

Within the Community, as Guestmaster for 30 years he welcomed Dominicans and others from all over the world, so that they came to expect him every time they returned, he collected the daily papers, often opened and locked the Church door — anything which gave him an excuse to meet the people he loved; which meant everybody. He tended the garden, making bare places bloom (and that, to go back to his origins, was a love he inherited from his father).

Most of these things he did to the day before his sudden death. Some of the things he cared deeply for, had founded and maintained, were taken from him as he grew older, against his will. The last blow was the proposed closure of St Richard's School. He grieved over many things, yet in everything he remained calm, unruffled, and at deep peace with God and his people.

There will be many orphans in the parish, many lamentations. But the belief he increasingly voiced in his old age was this: *Magna est veritas et praevalabit* — mighty is the truth, and it will prevail.

Columba Ryan OP

Natural law and ethics: some second thoughts

Jordan Bishop

Students of the Thomistic synthesis have always had to deal with the ambiguities inherent in the project of bringing together an Aristotelian vision of ethics and the inevitable—for a Christian—intrusion of the law-centred vision of the Bible. And because of the centrality of the Bible in Western culture, discourse about ethics has remained largely law-centred. We think of ethics in terms of law, even, as been suggested, long after belief in, or acceptance of, a notion of divine law had been largely eroded'. In the Church, in spite of Aquinas's espousal of Aristotelianism, the law-centred idiom remained dominant. And it can be argued that this conception of ethics is a source of many of the problems faced in discussions of ethics in the Church today.

In the light of this, it may be worthwhile to look again at Aquinas's

attempt to reconcile the ethical discourse of Christianity, based on the *Torah*, with that of Aristotle. For reasons that may in fact be familiar to readers of G.E.M. Anscombe's now famous 1958 article on modern moral philosophy², Aquinas chose to make the Aristotelian account the centre of his own thought on ethics, to the extent of incorporating theological elements such as the virtues of Faith, Hope, and Charity into an Aristotelian format. He has also, in the well-known questions in the *Prima Secundae* on human actions, dealt with the very real questions of *ends and means, intention, proportionality, and context*. Aquinas refers to this section as the "conditio" of human actions, and this provides a basis for the brief discussion of the morality of human actions that follows (1–2, qu. 18). This is in turn followed by a discussion of the passions, then a discussion of the virtues, and finally, by the question of law.

Structure of the *Prima Secundae*

The structure of Aquinas's work is laid out in the prefaces to the questions and articles. These do not usually provide students with ready answers to any of the questions discussed, so that they often pass without comment. Yet it is precisely here that Aquinas outlines what he is about, and in the preface to Question 6 of the *Prima Secundae* he notes that the first consideration is that of human actions in themselves (questions 6–48), and secondly "the sources of human actions" (question 49). It is with these that we are concerned.

The structure is interesting. At question 49 there begins a discussion of the sources of human actions, some of which are said to be "within the agent" (*intrinsicis*)—the virtues—and some of which are "without the agent" (*extrinsicis*: preface, question 49) or "exterior" (*exterioribus*: preface, question 90). The preface to question 90 is worth citing:

We now have to consider the extrinsic principles of human acts. Now the extrinsic principle inclining to evil is the devil, of whose temptations we have spoken in the First Part. But the extrinsic principle moving to good is God, Who both instructs us by means of His Law, and assists us by His Grace: therefore in the first place we must speak of law; in the second place, of grace.³

The "intrinsic" principles of human actions are the virtues, including the theological virtues of Faith, Hope, and Charity, as well as the Gifts of the Holy Spirit, which Aquinas incorporates into his structure of the virtues. These are outlined in the *Prima Secundae* and then discussed in detail in the *Secunda Secundae*. It is worth noting that, aside from a cursory summing up and defence of the law of the Old Testament (1–2, 382

qq. 98–105), his discussion of practical moral questions is found almost exclusively in the treatise on the virtues in the *Secunda Secundae*. These include many questions which are still hotly discussed today: war and peace, crime and punishment, the duties of lawyers and judges. The point is that it is in the context of the virtues that the real questions are handled, and while law is often appealed to in the course of these discussions, they are always centred on questions of virtue.

