): “. . . freedom is thinkable only when it is based on a sense of responsibility toward an authority that transcends us.”

45. For a discussion of this question see Laura Garcia (1999).

46. Wojtyła (193): “By virtue of self-determination, I experience in the relatively most immediate way that I am a person.”

47. *S.T.* I-II.91.4c: “[M]an can make laws in those matters of which he is competent to judge. But man is not competent to judge of interior movements, that are hidden, but only of exterior acts which appear.”

48. *S.T.* II-II.10.11.

49. *S.T.* II-II.10.8c: “[Those] who have never received the faith . . . are by no means to be compelled to the faith, . . . because to believe depends on the will.”

50. John T. Noonan (1998) describes the process whereby the early colonists moved from intolerance to tolerance and well as contemporary challenges to religious liberty. He (43) also identifies the ultimate ground of religious liberty as being “Holy Writ which makes obligations to God superior to those to any human being or any human contrivance. . . . [C]ertain charismatics [thereby gained the liberty] to speak in judgment of government.” Noonan then argues that Christianity enlarged “this split of authority, this space for conscience by creating a Church that could speak such judgments . . . by proclaiming the crucifixion of Christ at the hands of a lawful Roman governor, with the unspoken but momentous implication that lawful authority could make stupendous mistakes . . . [and] by separating religion from obligation to family, obligation to tribe, obligation to nation, obligation to empire; in short, by making it personal” (44). It should also be noted that the Church forbade clerics from assuming secular duties in canon 12 of the Third Lateran Council in 1179 and from shedding blood in canon 18 of the Fourth Lateran Council in 1215. Find these documents <http://www.catholicculture.org/culture/library>. <http://www.catholicculture.org/search/searchResults.cfm?querynum=1&searchid=671488&showCount=10&CFID=55215149&CFTOKEN=19599341> (accessed October 23, 2010).

51. Private warfare by French nobles was only banned by King Louis IX in the thirteenth century.

52. See Sidney Z. Ehler and John B. Morrall, (1954); Marshall W. Baldwin (1953); Brian Tierney (1964); Friedrich Heer (1962); John B. Morrall (1980).

53. Wojtyła’s strongest defense of inalienable rights can be found in his papal writings, especially *Centesimus Annus* and *Evangelium Vitae*. For an extensive explication see Thomas D. Williams (2005).

54. The plea for forgiveness was made at the first Sunday Mass of Lent by then Cardinal Ratzinger with Pope John Paul II presiding (Weigel 2005, 113).

55. *Second Vatican Council’s Declaration on Religious Liberty*. Ed. Austin Flannery, O.P. (1975, 801).

56. Plato, *Symposium* 212a (1935). Plato explains that to become the friend of God, the lover of beauty must procreate wisdom and virtue; the best of these is found in the proper ordering of cities and households (209a).

57. Aquinas explicates charity as friendship with God in *S.T.* II-II.23.1.

58. Aquinas (*S.T.* I.2.3) argues that the existence of God can be known from the attributes of nature, e.g., motion, contingency, causality, imperfection, and organization. In *S.T.* I.6.1-4, he argues that it is possible to know of God’s goodness. For a fuller discussion see Hayden (1991).

59. *S.T.* II-II.81.3c: Natural religion reverences God “as the first principle of the creation and government of things.” *S.T.* II-II.81.1 ad 3: “Now it is evident that lordship belongs to God in a special and singular way, because He made all things, and has supreme dominion over all.” *S.T.* II-II.81.2c: “[I]t belongs to religion to pay due honor to someone, namely, to God.” And, *S.T.* II-II.81.4c: “Again, honor is due to someone under the aspect of excellence: and to God a singular excellence is competent, since He

infinitely surpasses all things and exceeds them in every way.” Also, *S.T.* II-II.80.1c: “In this respect, religion is annexed to justice since, according to Tully, it consists in offering service and ceremonial rites or worship to some superior nature that men call divine.” And, *S.T.* II-II.81.4 ad 3: “The object of love is the good, but the object of honor and reverence is something excellent.”

60. *S.T.* I-II.100.5c: “Fidelity to his master consists in his not giving sovereign honor to another: and this is the sense of the first commandment, in the words, ‘Thou shalt not have strange gods.’--Reverence to his master requires that he should do nothing injurious to him: and this is conveyed by the second commandment, ‘Thou shalt not take the name of the Lord thy God in vain.’--Service is due to the master in return for the benefits which his subjects receive from him: and to this belongs the third commandment of the sanctification of the Sabbath in memory of the creation of all things.”

61. Also *S.T.* I-II.100.6c: “Moreover, it is clear, since the order of reason begins with the end, that for a man to be inordinately disposed towards his end, is supremely contrary to reason. Now the end of human life and society is God. Consequently it was necessary for the precepts of the Decalogue, first of all to direct man to God; since the contrary to this is most grievous. . . . Now among those things whereby we are ordained to God, the first is that man should be subjected to him faithfully, by having nothing in common with his enemies. The second is that he should show him reverence: the third that he should offer him service.”



## *Chapter 17*

# **Updating the Parameters of War and Punishment with Love**

*This chapter argues that the love precepts can prescribe the traditional natural law obligations governing war and punishment, including capital punishment.*

### **The Parameters of Just War**

**“It is lawful to fight, provided it be for the common good” (S.T. II-II.42.2 ad 1).**

It seems counterintuitive to identify the love precepts as the basis of natural law, given natural law’s perennial advocacy of the Just War Theory propounded by St. Augustine. Indeed, all kinds of lethal violence seem antithetical to intending the good of others as required by love.

Nevertheless, if the love precepts were not applicable to cases of lethal violence, then since it is love that proscribes harm, no acts of harm could be proscribed in war. And if this were so, there would be neither a category of action called “war crimes” nor one called “crimes against humanity.”<sup>1</sup> But there

are. The human race has long abhorred war crimes: those of Genghis Khan have yet to be forgotten.<sup>2</sup> Modern abhorrence of wanton cruelty is expressed by trying their perpetrators as shown by the Nuremberg and Tokyo War Crime Trials following World War II as well as by the 1971 trial of William L. Calley, Jr. for the My Lai massacre in Vietnam. The natural law proscription of harm for harm's sake has been embedded in the history of constraining war acts from the dawn of recorded history, as pointed out by Leon Friedman (1972, 3):

Virtually every civilization of which we have record placed some limitations on the conduct of its own warfare. As early as the Egyptian and Sumerian wars of the second millennium B.C., there were rules. . . . In his famous book *The Art of War*, written in the fourth century B.C., Sun Tzu noted that it was forbidden to injure an enemy previously wounded. . . . About the same time, the Hindu civilization in neighboring India produced a body of rules (found in the *Book of Manu*) . . . [containing] the following:

[L]et him not strike with weapons concealed (in wood), nor . . . bared, poisoned, or the points of which are blazing with fire. Let him not strike one . . . who is unarmed, nor one who looks on without taking part in the fight . . . nor one whose weapons are broken . . . nor one who has turned to flight; (but in all these cases let him) remember the duty (of honourable warriors).

. . . The Babylonians of the seventh century B.C., also treated prisoners and captured peoples with restraint in accordance with well-established rules.

The sense that lethal violence between states does not warrant inhumanity and must be governed by moral laws reached a clarity of expression with Aquinas. He cited Augustine,<sup>3</sup> who cited Cicero,<sup>4</sup> thereby continuing a long tradition holding that only just wars were legitimate. Just wars had to meet the following three criteria:

First, . . . the power to declare and counsel war should be in the hands of those who hold the supreme authority. Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault. . . . Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil. (*S.T.* II-II.40.1)

These criteria of what constitute a just war necessarily place moral parameters upon the conduct of war: (1) only legitimate political authority may declare war; (2) acts of war are responses to another state's grave injustice; and, (3) the only legitimate ends of war are the advancement of good and the avoidance of evil. The advancement of good and the avoidance of evil entail (4) that acts of war must not involve greater harm than good: the minimization of harm must be



sought; and, victory must be a possibility. Criteria four entails criteria five: war must be a last resort; otherwise the minimization of harm would not be intended.

Several key thinkers were responsible for making these criteria basic to modern international law. Among them, according to Leon Friedman (1972), are Francisco de Vitoria (1485-1546), a Spanish Thomist who in his book *On the Indies and the Law of War* argued that the Native Americans of the New World could not be conquered with impunity; Balthazar Ayala (1548–84), a Spanish Judge Advocate who in his *Three Books on the Law of War and on the Duties Connected With War* reiterated Aquinas' criteria for just war; and, most importantly, Hugo Grotius (1583–1645), a natural law theorist who, in his three volume masterpiece *On the Law of War and Peace*, expounded principles that became international laws (11–5).

Friedman continues to explain that modern international laws are based upon the 1868 Declaration of St. Petersburg (which proscribed “the employment of harms which uselessly aggravate the sufferings of disabled men, or render their death inevitable, . . . [including explosive or fulminating or inflammable projectiles of less than 400 grams]”) (192–3); the 1874 Brussels Declaration, which denied an unlimited right to injure the enemy, forbade attacking or bombing open and undefended towns or “agglomerations of houses,” and required the humane treatment of prisoners, (196–7)<sup>5</sup>; the 1899 and 1907 Conventions of The Hague Peace Conferences; the 1925 Geneva Protocol; the 1929 and 1949 Geneva Conventions; the 1977 Protocols to the 1949 Convention; and the Genocide Convention of 1948.<sup>6</sup> These treaties, according to Charles Shanor and Timothy Terrell (1980, 196–7), share four basic principles:

(1) *military necessity*—force should be directed only at those targets which are directly related to the enemy's ability to wage war; (2) *proportionality*—the degree of such force used should be directly related to the importance of the target and should be no more than is necessary to achieve the military objective; (3) *humanity*—those targets and degrees of force should be selected which will result in the least possible suffering, destruction of civilian property, loss of civilian life, and loss of natural resources; and (4) *chivalry*—one should not engage in dishonorable or treacherous acts which violate certain recognized formalities and courtesies of warfare, such as misuses of flags of truce. (sic)

In addition, Shanor and Terrell (1980, 211) point out that various customary laws expressing the principles of humanity, military necessity, proportionality, and chivalry have been accepted in so many treaties, court decisions and domestic statutes that they have the status of an international *common law*.

In this way, international common law honors the Augustinian-Thomistic obligation to minimize the harms of war and to avoid causing useless suffering,

e.g., by requiring the humane treatment of combatants, prisoners and noncombatants, which insures that others are treated as one wishes to be treated. And, this is to apply the obligations of neighborly love to war. The minimization of harm while actively engaging in war by using the principles of humanity, military necessity, proportionality, and chivalry also require reserving war as a last resort to be undertaken after economic sanctions and other nonviolent means of redress have failed.

Subsuming war under the obligations of neighborly love makes clear not only the need to minimize harm but also the need for war to be waged for the sake of the common good. This requirement makes it possible to subsume humanitarian wars under the obligations of neighborly love, since neighbors are not loved when one does nothing to defend them from a harm that one could easily avert without risk to oneself. But since wars are violent with substantial risks to the lives of one's own soldiers, humanitarian wars must meet two additional conditions before being morally permissible: (1) the common good of the beneficiary state must not be advanced at the cost of harming the common good of the beneficent nation; (2) the lives of the beneficent nation's soldiers are not to be risked unless the lives of the intended beneficiaries are at substantial risk.<sup>7</sup> Voter fraud, for instance, could not warrant a humanitarian war, but genocide or ethnic cleansing could—on the condition that the would be beneficent state could advance the common good of the victims while not harming its own common good, and that all the other conditions for just war are met, especially those concerning the likelihood of success. Armed humanitarian interventions should thus be undertaken only to save lives, e.g., by stopping genocide, and not simply to improve the political or economic welfare of an oppressed people.

Wars of neighborly love or humanitarian interventions, moreover, are just only when they are conditioned by neighborly love *for the enemy*. No enemy should be unnecessarily hurt. No enemy is evil incarnate; and so, one remains not only united to the enemy through the bond of humanity but also bound to love the enemy as another self, i.e., as human being. “[M]an, by nature, loves all men,” explains St. Thomas (*In Charity* a. 8 ad 7), “[B]ut that one becomes an enemy is from something superadded to nature, and accordingly, the inclination of nature ought not to be taken away.” Even enemies are to be loved—but not as enemies, since that would imply, as pointed out by Aquinas (*S.T.* II-II.25.8c), “[the perverse] love of that which is evil in another.” Legitimate hatred of enemies as enemies is thus circumscribed, or ruled, by love. For this reason, wounded enemies are to receive medical treatments and no prisoner should be tortured or mistreated. As pointed out by Aquinas (*S.T.* II-II.25.9c), “If thy enemy be hungry, give him to eat; if he thirsts, give him . . . drink.” In short, enemies ought always to be treated humanely.

Moreover, since the enemy is not treated humanely if killed or treated violently when harmless, violence against unjust enemies is morally permissible only to the degree necessary for establishing a just peace.<sup>8</sup> This means that if diplomacy can correct a situation, lethal force would not be permissible. It also means that if a single attack against a military target would stop the injustice of a rogue state, multiple strikes ought not be undertaken. Furthermore, peace is disturbed not only by the violence of rogue states but also by the seditiousness of their governments. Governments are seditious, when rulers refuse to pursue the common good, either in order to pursue their own private good or in order to establish a tyrannical ideology.<sup>9</sup> Overthrowing seditious governments is good unless greater harm would result from ending the seditious rule (*S.T. II-II.42.4 ad 3*). In this way, Aquinas recognizes a right to overthrow unjust governments.

In these ways, then, the Geneva Conventions are entailed by love's obligation to treat even enemies humanely; as the traditional Just War Doctrine is entailed by love's obligation to defend the common good insofar as the common good is defended when wars are undertaken only as a last resort to rectify grave assaults upon peace by rogue nations or seditious governments, when the harms of war are outweighed by greater goods, when harm is minimized, and when enemies are treated humanely.

If, then, love regulates justified expressions of lethal violence through war, the ethics of war instantiate the primacy of the love precepts. Therefore, as long as one's actions involve or affect human beings, the love precepts are applicable and capable of prescribing or proscribing certain acts.

Natural law's regulation of war extends to the reconstruction of the enemy's state after the war. For if the war is just and guided by the parameters of neighborly love, then once the enemy is vanquished, neighborly love seeks to remedy the harms that it can. These harms include not only a damaged infrastructure but also the social, political, moral, and criminal damage done by the aggressors. Brian Orend (2000) argues that Michael Walzer has several principles that must be applied to ensure that there is justice after the war (*jus post bellum*). These include the following: (1) "the unjust gains from aggression must be eliminated"; (2) "war crime trials for the initiators of the aggression"; (3) "re-establishing the integrity of the victim of aggression as a rights-bearing political community"; (4) "and in some sense deterring future aggression, notably with regard to the actual aggressor but, in so doing (and at least to some degree), other would-be aggressors" (138–9). The United States followed these principles and modeled this type of post bellum neighborly love when it helped to rebuild Europe and Japan after the Second World War.

## The Parameters of Legal Punishments<sup>10</sup>

“[T]o punish pertains to none but the framer of the law, by whose authority the pain is inflicted” (*S.T.* I-II.92.2 ad 3).

The common good that the law seeks to establish through love forbids harm. As such, it may seem that love is unable to ground the morality that governs punishments, since punishment seems to necessarily involve willing harm to another. But this is not so—even though punishment involves imposing physical or psychic pain. Aquinas identifies psychic pain as having to endure what is contrary to the will. And pain need not be harmful. Transient physical pain that causes no damage—either physically or psychically—and that is necessary for the sufferer’s good is not harmful, e.g., the pain caused in the cleaning of skinned knees or in medicinal shots. Likewise, the pain of enduring what is contrary to one’s will need not be harmful, e.g., a well-deserved scolding or a time-out. If pain need not be harmful, then punishment need not be harmful.

In order for punishment not to be harmful, it must be medicinal, that is, good for the criminal and for the community.<sup>11</sup> Punishment is for good of the criminal in four ways: (1) it prevents the criminal from continuing to develop a vicious character by stopping his criminal activity; (2) it reproaches the criminal’s conscience and reaffirms the truth that the crime was evil and impermissible; (3) it structures the criminal’s restitution for his crimes, especially when the criminal is required to pay damages to the victim<sup>12</sup>; and, (4) it suggests the desirability of rehabilitation. Presupposed by these conditions is a necessary condition, namely, that the criminal be guilty. Medicinal punishment is also good for the community: (1) it stops criminal activity; (2) it restores community values and rejects the legitimacy of the criminal act; (3) it compels obedience to the law thereby restoring equality between the criminal and those who obey the law; and, (4) it compensates the victim for damages.

Medicinal punishment, however, need not also be curative: medicine does not always cure. But medicinal punishment always restores the criminal’s subordination to the law and, thereby, defends the law from disintegration and the community from crime. This defensive aspect of punishment has yet to be widely appreciated. Nevertheless, defending the common good is a necessary attribute of punishment insofar as every crime attacks the rule of law and every punishment rebuffs that attack.

If a criminal is too monstrous in his commitment to evil, punishment cannot be fully medicinal. In such cases, punishment only partially restores subordination to the law: the criminal’s will is not turned towards the good and criminal activity continues in prison, perhaps, for instance, by using a pirated cell phone

to plan crimes for others to commit. However, even though criminal activity in prisons becomes difficult to eliminate when it occurs through the cooperation of guards or inept wardens, these difficulties are not insurmountable. If so, the defensive aspect of punishment cannot justify capital punishment as the way to protect society from incorrigible and dangerous criminals in so far as hiring honest guards and talented wardens would suffice to protect society.

Neither can the criminal's guilt per se justify capital punishment. For, neighborly love abhors all that is not life-affirming. Love desires to teach the criminal that he is not above the law, that he is to live as subordinated to the law and to contribute to the common good. Indeed, a criminal rendered harmless needs to live as subordinated to the law to restore what was lost by the refusal to be so subordinated. To execute such a harmless criminal would be to reinforce the criminal's conviction that he need not live under the law nor contribute to the common good. It would also identify the criminal's life as not worth preserving and as valuable only as providing the means of retribution. Such identifications undercut the juridical legitimacy of contemporary states that depend on advancing the common good, in part, by acknowledging the goodness and non-instrumentality of human life. It is thus especially requisite for political communities bound by the obligations of neighborly love to forgo all but defensive acts of capital punishment for those guilty of capital crimes.

Is this philosophy of punishment according to the natural law of love inconsistent with the tradition of permitting capital punishment? Let us settle this question by considering the arguments of that champion of capital punishment, Thomas Aquinas.

In *S.T. II-II.64.2 ad 3*, Aquinas argued that lawbreakers may be killed in order to protect the common good from those who have become lower than the animals by rejecting the order of reason, i.e., by rejecting the obligation to live according to the truths known by reason.<sup>13</sup> Such criminals are malicious predators and such persistent enemies of the common good that the common good cannot be adequately protected while they live. As Aquinas put it, in the main body of this text: "when . . . the good incur no danger, but rather are protected and saved by the slaying of the wicked, then the latter may be lawfully be to death" (*S.T. II-II.64.2c*). Aquinas thus consider capital punishment to be permissible when a criminal's on-going attacks on the common good are doggedly persistent and harmful. Capital punishment is thus a last resort for stopping a vicious criminal from preying on society.

This emphasis upon the dangerousness of the criminal indicates that wickedness does not suffice as a Thomistic warrant for capital punishment: capital punishment cannot be a simple matter of retribution.<sup>14</sup> It must then be a matter of on-going defense in order to morally permissible. This means that only those responsible for the defense of society have the authority to protect

society in this way; “hence a public authority is requisite in order to condemn [a criminal] to death for the common good” (*S.T.* II-II.64.3 ad 2).

Love of the common good prohibits the destruction of the common good and obligates public authorities to take defensive measures that are proportionate to any attacks. Love of the criminal obligates preserving his life and forgoing cruel, unusual, and disproportionate punishments. Love thereby also forbids capital punishment until the vicious and persistence of the criminal’s attacks leave public authorities with capital punishment as their only means of defending the common good.

Consequently, neighborly love warrants capital punishment only when indispensable for defending society from criminals who remain dangerous behind bars—a condition which modern society has the resources to prevent, e.g., electronic jammers can prevent pirated cell phones from working. Proper sentencing and due diligence should thus suffice to end the ability of criminals to continue attacking the common good.

If it is rather the case that contemporary prisons are schools of vice where prisoners viciously prey upon each other, then it needs to be determined whether systemic conditions are failing to control dangerous prisoners or whether criminals are being pushed into violence. Are prisons overcrowded? Do wardens lack the means of rewarding good behavior? Does the criminal justice system offer criminals, whether early or late in their “career,” alternatives to deepening their malice? Are prisoners routinely humiliated? Is adequate medical care provided? Are their spiritual needs met? Are guards corrupt—or vicious? Has transferring control of prisons to profit making organizations dehumanized the system?

Whatever the answer to these and like questions, the resources of contemporary society make it possible to structure prisons in ways that render dangerous criminals harmless and capital punishment unnecessary.

## Notes

1. For an excellent legal history of the evolution of the categories “war crimes” and “crimes against humanity,” see Lawrence Douglas (2001).

2. The deaths of five million have been attributed to Genghis Khan (Simmons and London, 1984: 29).

3. In *S.T.* II-II.40.1c, Aquinas cites Augustine for all of these criteria: for the first, he cites *Contra Faust.* xxii.75: “*The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority;*” for the second, he cites *QQ. In Hept., qu. X, super Jos.*: “*A just war is wont to be described as one that avenges wrongs, when a nation*

or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly;" and for the third criterion, Aquinas cites Augustine's *De Verb. Dom.*: "True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good" as well as Augustine's *Contra Faust* xxii.74: "The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war." Those interested in pursuing further the influence of Augustine should see R. S. Hartigan (1966) and F. Russell (1975).

4. *City of God* XXII, ch. 6 (1962a, 162): "I am aware that Cicero, in the third book of his *De Republica*, if I mistake not, argues that a first-rate power will not engage in war except either for honour or for safety." In this book, Cicero clearly formulated these two criteria for the just war: "Those wars are unjust which are undertaken without provocation. For only a war waged for revenge or defence can actually be just. . . . No war is considered just unless it has been proclaimed and declared, or unless reparation has first been demanded" (*The Republic* III, XXIII, # 34-35 (2006, 213)).

5. See, in particular, articles twelve, fifteen, and twenty-three of the Brussels Declaration..

6. Also to be considered are various resolutions of the United Nations' General Assembly, especially, Resolution 1653 on Nuclear Weapons in 1961, Resolution 2444 on Human Rights in 1968, and Resolution 2675 on the Protection of Civilians in 1970. These documents can be found in Friedman (1972).

7. For further a discussion in the context of jihadism see, for instance, J. Daryl Charles (2005: 165-167).

8. *S.T.* II-II.40.1 ad 3: "Those who wage war justly aim at peace . . . . Hence Augustine says (*Ep. Ad Bonif. Clxxxix*: *We do not seek peace in order to be at war; but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those who you war against, and bring them to the prosperity of peace.*"

9. Cf. *S.T.* II-II.42.4 ad 3.

10. For an argument that Church teaching proscribes all intentional killing, see Gerald V. Bradley (1998). For discussions of capital punishment see Mark S. Latkovic (2002, 76-95) and Steven A. Long (1999).

11. *S.T.* II-II.68.1c: "Now the punishments of this life are sought, not for their own sake, because this is not the final time of retribution, but in their character of medicine, conducing either to the amendment of the sinner, or to the good of the commonwealth whose calm is ensured by the punishment of evil-doers. "

12. Aquinas discusses restitution in *S.T.* II-II.62.1-8. Also consider *S.T.* II-II.79.1c: "For it belongs to justice to establish equality in our relations with others."

13. This is a moral claim about the nature of the predator's form of life. It is not an ontological claim. If Aquinas were to be speaking literally, he would be contradicting his own claim that death involves undergoing substantial change. But immorality is not lethal to bodily life; hence, immorality does not affect the soul's essence (as Plato argued in the *Phaedo*). As a result, even violent predators remain human beings and retain the dignity of being persons; if this were not so, then predators would annul their

own culpability. Moreover, if predators were able to annul their human dignity, then they would also be able to eradicate the bond of humanity that obligates treating them with neighborly love. Aquinas's words must thus be interpreted not ontologically but morally, that is, as asserting that the inhumanity of predators signifies their malice rather than their transformation into another species. After all, Aquinas accordingly has two notions of dignity: a dignity of person grounded in personal goodness and virtue (*S.T.* II-II.64.2); and, a dignity of nature grounded in the rationality of the human soul (prologue to the *prima secundae*). Here is the text from the *prima secundae*: "man is said to be made to God's image, insofar as the image implies an intelligent being endowed with free-will and self-movement: . . . it remains for us to treat of His image, i.e., man, inasmuch as he too is the principle of his actions, as having free-will and control of his actions." Moral dignity can be abrogated by malice, but not natural dignity. Accordingly, even the worse criminal must be treated with humanity; if so, the obligations of neighborly love apply and the criminal cannot be used as a mere instrument for gratification of others.

14. Some may argue that Aquinas held that retribution sufficed for capital punishment. This is a difficult argument to make since it presupposes a clear distinction between retributive and defensive means of punishment and since such clear distinction would be unusual in any culture that did not routinely incarcerate criminals.



## *Part Six*

### **Global Challenges and Thomistic Responses**

The question that frames these chapters is whether personalist natural law can successfully underpin a global morality and jurisprudence. The challenge of moral diversity is considered in chapter 18, that of feminism in chapter 19. The advantages of personalist natural law for global morality and jurisprudence are then considered in chapter 20.



## **Chapter 18**

# **The Reality of Moral Diversity**

*An overarching thesis of this book is that a global morality and jurisprudence can be established on the basis of Aquinas's natural law. Against this thesis, de facto as well as de jure arguments can be made. De jure arguments, such as those based on the indeterminacy thesis were treated in chapter 11. This chapter considers the de facto arguments claiming that Aquinas's natural law mistakenly presupposes that there are de facto universal moral norms. Against this objection, I seek to establish not only that it is plausible to hold that there is indeed a de facto global morality but that it is plausible to identify that morality with personalist natural law. My argument is divisible into four major moves. First, the diversity of norms across the globe need not preclude the presence of universal moral principles due to the nature of practical reasoning and the practical syllogism. Second, there are two moral obligations that are likely to be universal, namely, the Golden Rule understood in terms of neighborly love and the obligation to love God above all. Third, the moralities specific to religious traditions with doctrines of special revelation need not vitiate the tacit universality of natural law's principles. Fourth, international law as well as various international agreements indicate a worldwide consensus that tacitly implies the operating presence of a natural law jurisprudence.*

### **Moral Variability and Diverse States of Affairs**

A common argument against the plausibility of natural law is that if it were true, then there would be either no or little variation in moral norms, values and virtues across cultures and historical periods. But such a degree of complete uniformity has never been a part of the natural law tradition. For, at the dawn of this tradition, Aristotle—in his seminal division of political justice into positive and natural—characterized natural justice as being able to vary somewhat.<sup>1</sup> More than a millennium later, Aquinas distinguished general natural law norms from specific ones and held not only that the more specific ones are derived from general ones,<sup>2</sup> but also that specific norms need not be invariable with the same rectitude for all.<sup>3</sup> Specific norms need not be invariable because what is good can vary when it is other than the end of natural inclination. Consider, for example, the natural law principle that social welfare is to be advanced. This principle is applied by identifying those states of affair, or things, that promote social welfare. But what promotes social welfare can vary according to the circumstances without inconsistency. Andrew Oldenquist (1978, 48) gives the example of how different parts of the world could judge washing one's car to be moral or immoral depending upon whether water is a precious resource or a cheap commodity. This example shows that opposing moral norms about specific matters can arise from the same general principle when the entailments of that general moral principle depend on some variable state of affairs.

If, however, it were the case that all moral diversity is due to local variations in what is good and evil, then there would be no disputes among locals about what is good and evil. But there are such disputes. According to Aquinas, such disputes occur due to moral error arising from wicked passions, bad habits,<sup>4</sup> or ignorance.<sup>5</sup> These hinder the perception of moral truth, while also making any dispute resolvable, albeit through the sometimes difficult process of unmasking error.<sup>6</sup> For example, during the first half of the twentieth century, in the United States, Jim Crow laws discriminating solely on the basis of race were judged to be good by some and evil by others. The dispute was primarily grounded in the evaluation of two states-of-affairs, namely, whether African-Americans and whites were equal, and whether Jim Crow laws harmed African-Americans. When the civil rights movement unmasked the ignorance and prejudice that were justifying Jim Crow laws, they were repealed. The persuasiveness of the American civil rights movement thus arose, not from its ability to establish new moral principles, but rather from its ability to unmask moral errors and to show that the state of affairs concerning race were not as commonly assumed by whites. Ending such mistaken judgments about a state of affairs thus changes evaluations of what is really good here and now, and

enables new specific norms to be derived from moral principles, e.g., the proscription of harm. These new specific norms then mark moral progress.

States of affairs can also be responsible for differences in how the virtues are viewed and ranked. This is especially the case with those virtues that affect community life or one's responsibilities to others. For example, the virtues most needed by a day-care provider differ from those most needed by a warrior: the former needs gentleness and an abhorrence of risk taking, not so the latter. Differences in ways of life, argues Joseph Boyle (1992, 19–20), diversify both the moral responsibilities and obligations resulting from the application of norms. "Some cultures," writes James Q. Wilson (1993, 229), "emphasize the virtues of duty and self-control, others those of sympathy and fairness." Such cultural differences, however, need not preclude a grounding in the same maxim, such as the prescription to promote social welfare.

Nor need cultural differences preclude the possibility that the attentiveness of one culture to a particular moral value/virtue is a resource for the global village; for moral excellence requires respecting others and learning from them. Different humans excel in different virtues, so that each needs the other and has a reason to love others.<sup>7</sup> Thus, given the multitude of virtues and various ways in which a moral life may be lived, one's own moral sensibility and growth in the virtues are improved by attending with appreciation to the particular ways in which goodness is expressed by diverse individuals, peoples, and cultures.

But moral differences can be neither appreciated nor a stimulus to moral growth, if not recognized as a form of moral excellence, that is, as a legitimate—though different—application of one's own moral principles. Thus unless some moral principles were common across cultures and societies, diverse moral values, virtues and norms could be neither recognized nor taken as a source of transcultural moral illumination. The gradual repudiation of sexual inequality within diverse cultures illustrates the phenomenon of moral cross-fertilization and growth.

### **The Practical Syllogism**

To argue that moral principles can remain constant while the obligations resulting from their application vary is to argue that moral variability need not reflect differences in ultimate moral principles or foundational norms. This is possible because both particular moral norms,<sup>8</sup> and particular moral judgments about particular acts are derived through the practical syllogism.<sup>9</sup> The practical syllogism consists of a major premise asserting some moral norm and a minor premise identifying some state of affairs as being subsumed under that norm. Changes in the states of affairs will change the minor premise and diversify the resulting moral obligations. Consider, for instance, this practical syllogism:

Major premise: Acting in accord with reason is morally obligatory.

Minor premise: Returning this borrowed weapon to its owner is acting in accord with reason.

Conclusion: Returning this borrowed weapon is morally obligatory.

Aquinas uses a variation on this argument to show that universal norms can yield diverse conclusions when states of affairs differ and it is no longer reasonable to restore borrowed items:

But as to the proper conclusions of the practical reason, neither is the truth or rectitude the same for all, nor, where it is the same, is it equally known by all. Thus it is right and true for all to act according to reason: and from this principle it follows as a proper conclusion, that goods entrusted to another should be restored to their owner. Now this is true for the majority of cases: but it may happen in a particular case that it would be injurious, and therefore unreasonable, to restore goods held in trust; for instance if they are claimed for the purpose of fighting against one's country. And this principle will be found to fail the more, according as we descend further into detail, e.g., if one were to say that goods held in trust should be restored with such and such a guarantee, or in such and such a way; because the greater the number of conditions added, the greater the number of ways in which the principle may fail, so that it be not tight to restore or not to restore.

Consequently, we must say that the natural law, as to general principles, is the same for all, both as to rectitude and as to knowledge. But as to certain matters of detail, which are conclusions, as it were, of those general principles, it is the same for all in the majority of cases, both as to rectitude and as to knowledge; and yet in some few cases it may fail. (S.T. I-II.94.4c)

Since the minor premise names facts or contingent states of affairs, the derived obligations can vary without also requiring that the truthfulness of the major premise be disproven. The practical syllogism thus enables morality to be flexible while preserving the universality of basic norms and their ability to generate diverse judgments tailored to the contingencies of life.

If the practical syllogism did not characterize moral reasoning, then particular moral judgments would be neither derived from more general norms nor hierarchically related to those more general moral norms. Without the practical syllogism, morality would be a set of moral norms, judgments, values and virtues that could not vary in any part without necessarily altering the identity of the whole. Any variation in moral judgments across cliques, socioeconomic classes, cultures, and historical periods would then suffice to disprove *de facto*—if not, *de jure*—universality.

But if this were the case, then not only would a global morality be impossible, but it would also be impossible for any individual to keep the same morality throughout a lifetime: for states of affairs differ throughout a lifetime. For example, the refusal to shake hands may be a grave insult—in certain

circumstances but not in other circumstances: sometimes respect requires bowing. For this reason, Aquinas (*S.T.* I-II.94.4), the quintessential defender of natural law and normative universality, argues that some moral judgments necessarily vary, namely, those moral judgments that concern highly particular matters. An example of such a moral judgment has been in the literature since Plato, namely, the judgment that borrowed weapons ought to be rendered to their owner. But not always. Sometimes it is the case that these weapons ought to be returned and sometimes it is not the case, namely, when the owner makes known his intention to use those weapons for evil. The moral course of action is determined by what would be harmful here and now: sometimes avoiding harm requires denying weapons to their owner.

Evidently, the contingencies and exigencies of life are such that a moral norm cannot be discharged in only one way—not even for a relatively simple matter of whether borrowed weapons ought to be returned upon demand to their owners. The reliance of particular moral obligations not only upon general principles but also upon the particularity of one's context (as well as the existence of moral error<sup>10</sup>) reveals the insightfulness of Aristotle's and Aquinas's claim that the moral judgment about actions to be undertaken here and now stem from both a major premise identifying a general moral norm and a minor premise identifying a particular act here and now to instantiate either the evil being proscribed or the good being prescribed by the major premise.<sup>11</sup> For this reason, Aquinas relied upon the practical syllogism to argue that particular moral obligations vary according to time, place and circumstance—even when they are derived from the same norm.<sup>12</sup> Hence, the norm proscribing harm sometimes obligates returning borrowed weapons and at other times obligates keeping them, depending upon whether the states-of-affairs are actually harmful here and now.

The variability necessitated by the practical syllogism's identification of its minor premise with a certain state-of-affairs means that moral variability is not only compatible with natural law but is required by it. Accordingly, differences in particular moral norms across cultures, historical periods, and even contemporaneous groups need not prove that there are no moral principles shared by all inasmuch as the contingencies and exigencies of moral life require some degree of moral variation. Therefore, since variable moral judgments are reconcilable with the constancy of a moral principle, it is not the case that a universal morality need preclude all forms of moral variance.

Furthermore, since moral variability need not disprove moral universality, the impossibility of a universal morality would not be proven even if it were the case that the human race currently lacks a common morality. Current disagreements do not necessarily preclude future agreement. Furthermore, it is a logical fallacy to argue from premises asserting diverse beliefs to the conclusion that

the diverse beliefs are justified; for example, the prevalence of racism never justified its accuracy. Accordingly, even if it were true that human cultures have yet to develop a common morality, the impossibility of a common morality would not then be proven.

Therefore, since moral variability is compatible not only with a common global morality but also with natural law, moral variability does not suffice as evidence against a common global morality or against natural law. In the next section, two basic norms are proposed as possible common norms.

### **The Golden Rule and Divine Acknowledgment as De Facto Universals**

Although moral variability per se need not rule out the plausibility of natural law, moral variability of *basic principles* would rule out a form of natural law that has been influential since the Middle Ages, namely, Aquinas's. For Aquinas explicitly argues that the *principles* of natural law are invariable and known to all.<sup>13</sup> So, upon the assumption that a global morality requires common normative principles, the question before us is whether natural law's normative principles are indeed universally known as morally obligatory principles.

**“[A]lthough there may be no good things that all men and women everywhere in all societies desire, there certainly are evils that all men and women in all ages and all climates want to avoid: for instance, starvation, loss of family and friends, imprisonment, deformity and disablement, terror, and other afflictions . . . Even though the things we most admire and value may change with changing individuals and social orders, the universals of evil reliably recur in history, and they remain independent of the varieties of human sentiment” (Hampshire 2001, 43).**

This question of *de facto* universality needs to be distinguished from the question of *de jure* universality: for they have different grounds: *de facto* universality is grounded upon a commonality of belief that may or may not be warranted (since commonality does not suffice for truthfulness, e.g., the once common belief in the inequality of women); *de jure* universality is grounded upon a warrant that may or may not be believed (e.g., the warrant for the equality of women is yet to be universally believed). Establishing that Aquinas's natural law is characterized by a *de jure* universality that qualifies it to be the global ethics is a key task of this book. Establishing the plausibility of such a *de facto* universality is the task of this section.



To succeed this section must show that most of the globe's mainstream moralities share—either explicitly or tacitly—a basic obligation of natural law. Success in showing *de facto* commonality, however, does not also require showing that the natural law obligation is valued by every morality in the same way. It may have to compete with other obligations also deemed fundamental, since moral obligations arise not only from nature but also from the values inculcated, for instance, by family, social roles, religion, culture, ethnicity, economic realities, and even moral error. Neither does success require showing that the natural law norm underpins the various ethics devised by philosophers: we are seeking to show that *de facto* there is some basic natural law underpinning the world's diverse moral and juridical systems, not seeking to show *de jure* that the musings of philosophers embody natural law principles.

Needless to say, if we are successful in identifying some basic natural law to be *de facto* fundamental within diverse mainstream moralities, then it would be plausible to hold that natural law underpins every morality across the globe. And if this were the case, it would be possible to establish a global morality and jurisprudence upon moral principles already embedded in the globe's moralities. The resulting global morality and jurisprudence would not then result from an imposition of outside values but rather from the flowering of what is already tacit within the globe's diverse normative systems.

Success in establishing a beneficial global moral and jurisprudence would be facilitated if embedded in every morality were the first principles of natural law, namely, the *Bonum* precept (which prescribes acting reasonably, i.e., acting for what reason identifies as truly good); the obligation to love God above all; and the obligation to love neighbors as oneself.

Given the rationality of the world's people, their interest in moral truth, universality, and objectivity, the *de facto* universality of the *Bonum* Precept cannot be denied. What about the *de facto* universality of the obligation to love God above all and the obligation of neighborly love? Let us consider these in succession.

On the one hand, the lives of sincere atheists and agnostics precludes ascribing universal adherence to the natural law norm that God is to be loved above all.

On the other hand, such universal adherence is not necessary for showing that personalist natural law is somehow *de facto* global. Let us begin our discussion of a worldwide *de facto* adherence by those who are not atheists and agnostics by recalling (from Part 2) that practical reason prescribes that God is to be loved above all due to the threefold realization (1) that there is a divine being who is good and the source of good; (2) that love is to be proportional to the other's goodness, i.e., supreme goodness deserves supreme love; and, (3) that love requires acts of benevolence and, at times, beneficence. If, then, the

term “God” is taken as a place-holder for any divine and supreme principle of goodness, and if “love above all” is taken as a place-holder for the obligation to acknowledge, through religious acts, any supreme principle of goodness, religious practices across the globe provide *prima facie* evidence for the ubiquity of the natural law obligation to love God above all. After all, these practices express not only a belief in a supreme and divine principle of goodness but also a belief that religious obligations are unsurpassable—as the precept to love God above all prescribes.<sup>14</sup> This is so, even if a particular religion is polytheistic and even if not every divine being in that religion is good and deserving of human love.

Evidence for the *de facto* universality of the Thomistic obligation to love neighbors as oneself can be found in the universality of the Golden Rule, since Aquinas identifies the Golden Rule as an explanation of neighborly love:<sup>15</sup>

As stated in *Ethic.* IX.8, *friendship towards another arises from friendship towards oneself*, insofar as man looks on another as himself. Hence when it is said, *All things whatsoever you would that men should do to you, do you also to them* this is an explanation of the rule of neighborly love contained implicitly in the words, *Thou Shalt love thy neighbor as thyself*; so that it is an explanation of this commandment. (S.T. I-II.99.1 ad 3)

As an explanation of neighborly love, the Golden Rule expresses nothing other than a basic presupposition of morality, namely, the idea that one should be bound by the same moral parameters by which one would bind others and vice versa. Without this presupposition that consistency is morally requisite, morality would not be possible in so far as morality binds one to treat similar cases alike. This means that the ubiquity of morality proves not only the universality of the Golden Rule but also of the precept of neighborly love.

Furthermore, the Golden Rule (as does love) makes it clear that every human is like every other human in being the subject of his own consciousness and the agent of his own acts. In other words, the Golden Rule requires one not only to be aware of his own subjectivity (how would you like it, if . . .), but also to be aware of the other’s subjectivity (*he won’t like it either*). Personalism thereby characterizes the Golden Rule as well as neighborly love.

The Golden Rule also requires one to identify with the other so that one can recognize that what would harm or benefit the self would also harm or benefit the other and that, as a result, the self and others fall under a common morality: the moral obligations that one wants others to fulfill are those that one should fulfill. Such identifications or unifications with others occur through love, since love unifies. In this way, the Golden Rule makes explicit a tacit aspect of morally requisite neighborly love.

The Golden Rule can be expressed as an affirmative obligation to treat

others a certain way—or, negatively as the prohibition from treating others a certain way. Aquinas uses an affirmative formulation of the Golden Rule because the obligation to promote another's good implies that one ought not act against that good; the affirmative formulation includes the negative.

Various expressions of the Golden Rule are ubiquitous in human culture—as Jeffrey Wattles makes explicit:<sup>16</sup>

Hinduism: 'Let no man do to another that which would be repugnant to himself' [*Mahabharata* bk. 5, ch. 49, v. 57]. 'A person should not himself do that act which, if done by another, would call down his censure' [bk. 12, ch. 279, v.23]. 'Do not do to anyone what you would not like another to do to you; that is the sum of the law' [bk 5, vv.1517–18].

Islam: 'None of you [truly] believes until he wishes for his brother what he wishes for himself' [*Hadith* (or *Traditions*) from the collection *An-Nawawi's Forty Hadith* 13 (56)]. 'Woe to those . . . who, when they have to receive by measure from men, exact the full measure, but when they have to give by measure or weight to men, give less than due' [*The Qur'an, Surah 83, "The Unjust,"* vv. 1–4)]. 'Seek for mankind that of which you are desirous for yourself, that you may be a believer; treat well as a neighbor the one who lives near you, that you may be a Muslim [one who submits to God].' [*Sukhanan-i-Muhammad* nos. 14 (Teheran, 1938)]. 'The most righteous of men is the one who is glad that men should have what is pleasing to himself, and who dislikes for them what is disagreeable' [*Sukhanan-i-Muhammad* nos. 63].

Buddhism: 'Hurt not others in ways that you yourself would find hurtful' [*Udana-Varga*, 5.18].

Inca leader Manco Capac: 'Each one should do unto others as he would have others do unto him' [cited in Alton 1966, 111].

#### Additional expressions of the Golden Rule:

Confucius, *The Analects* (1996): "The Master said, . . . My Way has one (thread) that runs through it. . . . [namely] loyalty, consideration [shu]" (#4.15); "Tzu-kung asked saying, Is there any single saying that one can act upon all day and every day? The Master said, Perhaps the saying about consideration [shu]: 'Never do to others what you would not like them to do to you'" (#15.23); "As for goodness - you yourself desire rank and standing; then help others to get rank and standing. You want to turn your own merits to account; then help others to turn theirs to account—in fact, the ability to take one's own feelings as a guide—that is the sort of thing that lies in the direction of Goodness" (#6.28); "Fan Chi'ih asked about the Good (ruler). The Master said, He loves men" (#12.22).

Judaic Scripture: 'Do to no one what you yourself dislike.' [*Tobit* 4:15].

Christian Scripture: 'Do to others whatever you would have them do to you. This

is the law and the prophets.' [Matthew 7:12]. "Teacher, which commandment in the law is the greatest? . . . You shall love the Lord, your God, with all your heart, with all your soul, and with all your mind. This is the greatest and the first commandment. This second is like it: you shall love your neighbor as yourself. The whole law and the prophets depend on these two commandments' Matthew 22: 36–40 (*New American Bible*).

Each of these diverse expressions of the Golden Rule convey the idea that since one is to identify the other as like oneself, one is bound either to forgo certain acts or to pursue certain acts.

This idea is basic to morality and a basis of morality. For this reason, the Golden Rule is used as sufficing for moral explanation. For instance, why not steal? Because one would not wish to be a victim of theft. Why be moral? Because one would not wish to be treated immorally.

But one could object that the Golden Rule could not possibly be universal or basic given the tribal moralities that legitimate treating others in ways one would not identify as moral if done to oneself, e.g., slavery. Slavery is the classic example because historically there have been many who considered slavery to be a moral institution even though they would not consider their own enslavement to be moral.

Underwriting this dichotomous judgment about slavery is the conviction that it is morally permissible to enslave the other because the other is *not like the self*. But if identifying the other as *unlike the self* warrants different moral standards for the self and the other, then it is necessary to presuppose that one must use the same moral standards for those *like oneself*. This means that contrary to the objection, the Golden Rule is still being used—albeit with a narrower scope due to the failure to recognize that human nature establishes all others to be like oneself. Since this is so, the universality of the Golden Rule is not undercut by the failure of certain peoples to extend the scope of the Golden Rule to all human beings because they consider creed or race or some other distinguishing feature as more salient than human nature. Dichotomous moral systems distinguishing “us” from “them” still rely upon the Golden Rule for establishing the proper moral parameters for those like oneself. Thus, the objection fails. And the universality of the Golden Rule remains untarnished, thereby preserving the tacit *de facto* universality of natural law’s principle of neighborly love.