Virtues: embedded ethics

The virtues, in Aquinas's account, are embedded ethics. While one can, with Aristotle and Aquinas, use the analogy of a "practical syllogism", a virtue is a habit of acting rationally that is embedded in the acting subject. Because of this, the early discussions of ends and means and proportion and context have a new relevance. These elements are not part of the abstract casuistry necessary to bring law to bear on concrete actions. They are an inescapable dimension of the actions that we describe as virtuous, or for that matter, of the actions that we describe as vicious. This may appear to suffer from some circularity to the practitioner of moral science. But it is not moral science, but prudence, and one cannot repeat too often that a prudent action is not simply an instance of the application of a general principle to a particular action. It would be more accurate to say that the prudent action is the innate, if learned response to an immediate situation. When Aquinas describes the virtues as intrinsic principles it is this immediateness that is implied. A virtue is an *acquired* second nature, or in the case of the theological virtues, a *given* second nature, together with the Gifts of the Holy Spirit.⁴

Natural Law

Aquinas's point of departure for his consideration of natural law is the Epistle to the Romans: "For instance, pagans who never heard of the Law but are led by reason to do what the law commands, may not actually "possess" the Law, but they can be said to "be" the Law." (Rom. 2, 14) Aquinas then develops a double argument. Humans have, he contends, natural inclinations to certain acts and to certain ends which are, as it were, impressed in us by the Creator, being, as it were, a participation of the Eternal Law: "Thus they join in and make their own the Eternal Reason through which they have their natural aptitudes for their due activity and purpose. Now this sharing in the Eternal Law by intelligent creatures is what we call "natural law" (a. 2, corpus). He then cites Psalm 4 as an example: *There be many who say, Who will us any good? makes reply, The light of thy countenance, O Lord, is signed upon us*, implying that the light of natural reason by which we discern

what is good and what is evil, is nothing but the impression of divine light on us. Accordingly it is clear that natural law is nothing other than the sharing in the Eternal Law by intelligent creatures." (*ibid.*) One wonders here if, in Aquinas's conception of things, *nature* is not still "an object to be read" through the light of reason, rather than the bookish "object to be described" that begins to appear during the course of the thirteenth century.⁵ In either case, the notion again is of reason *embedded* in the human subject. Natural law is not an abstraction, to be read as a text, or indeed to be picked apart by casuists. It is simply reason at work. The notion assumes that man—indeed the individual man, immersed in a context and a web of human relationships—has a *telos*, and that his practical reason is capable of directing him in accord with that *telos*, or, conversely, of being aware that his actions are in conflict with that *telos*. Aristotle's ethics, here assumed by Aquinas, incorporate a view which is "teleological, but not consequentialist."⁶ And since *natural law* in this sense is not a text nor abstracted from nature, there is a sense in which it is *not an extrinsic principle in the same way that law is in Aquinas's scheme of things*. Law is most characteristically an *extrinsic* principle when it becomes a text, when it is abstracted, and becomes a means of instruction. And this, in a real sense, is not then *natural law*, but *human law*, precisely as described by Aquinas.

Human law: law as text

Aquinas's thought on the matter is worth citing at length:

As we have seen, law is a kind of dictate of the practical reason. Now the processes of the theoretic and practical reasons are parallel; both, we have held, start from certain principles and come to certain conclusions. Accordingly we say this, that just as from indemonstrable principles that are instinctively recognized the theoretic reason draws the conclusions of the various sciences not imparted by nature but discovered by reasoned effort, so also from natural law precepts as from common and indemonstrable principles the human reason comes down to making more specific arrangements.

Now these particular arrangements human reason arrives at are called "human laws" ... (1a2ae, qu. 91, a. 3, *corpus*).

The response to the third objection is also worth citing here:

The practical reason is concerned with things to be done, which are individual and contingent, not with the necessary things that are the concern of theoretic reason. That is why human law cannot have the inerrancy that marks conclusions of demonstrative science. That a

measurement should be unerring and exact at every point is not demanded, but only that it should fit to the extent that the matter allows (*ibid.*, ad 3).