### World Religions versus Natural Law

If it be granted that it is possible that the Golden Rule and divine acknowledgment are, explicitly or implicitly, basic global moral obligations and if it be granted that these principles are also basic principles of natural law, then it would seem to follow that the Golden Rule and divine acknowledgment would be basic principles within every religious morality and, hence, that the natural law is implicitly underwriting every religious morality.

The tacit underwriting of every religious morality by the natural law would be facilitated if all religious moralities taught that moral norms were somehow inscribed in or by nature. This seems to be the case with many of the world religions. For example, Confucians and Taoists hold that morality is The Way of Heaven; Hindus, Jains and Buddhists hold that morality is governed by karmic laws immanent within nature; and Animists hold that nature itself is spirit.<sup>17</sup> Thus, if it were the case that all religious moralities express nothing other than the natural order, then all religious moralities would be more or less accurate forms of natural law.

Herein, however, lies a problem. Not all religions hold that their moralities are reducible to the natural order. Judaism and Christianity, in particular, teach that morality is based upon a special relationship with God above and beyond the natural world; the divine moral revelation is not reducible to the natural order.<sup>18</sup> In addition, Christians worry that given Original Sin, natural law morality is either inadequate as a morality or irrelevant as being unlivable without the reception of supernatural grace.<sup>19</sup> The Judeo-Christian dependency of morality upon a revelation not reducible to the natural law as well as the Christian doctrine of Original Sin combine to form a serious Judeo-Christian challenge to the *de facto* universality of natural law—especially given sizable numbers of these believers.

However, in order for the Judeo-Christian challenge to disprove the plausibility of natural law's *de facto* tacit universality, the basic moral requirements of Jews and Christians would have to be opposed to those of natural law.<sup>20</sup> If they were not opposed, then there would be no way of defeating the possibility of divine revelation including the natural law (and, thereby supporting natural law's tacit *de facto* universality). In this regard, upon the supposition that the Golden Rule is a basic natural law principle, it is not insignificant that the Golden Rule is explicitly revealed in the scriptures of both Jews (*Tobit* 4:14) and Christians (*Matt.* 7:12). The compatibility of the Golden Rule and religion is also found in all religions that believe in a divine Creator; for, as pointed out by Wattles (182, 185), being related to God establishes a kinship that promotes the Golden Rule.

Moreover, if any religious believer were to argue that morality arises *only* from a divine revelation alien to the natural law, then that religious believer

would also have to concede that, logically, it is impossible for those who did not receive God's revelation to be bound by anything other than a purely conventional morality. If this were the case, then those outside of divine revelation would not have been given guidelines for living by their omniscient and benevolent Creator.

Besides besmirching the generosity and goodness of the Creator, if moral knowledge were bestowed only through special revelation to a few, those outside of that revelation could not act immorally in any case where their own community would misidentify an evil as good. Invincible ignorance exonerates. In other words, if there were no natural law, then upon the assumption that not everyone has received God's special revelation, those to whom God did not speak would be ruled only by a conventional morality. And, none following a corrupt conventional morality could then be culpable for acts sanctioned by that morality. Genocide, "ethnic cleansing," and all other "crimes against humanity" would not then be morally impermissible for all human beings at all times. Surely the horrendous and shocking deaths of millions—in Nazi Germany, in communist Europe and Asia, in Rwanda, in Bosnia, and elsewhere—so affront the conscience of the human race that they cannot but be denounced as always grossly immoral. For, given the diversity of beliefs amongst the peoples of the world, it would not be possible for genocide, for instance, to be universally recognized as immoral unless that recognition arose somehow from nature and the natural law; for it is only nature and the basic norms of natural law that transcend the peculiarities of diverse cultural and religious perspectives. Since this is so, only the existence and the *de facto* tacit universality of natural law are able to warrant the transcultural recognition of *crimes against humanity*, e.g., the Jewish Holocaust.

**The 1966 *International Bill of Human Rights* was approved by the General Assembly with more than 100 affirmative votes and without any dissenting votes (Meyer 1981, xxxvi).**

#### **Human Rights and International Law: Signs of a Worldwide Moral Consensus**

International law, as pointed out by Hector Gros Espiell (2000, 349), "whether in its universal or regional manifestations, . . . guarantees and promotes the enforcement and observance of human rights." Espiell (350) also points out:

The body of principles and rules in international law which currently governs the issue of human rights on the international plane is . . . derived from the Charter of the United Nations, the Universal Declaration of Human Rights, the two

International Covenants on Human Rights, the Optional Protocol to the International Covenant on Civil and Political Rights and a long series of instruments, treaty-based or otherwise, developed within the framework of the United Nations and some of its specialized agencies, in particular the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). Besides these instruments of a universal nature, there are international regional instruments such as the European Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols, the European Social Charter, the American Declaration of Human Rights and Duties, the African Charter of Human and Peoples' Rights, and many others.

International human rights law could never have developed, if there were not transcultural moral convictions about human dignity made possible by a tacit *de facto* universality of natural law.

Among these remarkable documents, two deserve special note, namely, the United Nations' 1948 *Universal Declaration of Human Rights*,<sup>21</sup> and the 1966 *International Bill of Human Rights*.<sup>22</sup> The prologue of these documents proclaim that the foundation of freedom, justice and world peace lies in recognizing the inherent dignity of all members of the human family as well as their inalienable rights.<sup>23</sup> The explicit acknowledgment that human rights are grounded in human dignity marks these rights as objective rights based on human nature; hence, these rights are natural rights.<sup>24</sup> The focus on human dignity and individual well-being also marks these rights as articulating the rules of neighborly love. Perhaps, Article One of the *Universal Declaration on Human Rights* puts it best: "All human beings are born free and equal in dignity and rights. They are endowed with rea-

**Countries approving the 1948 *Universal Declaration of Human Rights*: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Columbia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela (*Official Records of the Third Session of the General Assembly*, 21 Sept. 1948–12 Dec. 1948, New York: United Nations Publications, 933). The vote was 48 to 0 with eight countries abstaining: Poland, Byelorussia, Czechoslovakia, the Ukraine, Yugoslavia, South Africa, Saudi Arabia, and the Soviet Union (Meyer 1981: xxxi).**

son and conscience and should act towards one another in a spirit of brotherhood.”<sup>25</sup>

The spirit of brotherhood obliges acknowledging human freedom, equality and rights; as such, the spirit of brotherhood is basic within the morality of these documents. This means that the Golden Rule in terms of neighborly love is presupposed by these documents. This reliance on the Golden Rule or neighborly love is such that it is within this perspective that the norm of divine acknowledgment is placed. Hence, these documents impose no direct obligations toward the divine but rather impose the obligation to allow religious freedom. In this way, these documents harmonize the obligation to divine acknowledgment with the obligation to treat others with the spirit of brotherhood.

These documents are remarkable for three reasons. *First*, these international documents did not include any theoretical justification for those rights. This means that the document did not consider persuasion to be necessary: the bold and bald assertion of rights sufficed for consent. Was this because the rights asserted were self-evident or because they were obviously warranted by the major cultures of the world? Either way, the absence of theoretical justification allowed these documents to be approved by countries with dramatically different ethical and cultural traditions.

*Second*, if human rights express the parameters of a universal morality, then these documents set the benchmark for a global ethics. On the assumption that there are no inconsistencies between the rights enumerated in these documents and no inconsistencies between the enumerated rights and natural law’s self-evident principles, any theory seeking universal consensus must be able to warrant these rights as intrinsic to human beings.

*Third*, by binding governments to respect the right to life and right to liberty, these international documents—like the *Declaration of Independence*—provide a natural law criterion for determining whether or not something may be a right. For life and liberty are not only basic rights, they are mutually interdependent: without freedom, human life can neither be truly humane nor realize its latent potentialities; without life, freedom lacks a criterion to avoid the harm that is so destructive of freedom.

The identification of life and liberty as foundational principles enables these documents to identify the very principles that make possible moral values (and hence, political justice), because—at their most fundamental level—values presuppose life and liberty. As explained by Ayn Rand in *The Objectivist Ethics*:

“Value” is that which one acts to gain and/or keep. The concept “value” is not a primary; it presupposes an answer to the question: of value to whom and for what?



It presupposes an entity capable of acting to achieve a goal in the face of an alternative. Where no alternative exists, no goals and no values are possible. . . . There is only one fundamental alternative in the universe: existence or nonexistence—and it pertains to a single class of entities; to living organisms. The existence of inanimate matter is unconditional, the existence of life is not: it depends on a specific course of action. Matter is indestructible, it changes its forms, but it cannot cease to exist. It is only a living organism that faces a constant alternative: the issue of life or death. Life is a process of self-sustaining and self-generating action. If an organism fails in that action, it dies . . . It is only the concept of “Life” that makes the concept of “Value” possible. It is only to a living entity that things can be good or evil. (1964c, 15–6)

In other words, since the objectivity of values presupposes both life and vulnerability, the failure to adopt the proper values endangers the self and others. The oppositions of life and death, flourishing and impediments, thereby provide an objective criterion for differentiating good and evil, value and dis-values.<sup>26</sup>

Thus, by identifying life and liberty as basic human rights, these documents not only identify the criterion necessary for identifying the rights of persons but also identify this criterion as pertaining to the nature of human beings—and, thereby, to natural law. This appeal to nature grounds the universality of human rights because human nature is everywhere the same in its requirements for human survival and flourishing. In this way, under the guise of human rights established by human nature, these documents advance the natural law legacy.

It may, perhaps, be objected that the rights enumerated in these documents are not really natural rights but rights bestowed by social contracts or by the state. Though the latter option may be more popular among contemporary political theorists, it seems to me that it is only the understanding of these rights as natural rights that justifies the sea-change in the political expectations of millions during the twentieth century. For if human rights were not grounded in natural law but in social contracts, or some other convention, then human rights would be bestowed by society or the state rather than imposed on society or the state by their peoples.

But the world, for the most part, no longer believes that individual liberties are gifts to be bestowed by the state; rather, the state is to be constrained by individual rights. This is the quintessential natural law position: the dignity and rights of individuals originate in human nature. This ground of human dignity and rights was explicitly proclaimed by Article One of the *Universal Declaration on Human Rights* as well as by the preambles of the *International Covenants on Rights*. These documents thus show that natural law under the guise of human rights continues to be a powerful influence in the contemporary world.

Another possible objection is that the notion of human rights is too vague

for setting the normative parameters of an universal morality and a global jurisprudence.<sup>27</sup> As put by Reinders (1992, 88): Equating common morality “. . . with the universal core of human rights, . . . does not rule out moral diversity in understanding these core rights.” Three responses to such a criticism may be made. The *first* is that, as already argued in the preceding section on moral variability, moral diversity need not be precluded by a universal morality as long as that diversity rests upon differences in states-of-affairs rather than on differences in basic normative principles. For as long as those differences are based upon states-of-affairs, unanimity is eventually possible as the truth about those states-of-affairs becomes known.

The *second* response is that, as Reinders (1992, 89) points out, human rights can be considered neither as purely formal nor as merely parochial: “To have a human right is to have a claim, that some determinate action or good be performed or delivered which is valid across the borders of one’s own community.” Rights, then, are claims with “bite.”

The *third* response is that *The International Bill of Human Rights* and the United States’ *Bill of Rights* are similar, especially since the *International Bill* contains two covenants. The *International Covenant on Civil and Political Rights* protects the basic liberties of individuals and forbids, in article four, even the temporary suspension of the rights to life, to freedom of thought, conscience and religion, and to not being tortured or enslaved. *The International Covenant on Economic, Social and Cultural Rights* expresses what many consider a foundational American right to consider their government the servant of the people. Hence, if it were the case that the *International Bill of Human Rights* espoused vacuous moral commitments, then the *Bill of Rights* embedded within the American Constitution would also be morally vacuous and unable to offer specific guidance for human actions. But the very specificity of the rights within both *Bills* disproves the claim that rights are too vague to set moral and legal parameters.

Another possible objection is that the political nature of these documents suffices either to eliminate their moral seriousness or to render them morally inadequate. The *first disjunct* of this objection is cynical and suggests that agreement within the United Nations resulted from solely political exigencies and pressures rather than from the moral consciences of participants. Adamantia Pollis (2000, 15), for instance, argued that ratification of these documents asserted “membership in the world community and not a commitment to the implementation of these rights or their legitimacy.” No doubt this occurred. But if it had been the controlling factor, the influence of small states would not have been as great as it was.<sup>28</sup> Furthermore, states were very much aware that these documents were innovative in their placement of limitations upon a country’s sovereignty and treatment of its own citizens.<sup>29</sup> States were thus very much

aware that the explicit listing of human rights would provide powerful and invaluable ammunition to those convinced that human rights are morally requisite. In addition, David Hollenbach (2003, 235) gives three reasons for supposing that “human rights are becoming the core of a truly global common morality:” namely, (1) more countries representing more free peoples signed the 1993 Vienna Declaration “which reaffirmed all the standards contained in the Universal Declaration”<sup>30</sup>; (2) there has been “an astonishing growth in the number of non-governmental organizations devoted to advocacy for human rights”<sup>31</sup>; and (3) judicial bodies have been established with jurisdiction over human right abuses, e.g., International Criminal Tribunal.

The *second disjunct* of this objection that the political nature of these documents vitiates their moral character assumes that moral convictions cannot be embedded in political documents without losing their integrity. To assume this is to deny that moral convictions can find their fullest expression in social and political actions. But social and political actions are nothing else but human interactions and the *raison d’être* of morality is to guide human interactions. Furthermore, any morality that would exempt the social and political realms from its purview would be a morality unable to condemn social and political actions as immoral. But the witness of those who suffer and who perish from unjust social and political actions condemns this possibility. Thus, the moral character of these *Bills* cannot be denied.

The morality embedded in these international documents has tacitly influenced International law’s reliance on natural law in five additional areas: fairness and reciprocity in trade agreements, the Geneva conventions, multilateral agreements to protect the environment, humanitarian aid, and human rights. Indeed, the world’s major players are increasingly factoring morality explicitly into their foreign policies, according to Gelb and Rosenthal (2003). They argue that endorsement of “the principle that morality trumps sovereignty” can be found in the United Nations’ approval of interventions in Bosnia and Somalia; NATO’s military action in Kosovo; approval of the American led intervention in Haiti by the Organization of American states. These actions—to the degree that they seek to protect human life from wanton savagery—embody traditional concerns of natural law. In this way, humanitarian interventions have become one of the contemporary faces of natural law. That this is so was especially shown by the massive worldwide aid that was bequeathed to the victims of the 2004 tsunamis.

A last difficulty to be considered is whether the emphasis on human rights in these documents is a product of western imperialism.<sup>32</sup> The charge of western imperialism assumes that the ideas of human dignity and rights are antithetical to Islam as well as to Asian traditions of thought.<sup>33</sup> However, if this were so, then human dignity and rights would be embodied neither in the Islamic nor the

Asian versions of the Golden Rule. Neither would it be true that the right to life has attained universal consensus—as pointed out by Adamantia Pollis:

[N]o philosophic/cultural system sanctions arbitrary killings, disappearances, or torture. The right to life is sacrosanct, at least for the members of one's community, be it a nation-state or a tribe. This is not to say that the right to life is not violated in practice, in Western as well as in non-Western societies. Ruthless tyrants have been condemned in 'traditional' societies and in ancient empires and frequently overthrown. . . . the right to life was and remains a universal principle. (2000, 23)

Where the right to life is sacrosanct, other inalienable rights follow: one cannot live fully without freedom of religious exercise, free speech, and trade.

Moreover, if human rights were nothing more than western imperialism, then it would also have to be the case that personal autonomy and rights would be alien to the traditionally communitarian cultures found in the non-western world. But Adamantia Pollis (2000, 18–9) argues that this is an unwarranted oversimplification of communitarian cultures. Likewise, Kwasi Wiredu (1990, 250–57) explicates the political rights embedded in the communitarian culture of the Akan language group. Francis M. Deng (1990, 261) explicitly argues against the notion that “the concept of human rights is peculiarly Western.”

Likewise, Asians are arguing that their traditions have been distorted by their rulers.<sup>34</sup> For instance, Xiaorong Li (1996, 402–3) argues that the Confucian value of social harmony has been unfairly co-opted to defend restrictions on the right to free association and that the rulers have used the Asian idea that the community takes precedence over individuals and their rights in order to collapse “the ‘community’ into the state and the state into the current regime.” A false view of individual freedom underwrites this reduction. According to Li (1996, 403): “Free association, free expression, and tolerance are vital to the well-being of communities. . . . In a liberal democratic society, which is mocked and denounced by some Asian leaders for its individualist excess, a degree of separation between the state and civil society provides a public space for the flourishing of communities.” Li also points out that the right to human freedom cannot be consistently denounced as western imperialism by anyone also seeking to develop strong western-style economies.

Nevertheless, even if it were the case that the concept of natural rights were alien to non-western cultures lacking a lengthy exposure to Christianity,<sup>35</sup> the ground of natural rights is not Christianity but the nature of human beings. If this were not the case, the notion of human rights could not have been appropriated by diverse cultures and philosophies including that peculiarly western philosophy of secular humanism.

Furthermore, as pointed out by Li (1996, 401), it is a *genetic fallacy* to

assume that “a norm is suitable only to the culture of its origin.” Ideas and ideals belong to whoever believes in them. Accordingly, the students of Tiananmen Square who, in 1989, built a miniature Statue of Liberty were claiming that it was time for Chinese culture to evolve a greater respect for freedom and individual rights. Evolution is not imposition; neither culture nor tradition need be static in order to retain its authenticity. Indeed the ability of a culture to evolve indicates not only that it possesses cultural resources not found within the status quo but also that it is possible to draw upon these tacit resources and stimulate cultural growth.<sup>36</sup> The spread of democracy and free economies across the globe bear witness to the truth about the resources of individuals and their inherent dignity and rights. Hence the United Nations documents proclaiming inalienable human rights truly voice human conscience.

Consequently, the *Universal Declaration on Human Rights* and the *International Bill of Human Rights* show that the human race is aware that respect is due every human being and that none ought to be wantonly harmed. As such, these documents show that it is possible for a common global morality and jurisprudence to be centered upon protecting and promoting human dignity through rights that both restrict and bind governments to care for individual well-being. In this way, these international documents show a worldwide consensus that reveals—at the very least—the tacit presence of natural law within the conscience of the global village. It remains to be seen whether or not that presence will evolve into an explicit acknowledgment of natural law.

## Notes

1. *N.E.* Bk. V, ch. 7, 1134b18-1135a 5 (1941a). That the natural law tradition was influenced by Aristotle’s bipartite division of political justice was argued by Crowe (1977, 21-22).

2. See *S.T.* I-II.100.1 and 3 as well as I-II.100.11. Also see *S.T.* I-II.95.2c: “[T]hat one must not kill may be derived as a conclusion from the principle that one should do harm to no man.”

3. *S.T.* I-II.94.4c: “The practical reason . . . is busied with contingent matters, about which human actions are concerned: and consequently although there is necessity in the general principles, the more we descend to matters of detail, the more frequently we encounter defects. Accordingly, then . . . in matters of action, truth or practical rectitude is not the same for all, as to matters of detail, but only as to the general principles: and where there is the same rectitude in matters of detail, it is not equally known to all.” Whether Aquinas’s openness to moral diversity leads to relativism is discussed in chapters 14 and 18.

4. *S.T.* I-II.93.6. Also see I.83.1 ad 5 and Aquinas’s explanation of Aristotle’s saying “According as each one is, such does the end seem.”

5. Ignorance can be due to one's culture, see *S.T.* I-II.94.6c. Ignorance is only culpable when vincible, see *S.T.* I-II.76.1-2.

6. Cf. Lawrence S. Cunningham (2009). This anthology assumes that disputes between opposing moral traditions are intractable, while I am arguing that no moral dispute is necessarily intractable because disputes are due to moral errors that can be unmasked—eventually. Presupposed by this discussion is the objectivity of moral goods—and evils as argued in chapter 11's section on Subjectivist Epistemology.

7. See chapter seven of the *Dialogue* by St. Catherine of Siena (1925, 16).

8. Aquinas identified the moral precepts of the Decalogue to be derived from self-evident precepts: (*S.T.* I-II.100.3c): “[T]wo kinds of precepts are not reckoned among the precepts of the Decalogue: viz., first general principles, for they need no further promulgation after being once imprinted on the natural reason to which they are self-evident; as, for instance, that one should do evil to no man, and other similar principles:—and again those which the careful reflection of wise men shows to be in accord with reason. . . Nevertheless both kinds of precepts are contained in the precepts of the Decalogue; yet in different ways. For the first general principles are contained in them, as principles in their proximate conclusions; while those which are known through wise men are contained, conversely, as conclusions in their principles.”

9. The term “practical syllogism” has been used to describe the type of reasoning identified by Aristotle in the *Nicomachean Ethics* 1147a25 and by Aquinas in the *Summa Theologica* *S.T.* I-II.94.4. Also see *S.T.* I-II.76.1c: “Now we must observe that the reason directs human acts in accordance with a twofold knowledge, universal and particular: because in conferring about what is to be done, it employs a syllogism, the conclusion of which is an act of judgment, or of choice, or an operation. Now actions are about singulars: wherefore the conclusion of a practical syllogism is a singular proposition. But a singular proposition does not follow from a universal proposition, except through the medium of a particular proposition: thus a man is restrained from an act of parricide, by the knowledge that it is wrong to kill one's father, and that this man is his father.”

10. Moral error also reveals Aristotle's insightfulness in positing the practical syllogism as the structure of moral reasoning, because moral mistakes are discovered in two ways. First, moral mistakes are discovered when one becomes aware that a particular judgment is inconsistent with more general (and more certain) moral principles as when one realizes that the judgment that borrowed weapons ought always be returned clashes with the moral principle of not harming others. Secondly, moral mistakes are discovered when one becomes aware that one has inaccurately classified a particular act as when one realizes that forbidding a person of color from sitting in the front of the bus is really unfair and mean.

11. If Aristotle were mistaken about the practical syllogism, then no morality could evolve and be the source of moral improvement: to change a particular moral obligation would entail discarding a morality. But, for example, the current moral obligation to treat African-Americans with respect and non-discriminatory laws reflects—not the grafting of an alien morality upon the American people—but the realization that unless the Jim Crow laws and other discriminatory laws were abolished, Americans would fail to adhere to their own moral standards that prescribe treating one's fellows

with dignity and equality. In this way, advancement is possible within a cultural morality as human beings seek to maintain consistency between their own basic moral principles and the ever-changing world.

12. *S.T.* I-II.94.4.

13. His key arguments are found in these lead texts: *S.T.* I-II.94.4 (whether the natural law is the same in all men) and *S.T.* I-II.94.6 (whether the law of nature can be abolished from the heart of man).

14. Chapter 14 explains the connection between loving God above all and the acts of natural religion.

15. This identification by Aquinas of the Golden Rule as the first principle of natural law is not unusual for the medieval period; moreover, his formulation of the Golden Rule in terms of neighborly love restores the ancient Ciceronian understanding of the Golden Rule in terms of fraternal love (see the appendix). This restoration paved the way for unifying the Golden Rule with the Christian obligation to practice charity.

16. Wattles (1996, 4 and notes 1, 2, 3).

17. See, for instance, Elizabeth Breuilly, Joanne O'Brien, Martin Palmer (1997).

18. See, for example, Aquinas's arguments in *S.T.* I-II.100.12, *S.T.* I-II.5.5 and *S.T.* I.1.1. For a treatment of natural law's role in Jewish morality see David Novak (1998).

19. See, for example, Aquinas's arguments on the indispensable need for supernatural grace in *S.T.* I-II.109, 1-10.

20. The compatibility of natural law and religious morality has been argued by David Novak (1998) and Thomas Aquinas, *Summa Theologica*, *prima secundae* question 100.

21. Perhaps, time and distance has diminished our appreciation for the remarkable character of this document. Peter Meyer (1981, xxv) reminds us that at that time "... the world was still a house divided: by dozens of shades of political and economic ideologies, by hundreds of thousands of religious, class, cultural and race barriers, by dictators who still enjoyed riding roughshod over hapless millions." Also it should be noted that the committee for drafting the *Universal Declaration* was chaired by Eleanor Roosevelt, its vice-chairman was Chang Peng-chung, a Chinese diplomat, its rapporteur was Charles Malik, a Lebanese philosopher (Meyer 1981, xxv). Mary Ann Glendon (2001b) provides an excellent account of the drafting of this document.

22. *The International Bill of Human Rights* consists of the *Universal Declaration on Human Rights* plus two covenants, *The International Covenant on Civil and Political Rights* and *The International Covenant on Economic, Social and Cultural Rights*. As pointed out by Peter Meyer (1981, xxxvii-xxxviii), these Covenants were not legally binding upon the states that ratified them until ratification had occurred by thirty-five states. The *Covenant on Civil and Political Rights* became binding in 1976 with 64 states having ratified it by January 1981. The *Covenant on Economic, Social and Cultural Rights* became binding in 1976 with 65 states having ratified it by January 1981.

23. The prologue to the *International Covenant on Civil and Political Rights*, for example, reads as follows: “Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights, Considering the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedom, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the following Covenants, Agree upon the following articles.”

24. For a detailed historical tracing of the ways in which natural law has influenced international law see the E. B. F. Midgley (1975, 56-257) and Knud Haakonssen (1996).

25. <http://www.un.org/en/documents/udhr/> (accessed January 8, 2010).

26. Since values presuppose life, death cannot be a value; it can never be, in itself, good. When we say, with tears in our eyes, that a friend is better off dead, what we mean is that it is good that he suffers no more. We are not speaking precisely but emotionally; and so, we commit a category mistake and call death good.

27. For example, Jean Porter (2001, 121) argues that a shared common core of moral values would be so vacuous as to be “virtually empty.”

28. Susan Waltz (2001).

29. Jimmy Carter (1981).

30. In support of his claim, David Hollenbach (2003, 255 note 10) cites the study done by Robert F. Drinan, *The Mobilization of Shame: A Worldview of Human Rights*, (New Haven, Conn: Yale University Press, 2001).

31. In support, David Hollenbach (2003, 255 note 11) cites Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, N.Y.: Cornell University Press, 1998); and, L. David Brown, Sanjeev Khagram, Mark H. Moore, and Peter Frumkin, “Globalization, NGOs and Multisectoral Relations,” in Joseph S. Nye and John D. Donahue, eds., *Governance in a Globalizing World* (Washington, D.C.: Brookings Institution Press, 2000), 271-96.

32. It would be difficult to reconcile the charge of western imperialism with the experiences of Jacques Maritain: “During one of the meetings of the French National Commission of UNESCO at which the Rights of Man were being discussed, someone was astonished that certain proponents of violently opposed ideologies had agreed on the draft of a list of rights. Yes, they replied, we agree on the rights, proving we are not asked why. With the ‘why,’ the dispute begins. . . . the Rights of Man provides us with an eminent example of the situation that I tried to describe in an address to the second International Conference of UNESCO, from which I taken the liberty of quoting a few



passages. ‘How,’ I asked, ‘is an agreement conceivable among men assembled for the purpose of jointly accomplishing a task dealing with the future . . . who come from the four corners of the earth and who belong not only to different cultures and civilizations, but to different spiritual families and antagonistic schools of thought? Since the aim of UNESCO is a practical aim, agreement among its members can be spontaneously achieved, not on common speculative notions, but on common practical notions, not on the affirmation of the same conception of the world, man, and knowledge, but on the affirmation of the same set of convictions concerning action. This is doubtless very little, it is the last refuge of intellectual agreement among men. It is, however, enough to undertake a great work . . .’ (Maritain 1951, 77-8).

33. See, for instance, Michael Ignatieff (2001). For arguments to the contrary see Michael C. Davis (2000). Also see Zehra R. Arat (2000).

34. William Theodore DeBary (1998, 5): “What has lent further credence to this association of Confucianism with authoritarianism is the more recent reversal of Communist China’s long-standing hostility to Confucianism—typified earlier by the Cultural Revolution’s targeting of it as the ghost of the past hampering revolutionary change. Since the death of Mao, however, and the overthrow of the so-called Gang of Four, Confucianism has been discreetly rehabilitated by the more moderate Deng and Jiang regimes—with considerable assistance from Singapore—as the better long-term support for an established government than the revolutionary, class-struggle morality that had inspired its rise to power, but later had torn the country apart in the days of Mao.” Also p. 164: “[I]t can hardly be doubted that Confucianism (or what goes for it), and not any form of Marx-Leninism, has become the claimed ideological justification for one-party rule, for openly rejecting “peaceful evolution” to democracy, and for suppressing demonstrations such as those at Tiananmen Square in May-June 1989.”

35. That rights theory owes much to medieval Catholicism see Brian Tierney (1989 and 1997) and Jean Porter (2005: 345-358).

36. For an extended treatment of universal rights, indigenous resources, and pluralism see David Hollenbach (2003: 231-259).



## ***Chapter 19***

# **The Globe, Feminism, and Aquinas**

*Were it the case that the natural law principles of Aquinas are hostile to sexual equality, then his personalist natural law would be unable to support activism on the behalf of securing the rights of women across the globe. This chapter makes the case that Thomistic principles advance a version of feminism able to help humanize the world.*

Across the globe, the equality of women is gradually becoming more commonplace as women increasingly become social and political leaders. As put by the *Star Tribune* in 2006:

Liberia has Africa's first elected woman president, Ellen Johnson-Sirleaf, a former World Bank economist. Mozambique and Sao Tome and Principe have women prime ministers and South Africa and Zimbabwe have female vice presidents. Zambia has a woman running for president, Tanzania has a female foreign minister and women hold at least 30 percent of the legislative seats in Burundi, South Africa and Mozambique.<sup>1</sup>

Given the growing importance of sexual equality, any natural law that is unable to support sexual equality is not a natural law able to contribute to the development of women and promote indispensable global values.

From this perspective, the natural law of Aquinas may seem unhelpful, since Aquinas held that the generation of woman is defective and misbegotten *qua* individual nature (*S.T.* I. 92.1 ad 1); that woman is made

**Besides, friendship consists in an equality. So, if it is not lawful for the wife to have several husbands, since this is contrary to certainty as to offspring, it would not be lawful, on the other hand, for a man to have several wives, for the friendship of wife for husband would not be free, but somewhat servile. And this argument is corroborated by experience, for among husbands having plural wives the wives have a status like that of servants" (*SCG* III, 124).**

from man "as out of her principle" (*S.T.* I.92.2c); that a wife "should be ruled by her husband" (*S.T.* II-II.182.4c); that "woman is naturally subject to the man, because in man the discretion of reason predominates" (*S.T.* I.92.1 ad 2); and, that fathers are to be loved more than mothers (*S.T.* II-II.26.10).

These quotes, however, do not suffice to provide an accurate understanding of Aquinas's view of the sexes. They do not reveal, for instance, that Aquinas argues that equality ought to characterize spousal relationships

(*SCG* III.124). Nor do they reveal their reliance on outdated Aristotelian science that Aquinas attempted to override by arguing that women could not be considered *simply* as "misbegotten males," since the generation of females was necessitated by nature and intended by the Creator, albeit through "defect in the active force [of the male semen] or from some material indisposition, even from some external influence; such as that of a south wind, which is moist, as [Aristotle] the Philosopher observes (*De Gener. Animal.* IV.2)."<sup>2</sup>

In other words, even though the science of the day held that femininity results from defective masculinity, Aquinas argues that since the perfection of nature requires females, women are as necessary as men for the perfection of the human species.<sup>3</sup> In this way, Aquinas finds a basis for sexual equality despite the leading scientific viewpoint of his age.

Moreover, as Prudence Allen (1985, 392) points out, if Aquinas had not identified both sexes as necessary for the perfection of the human species, he would have had to acquiesce in the medieval argument that the resurrection of the dead, which removes all imperfections, would have transformed women into men.

Aquinas also championed various "feminist" claims,<sup>4</sup> namely, that a wife need not request her husband's permission to give alms out of her own "non-dowry" property (*S.T.* II-II.32.8 ad 2); that polygamy is *unfair* to women (*C.G.*

III.124); and that both sexes image God through the mind “wherein there is no sexual distinction” (*S.T.* I.93.6 ad 2). Most importantly, Aquinas did not acquiesce in his culture’s belief (stemming from its practice of arranged marriages as well as from the secular literature of courtly love) that wives were inferior to husbands. Instead he considered husbands and wives to be each other’s equals in the marriage act<sup>5</sup> as well as the greatest of friends.<sup>6</sup>

These claims of equality were radical in an age that considered Aristotle to be the very voice of reason. Even today they continue to undercut the chauvinistic assumption that differences between women and men preclude both spousal equality and the equality required of true friendship.<sup>7</sup>

Furthermore, these claims of spousal equality amidst differences enables Aquinas to reject not only Aristotle’s identification of spousal friendship as a proportional friendship between unequals, but also Aristotle’s assumption that differences in the activities of husbands and wives suffice to differentiate spousal virtues (and, thereby preclude spousal equality). For Aquinas argues that the various virtues are nothing other than the various dispositions to adhere to the judgments of reason. Dispositional differences affect neither the unity nor the oneness of virtue. Were this not so, the virtues would not be common even to all males due to the diversity of dispositions and personalities. The virtues thus cannot be gender-specific. In this respect, Aquinas anticipates the arguments of the famous eighteenth century feminist Mary Wollstonecraft (1988).

Aquinas’s claims of spousal equality have not been as influential as we would have wished. They were not even sufficient to overcome his own view that unlike the male’s body, the female’s was more indisposed to reason’s rule and, thereby, more of a hindrance to acquiring the moral virtues (but not the divinely infused virtues). But then Aquinas trusted that the science of his day had proved that the female body was unruly, since it resisted the formative powers of the male seed that was seeking to reproduce a boy, and since the female body was susceptible to being influenced by the south winds and the other physical factors that caused the generation of females.<sup>8</sup> These medieval “facts” were able to ground the chauvinistic elements present in Aquinas’s thought because he identified matter—and not the soul—as the principle of individuation.<sup>9</sup> Physical differences were thereby identified as the principle of natural human inequalities—even for men (*S.T.* I.85.7).

Physical inequalities, however, do not affect the equality of the human soul. No human soul can be *essentially* more or less perfect than any other human soul, because any differences in the perfection of incorporeal substances cause differences in species (*S.T.* I.75.7). For this reason, Aquinas held that none of the many species of angels has more than one individual, and that the plurality of individuals in the human race arises from differences in their matter. Aquinas

tacitly relies on these principles when he argues that the image of God belongs to both sexes, not according to their bodies, but according to their minds wherein there is no sexual distinction (*S.T.* I.93.6 ad 2). Men and women are thus essentially equal.

Sexual equality makes friendship possible between men and women. Aquinas accordingly declares: “Now, there seems to be the greatest friendship between husbands and wives” (*SCG* III, c. 123). In this respect, he follows Aristotle: “Between man and wife, friendship seems to exist by nature” (*N.E.* Bk. 8, ch. 12, 1162a16).

The essential equality of men and women, however, cannot suffice as the basis of norms that must take biology into account. For example, any norm pertaining to loving one’s parents must take into account who is one’s parent. If generation were primarily the effect of the father—as held by medieval science—then the obligation to love benefactors according to the gift bestowed would entail that the father be loved more than the mother. This entailment would not follow from contemporary genetics which establishes the procreative equality of the sexes.

Thus, since Aquinas’s chauvinism is not based upon philosophy but biology, namely, the faulty biology of Aristotle, the chauvinistic elements within his ethics result from derivations contingent upon biological errors. They can thus be removed from his ethics without affecting his normative principles.

Another argument that Aquinas’s morality is not sexist in its foundational norms arises from the consideration that the biologically grounded obligation to love one’s father more than one’s mother was held by Aquinas to equally bind male and female children. That children—regardless of gender—have this obligation reveals that the foundations of morality must be genderless. In other words, since genderless obligations are broader than gendered obligations, genderless obligations cannot be based upon gendered obligations. Hence, no obligation could be genderless, unless the basic norms were also genderless. Therefore, chauvinism does not characterize Aquinas’s basic norms. Indeed, there is nothing gender-specific in the norm that benefactors are to be loved according to the good that they bestow. Accordingly, the gendered obligation to love fathers more than mothers, for example, is due to faulty medieval biology.

Correction of this biology according to modern genetics, which shows the equal contribution of the male and female, removes the biologically grounded obligation to love fathers more than mothers thereby updating Thomistic morality without distorting its fundamentals.

Moreover, if we consider that the love precepts are the primary precepts of Aquinas’s morality, it is apparent that male chauvinism (which prides itself on the alleged inferiority of women) is proscribed by natural law. For regardless

of any alleged female inferiority, women and girls are human beings with the same subjectivity of nature as men and boys. Personalist natural law thereby forbids treating women and girls as inferior to men and boys.

Basing morality on the obligations of love also offers a corrective to the contemporary characterization of ethics as based upon a “justice” defined according to an uncaring principle of impartiality that requires treating everyone the same. For love establishes relationships in which obligations increase as the relationship tightens: the closer the relationship, the greater the demands of justice. From this, it follows that justice demands impartiality only in those relationships where all are related in the same way, e.g., as students are related to their teacher, or soldiers are related to their general. Otherwise, justice demands that those who are closer be treated preferentially, e.g., family members deserve more than assistance than strangers. Thus, on the one hand, justice requires, for instance, parents to feed, clothe, and educate their own children, but not the children of others, while, on the other hand, justice requires, for instance, impartiality before the law to which all are related in the same way.

By formulating a way to reconcile justice and love, Aquinas’s natural law morality of love offers an alternative to the current dichotomy, drawn by some feminists, between the ethics of care and the ethics of justice.<sup>10</sup> The need for this alternative was noted by Carol Gilligan (1993), who launched the debate between the ethics of care and the ethics of justice in her groundbreaking *In a Different Voice*. Maturity, Gilligan argues, unifies justice and care.<sup>11</sup>

Furthermore, if the Thomistic principle that the one who contributes more to a child’s life is owed greater love and honor is adopted, then—given genetic parity—the newborn is more indebted to the mother who carried it throughout pregnancy than to the father. As a result, pregnancy precludes fully equalizing the relationship between offspring and their mothers and fathers. For this reason, justice demands that this special mother-child relationship be respected, e.g., by giving the mother who carried her own baby, or a surrogate baby, preference in any custody dispute—unless she is unable to care adequately for the child.

Justice also demands preserving the equality between men and women by restructuring the workplace so that the woman can exercise her equality and develop the talents, virtues, and wisdom that work makes possible (Savage 2008, 43–4). Without such restructuring, women are “penalized by the job market for the work they do within the family” (Schlitz 2007b, 398). But the workplace does not simply need to be restructured to facilitate child-care but also to welcome the peculiarly feminine insight of women into the vulnerabilities of others, their sensitivity to those vulnerabilities, and their willingness to figure out how to render any needed assistance. Such quintessentially feminine

caring is essential to humanizing not only the workplace but the culture.

The need for women to extend their influence throughout the culture led John Paul II to call for the development of a “new feminism” which would not only protect the woman’s investment and interest in new human life and children, but would also extend maternal concern to every human being, while protecting her equality.<sup>12</sup> Such protection, according to John Paul II in *Familiaris Consortio* #23 (1981, 40), requires that the maternal, family, and professional roles of women be “harmoniously combined, if we wish the evolution of society and culture to be truly and fully human.”

If unpacking the rights of women to be mothers and to be feminine is the basis of feminist ethics, then Aquinas’s normative principles can help develop this kind of applied ethics. The resulting Thomistic feminism would thus be a personalist feminism that would seek to honor the uniqueness of women while protecting the right of every human being to be loved and to give love. As such, Thomistic feminism would advance the cause of personalist natural law and seek ways to facilitate neighborly love and improve lives across the globe

Therefore, Thomism—once purged of Aristotelian myths—argues that justice binds all to honor and support the special roles that women play in the lives of their children, in their families, in the workplace, and in the culture. This means, of course, that personalist natural law as founded on Thomistic principles is able to advance the cause of sexual equality and the dignity of women in the twenty-first century.

## Notes

1. Laurie Goering (2006, A13 & A17).

2. See, e.g., *S.T. I.92.1 ad 1*. For an excellent explication of these and other texts see the excerpts of Kristin Mary Popik (1978 and 1979). Also see Prudence Allen (1985). Allen’s analysis, while excelling in exegesis, fails to differentiate Aristotle and Aquinas; she writes on p. 442: “As far as the concept of woman was concerned, however, Aristotelianism and Thomism were clearly the same.” As a result, she faults Aquinas for legitimating Aristotelian philosophy and, thereby, making its chauvinistic elements commonplace within Europe (see p.442). The problem with this argument is that it assumes a greater influence for Aquinas’s philosophy than it had due to the suspicions cast by the Condemnation of 1277. Furthermore, explosive founding of new universities in the thirteenth century coupled with the new translations of Aristotle gave scholars access to Aristotelian texts unmediated by Thomism. Indeed, Allen notes that with the rise of the University of Paris as the paradigm for a male-only liberal arts education and the decline of monastery-based schools whereby women could become as educated as men effectively ended the ability of women to challenge the male chauvinism of Aristotelianism. Thus, it seems unlikely that Europe’s fascination with



Aristotle was due to Aquinas.

3. *S.T. Supplementum*. Q. 81, a 3 ad 3.

4. For a description of the rights of women during the middle ages see Frances and Joseph Gies (1987).

5. *S.T. II-II.32.8* ad 2.

6. *Summa Contra Gentiles* III, c. 123.

7. True friendship presupposes equality; because, since likeness is a cause of love, the relationship of a superior to an inferior establishes a likeness of potentiality that causes only a love of concupiscence rather than the love-of-friendship which results from actual similarities. See *S.T. I-II.27.3*.

8. The male alone was identified as the active human principle of generation. See *S.T. I.118.1* ad 4; and, *S.T. II-II.26.10*. Also see Michael Nolan (2000) and Stephen Heaney (1992).

9. For a more recent discussion of the controversies about individuation see Lawrence Dewan, O.P. (1999).

10. For a discussion of the alleged tensions between impartiality and the ethics of care see, for instance, Helga Kuhse et al. (1998) and Elizabeth Rose Schlitz (2007a).

11. Gilligan (1993, 174): "To understand how the tension between responsibilities and rights sustains the dialectic of human development is to see the integrity of two disparate modes of experience that are in the end connected. While an ethic of justice proceeds from the premise of equality--that everyone should be treated the same--an ethic of care rests on the premise of nonviolence--that no one should be hurt. In the representation of maturity, both perspectives converge in the realization that just as inequality adversely affects both parties in an unequal relationship, so too violence is destructive for everyone involved."

12. John Paul II's most extensive arguments for the equality of women can be found in *Mulieris Dignitatem* (1988). His call for a "new feminism" is in *Evangelium Vitae* (1996b). Steps towards unpacking this feminism has been undertaken, for instance, by Michelle M. Schumacher (2004), Lemmons (2002), Elizabeth R. Schlitz (2007a,b), and Deborah Savage (2008).



## *Chapter 20*

# **Personalist Natural Law: Normative Advantages**

*This chapter relies on the arguments of the previous chapters and summarizes the advantages of personalist natural law in light of the problems currently facing the globe.*

The interdependencies of national economies, the fragility of the ecosystem, and the communicability of diseases increasingly reveal the indispensable need for international cooperation, unity, and law to be built upon the shared values and obligations of a transcultural global morality grounded in human nature and warranted by an ethics and a jurisprudence able to preserve fundamental principles amidst diversity.

**“We are drawn to life by love” (R. May 1969, 81).**

Shared values and obligations based on nature, however, are not enough to produce international cooperation, world peace, and global well-being: the temptations to exploit the weak and to use others as fodder for one’s personal or political agenda are proving to be most alluring. The globalization of terror, for instance, have nullified the widespread, post-WW II confidence that the notions of human rights and moral duty suffice per se as a basis for international law and world peace. It is not moral knowledge that protect us from violence, but only a neighborly love that respects others and seeks their good in and through friendship. Thus, the challenge currently facing the globe is to facilitate friendship between the world’s peoples.

But before the peoples of the world can united in neighborly love, we must become more aware that the other is a neighbor linked to oneself through global economic and environmental interdependencies as well as through the common aspiration for justice, freedom, and well-being. Current global realities link every human being to the other through various social, economic, and environmental networks whereby every human being can be known as another self and loved as such. The objective truth about the other identifies the other as one like oneself. This truth engages one's love and enables the will to commit to an objective truth whose goodness continually renews the will's neighborly love and thirst for doing good while avoiding evil. The commitment to neighborly love, not only makes the other's well-being one's own concern, but also establishes the basis for a personalist jurisprudence that seeks the flourishing of every person through the common good.

The moral and juridical obligations of neighborly love are so basic within personalist natural law that it is to this version of natural law that the world must turn for a moral and juridical grounding that advances global well-being. This is especially the case since this version of natural law combines the motivational power of love with the objectivity of nature and the universality of practical reason. Love keeps practical reason focused on truth and justice, while objectivity keeps love from devolving into a cold, uncaring, self-centeredness or a blind, volatile, and erratic emotivism. In this perspective, love is more than an emotion; it is a free act of the will that deliberately affirms what is good by expressing itself in good deeds. Since personalist natural law characterizes love as affective, active goodwill obligated by the objective reality of one's neighbors and God, personalist natural law bases morality and law on reason's ability to recognize the essential nature of God and neighbor, and the will's ability to love in accordance with reason's knowledge. That is to say, personalist natural law bases morality and law on the intellect's thirst for truth and the will's thirst for goodness. Of course, in this context, thirst is another word for love. So personalist natural law is based ultimately based on the love of truth and goodness. And, this is why these morally requisite loves spurn base desires, wicked rationalizations, and acts of injustice. And why the love of God and neighbor binds the human heart to pursuing and doing what is really good.

The emphasis on truth and goodness so integral to personalist natural law bestows upon this version of natural law several unique advantages crucial to meeting the moral and juridical needs of today's global village. These advantages are grounded within the normativity of practical rationality and the normativity of love as formulated by the basic norms to love God above all and to love neighbors as oneself. Let us begin by considering the advantages bequeathed by the normativity of practical rationality and then proceed to discussing the advantages given by the normativity of the love precepts.

**The Normativity of Practical Rationality**

In previous chapters, we have established the following claims. Aquinas identifies practical rationality as according with the norm that good as understood by reason is to be pursued and done while evil is to be avoided (chapter 7). Reason understands the good not only as the ends of natural inclinations but also in relationship to eudaimonia and the well-being of the person; such goods are self-evident (chapter 3). The quintessential moral obligation is to act in accord with reason's knowledge of truth rather than in accord with the emotions or feelings (chapter 6). In other words, practical reason is not a blind instrument for desire-satisfaction but rather enables us to know whether the end being sought is truly good or merely appealing for the moment. For instance, not only can we distinguish between seeking another's company for the purpose of friendship or rape, but we can also know that friendship is good, rape is bad. We call the latter judgment of reason, conscience. For reason knows that others are beings like ourselves and should be loved as ends in themselves and not as mere means to our own gratification (chapter 8). And, if we are theists, we also know that God's goodness is such that he should be loved above all (chapter 8).

The obligations to love God above and neighbors as oneself are applied in particular instances as well as used as principles for identifying more specific obligations through the practical syllogism (chapter 18). Reason's sensitivity to the objective goodness or evil of one's acts makes accurate judgments of conscience possible. It also means that the pursuit of evil involves a choice not to fulfill morality's obligations. For instance, fornicators would never make it to bed, if they did not judge indulging lust as preferable to morality. Neither would fornicators awake with remorse, if they did not know better. Consequently, since practical reason functions through the practical syllogism, and since practical reasoning begins with the first principle of natural law, a practical syllogism concluding with a command to act in a certain way that is contrary to natural law is not only inconsistent but unsound. When this occurs, the premise that identifies the act as good (when it is actually wicked) is false; and, practical reason has mistakenly identified the act in question.

Such mistakes are either intentional or unintentional. If intentional, then one has either chosen to ignore what one's knows to be true or chosen not to determine the truth. Hence, practical reason errs when it chants "ignorance is bliss" before commanding the use of a refund check from the Internal Revenue Service that is three times one's annual income to buy a boat. If unintentional, then either invincible ignorance has caused the mistake or a sudden unanticipated passion has so inflamed one's emotions that one cannot clearly see the moral truth. Culpability occurs either when ignorance is intentional and free choice indulges desires against what is known—or ought to be known—as true.

For example, the Greco-Latin warrior tradition has long warned that bloodlust can occur in battle when one experiences the power of killing. In such cases, one chooses to forgo the considerations of practical reason; to scorn the moral truth that distinguishes, for instance, between combatants and noncombatants; to seize *this* moment; and, to hold that *these* feelings are *the* good that warrants the action. (Hence, when such passion passes, remorse follows.)

It is possible to get things wrong because particular good and evils have various advantages and disadvantages that can be considered in various ways, both by the intellect and by the senses.<sup>1</sup> Various considerations can yield different feelings that tempt one to forgo reason's full consideration of the act in question: is it really likely that the IRS had such much money that it is tripling every refund? Choosing to block the full consideration of the act in question enables one to rationalize to the outcome that is desired rather than to the one known to be obligatory. At such times, practical reason is acting unsoundly because it is failing to consider the big picture, the context of one's acts, or every significant aspect of the act in question. Not for Aquinas, the technician's excuse that *this* action is permissible because it lacks moral relevance: even composing an opera can be immoral when one ought to be taking one's injured child to the hospital.

Not all cases of unsound rationality are culpable; for the truth about human actions is not always knowable. For instance, the history of the human race shows that women have not always been respected as the equals of men; but then the truth about women was obscured until Jesus Christ revealed it.<sup>2</sup> Given the frequency of unsound practical reasoning, the most remarkable fact about the human race is that sound practical reasoning is not only possible but has become demanded by international laws proscribing genocide, the mistreatment of prisoners, and other obvious evils.

We come then to the foremost advantage of Aquinas's identification of sound practical reasoning with morality: it differentiates between sound and unsound acts of practical reasoning on the basis of consistency with normative first principles that are self-evidently and universally true. As a result, not only is consistency morally requisite for all but so is acknowledging—in thought and deed—objective truths. Or as put by Keith Ward (2001, 59): “[all] are rationally bound to agree that happiness, freedom, truth and justice are basic goods for all humans whatsoever.” Such rational normativity makes a global morality and jurisprudence possible.

Herein lies a *second key advantage* of Aquinas's natural law: it is able to explain moral phenomena, e.g., immoral acts, guilt, and remorse. (Immorality is due to the free choice to wallow in ignorance or to allow unruly desires to override moral truth, while guilt and remorse arise when unruly desires subside and one is able to realize that one has sought what was not truly good or one has

avoided what was not truly evil.)

The *third key advantage* of Aquinas's normative practical rationality also flows from his identification of sound practical reasoning with sound practical syllogisms, namely, it permits particular obligations to be differentiated according to particular claims that can be responsive to peculiar cultural, or even unique, situations, without also involving different universal norms. For example, the universal claim that respect is to be shown to others obligates some to shake hand and others to bow because some identify shaking hands as respectful, while others bowing. Hence, the practical syllogism makes it possible for the same universal or basic norms to be intrinsic to all cultures and peoples, while derived obligations differ according to the differences that arise from the moral demands of diverse environments and cultures. Aquinas's natural law is thus able to explain moral diversity while claiming universality for its basic norms.

The jurisprudence resulting from these features of Thomistic natural law obligates the rule of law, equality under the law, equity, and objective rights inalienably based on human nature. For practical reason acknowledges that the benevolence owed to individuals requires a legal system that identifies justice with treating like cases alike and treating unlike cases in equitable ways that avoid harm and violations of rights. The objectivity required in order to ascertain the particular demands of justice and equity thus also requires that human rights be understood objectively, that is, either as naturally suitable for human beings or as necessitated by human equality.

The objective character of rights required by natural law jurisprudence is a tremendous advantage. For if rights were based only on desires or liberty interests, their proliferation would not only be unstoppable but would also entail inescapable conflicts due to the diversity of human interests. Such conflicts would doom some rights to be overridden by others before dooming the entire category of rights as being too vacuous to be juridically viable. Hence the objectivity of rights is a necessary condition of their very existence as a viable juridical category. Indeed, the objectivity of Thomistic rights obligates natural law jurists to decide cases according to the objective standards of truth. Hence, it is not the case that Thomistic natural law jurisprudence leaves jurists with no resources other than their own opinion.<sup>3</sup>

Thus, Aquinas's normative practical rationality, consequently, enables his natural law theory to offer a morality to the world that is as objective as human nature and rights, as universal as the realm of intentional actions, as knowable as one's own thoughts, and as compelling as the very structure of practical rationality.

### **The Normativity of the Love Precepts**

The Thomistic natural law of love identifies the obligations to love God and neighbor to be self-evident and basic.<sup>4</sup> As a result, this version of natural law has several advantages that especially enable it to meet the global need for an ethics and a jurisprudence able to counter the indifference or hatred that facilitates treating others unjustly and even violently. These advantages are listed below in no particular order of importance.

*A first key advantage* is that by identifying the love obligations as foundational principles that are self-evident to practical reason, Aquinas is able to claim that these obligations cannot be denied without irrationality, that is, without denying what practical reason knows is true. By so doing, Aquinas is claiming that the love precepts are norms of practical rationality. As a result, they not only are universal moral norms that can be known by all, but also are foundational principles.<sup>5</sup> As such, all other natural law prescriptions either instantiate these norms or are equivalent to them.<sup>6</sup> Pedagogical simplicity is thereby achieved.

The importance of pedagogical simplicity cannot be overestimated: no morality and no ethics can truly be universal if too complex. Universality presupposes that even the uneducated and school age children can grasp the fundamentals of morality and function as moral agents.

The precepts of love provide such pedagogical simplicity, since neighborly love obligates that others not be harmed and helped when in need. Presupposed is a habitual goodwill or caring that abhors harming others and stands ready to lend needed assistance. Accordingly, even children know that others ought not be kicked or hit—and that we ought to care enough about others in need to do something. As mental sophistication grows, the obligations of love likewise develop in their breadth and depth—although not essentially. The child and the adult are bound by the same love-obligations that proscribe hurting oneself or others, while caring enough to help those in need. It is just that the ways of harming and the ways of caring diversify and multiply for the adult, especially for the ones that form various love-unions, e.g., through marriage or through belonging to a community.

To assist the needy without harming them requires objectivity and wisdom: for, the standards of benevolence arise not from the lover's desires but from the human nature of the one loved. Thus, personalist natural law holds that love is itself only when conforming to the objective parameters of assistance and harm. Accordingly, personalist natural law requires that one objectively ascertain whether courses of action benefit or harm those whom ought to be loved. For this reason, for example, no matter how much spouses claim otherwise, beating up one's spouse is never a matter of love.



The requirement that love honor the objectivity of benefit and harm provides a *second key advantage* of Thomistic natural law, namely, that it obligates respecting whatever is naturally commensurate to a person. The naturally commensurate are natural rights.<sup>7</sup> As a result, Thomistic natural law identifies natural rights with those goods naturally suitable for human beings. “Naturally suitability” is thus the objective criterion for natural rights, natural inclinations, and true love. To love others as oneself is to acknowledge that just as self-love is proper when bounded by what is naturally suitable, so is love of others proper when bounded by the naturally suitable. Life, for instance, is naturally suitable for oneself and for others: love is proper when it honors life. Murderers may claim to love their victims, but they do not. Love abhors what is contrary to natural rights and inclinations. Subsumption of natural rights under the love precepts, thus, enables their contraries to be necessarily proscribed. In this way, natural rights or naturally suitable goods become inalienable rights: acting against them is anathema to the love owed to oneself and to others.

The key advantage of this subsumption is it places love, rights and obligations within the parameters of what is naturally suitable for human beings and their contraries. And since the naturally suitable can be objectively determined, morality and political legitimacy are removed from the domain of those who would reduce truth and value to the preferences of powerful individuals or groups. Given the identification of these objective benefits as objective goods of persons honored by love, and given that the love forbids harming others, violating these goods is proscribed by the morality of love.

A *third advantage* of Thomistic natural law is its ability not only to motivate and obligate individuals to care about others—including strangers in distant lands, but to obligate them to do so according to a hierarchy that prevents harming those close to oneself, e.g., relatives. The prescription of loving neighbors as oneself requires one to love all human beings according to the manner in which they are one’s neighbors with the closest neighbor being loved more. In the words of Aquinas (*S.T.* II-II.44.8 ad 3): “It follows from the very words, ‘Thou shalt love thy neighbor’ that those who are nearer are to be loved more.”<sup>8</sup> Hence, Aquinas uses the term “neighbor” not to limit one’s love to those closest to oneself but to extend one’s love to all to whom one is united by a certain commonality, such as sharing in the same nature of being human.<sup>9</sup> By basing the love of others upon the recognition of one’s own nature as a human being, Aquinas provides a compelling motive to care about others. Not to care involves a denial of one’s own humanity and a denial that human beings flourish best in caring communities. The obligation of neighborly love thus not only forbids exploiting or otherwise harming strangers but also requires extending goodwill to them and doing what we can for them, e.g., by contribut-

ing to international charities.

A *fourth advantage* of Aquinas's identification of the love obligations as foundational lies in his identification of the prescription of neighborly love with the Golden Rule (chapter 18).<sup>10</sup> By equating the Golden Rule with the obligation of neighborly love, Aquinas makes explicit the tacit moral intent of the Golden Rule to be nothing other than to advance moral actions and to proscribe immoral actions. This intent precludes using the Golden Rule not only as a mere warrant for strict reciprocity, but also as a warrant for exchanging what would otherwise be immoral. Moreover, by equating the Golden Rule in the obligation of neighborly love, the obligation of neighborly love underwrites all those moralities relying upon the Golden Rule as the foundational norm regulating human interaction. Aquinas, however, is not the only one to consider the obligations of love to be basic to morality: so did Cicero<sup>11</sup> and Confucius.<sup>12</sup> And the Confucian Mencius (371–289 B.C.) argued—like Aquinas—that love is to be extended to all but is to be more intense towards those closest to oneself.<sup>13</sup> Indeed, Aquinas's reliance on the precept of neighborly love to establish the parameters of love not only protects the universal moral insight that made the Golden Rule immanent in all moralities but also advances a natural law morality capable of being held by all peoples.

A *fifth advantage* of making love foundational for morality is that love motivates us towards a complete and perfect, or happy, existence: love thirsts for what is lacking and rejoices in its attainment. An ethics of love is thereby eudaimonic and draws its moral necessity from eudaimonia, the only end that all are necessarily motivated to seek; and, the only end with sufficient necessity to make morality indefeasible. Thus, all that is indispensable for attaining this end becomes morally requisite and able to motivate—without compulsion—human action. For, since one cannot but desire eudaimonia, one is motivated to fulfill one's obligations and not to do or pursue harm. To root an ethics in eudaimonia is thus to provide the foundation for resolving questions of moral motivation and moral certitude by enabling the predication of some obligations to be absolutely necessary. Hence personalist natural law not only obligates caring for others and forbids harming them, but also motivates fulfilling these obligations.

A *sixth advantage* of personalist natural law is that by identifying love as the basis of obligation, it provides the touchstone for developing the virtues and living virtuously. For none can become virtuous or live virtuously without loving the good and one's neighbor as set forth by the love precepts.

A *seventh advantage* of the natural law of love is that since its eudaimonic grounding is the same for all human beings, a common eudaimonic morality becomes possible as all become not only aware of the essential elements of eudaimonia but also aware of the global interdependencies necessary for

attaining eudaimonia. Adoption of mutually beneficial global goods would unify diverse peoples into a global community. For the mutual dedication to a common good establishes a community whereby members are not only united in the love of some common good but also are united in a love-of-friendship for each other.

Hence, even though communities can be diversified by their various common goods, they can also be united by the eudaimonic concerns of individuals which establish an overarching common good for the globe. For each of us seeks the one end necessarily sought by every human being, namely, happiness or eudaimonia. And none of us can attain eudaimonia without others. We are social creatures by nature. Hence, the happiness of the individual is found in communal happiness, which is, the community's most important and basic common good. Communal happiness occurs when that good whose pursuit unified members into a community is attained by those community members. For example, sport teams are happy when victorious. Every community is happy when the goods for which it exists are attained by its members.<sup>14</sup> Accordingly, attaining these goods whereby its members flourish is the goal of every community.

Therefore, the natural law of love identifies the common good of every community with the welfare of its members that is attained by in communion with others. But such communion marked by the dedication to some common good is nothing less than some degree of friendship. For friendship is a union established by the reciprocated willing of some good that so benefits the self and others that it is the common good.

Since friendships are differentiated according to their common goods, there are different kinds of community, e.g., a church community differs from a work community. Nevertheless, the friendship or love that establishes a community by unifying its members around a common good honors the reality that the common good is mutually beneficial; it cannot be attained at the expense of individual members. All forms of love and friendships abhor treating any member as a mere instrument for attaining some goal—not even the goal of survival. Love condemns utilitarian arguments that survival or well-being requires the sacrifice or mistreatment of some. What loving parent would intentionally throw his beloved baby to a hungry lion in order to walk away unscathed? Better to fight a losing battle to the death than to survive through such a cost. Indeed, it is not love that steps behind another at the enemy's charge, but cowardliness, as the ancients well knew. Survival through such means is not only unworthy for those who are noble; but it is also, according to Aristotle, unworthy of those who truly love themselves.<sup>15</sup> For these honor the truth above all, including the truth that love never intends harm and the truth that love never treats another as a mere means to some end—not even to save

the human race. Consequently, political communities formed by love not only forbid the mistreatment of minorities and the exploitation of workers, but obligate promoting the welfare of every individual. Utilitarian conceptions of the state are thereby rejected: love does not flourish but dims and suffers whenever another is denigrated to the status of instruments.

Moreover, since the common good cannot be loved without honoring the humanity of the state's subjects, neighborly love obligates the state to acknowledge the humanity of the criminal and proscribe the torture of criminals as well as inhumane punishments. Neighborly love also forbids the state to pursue criminals in ways that harm the common good, for instance, by degrading searches or by outlawing free associations. In other words, since the state exists through the unity caused by the neighborly love focused upon the political common good, the state and its coercive power are subordinated to the obligations of neighborly love and civic friendship.

This subordination, according to Jacques Maritain (who was so influential developing the Universal Declaration of Human Rights<sup>16</sup>), unleashes the human creativity necessary for societal flourishing:

While the structure of society depends primarily on justice, the vital dynamism and the internal creative force of society depend on civic friendship. Friendship brings about the agreement of wills required by nature, but freely undertaken, which lies at the origin of the social community. Friendship is the true cause of civil peace. It is the animating form of society. This was well known to Aristotle, who distinguished types of community according to types of friendship. Justice and law are indispensable prerequisites, but they do not suffice. Society cannot exist without the perpetual gift and the perpetual surplus which derive from persons, without the wellspring of generosity hidden in the very depths of the life and liberty of persons, and which love causes to flow forth. . . . Finally this very development of justice and friendship is linked to a progress of equality among men. (Maritain 1944, 22–3)

Hence, as no society can afford to avoid advancing equality and justice, no society can afford to avoid advancing civic friendship. Indeed, such is the goal of political society.

The identification of civic friendship as the political goal means that political society is constituted by the consent of the governed; it is the people who are the source of political authority.<sup>17</sup> Although Aquinas mentions this source of authority only briefly, it was seminal. Indeed, that the people, by delegating their own power, warrant the state's authority is an idea that took centuries to develop, the Enlightenment to popularize, and the American colonists to realize. If, then, ruling is not a matter of divine right but of the consent of the governed, political rule is constituted by the partial consignment of an individual's responsibility for the common good to the ruler. This means

that the state is obligated to promote and protect, on the behalf of its citizens, the common good. But since the common good is constituted by the joint pursuit and equal enjoyment of some objective good within the parameters of neighborly love, promoting and protecting this good requires honoring the natural law obligations of love. These obligations demand place law at the service of the ruled. Laws that fail to benefit the ruled are thus anathema. This is a great constraint not only because unjust laws harm rather than benefit the people but also because, as Aquinas recognized, laws that are too stringent cause greater evils to erupt. Love thus demands juridical prudence in the pursuit of the common good.

Hence, natural law jurisprudence must often permit lesser evils in order to prevent greater ones. The criterion for determining whether or not an evil can be permitted is determined by the principle of double effect.<sup>18</sup> This principle permits only the toleration of those evils that are the unintended side-effect of an equal or greater indispensable good. For instance, the great good of free speech requires a state to tolerate even hateful speeches as long as they do not incite violence. Such toleration is required by love insofar as love never seeks to impose the truth but only to enable the truth to be found: liberty is the indispensable means of attaining love's objects.

A *eight advantage* of personalist natural law is that its grounding of political authority in the common good identified and loved by a people not only establishes neighborly love as the parameters of the state but obliges the creation of institutions and laws that advance the welfare of the people when the failure to do so would fail to protect them from harm.

In this way, the power to make coercive laws is grounded in the "whole people or a public personage who has care of the whole people."<sup>19</sup> For, "to punish pertains to none but the framer of the law, by whose authority the pain is inflicted."<sup>20</sup> Accordingly, within democracies, coercive political authority is derived from the people and their representatives.<sup>21</sup> As a result, the moral parameters of coercive political authority are the moral parameters of the people, that is, the parameters of neighborly love. Neighborly love obligates individuals to pursue and to protect their community's common good because this good is partially constitutive of their happiness. This responsibility requires the right to make and enforce coercive laws, because otherwise the common good would not be protected and their members would be harmed. Tough love is still love.

Only a disdain incompatible with neighborly love and proscribed by neighborly love would count the common good and individual welfare unworthy of protection through coercive laws. For example, if a state were to refuse to prosecute shoplifting, it would not only be dismissive of the harm caused by shoplifting but it would be failing to protect shop owners from harm.

Such a state would be vitiating the neighborly love owed to shop owners by virtue of their humanity. Neighborly love does not, however, require the state to prohibit all evils but only those that are incompatible with the love of the political common good. As a result, government must protect human rights and freedom. Such protection not only requires the outlawing of violence, fraud and other unjust acts, but also requires structuring benefits so as to facilitate the freedoms to have a family life, to form voluntary associations, to be religiously active, and to be involved with politics. These freedoms are fragile; they are imperiled, for example, by grinding economic needs, by excessive bureaucracy, by the taxation of charitable organizations, and by the failure to provide opportunities for civic involvement. In brief, neighborly love obligates governments to protect freedom by protecting natural rights—especially the rights to life, liberty, the pursuit of happiness, justice, and community involvement.

From this, it follows that only those governments and laws that promote the common good are legitimate. Governments and laws are illegitimate when they betray the common good. They abandon the common good when they frustrate—rather than advance—the well-being of any member. To frustrate the common good is unjust.

Neither unjust governments nor laws bind one's conscience (*S.T.* I-II.96.4c). If then a government is tyrannical without care for the common good and the well-being of individuals, it is not seditious to overthrow it (*S.T.* II-II.42.2 ad 3). In this way, Thomistic natural law stands outside of any political regime and judges whether its authority is binding upon the human conscience by determining whether it is a regime seeking a political common good identified by a people united by neighborly love. This advantage of the Thomistic natural law of love ought not be underestimated: the right to act against tyrannies and establish just regimes is a great protector of human dignity and love.

A *ninth* key advantage of personalist natural law is that its fundamental precepts are affirmative precepts that resolve a key puzzle of contemporary metaethics, namely, how it is possible to be a universal norm that is always applicable. Affirmative precepts, regardless of the degree of their generality, are always applicable because they are fulfilled as long as one conforms to that prescription. For instance, parents are obligated to care for their children; and, they are in conformity with that precept when their children are in a particular school in a particular location that is educating their children in a particular way. But should the school actually be a sweatshop for making hats, then the parents would actually be violating that very general obligation to care for their children. Affirmative precepts forbid their contraries no matter how unique those contraries are.

A *tenth key advantage* of personalist natural law is that it is able to capitalize not only on the global universality of the Golden Rule but also on the natural law tradition that was seeded in ancient Greece and nourished on the conviction that care for our fellow human beings was not only a privilege but a duty. This is a great advantage because it bears witness to the achievements of the past, while integrating them with the present in order to establish a way to advance the cause of humanity in the future.

A *eleventh key advantage* of personalist natural law is that it counters the hatred, greed, and self-centeredness that breeds not only immorality but criminality. For although many schemas of natural law can legitimately prescribe caring for our neighbors on this small planet, only love is able to motivate adherence to this truth in difficult situations. Love alone dismisses the rationalizations that permit harming the few for the sake of the many. Love alone enables one to honor the truth at all costs. Love alone recognizes that the common weal is constituted by a neighborly love of individuals that abhors treating any as a means to another's well-being or to the group's well-being.

But this love is such a fragile thing, especially when extended to our neighbors in humanity, that it is likely to dissipate when costly unless anchored in the love of all-good benevolent first cause, who holds our lifeline in the palm of His hand: God alone can guarantee that truth and virtue are never vanquished.

Hence an *twelfth key* advantage of personalist natural law is that it recognizes the weaknesses of human loves and bolsters them with divine love. In other words, the recognition of God as not only existing but as the supreme cause of goodness involves a recognition that the goods of this life exist because there is a first cause who transcends space and time and loves us. This means that there is someone who cares about the sacrifices we undertake for the sake of morality, that is, for the sake of love. This Divine Being will not let our dedication to loving neighbors as our self and God above all be in vain. Confidence in God, then, can bolster any flagging human love and encourage one to continue to seek the moral ideal. The importance of this point was well-recognized by America's founding fathers who were convinced that the country would not survive if her people were not God-centered and religious.<sup>22</sup>

The *final advantage* is that the religious obligations stemming from the love of God identify hateful acts that denigrate or destroy neighbors and communities as hateful to this loving God, the Creator of all that is good. Consequently, terrorism and forced religious conversions, for instance, cannot be warranted as an expression of religious zeal.<sup>23</sup> These entailments also follow when one bases religious obligations on the other foundational love precept, namely, the precept of neighborly love. For neighborly love obligates a respect for the subjectivity of others incompatible with attempting to coerce religious beliefs.

As a result, neighborly love obligates giving others the freedom to worship as they see fit as long as that worship does not exceed the boundaries of neighborly love and physically harm others, e.g., by the use of some kind of mind control, or by the failure to seek medical care for sick children, or by the planning of terrorist acts. Consequently, the jurisprudence entailed by personalist natural law is delimited by the conditions of loving God and neighbor appropriately. These conditions presuppose a freedom that precludes laws infringing the free exercise of religious beliefs or otherwise harming individuals by denying their natural rights or by scorning their vulnerabilities. Hence, laws against murder and fraud, for instance, are entailed by personalist natural law as protections of natural rights, just as laws prescribing the education of children, or forbidding discrimination against those with disabilities, protect the vulnerable. In this way, the love of God and neighbor protect natural rights of life, liberty and the pursuit of happiness.

## Notes

1. Aquinas does not identify the intellect as the only cognitive power. The cogitative sense in humans and the estimative sense in animals are also cognitive powers, albeit only of sensible values such as danger or sexiness. See *S.T.* I.78.4. For a definitive treatment of the cogitative sense see George P. Klubertanz, S.J. (1952).

2. Pope John Paul II, *Mulieris Dignitatem* # 13 (1988).

3. See V. Bradley Lewis (2001, 140-158).

4. *S.T.* I-II.100.3.ad 1.

5. For an in-depth treatment see chapter 8 on privileging the love precepts.

6. Cases of killing and punishment *seem* to involve a harming antithetical to the love obligations. If so and if there are times in which killing and punishment are morally licit, then properly loving God, neighbor and self could not be the foundational norms of natural law. I considered these difficulties in chapter 17.

7. The keys to understanding Aquinas's perspective on rights lies in several key texts. In *S.T.* II-II.57.2c, he argues that the equality of exchanges is a natural right. In *S.T.* II-II.57.3c, Aquinas argues that natural rights are by nature commensurate to a person. In *S.T.* I-II.10.1c, he argues that whatever is the object of a natural power is naturally loved by the will. In *S.T.* I-II.94.2c he argues that there are three genera of natural inclinations, among the natural rights of every person are life, procreation, education of offspring, living in society, and freely pursuing the truth about God. Thus, since the objects of the natural inclinations are naturally commensurate to human persons, they are natural rights.

8. The obligation to love the closest most echoes natural love; *S.T.* I.60.4 ad 2: "For since natural love is founded upon natural unity, that which is less united with one, is naturally loved less."



9. *S.T.* II-II.114.1 ad 2: “Every man is naturally every man's friend by a certain general love; even so it is written (Ecclus. xiii. 19) that ‘every beast loveth its like.’” *S.T.* I.60.4c: “Now it is evident that what is generically or specifically one with another, is the one according to nature. And so everything loves another which is one with it in species, with a natural affection, insofar as it loves its own species.”

10. For a treatment of the historical influences upon Aquinas's identification see Crowe (1977, especially page 80). Crowe notes therein that medieval identifications of the Golden Rule as a foundational moral norm reveal the influences of Matt. 7:12 and Tobit 4:15 (rather than upon the love obligations of Matt. 22:39) as well as the influences of St. Augustine, Anselm of Laon (d. 1117), Hugh of St. Victor (d. 1141) and the *Decretum* of Gratian (d. 1160). The opening words of the *Decretum* are as follows: “The human race is governed in two ways, by natural law and by custom. Natural law is what is contained in the law and the gospel, in virtue of which each is commanded to do to others as he would wish to be done to himself and is forbidden to do to another what he would not have done to himself.” (Citation from Crowe p. 80). Gratian's reduction of natural law to the Golden Rule was used by Aquinas to argue that Gratian did not intend to conflate the Gospel with natural law; (*S.T.* I-II.94.4 ad 1): “The meaning of the sentence quoted is not that whatever is contained in the Law and the Gospel belongs to the natural law, since they contain many things that are above nature; but that whatever belongs to the natural law is fully contained in them. Wherefore Gratian, after saying that ‘the natural law is what is contained in the Law and the Gospel,’ adds at once, by way of example, ‘by which everyone is commanded to do to others as he would be done by.’”

11. Cicero *De Officiis*, chapter six #27-8 (2005, 293-5): “And further, if Nature ordains that one man shall desire *to promote the interests of a fellow-man, whoever he may be, just because he is a fellow-man*, then it follows, in accordance with that same Nature, that there are interests that all men have in common. And, if this is true, we are subject to one and the same law of Nature; and, if this is also true, we are certainly *forbidden by Nature's law to wrong our neighbor*. . . . [Some] people contend in essence that they are bound to their fellow-citizens by no mutual obligations, social ties, or common interests. This attitude demolishes the whole structure of civil society. Others again who say regard should be had for the rights of fellow citizens, but not of foreigners, would destroy the universal brotherhood of mankind; and, when this is annihilated, kindness, generosity, goodness, and justice must utterly perish.” (emphasis mine)

12. Consider the following passages from *The Analects* (1996): 1.6: “The Master said, A young man's duty is to . . . to have kindly feelings towards everyone.” 4.25: “The Master said, Moral force (*te*) never dwells in solitude; it will always bring neighbors.”

13. Fung Yu-Lan (1948/1976: 71-2).

14. The key argument for this position is found in *S.T.* I-II.90.2c.

15. Aristotle, *Nicomachean Ethics* Bk IX, ch 8, 1169a11-1169b1.

16. Mary Ann Glendon (2001b, 12-14).

17. The democratic authority of political regimes dramatically differs from the ideas that political authority directly stems from God's authority and that earthly rulers had the right to wield the sword of the One who has authority over life and death. This divine "power of the sword" removes defense of the common good as a necessary condition for capital punishment and war; God's sword may kill for the sake of retribution and just punishment. The theology of the sword is heavily influenced by the Old Testament wherein killing is ordered by God. For instance, by God's command the first born of those holding the Jews captive were slain. The theology of the New Testament indicates, however, that the time for public authority to bear the sword is passing away. For although St. Paul affirms that public authority is given God's sword "to inflict wrath on the evildoer" (*Rom.* 13.4) and although Christ requested swords before leaving for the Garden of Gethsemani (*Luke* 22.36-8), Christ orders Peter to put the sword away (*John* 18:10; *Luke* 22:50). After all, Christ died so that the wicked could have life. That the ministry of the New Testament does not appoint any punishment of death or bodily maiming was recognized by Aquinas (*S.T.* II-II.64.4c). In addition, in *Evangelium Vitae* 9.3, John Paul II has argued that the story of Cain and Abel shows how God wishes the murderer to live and not suffer retributive punishment.

18. See R. Mary Hayden Lemmons (2006).

19. *S.T.* I-II.90.3c and ad 2. See chapter 17 on the law's coerciveness.

20. *S.T.* I-II.92.2 ad 3.

21. *S.T.* I-II.90.3c: "Now to order anything to the common good, belongs either to the whole people, or to someone who is the viceregent of the whole people. And therefore the making of a law belongs either to the whole people or to a public personage who has care of the whole people." *S.T.* I-II.92.2 ad 3: ". . . to punish pertains to none but the framer of the law, by whose authority the pain is inflicted."

22. Siobhan Nash-Marshall (2003). Also Michael Novak (1999: 153-4).

23. For a fuller discussion that considers the medieval treatment of heretics see above chapter 16.

## Conclusion

*“Love, compassion, and tolerance are necessities, not luxuries.  
Without them, humanity cannot survive” (Dalai Lama 2008, 2).*

Two questions have framed this book. What is the normative theory that best explains the indefeasibility that characterizes morality and law? Are the normative foundations of this theory also adequate for denouncing cruelty and establishing the basis for global morality and jurisprudence? This book answers that the natural law formulated by Aquinas in terms of practical reason and love not only lacks the intractable problems and weaknesses that characterize alternatives but also counters what would otherwise be lethal objections ranging, for instance, from Hume’s Is-Ought Fallacy, Mackie’s Error Theory, Nietzsche’s will to power, and moral diversity.<sup>1</sup> The resiliency of Thomist natural law arises, in part, from its identification of this life’s necessary end as the source of morality’s indefeasibility. As a result, indefeasibility characterizes only those specific proscriptions of what frustrates that end or those specific prescriptions of what’s indispensable for the end. This end, which Aristotle called eudaimonia and Aquinas called an imperfect form of happiness, consists in the good of acting well by according with the basic truths known by reason. To identify the morally necessary end with adherence to the basic truths known by reason is to identify moral necessity with practical rationality. For Aquinas, the demands of truth set the parameters of rationality, morality, virtue, and jurisprudence. To freely reject and act contrary to what one knows to be true is to freely embrace irrationality, immorality, and vice.

To accord with truth, moreover, is to pursue what is really good; it is to love neighbors as oneself and to love God above all—both in fact and according to

the natural law tradition as the appendix argues. Although these obligations of love are basic to Aquinas's natural law and to his specifically Christian morality, they need not be understood in terms of Christian charity or as otherwise presupposing Christian revelation. As a result, Thomistic natural law is fundamentally a personalist natural law. As such, it builds on the basic moral insight embedded in the Golden Rule and tacit within the world's cultures. In this way, personalist natural law is especially well-equipped to contribute to human flourishing and to the development of a more human world by providing a solid foundation for global morality and jurisprudence.<sup>2</sup>

Personalist natural law as formulated by Aquinas in terms of love and reinvigorated by Karol Wojtyła in terms of subjectivity and inalienable rights is also able to do the work of traditional natural law jurisprudence and specify the acts of the virtues as well as establish inalienable rights, the priority of religious liberty and the common good as well as the criteria for just wars and legal punishments.<sup>3</sup> For, the obligations of love require acting in accord with reason and forbid treating persons as mere instruments of political will—or, of satisfying one's own desires, no matter how worthy. The juridical entailments of personalist natural law thereby place the state at the service of persons and obligate the humane treatment of every human person as well as the protection of every natural right including that of religious liberty and political participation.

Besides these overarching theses, *Ultimate Normative Foundations: The Case for Aquinas's Personalist Natural Law* argues that practical reasoning can be unsound due to ignorance of particular goods and evils, overwhelming desires, malice, and the meaninglessness arising from undeserved suffering.<sup>4</sup> Of these, the last is the worst, since only meaninglessness denies practical reason a rationale for ordering acts in accord with truth and, thereby, threatens practical reason—and morality—with irrelevance. To counter meaninglessness, undeserved suffering needs to be identified as a personal challenge, or as redemptive, or as somehow relating one to divine compensation. To be meaningful, the evil of suffering must be outweighed by the good. Consequently, however the challenge of undeserved suffering can be met, it is best met when countered by the good personified in God in as much as some sorrows are so deep and awful that only God can remedy them. The best form of eudaimonism is thus theistic.<sup>5</sup> This does not mean, however, that knowing and loving God are pre-requisites for knowing that neighbors ought to be loved as oneself—or even for being motivated to so love in normal circumstances. Indeed, the precept of neighborly love captures the normative gist of the Golden Rule found in all cultures across the globe and throughout known history.

Finally, *Ultimate Normative Foundations: The Case for Aquinas's Personalist Natural Law* argues that since human beings are not only minds but

also hearts embodied in flesh, a flesh characterized by all the peculiarities of time and place, love fails if it remains merely abstract.<sup>6</sup> Good neighbors lend the helping hand to whomever can be reached. Love remedies needs, including the need to reaffirm individuality in the face of the mass culture being spread across the globe by the entertainment industries as well as by economic and political interdependencies.

The love obligated by personalist natural law accordingly excels in combining universal and indefeasible norms with contextual sensitivity, since it instantiates absolute norms according to time and place. Love can do no less. After all, love is not only attentive to the uniqueness of others, but also rejoices in that distinctiveness. It counts diversity as a gift. And it honors the peculiarities—and commonalities—of the human experience that are nothing other than the unimpaired expressions of a mind bent on truth and a heart bent on goodness. And this is the very best basis for a global jurisprudence and morality.

## Notes

1. Alternative groundings of natural law are evaluated in Part One, Aquinas's own grounding in Part Two, the resiliency of that ground in the face of interpretative objections in Part Three, key metaethical objections in Part Four, and the challenge of moral diversity primarily in Part Six.

2. See Part Six.

3. See Parts Five and Six. For a historical sketch of the natural law tradition see the appendix.

4. See chapters 12 and 15.

5. The key argument for theistic eudaimonism is found in chapter 12.

6. See Part Five for the specifications of love.

Love shall never fail  
Anew to make  
The bonds of life  
The bands of joy.

*Regeneration* (2002)

## ***Appendix:***

### **A Historical Sketch of Natural Law**

*Failure to know the history of natural law causes grievous errors, such as assuming that it is a Catholic idea or an ivory tower construction without real world impact. This sketch hopes to remedy such errors by identifying the diversity of its sources; by tracing its main lines of influence through the centuries, especially on international law; by identifying its key historical developments; and by noting some interesting facts. This sketch is meant to be a suggestive treatment of our heritage rather than a definitive exposition.*

Although it is not clear who coined the term “natural law,”<sup>1</sup> the link between morality and nature can be found in the cryptic, Presocratic sayings of Anaximander,<sup>2</sup> Heraclitus,<sup>3</sup> Sophocles,<sup>4</sup> and Pythagoras.<sup>5</sup> For the seminal Presocratic insight was that humans should live as nature dictates rather than by wanton desire. This natural law touchstone was systematically expounded and defended as the prescription of virtue that attains objective goods, fulfills human nature, and constitutes happiness according to Plato<sup>6</sup> and Aristotle.<sup>7</sup> The idea of natural law was further developed through arguments concerning the world’s *logos*, universal fraternity, and the jurisprudence of nature that were formulated by the Stoics<sup>8</sup> and by Cicero (106–43 B.C.). Cicero, moreover, not only identified the eternal natural law of the Stoics with divine right reason<sup>9</sup> and declared natural law to be “right reason in agreement with nature,”<sup>10</sup> but he also added a precept of charity.<sup>11</sup>

Natural law was then taken beyond the provinces of philosophy and jurisprudence into the law not only by the early Roman jurists, Gaius (fl. 180 A.D.) and Ulpian (170–228 A.D.), but also by Justinian, the Roman Emperor

who authorized the codification of Roman imperial law. Roman imperial law became a source of law for medieval Europeans. Indeed, until conquered by the Norman King Roger I in the eleventh century, southern Italy was ruled by Justinian's *Corpus Iuris Civilis*.<sup>12</sup> The rest of Europe retained some familiarity with Roman law either through Alaric's adaptation, in 506 A.D., of the Theodosian Code (called *Breviarium Alaricianum*), which was influential in southern France and northern Spain; through the less influential adaptation called *Lex Romana Burgundionum*; or through the Church's canon laws governing clerics.<sup>13</sup> Canon law was reinvigorated by the rediscovery of Justinian's *Digest* (the *Pandects*) at Monte Cassino around 1070 A.D.<sup>14</sup> In England, the natural law notions of equity and fairness underpinned the development of common law.<sup>15</sup>

Contact with Jewish and Christian believers led to natural law's appropriation of theology. Philo of Alexandria (c.20 B.C.–c.50 A.D.), for instance, united natural law with Mosaic law,<sup>16</sup> while St. Paul endorsed it in *Romans* 2:14 as God's law written on the heart. Centuries later, St. Augustine (354–430 A.D.) identified this law as God's eternal law prescribing not only that reason rule over the emotions,<sup>17</sup> but also that lesser things be subordinated to the more important ones<sup>18</sup> and loved appropriately.<sup>19</sup> In this way, peace—which is nothing other than the tranquillity of order<sup>20</sup>—can be pursued primarily through the love of God and neighbor in the eternal order<sup>21</sup> and through the Golden Rule in the temporal order.<sup>22</sup> Either way, “in temporal law there is nothing just and lawful which men have not derived from eternal law.”<sup>23</sup> Government, for instance, would involve an unjust violation of human equality if it were not derived from God's authority as a punishment for Original Sin.<sup>24</sup> Augustine also endorsed the natural law ideas of Cicero (and Scipio) that there is no justice without the recognition of rights and that a people is defined as a multitude unified by a “mutual recognition of rights and a mutual cooperation for the common good.”<sup>25</sup> Augustine's discussion of Cicero's ambiguous claim that war should be waged only for honor or safety<sup>26</sup> firmly established natural law's concern for developing criteria for proper conduct between nations. In sum, Augustine's theory of natural law perpetuated key elements of Greco-Roman natural law within the context of Christian theology.

At the dawn of the Middle Ages, four main currents can thus be identified as influential sources of natural law: the Greco-Roman philosophical tradition, the theological tradition shaped by Augustine, the canon law tradition of the Catholic Church, and the juridical traditions based on Roman imperial law. A fifth current, British common law, developed later.<sup>27</sup>

During most of the medieval period, natural law's European currents were especially murky. For instance, the great encyclopedist St. Isidore of Seville (570–636 A.D.), whose *Book of Etymologies* was the main conduit for Roman



imperial law, perpetuated the tension between the definitions of natural law and the positive laws found in the legal codes of various peoples or nations (*ius gentium*) given by Gaius (fl. 130–180 A.D.) and Ulpian (c.170–233 A.D.).<sup>28</sup> The Church's juridical traditions were likewise muddled by the commingling of the juridical tradition of ancient Rome with the Augustinian theological tradition as well as the Greco-Roman philosophical tradition. Moreover, these natural law currents were intermixed by the convoluted interrelations of popes, bishops, clergy, kings, and lay ministers.<sup>29</sup> These currents were further intertwined around 1140 A.D. when Gratian published his highly influential canon law textbook called the *Decretum*. The *Decretum* declared that “the natural law is that which is contained in the Law and the Gospel.”<sup>30</sup>

It took Saint Thomas Aquinas (1225–1274) to provide a systematic explication of natural law that clarified each of these currents and restored their distinctiveness. For instance, Aquinas distinguished natural law and Christian morality by identifying different types of laws<sup>31</sup> and by arguing that while Christian morality incorporates into itself the natural law<sup>32</sup> insofar as grace builds upon nature,<sup>33</sup> it is not reducible to the natural law: Christian morality is ruled by divine law.<sup>34</sup> In particular, he clarified the ambiguity in Gratian's aphorism: “The meaning of the sentence quoted [*the natural law is what is contained in the Law and the Gospel*] is not that whatever is contained in the Law and the Gospel belongs to natural law; but that whatever belongs to the natural law is fully contained in them” (*S.T.* I-II.94.4 ad 1).

Aquinas also clarified St. Augustine's identification of natural law with the eternal law in two steps. First, he defined the eternal law as God's providential plan (*S.T.* I-II.93.1), and the natural law as a participation in the eternal law (*S.T.* I-II.91.2c). Secondly, he argued that although the eternal law is per se unknowable to all but God and the saints in heaven,<sup>35</sup> it is known indirectly through its effects<sup>36</sup> whenever natural reason discerns “what is good and what is evil.”<sup>37</sup> Aquinas also argued, against Augustine, that government was not the penalty of sin but rather a requirement of the common good that gives meaning to the different gifts of individuals by facilitating the opportunity of the gifted to serve others (I.96.4c).

Besides clarifying the relationship between natural law and Christianity, Aquinas also clarified natural law's secular juridical stream by reconciling the tensions between the ancient Roman jurists Gaius<sup>38</sup> and Ulpian<sup>39</sup> on two issues. The first of these was whether natural law was properly understood as a dictate of natural reason as held by Gaius or as “what nature has taught all animals” as held by Ulpian. On this question, Aquinas adopted Gaius's definition without abandoning Ulpian's definition. Aquinas accommodated Ulpian by identifying “what nature has taught all animals” as one of the three generic natural inclinations basic to natural law (the other ones are the inclination to accord

with reason that is specific to human beings and the inclination for self-preservation that is common to all substances (i.e., self-preservation).<sup>40</sup>

The second issue that Aquinas clarified between these two jurists concerned whether the *ius gentium* (laws found in more than one nation, e.g., the prohibition of murder) was part of the natural law as Gaius affirmed and Ulpian denied. Central to Aquinas's resolution was his distinction between the primary and secondary dictates of reason: primary dictates concern what is naturally commensurate to human beings while secondary dictates concern further entailments.<sup>41</sup> This distinction enabled Aquinas to argue, in *S.T.* II-II.57.3, that while both types of dictates belong to natural law, they do not belong in the same way. So while Gaius is right that the *ius gentium* belongs to the natural law, Ulpian is partly right and wrong about the status of the *ius gentium*. Ulpian is right that its status is not the same as basic natural law precepts, but wrong to deny the status of natural law to the *ius gentium*.<sup>42</sup> Controlling this choice of Gaius over Ulpian was both the fact that different nations have the same laws<sup>43</sup> (e.g., the proscription of murder and the like) and the assumption that such commonalities were due to the dictates of natural reason (rather than to common misconceptions).<sup>44</sup> Aquinas thus identified the *ius gentium* as those human laws that fall under the natural law as necessary entailments of those natural law principles "without which men cannot live together," while also identifying those human laws that vary across nations as merely legal determinations of what is per se indifferent but conducive to a particular people's common weal.<sup>45</sup> In this way, Aquinas preserved the notion that all human law is grounded in natural law while also providing a way for the diversity of human law to avoid compromising its natural law foundations.<sup>46</sup> By so doing, Aquinas also preserved the natural law notion that justice or morality is a necessary condition for human law.<sup>47</sup>

In sum: Aquinas analyzed each of natural law's streams, clarified them, and systematized them in a way that enabled natural law to continue as the warrant for human law, universal morality, equity, and justice. Besides reorganizing natural law so that it need not sink under the musty confusions of its ancient childhood, Aquinas also contributed to natural law several notions—some of which have yet to be fully appreciated or developed: 1) all norms are ultimately based on the self-event *Bonum* Precept ("Good is to be done and pursued and evil is to be avoided")<sup>48</sup>; 2) the obligations to love neighbors and God are foundational norms<sup>49</sup>; 3) justice maintains interpersonal equality by proscribing harm and by prescribing that others by given their due good so that, for instance, debts are paid and gratitude is expressed for favors received<sup>50</sup>; 4) the obligatory goods and forbidden harms of natural law form the natural law content of the Decalogue<sup>51</sup>; 5) the objects of natural inclinations are natural rights as is the right to equality<sup>52</sup>; 6) rights are the objects of justice and as such

form the basis of law<sup>53</sup>; 7) “law is an ordinance of reason for the sake of the common good promulgated by one who is in charge of the community”<sup>54</sup>; 8) responsibility for the common good “belongs either to the whole people, or to someone who is the viceregent of the whole people”<sup>55</sup>; and 8) the common good is nothing other than the universal happiness that all seek.<sup>56</sup>

Soon after Aquinas’s death came the Paris Condemnation of 1277 that reinforced the Condemnation of 1270 and denounced Averroism while also casting suspicion on Aquinas’s teachings until his canonization in 1323. Instrumental in achieving this condemnation were the efforts of Henry of Ghent (c.1217–1293).<sup>57</sup> Henry rejected the psychology and metaethics of Aquinas and identified the will as the sole principle of freedom and obligation.<sup>58</sup> Law was thereby defined as the will of the lawmaker rather than as the requirements of loving God and neighbor. Thus was born a voluntarism that spanned centuries was born.<sup>59</sup> Concurring with Henry’s identification of command as the act of the will were John Duns Scotus (c1266–1308) and William Ockham (c1280–c1349). Scotus and Ockham sought to maximize God’s freedom by identifying His will as the source of law. But while Scotus argued that God could only dispense with the precepts of the Decalogue’s second table,<sup>60</sup> Ockham argued that God could dispense with the precepts from both tables because God’s freedom precluded any necessitation of morality by nature. Nevertheless, Ockham also argued that although God could have done otherwise, He commanded humans to obey what reason discerns of the natural law.<sup>61</sup> Ockham thus promoted the natural law theory that nature’s specifications become normative only through God’s command. Through the efforts of Scotus and Ockham, the version of natural law that I call divine prescriptivism was formulated and adopted into the natural law family.<sup>62</sup> Another outcome of Ockham’s emphasis on the importance of freedom was his identification of consent as the way to base government and human law on natural law.<sup>63</sup>

The discovery of the New World brought Thomistic natural law into prominence as the Spanish Thomist Francisco de Vitoria (1485–1546) used its just war theory to argue that Native Americans were not to be fodder for Spanish greed.<sup>64</sup> Shortly after Vitoria came the Italian Thomist Robert Bellarmine, S.J. (1542–1621). Bellarmine achieved renown by teaching in Louvain during 1569 to 1576. His book on civil government *De Laicis* influenced Thomas Jefferson,<sup>65</sup> the primary drafter of the American Declaration of Independence.<sup>66</sup> Thomist natural law also greatly influenced Francisco Suarez (1548–1617) and Richard Hooker (1554–1600). Suarez, however, was also deeply influenced by William Ockham. As a result, although Suarez rejected Ockham’s nominalism and voluntarism, he accepted Ockham’s identification of God’s command as that which makes the pursuit of good obligatory.<sup>67</sup> For Suarez, nature describes and God commands. Suarez, in turn,

influenced the Protestant Hugo Grotius (1583–1645).<sup>68</sup>

Grotius is known as the father of international law as well as for being the one who launched the secularization of natural law by characterizing natural law precepts as self-evident even if there were no God.<sup>69</sup> Grotius also held that the age of Abraham was the historical period in which the natural law fully functioned,<sup>70</sup> that the right of revenge or punishment was an original natural right,<sup>71</sup> and that “political authority had a certain competence to determine matters pertaining to the supernatural order.”<sup>72</sup> According to A. P. D’Entrèves (1970, 55), Grotius is also the one who bequeathed to the modern world an axiomatic and rationalistic understanding of natural law as based solely on “clarity, self-evidence, and coherence.”<sup>73</sup> No need for experience, no need for theology, and no need for God: the rights of man would suffice for the specification of natural laws.<sup>74</sup> Associated with this rationalism is an atomistic individualism that can only justify social organizations as well as legal and political obligations through the social contract.<sup>75</sup> The purpose of this contract was to safeguard natural rights<sup>76</sup>—that is, “the individual in the possession of what belongs to him.”<sup>77</sup>

During this century, Thomas Hobbes (1588–1679) broke with the classical and Thomistic tradition of natural law by replacing freedom’s teleology toward the good with a teleology of desire-satisfaction. Hobbes accordingly argued that the desire for self-preservation was the fundamental right and that the right of self-preservation warrants unrestricted liberties even to “another’s body.”<sup>78</sup> Rights were thereby identified as unlimited liberties—or licenses. This conception of rights made law—not the guarantor of liberty—but liberty’s constraint. As put by Hobbes, law and rights to “differ as much as Obligation and Liberty.”<sup>79</sup>

Natural law thereby obligates one to seek peace as the way to attain self-preservation, while also holding that peace requires an irrevocable social contract whereby one surrenders all but the right to self-preservation. Hobbes thus identified only the right to self-preservation as inalienable. In this way, Hobbes identified the irrevocable social contract, the supremacy of government, and the conventional establishment of morality as dictates of natural law. Yet, even within this context of eviscerating classical natural law, Hobbes argued that the natural law was “contained in this one Sentence, approved by all the world, ‘Do not that to another, which thou thinkest unreasonable to be done by another to thy selfe (sic).’”<sup>80</sup>

Although Hobbes never ceased being somewhat influential,<sup>81</sup> his thought was soon countered by Samuel Pufendorf (1632–1694).<sup>82</sup> Pufendorf reintroduced Stoic ideas to the natural law tradition<sup>83</sup> and argued that sociability as well as self-love were basic to human nature.<sup>84</sup> Pufendorf also argued that natural law allowed the right to form societies.<sup>85</sup> Pufendorf influenced John

Locke (1632–1704) as well as the American revolutionists.<sup>86</sup> Locke supported the classical views that freedom's teleology is toward the good, that inalienable rights exist, and that the social contract is conditioned on protecting and advancing nature's goods. Locke also held that sovereigns are in a state of nature ruled by natural law. Locke's natural law theory has long been heralded as one of the touchstones of the American revolution.<sup>87</sup>

Besides Pufendorf, Locke was influenced by Richard Hooker (1554–1600). Hooker emphasized that the love of God and neighbor were principles of natural law and that neighborly love is based on natural equality.<sup>88</sup> Hooker was studied not only by Locke but also by William Blackstone (1723–1780). Blackstone's influence on America's founding fathers may have been as significant as Locke's, since his *Commentaries on the Laws of England* were wildly popular. His first edition, "published in Philadelphia between 1771–72, sold out its first printing of 1,400 and a second edition soon appeared."<sup>89</sup> The *Commentaries* were designed to teach common law to beginners and rapidly became the definitive text for generations of aspiring lawyers; even Abraham Lincoln would depend on it.<sup>90</sup> The *Commentaries* cited Plato, Cicero, and Grotius while explicitly distancing British common law from Justinian's imperial Roman law that was imported into England by William the Conqueror.<sup>91</sup> More importantly, the *Commentaries* characterized human law not only as necessitated by the need to live in society but also as subordinated to natural law and divine law.<sup>92</sup> Natural law was thereby deemed to be the warrant not only for British common law but also for those legal systems inspired by British law—including America's.

In addition to Blackstone, American lawyers and jurists were familiar with his predecessor, the eminent jurist, Sir Edward Coke (1552–1634).<sup>93</sup> Coke, like Blackstone, considered natural equity and the natural law to be the basis of human law. But unlike Blackstone, Coke held that Parliament was not supreme: Parliament, for instance, could not violate the common law principle "that no man should be a judge in his own case."<sup>94</sup>

The classical tradition of natural law was influential within colonial America not only through these lines of influence but also through the popular method of teaching schoolboys Latin through the texts of Cicero. In addition, colonists were familiar with the natural law perspectives of those who headed various ecclesial covenant communities, such as Thomas Hooker (1586–1647), and especially Roger Williams (1603–1684).<sup>95</sup> Williams "introduced into American thought not only toleration but an effective application of the idea of the separation of Church and State."<sup>96</sup> Also influential was the Congregationist John Wise (1652–1725). In a pamphlet well-known at the time,<sup>97</sup> Wise used Pufendorf's natural law "in order to prove that natural law is on the side of existing democratic form of government in the New England Churches."<sup>98</sup> In

his argument, Wise used the sociableness of human nature to establish a natural concern for the common good that makes it possible to enter into civil unions.<sup>99</sup>

The ability of natural law to place—through its inalienable, natural rights—parameters on the state became a touchstone of America’s political philosophy.<sup>100</sup> Natural law then became the fundamental law embodied in written constitutions.<sup>101</sup> As a result, Americans “regarded written constitutions as embodying moral values derived from natural law.”<sup>102</sup> And, the *Declaration of Independence* and the *Constitution of the United States* became invaluable precedents that then not only helped fuel the French Revolution of 1789,<sup>103</sup> but also helped develop the various regulations governing conduct in war—as shown, less than a hundred years later, by the code drafted primarily by Francis Lieber (1800–1872) and promulgated by Abraham Lincoln.<sup>104</sup> The Lieber Code self-consciously appealed to natural law to adjudicate the conduct of clashing armies,<sup>105</sup> to proclaim human equality—even for fugitive slaves,<sup>106</sup> and to prescribe humanitarian considerations in the treatment of prisoners and others.<sup>107</sup> The Lieber Code then influenced the 1868 Declaration of St. Petersburg, which proscribed “the employment of harms which uselessly aggravate the sufferings of disabled men, or render their death inevitable, . . . [including explosive or fulminating or inflammable projectiles of less than 400 grams].”<sup>108</sup> Six years later came the 1874 Brussels Declaration (which denied an unlimited right to injure the enemy, forbade attacking or bombing open and undefended towns or “agglomerations of houses,” and required the humane treatment of prisoners).<sup>109</sup> To this chain of influence can be added the 1899 and 1907 Conventions of The Hague Peace Conferences<sup>110</sup>; the 1925 Geneva Protocol; the 1929 and 1949 Geneva Conventions; the 1945 *Nuremberg Charter of the International Military Tribunal*; the Genocide Convention of 1948<sup>111</sup>; the United Nations’ 1948 *Declaration of Human Rights*<sup>112</sup>; *The International Covenant on Civil and Political Rights*; and *The International Covenant on Economic, Social and Cultural Rights*. These international laws, treaties, and conventions—along with its crucial role in the American Civil Rights movement<sup>113</sup>—established the high water mark of natural law influence and showed that the consciences of many were formed through its condemnations of racial discrimination, crimes against humanity, the killing of innocents, unjust wars, and tyrannies.

Paradoxically, as natural law’s influence within international law grew during the last two centuries, it gradually faded within the academy. The reasons are complex and numerous, but five overarching reasons can be identified. *One* of these was the rise of atheism. Atheism particularly undercut those versions of natural law with which most eighteenth and nineteenth century Americans were familiar, namely, those resting obligatoriness on God’s authority (I have identified these as forms of “divine prescriptivism”<sup>114</sup>). The

*second* overarching cause of natural law's gradual decline in the academy was the forcefulness of various objections, especially those of David Hume.<sup>115</sup> A *third* overarching cause was the Enlightenment's endorsement of Cartesian anthropology over Thomistic anthropology. Descartes defined humans as thinking beings, while Aquinas, following Aristotle, defined humans as rational animals, that is, as rational beings with mental lives complicated by desires, feelings of all kinds, sense judgments, habits, and the will's pride. This Thomistic anthropology was updated by Karol Wojtyła to include the subconscious.<sup>116</sup> The Enlightenment thus saw humans as simply rational beings, rather than as primarily rational beings. As a result, neither the Enlightenment confidence in human rationality nor its natural laws were able to withstand the post-Enlightenment anthropologies mounted, for instance, by the Freudians who argue that the subconscious plays a critical role in behavior, and by the evolutionists who argue that all behavior is a function of genetics and natural selection. WWI also played a role in dethroning reason. The success of wartime propaganda inveighed against the notion of universal rationality<sup>117</sup>; and, an intelligence test widely given to soldiers showed such variations as to undermine the conviction that rationality is the basis of equality.<sup>118</sup> A *fourth* overarching cause was the rise of positivism and its basic assertion that what cannot be sensed—either directly or through experimentation—cannot be true. Positivism changed basic assumptions in science, law and philosophy. In science, positivism led to the widespread adoption of a scientific materialism that seeks to explain all—even moral obligations and religious beliefs—according to what can be known through the scientific method.<sup>119</sup> In law, legal positivism sought to be descriptive rather than normative and attempted to sever its relationship with morality. In philosophy, logical positivism denigrated the study of both metaphysics and ethics while undercutting confidence that reason can discover truth. A *fifth* overarching cause was the spread of utilitarianism. Established in the eighteenth century by Jeremy Bentham (1748–1832), reformulated in the nineteenth century by John Stewart Mill (1806–1873) and in the twentieth century primarily by Peter Singer (1946–), utilitarianism defines good and evil in terms of pleasure and pain, while holding that rights and law express merely the liberty interests of the majority, rather than the objective goods and the inalienable rights of naturally equal human beings.<sup>120</sup>

The decline of interest in natural law among academics has corresponded to a decline in overall popularity among the general public during the last century. For, during the twentieth century, the general public—seduced by the Sexual Revolution, no-fault divorce, contraceptives, and legalized abortion—became sexually licentious and increasingly considered natural law's absolutes to be uncaring and its certitudes unobtainable. The sea change in

sexual mores also led to a widespread adoption of the Hobbesian notion of liberty as unfettered desire and the rejection of the Lockean notion of liberty as channeling goodness according to the truth. As a result, voluntarist liberty trumped rationalist liberty and cast natural law with its presumption of rationalist liberty into a negative light.

At the present time, it is unclear whether natural law will remain so unpopular. There are signs that the public is beginning to tire of the damage done to the social fabric, and to themselves, by the sexual and economic libertines able to outwit human law or to bend it to their selfish purposes. Broken hearts and impoverished children, after all, demand attention. Or, as argued by J. Budziszewski (2009, 16), the consequences of violating the natural law cannot be avoided: “Those who cut themselves bleed. Those who betray their friends are betrayed by their friends. Those who abandon their children have no one to comfort them when they are old. Those who travel from bed to bed lose the capacity for intimacy and trust.” Indeed, apart from the natural moral law, we become each other’s enemy—as Thomas Hobbes once noted<sup>121</sup> and as our experience of twenty-first century terrorism confirms. For these reasons, the public is awakening not only to the need to uphold the dignity and rights of every human being, but also for the need to develop a transcultural, global morality, and jurisprudence based on objective values. Only such values provide a basis for unmasking the rationalizations of the powerful and for identifying what is truly good for all. Thus, as globalization increases the might of the elite, the need for the natural moral law also increases.

There are likewise signs of a natural law revival within the academy. Late in the twentieth century, serious attention began to be paid to the arguments of the natural lawyers led by John Finnis, Robert George, and Russell Hittinger.<sup>122</sup> Scholars and jurists now debate the relevance of natural law,<sup>123</sup> and whether judicial decisions should take account of the Constitution’s original natural law context as shaped by the eighteenth century.<sup>124</sup> Academics, moreover, are increasingly aware that natural law cannot be rejected without rejecting objective truths and values and these cannot be rejected without rejecting reason itself. As put by J. Budziszewski (2009, 20): “The dishonest intellect, at some level aware of having committed the sin against the truth, attempts to make up for its transgression by mortifying itself; ultimately it denies that there is such a thing as the truth, or at least that truth can be known.” Whether mortification—or a rationalization desperately seeking to restore consistency among one’s beliefs—explains the rejection of truth, the academy perishes without truth. For where truth is impossible, study is futile which makes higher education nothing more than a tool for indoctrination and self-aggrandizement. The Academy’s need for objectivity is beginning to reverse some of the conditions that facilitated natural law’s fall from favor; for example, atheism



seems to be waning as academic interest in the philosophy of religion continues to grow.

Theological interest in natural law is also growing.<sup>125</sup> Protestant theologians, as exemplified for instance by Stephen Grabill, Jr. (2006),<sup>126</sup> are reconsidering natural law as are Jewish theologians, e.g., David Novak (1998). Among Catholics, reconsideration was led by Pope John Paul II.<sup>127</sup> He sought to revitalize Thomistic natural law not only by casting it in terms of the obligation to love and the Personalistic Norm,<sup>128</sup> but also by casting love in terms of affirming the value of the person,<sup>129</sup> through respecting the inviolability of free will,<sup>130</sup> inalienable rights,<sup>131</sup> human equality,<sup>132</sup> and democratic participation.<sup>133</sup> Since love enables one to be good and do good, it is through love that one becomes a good person and achieves self-transcendence and self-fulfillment. By emphasizing this personalist character of natural law, John Paul II breathed new life into natural law and reunited contemporary natural law with the foundations identified by Samuel Pufendorf, Richard Hooker, Cicero and Aquinas as fellowship or neighborly love. History will now determine if this personalist version of natural law becomes influential in the future.

## Notes

1. John W. Martens, citing Helmut Koester, notes that, prior to Cicero and Philo of Alexandria, the term appears only six times (2003, 14).

2. "The Milesian philosopher Anaximander (610–547 B.C.) portrayed nature itself as accomplishing moral purposes as it evolves, achieving 'justice' (*dike*) by finally compensating for excesses or deficiencies in the operations of individual beings" (Kainz 2004, 1).

3. Heraclitus (fl. 500 B.C.) taught that logos rules all and that humans should live accordingly (Joseph Owens, C.Ss.R. 1959, 44–5).

4. Sophocles, *Antigone*, 442 B.C. [trans. R. C. Jebb. Internet Classics Archive (<http://classics.mit.edu/Sophocles/antigone.htm>; accessed October 23, 2010)]: "Yes; for it was not Zeus that had published me that edict; not such are the laws set among men by the justice who dwells with the gods below; nor deemed I that thy decrees were of such force, that a mortal could override the unwritten and unfailing statutes of heaven. For their life is not of to-day or yesterday, but from all time, and no man knows when they were first put forth." The influence of *Antigone* cannot be underestimated given that Aristotle cites it in his *Rhetoric* Bk. 1, ch. 13, 1373b6–11: "Universal law is the law of nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocle's *Antigone* clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature" (1941b, 1370).

5. According to Robert S. Brumbaugh, “The Pythagorean Order . . . [held] the ethical ideal of the good life as one in harmony with the order of the universe” (1981, 39).

6. In the *Republic* Book One, 351a–354a (1930), Plato argues that justice is its own reward because it orders the human psyche in such a way as to maximize performance and living well, that is to say, happily. Consider #351d: “For factions, Thrasymachus are the outcome of injustice, and hatreds and internecine conflicts, but justice brings oneness of mind and love.” #352a: “And is it not apparent that [injustice] . . . is such that wherever it is found . . . it first renders the thing incapable of co-operation with itself . . . In the individual too, I presume, its presence will . . . make him incapable of accomplishing anything.” #353e: “Will the soul ever accomplish its own work well if deprived of its own virtue, or is this impossible? It is impossible. Of necessity, then, a bad soul will govern and manage things badly while the good soul will in all these things do well. . . . And did we not agree that the excellence or virtue of soul is justice and its defect injustice? Yes, we did. The just soul and the just man then will live well and the unjust ill . . . But furthermore, he who lives well is blessed and happy.”

7. Aristotle, *N.E.* Bk. 10, ch. 6, 1176a30: “happiness . . . is what we state the end of human nature to be.” At ch. 7, 1177a 13: “If happiness is activity in accordance with virtue, it is reasonable that it should be in accordance with the highest virtue; and this will be that of the best thing in us” (1941a). In other words, since happiness is the action that fulfills the best part of us, it is virtue. Perfect happiness is contemplative (1178b7); secondarily, it is moral virtue (1178a8).

8. See, for instance, Chrysippus: “The natural law is king over everything, divine and human alike. It must be the authority that determines what is good and what is evil, the leader of men destined to live in communities; it lays down standards for right and wrong, and it does so by commanding what is to be done and forbidding what is not to be done” (Crowe 1977, 34).

9. Crowe (1977, 38).

10. Pope (2005, 41), citing Cicero, *De Re publica* 3.22.

11. *De Officiis*, Book One, Ch. VII, n.22–3 (2005, 23–5): “But, since, as Plato has admirably expressed it, we are not born for ourselves alone, . . . and since, as the Stoics hold, everything that the earth produces is created for man’s use; and as men, too, are born . . . to mutually help one another; in this direction we ought to follow Nature as our guide, to contribute to the general good by an interchange of acts of kindness, by giving and receiving, and thus by our skill, our industry, and our talents to cement human society more closely together, man to man.”

12. Paul Vinogradoff (1929, 16-7, 28).

13. Vinogradoff (1929, 16-7, 28).

14. H. R. Loyn (1989, 205).

15. William Blackstone, “On the Study of the Law,” *Commentaries on the Laws of England*, §1 Introduction (2010).

16. John W. Martens (2003).

17. Augustine, *On Free Choice of the Will*, Bk. 1, ch. 8, n. 65 (1964b, 18–9).

18. Augustine, *On Free Choice of the Will*, Bk. 3, ch. 5, n.61, (1964b, 100). The subordination of the lesser to the greater is as key to Augustine’s understanding of morality as it is to Aquinas’s understanding that love is caused by a being’s degree of goodness so that beings with less perfection are loved less than beings with greater perfection (plants are accordingly loved less than humans). Proportional love is discussed at great length in chapters 2, 3, and 4.

19. *Contra Faustum* XXII, 74–9. Quotation from Henry Paolucci (1962b, 170): “[I]njustice is seen in every case where a man loves for their own sake things which are desirable only as means to an end, and seeks for the sake of something else things which ought to be loved for themselves. For thus, as far as he can, he disturbs in himself the natural order which the eternal law requires us to observe.” Thus, (171): “sinful actions . . . are sinful because they are against nature.”

20. *City of God* XIX, ch 13 (1964a, 456). Also see *Contra Faustum* XXII, 75 in Paolucci (1962b, 163): “[T]he natural order . . . seeks the peace of mankind.”

21. *City of God* XIX ch. 14. (1964a, 460).

22. *Enarr. In Ps. LVII* [Lat.], 1-2: “Inasmuch as the hand of our Maker in our very hearts hath written this truth, *That which to thyself thou wouldest not have done, do not thou to another*. Of this truth, even before that the Law was given, no one was suffered to be ignorant, in order that there might be some rule whereby might be judged even those to Law had not been given” (Paolucci 1962c, 153-4).

23. Augustine, *On Free Choice of the Will*, Bk. 1, ch. 6, n. 50 (1964b, 14).

24. Kaye and Thomson (2001, 74–7).

25. *City of God* XIX, ch. 21 (1964a, 468–9).

26. *City of God* XXII, ch. 6 (1962a, 162–70).

27. Two of the events seminal in the development of British common law were the ninth century codification of common law by the Christian Anglo-Saxon King Alfred and the signing of the Magna Carter in 1215.

28. Crowe (1977, 68).

29. Some of these convoluted practices involved lay investiture, which was not ended in Europe until the thirteenth century. See Marshall W. Baldwin (1953), Brian Tierney (1964), Gerd Tellenbach (1959), Sidney Z. Ehler, and John B. Morrall (1954). Another practice involved interdict (Boudinhon 1910).

30. *Decretals* (Dist. I) citation from *S.T. I-II.94* objection one.

31. *S.T. I-II.91.1-6*.

32. This integration of natural law into Christian morality is explained primarily in *S.T. I-II.100.1-12*. In article one, Aquinas argues that the Decalogue consists of judicial, ceremonial, and moral precepts and that moral precepts are such from their relation to reason. In article ten, he argues that although a natural law precept is not violated if it is fulfilled when one lacks charity, one must have charity in order to fulfill the divine precepts of charity: “Wherefore he that honors his father, yet has not charity, does not break this precept: although he does break the precept concerning the act of charity.” In article twelve, Aquinas argues that fulfilling natural law precepts does not

justify man before God because this requires the infused virtue . . . caused by God Himself through His grace.

33. The key text wherein Aquinas reconciles the classical natural law tradition with the demands of Catholic morality is *S.T. I-II.100.3 ad 1*. In this text, Aquinas identifies natural law's primary precepts with the foundational precepts of Christian morality. This identification of the obligations to love God and neighbor as foundational in two different orders is only possible due to the ability of the terms "love," "God," and "neighbor" to have analogous meanings that differentiate the two orders without equivocation. The gist of the difference is that natural love does not will good to God nor neighbor for the sake of divine friendship, since divine friendship is only possible through the Christian virtue of charity bestowed through sanctifying grace (Lemmons 1992a; Hayden 1988). These differences are discussed above in chapter 10.

34. *S.T. I-II.91.4c*: "Besides the natural and the human law, it was necessary for the directing of human conduct to have a Divine law . . . [I]f man were ordained to no other end than that which is proportionate to this natural faculty, there would be no need for man to have any further direction on the part of his reason, besides the natural law and human law which is derived from it." Differences between natural law and Christian morality receive extensive attention in chapter 10.

35. *S.T. I-II.93.2c*: "[N]o one can know the eternal law, as it is in itself, except the blessed who see God in His Essence."

36. *S.T. I-II.93.2*.

37. *S.T. I-II.91.2c*: "[T]he light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine Light. It is therefore evident that the natural law is nothing else than the rational creature's participation of the eternal law."

38. Gaius wrote commentaries on Roman law around 180 A.D. wherein he noted that although laws were generally particularized to localities, some laws were common to diverse cultures. He called those universal laws the *ius gentium* and held that they were warranted by the dictates of natural reason. See *Institutionum Iuris Civilis Commentarii Quattuor [Elements of the Roman Law]* n. 1 (1890, 25): "The laws of every people governed by statutes and customs are partly peculiar to itself, partly common to all mankind. The rules enacted by a given state for its own members are peculiar to itself, and are called civil law [*ius civile*]; the rules prescribed by natural reason [*naturalis ratio*] for all are observed by all nations alike, and are called gentile law [*ius gentium*]." Thus for Gaius the dictates of natural reason are legally enforceable. Herein lies the natural law foundation of International Law.

39. Ulpian rejected Gaius's two-fold division of law into civil and natural (*ius gentium*) in favor of a tripartite division: civil law; *ius gentium* as "those rules prescribed by natural reason for all men are observed by all peoples alike" dealing with war, slavery, and contracts; and natural law as "that which nature has taught all animals" such as "the union of male and female, which we call marriage; hence the procreation and rearing of children, for this is a law in the knowledge of which we see even the lower animals taking pleasures" (*Institutes of Justinian* Bk. 1, # 1-2; 1889, 4). It should be noted that Ulpian identified slavery as a specification of the *ius gentium* due to war that is "contrary to the law of nature; for by the law of nature all men from

the beginning were born free" (*Institutes of Justinian* Bk. 1, #. 1–2; 1889, 4). For a detailed explication of the controversies caused by this tripartite division of law see the magisterial tome of Michael Bertram Crowe (1977).

40. *S.T.* I-II.94.2c.

41. *S.T.* II-II.57.3c. Also see *S.T.* I-II.94.4 for a discussion of the differences between universal and particular norms.

42. *S.T.* II-II.57.3 and *S.T.* I-II.95.4 ad 1.

43. In *S.T.* I-II.95.4, Aquinas cites Isidore as being correct when he writes that the *ius gentium* is common to most and that the "natural law is that which is common to all nations."

44. It is unfortunate that Aquinas used this distinction between primary and secondary principles of natural law to affirm, in *S.T.* II-II.57.3 ad 2, the natural law status of the *ius gentium* regarding slavery. On the other hand, it is fortunate that this distinction between the primary and secondary precepts of natural law provides Aquinas's natural law with the ability not only to evolve but to adapt to circumstances without compromising the universality of basic principles. Hence, centuries later, according to John Killoran (1987, 87–101), the Thomist Francisco de Vitoria was able to use Aquinas's own principles to denounce slavery.

45. *S.T.* I-II.95.4c.

46. In *S.T.* I-II.95.2c, Aquinas explains that every human law is derived from the natural law either by deduction or by determinations. Laws determining what is per se morally indifferent "have no other force than that of human law." *S.T.* I-II.95.2 ad 3: "The general principles of natural law cannot be applied to all men in the same way on account of the great variety of human affairs: and hence arises the diversity of positive laws among various people." The challenge of moral diversity across cultures is extensively discussed below in chapter 18.

47. *S.T.* I-II.95.2c: "I answer that, as Augustine says (*De Lib. Arb.* I.5) *that which is not just seems to be no law at all*: wherefore the force of a law depends on the extent of its justice. Now in human affairs a thing is said to be just, from being right, according to the rule of reason. But the first rule of reason is the law of nature, . . . Consequently every human law has just so much of the nature of law as it is derived from the law of nature. But if in any point, it deflects from the law of nature, it is no longer a law but a perversion of law." Also see *S.T.* I-II.96.4c: "Laws framed by man are either just or unjust. If they be just, they have the power of binding in conscience . . . Now laws are said to be just, both from the end, when, to wit, they are ordained to the common good, —and from their author, that is to say, when the law that is made does not exceed the power of the lawgiver, —and from their form, when, to wit, burdens are laid on the subjects, according to an equality of proportion and with a view to the common good. . . . On the other hand, laws may be unjust in two ways: first, by being contrary to human good . . . Wherefore such laws do not bind in conscience, except perhaps to avoid scandal or disturbance, for which cause a man should even yield his right, according to *Matth.* V. 40, 41: If a man . . . take away thy coat, let go thy cloak also unto him . . . Secondly, laws may be unjust through being opposed to the Divine Good: such are the laws of tyrants inducing to idolatry . . . and laws of this kind

must nowise be observed, because, as stated in *Acts* v. 29, *we ought to obey God rather than men.*”

48. *S.T.* I-II.94.2c.

49. *S.T.* I-II.100.3 ad 1.

50. *S.T.* II-II.79.1c.: [Doing good and declining from evil] are said to be quasi-integral parts of general or of special justice, because each is required for the perfect act of justice. For it belongs to justice to establish equality in our relations with others, as shown above (Q. 58, A.2): and it pertains to the same cause to establish and to preserve that which it has established. Now a person establishes the equality of justice by doing good, i.e., by rendering to another his due: and he preserves the already established equality of justice by declining from evil that is by inflicting no injury on his neighbor.”

51. *S.T.* I-II.100.1, 3, 11.

52. This point is primarily argued in chapter 15. The gist of this argument is that the naturally commensurate identify both the objects of natural inclinations (*S.T.* I-II.94.2) and natural rights (*S.T.* I-II.57.1-2).

53. *S.T.* II-II.57.1-2; 58.1; 79.1.

54. *S.T.* I-II.90.4c.

55. *S.T.* I-II.90.3c.

56. *S.T.* I-II.90.2c.

57. Thomas E. Davitt, S.J. (1951, 9-10).

58. Thomas E. Davitt, S.J. (1951, 12-23).

59. Thomas E. Davitt, S.J. (1951) argued that natural law can be divided into two camps depending on whether law is considered to be an act of reason or will. Into the first camp, he placed Albert the Great, Thomas Aquinas, Thomas de Vio (Cajetan), Dominic Soto, Bartholomew Medina and Robert Bellarmine. Into the second camp, he placed Henry of Ghent, John Duns Scotus, William Ockham, Gabriel Biel, Alphonse de Castro and Francis Suarez.

60. Thomas Osborne (2005, 188).

61. Sigmund (1971, 56). Sigmund noted that Ockham did not base his natural law theory on his voluntarism and his nominalistic metaphysics.

62. Divine prescriptivism was extensively discussed in chapter 2.

63. Sigmund (1971, 56). In this way, Ockham highlights an aspect of Thomistic natural law, namely, that law is the responsibility either of the “whole people or to a public personage who has care of the whole people” (*S.T.* I-II.90.3c).

64. “[I]t is clear that we may not turn our sword against those who do us no harm, the killing of the innocent being forbidden by natural law. . . . The basis of a just war is wrong done. But wrong is not done by an innocent person. Therefore war may not be employed against him.” Citation from Leon Friedman (1972: 12-3). For a learned discussion of Vitoria’s use of the Thomistic natural law tradition to protect the

American Indian see Brian Tierney (1997, 265-272). Also see John B. Killoran (1987).

65. Fulton J. Sheen (1940, 171) notes that Thomas Jefferson had scored only one passage in *Patriarcha*, a book by Robert Filmer, namely, this quotation from Cardinal Bellarmine's *De Laicis*: "Secular or civil power is instituted by man; it is in the people unless they bestow it on a prince. . . . Power is given by the multitude to one man, or to more by the same law of nature. . . . It depends upon the consent of the multitude to ordain over themselves a king, or consul, or other magistrates." Compare with the Declaration of Independence: "governments are instituted among men, deriving their just powers from the consent of the governed." Also see John C. Rager (1930).

66. See Pauline Maier (1997, 99-105) for the history behind the drafting of this document.

67. Suarezian natural law was extensively treated in chapter 2.

68. Hugo Grotius (1583-1645) was a natural lawyer and heavily influenced by Suarez as can be seen by his three volume masterpiece, *The Rights of War and Peace* (1625). Also see A. H. Chroust (1943, 101-133); and, Charles Edwards (1970, 784-807).

69. A. P. D'Entrèves (1970, 54-55). Grotius was not interested in secularizing natural law: he made his counterfactual claim of natural law's secular validity as a way to reject nominalistic voluntarism and to support the position of Thomas Aquinas and Suarez according to Charles Edwards (1970, 784-807). Moreover, Grotius was not the first to suggest the possibility of a secular natural law: Gabriel Biel (1425-95) made it before him by writing that "even if, which is impossible, God did not exist . . . if anyone acted against right reason . . . he would still sin" (Sigmund: 1971, 59; citation omitted). For an exegesis of Biel's natural law in light of contemporary metaethics see Kevin McDonnell (1987). Another natural law theorist who suggested the natural law would hold even if there were no God was Gregory of Rimini in his *On the Sentences*, Bk. 11, d. 34, q. 1 a. 2, according to E. B. F. Midgley (1975, 477 note 26).

70. E. B. F. Midgley (1975, 144).

71. E. B. F. Midgley (1975, 155, 160-163). According to Midgley (163), sovereigns do not surrender their right to punish when they enter into the social contract, while subjects do.

72. E. B. F. Midgley (1975, 143).

73. This strain of natural law succumbs to various difficulties, most notably, the inability of particular rules to cover all situations. Perhaps, William Sweet (2000, 224) put it best, "We cannot, as the Enlightenment approach suggests we can, take account of all values and find a set of rules that can help us to prioritize these values while at the same time recognizing them for what they are and giving them their moral weight. Moreover, a 'rationalistic' procedure based on the mere following of certain rules fails short; what we need instead is the development of skill in judgment—something suggested by Aristotle's model of the practically wise person, the *phronimos*. Here, reason leaves room for the notion of 'insight.'"

74. See Pope (2005, 46).

75. A. P. D'Entrèves (1970, 62). It is difficult to identify the ultimate inspiration for the social contract theory. For instance, although Thomas Hobbes relied upon it in his *Leviathan* (1651), the Mayflower Compact had already brought it to the New World in 1620. And long before that real world implementation was the democracy of ancient Athens.

76. A. P. D'Entrèves (1970, 62).

77. E. B. F. Midgley (1975, 159).

78. Thomas Hobbes, *Leviathan*. Part One, chapter 14, (1985, 189-90).

79. Thomas Hobbes (1985, 189).

80. *Ibid.*, Part Two, chapter 26, p. 318.

81. Hobbes, for instance, influenced Jean-Jacques Rousseau (1717-1778). Rousseau (1966, 16) in chapter Eight for instance, writes, “. . . we must clearly distinguish natural liberty, which is bounded on the strength of the individual, from civil liberty, which is limited by the general will.”

82. D'Entrèves (1951, 52).

83. E.B.F. Midgley (155).

84. Sigmund (1971, 81). Cf Pope (2005, 47): “Pufendorf believed nature to be fundamentally egoistic . . . natural law ethics combats the utter amorality of nature.”

85. Francis Wilson (1949, 43).

86. Sigmund (1971, 81). Along with Pufendorf's *De Jure Naturae et Gentium* (1672) and Grotius's *De Jure Belli ac Pacis* (1625), Americans were familiar with Burlamaqui's *Principes du droit naturel* (1748), especially after it was translated in 1752 (Benjamin Wright 1962, 7-8).

87. For a concise explication of Locke's natural law and its influence see Sigmund (1971, 81-98).

88. Sigmund (1971, 75).

89. Greg Bailey (1997).

90. Greg Bailey (1997).

91. *Commentaries on the Laws of England*, Introduction, section one on the Study of Law. Posted by Yale University Law School's Avalon project at [http://avalon.law.yale.edu/subject\\_menus/blackstone.asp#intro](http://avalon.law.yale.edu/subject_menus/blackstone.asp#intro) (accessed October 23, 2010). The search engine provided at this site showed that Blackstone cited Plato, Cicero, Bracton, and Grotius, but not Aquinas, Augustine, or Richard Hooker, who published in 1594, *Of the Lawes of Ecclesiastical Politie*.

92. *Commentaries on the Laws of England*, Introduction section two on *Of the Nature of Laws In General*.

93. Kelly et al (1991, 62).

94. Kelly et al (1991, 62).

95. Kelly et al (1991, 36).

96. Francis Wilson (1949, 37).



97. According to Benjamin Wright (1962, 50, note 1): The pamphlet, published in 1717 and reprinted in 1772 and in 1860, was entitled *Vindication of the Government of New-England Churches: Drawn from Antiquity; the Light of Nature; Holy Scripture; its Noble Nature; and from the Dignity of Divine Providence has put upon it*. Wright (52) also notes that by following Pufendorf, Wise broke with the first generation of New England minister and argued that the precepts of natural law are established by the careful study of human nature and society rather than by the study of divine commands.

98. Benjamin Wright (1962, 51).

99. As cited by Benjamin Wright (1962, 53): "This then is a fundamental law of nature, that every man as far as in him lies, do maintain a Sociableness with others, agreeable with the main end and disposition of humane Nature in general. For this is very apparent, that Reason and Society render Man the most potent of all Creatures. And Finally, from the principle of sociableness it follows as a fundamental law of Nature, that man is not so wedded to his own interest, but that he can make the Common good the mark of his aim; and hence he becomes Capacitated to enter into a Civil State by the Law of Nature; for without this property in Nature, viz. Sociableness, which is for Cementing of parts, every Government would soon moulder and dissolve." (Sic)

100. For details see Benjamin Wright (1962, 62-148).

101. Kelly et al (1991, 63). Kelly et al (1991, 66) also identified American republicanism as an innovation. Also see Forrest McDonald (1985). That the American Constitution expresses principles of natural law defended by Richard Hooker and mediated to the founding fathers by John Locke and William Blackstone is also argued by John S. Marshall (1954, p. 56).

102. Kelly et al (1991, 63).

103. Although the American and French Revolutions shared an emphasis on rights, they differed significantly on their attitude towards religion. Americans were interested in securing the right to religious worship as shown by the first amendment to the U.S. Constitution, whereas the French were interested in the secularization of their culture.

104. Lieber was an European immigrant who penned *A Manual of Political Ethics* (1838) and *On Civil Liberty and Self-Government* (1853). Abraham Lincoln promulgated the Lieber Code as General Orders 100; *The Code for the Government of Armies in the Field* in 1863.

105. The Lieber Code, Article 40: "There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land."

106. The Lieber Code, Article 41: "All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field." Article 42: "Slavery, complicating and confounding the ideas of property (that is, of a thing), and of personality (that is, of humanity), exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country

in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.” Article 43: “Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the *ius gentium*, and the former owner or State can have, by the law of postliminy, no belligerent lien or claim of service.”

107. The Lieber Code Article 22: “Military necessity does not admit of cruelty--that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district” (Article 16). “Nevertheless, as civilization has advanced . . . The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.”

108. Friedman (1972, 192-3).

109. Friedman (1972, 196-7): articles twelve, fifteen, and twenty-three.

110. Telford Taylor (1972, xvii).

111. Also to be considered are various resolutions of the United Nations’ General Assembly, especially, Resolution 1653 on Nuclear Weapons in 1961, Resolution 2444 on Human Rights in 1968, and Resolution 2675 on the Protection of Civilians in 1970. These documents can be found in Friedman (1972).

112. For the philosophical background of the drafters of the *Universal Declaration of Human Rights* see Mary Ann Glendon (2001b).

113. Martin Luther King, Jr., for instance, explicitly appealed to Aquinas’s natural law in his *Letter from the Birmingham Jail*. Available on-line at <http://www.stanford.edu/group/King/frequentdocs/birmingham.pdf> (accessed May 2010).

114. Divine prescriptivism is extensively treated in chapter 2.

115. These arguments are extensively discussed in Part Four.

116. Jaroslaw Kupczak, O.P. (2000, 110).

117. Francis Graham Wilson (1949, 416).

118. Francis Graham Wilson (1949, 410).

119. For arguments that scientific materialism fails see, for instance, Mary Midgley (1995).

120. For Bentham, good and evil were quantified pleasures and pains. Mill’s reformulation included the quality of the pleasure and pain under consideration. Singer’s reformulation emphasizes that self-awareness establishes some animals to be equal to humans and some humans to be inferior to animals. He then argues that while

it would be wrong to kill those self-aware animals, it would not be wrong to kill humans lacking in self-awareness. See Peter Singer (1993, 175-217).

121. Hobbes *Leviathan* ch. 15 (1985, 215): “The Lawes of Nature are Immutable and Eternall; For Injustice, Ingratitude, Arrogance, Pride, Iniquity . . . and the rest, can never be made lawfull. For it can never be that Warre shall preserve life, and Peace destroy it.” (Sic). Of course, Hobbes also posited law and rights to be antithetical to each other. But this antithesis does not subtract from his insight that the alternative to moral law is war and terror, as noted by J. Budziszewski (2009).

122. See the Bibliography for samples of their publications.

123. See, for instance, Samuel J. M. Donnelly (2001).

124. See, for instance, Steven G. Calabresi and Antonin Scalia (2007); Johnathan O’Neill (2007); Thomas B. McAfee (1992), Jack N. Rakove (1990); Dennis L. Goldford (2005); and Joseph Boyle and Germain Grisez (1979: 29-38; 301-304).

125. See, for instance, Michael Cromartie (1997). For the argument that it is time for natural law to abandon its theological neutrality and acknowledge its trinitarian context see Tracey Rowland (2008).

126. For an overview see Carl E. Braaten (1992).

127. That John Paul II sought the revitalization of Thomistic natural law can be seen in his pre-papal publications, particularly in “Thomistic Personalism” and in his papal emphases on Aquinas in the encyclicals *Veritatis Splendor* paragraphs 12, 36, 40, 44, 50, 67, 76, 78, 79) and *Fides et Ratio* (paragraphs 43-44, 57-8, 61, 78). For instance, in his quintessential encyclical on morality, *Veritatis Splendor*, John Paul II identified Aquinas’s analysis of the moral object as “still valid today” while pointing out that it requires us “to place oneself in the perspective of the acting person” (1996d, 78). Moreover, as pointed out by Janet Smith (1998, 68), the encyclical *Veritatis Splendor* identifies human dignity “as rooted not so much in his status as a rational creature whose mind is able to grasp reality but in his status as a free and self-determining creature who must shape himself according to the truth.”

128. “A person is an entity of a sort to which the only proper and adequate way to relate is love.” Wojtyła, *LR* (1981b, 41).

129. Wojtyła, *LR* (1981b, 121-124, esp. 123).

130. Wojtyła, *LR* (1981b, 27): “Love forbids treating a person merely as a means to an end. “Nobody can use a person as a means towards an end, no human being, nor yet God the Creator. On the part of God, indeed, it is totally out of the question, since, by giving man an intelligent and free nature, he has thereby ordained that each man alone will decide for himself the ends of his activity, and not be a blind tool of someone else’s ends. Therefore, if God intends to direct man towards certain goals, he allows him to begin with to know those goals, so that he may make them his own and strive towards them independently.”

131. Key documents include *Evangelium Vitae*, *Centesimus Annus*, and his speeches to the United Nations. That Wojtyła’s Personalistic Norm specifies the obligation to honor human rights was extensively argued by Thomas D. Williams (2005) in his book *Who is My Neighbor: Personalism and the Foundations of Human Rights*. In the words of Williams: “[T]here is something about the person that makes

him worthy of a certain sort of treatment [namely love]. . . . Love, seen as the affirmation of the person as an end and never just as a means, comes to be seen as the central requirement of natural justice, i.e., what is essentially due to every person simply because of his humanity (2005, 319-20). Accordingly, “[L]ove in order to be true, must be just; that is, it must extend to willing for the person those goods that lead to his perfection or integral fulfillment. If the human person has a right to be loved, to have the fulfillment of his being affirmed, he likewise has a right to those particular goods whose promotion forms the content of love. Thus in asserting that the person must not be an object to be used but only an object of love, one is led to conclude, with Wojtyła, that ‘the Personalistic Norm lays down the rights of the person’” (2005, 192).

132. Wojtyła, “The Person: Subject and Community,” (1976, 234): “Without this transcendence—without going out beyond myself and somehow rising above myself in the direction of truth and in the direction of a good willed and chosen in light of the truth—I as a person, I as a personal subject, in a sense am not myself.” Transcendence in freedom and truth fulfills oneself—as put by Wojtyła (Ibid., 1976, 235): “I fulfill myself . . . by the fact that I become good when that action is morally good.” Wojtyła (“The Problem of the Theory of Morality” 1993c, 148-9): “[W]e view [the end of action] not simply as the object of a particular aim but as that which fulfills—is conducive to the fulfillment of—the subject and its activity. I should add that the concept of fulfillment perhaps most properly corresponds to the Latin *actus*. We know how important *actus* is in Aristotelian and Thomistic philosophy and ethics. In this regard, it seems that moral value determines the fulfillment of actions proper to persons and also determines the fulfillment of the persons themselves in such actions.”

133. Equality is preserved only when two commit to a common aim that is good for both as Karol Wojtyła argues in *Love and Responsibility* (1981b, 28-9).

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