Human law, in this scheme of things, is by no means unimportant. One could say that it is in fact the prime analogate for what is surely an analogous concept of law. It is human law that we know best, and it is from human law that we derive our notion of law. This by no means excludes Aristotle's notion that the conclusions of politics and ethics are true *hōs epi to polu*, generally and for the most part,⁷ and that individual ethical decisions are even further from the decisions of scientific reasoning than are the conclusions of politics and ethics. One of the difficulties with recent natural law theory is that it appears to be modelled on science and to claim a degree of certitude that neither Aristotle nor Aquinas would believe possible.⁸

It is in part because of this ambiguity that human law is necessary for the life of the virtues. This is particularly the case with justice, since in innumerable cases what is due to another is simply not in the nature of things. Relationships involving property, for example, are determined by convention or by human law. As Aquinas often notes, the natural law goes no further than common property; private property is established by human law, as indeed are such things as legitimacy, inheritance, judicial procedures and the punishment established for crime.

Law and virtue

Virtue is embedded in the human subject in a way that law simply cannot be. Law is necessarily abstract, and as Aquinas notes it is impossible to reach the kind of certitude that one has in scientific reasoning. Because of this, law is inseparable from *casuistry*. Napoleon, it is said, dreamed of laws so clear and precise that there would be no need of lawyers. But that dream was never realised, and indeed could not be. And in any law-centred ethical system, casuistry will have a large and very important place. This can indeed take a number of forms: in the rabbinical tradition and in the Christian Gospels it takes the form of story telling. Who is my neighbour? Can a believer eat meat that has been sacrificed to idols? The abstract nature of law cries out for casuistry—or jurisprudence—to bring it down to the level of the concrete. And while this may appear to many as nit-picking or letting people off the hook, it is an inescapable consequence of a law-centred ethics. Historically, it is alive and well not only in the rabbinical tradition, but in the whole historical development of Catholic moral theology, particularly since the seventeenth century. It flourishes in

post-enlightenment schools such as that of utilitarianism. And it is at the heart of jurisprudence in any legal system, however one may dream of clear and distinct applications of law with infallible Cartesian logic. This is, one may say, precisely what Aquinas is talking about when he writes of human laws that they "cannot have the inerrancy that marks conclusions of demonstrative science." This is no doubt true of human laws as they are enacted; it is much more true of them as they are applied. The Courts are no more infallible than are the lawmakers, but the intervention of authority closes the circle and allows people to get on with it, although there is often room for appeals.⁹

An ethic centred on virtue does not, of course, eliminate casuistry any more than it eliminates law. Our question is more about the relative place of law and virtue in Aquinas's ethics.

Laws are exterior principles. God, or the human community, or the *polis* instructs us through law, and may indeed establish what, in questions of justice, is due to whom. But it remains external in a way that the prudential decisions, informed by the virtues, are not. Casuistry may narrow the possibilities and make the prudential decision appear with greater clarity. But in the end the decision is never simply the application of an abstract principle or law to a concrete act. And when, through a distortion of or mis-application of moral science, such applications are sought, the danger of misplaced concreteness is very real.

Authority and ethics

A law-centred ethics is particularly prone to the abuse of authority, whether it be the intellectual authority of professors, the authority of the State, or that of priests, pastors or ecclesiastical bureaucrats. This is not to claim that any of these authorities do not have an important place in human affairs, but simply that they are subject to severe limitations.

For Catholics, the authority of priests, bishops, popes and ecclesiastical bureaucrats creates a particular problem. The authority is real enough, yet it often creates no end of confusion. Part of the difficulty lies in the modern (post-Enlightenment) tradition of "natural law" and the claim on the part of Church authorities to determine what is demanded by natural law. If one looks carefully at Aquinas's account of human law, as cited above, it is obvious that much of this determination represents either the conclusions of moral science, whose authority must be self-justifying, as it were, on merit, or a kind of legislation, in a word, human law enacted by persons having authority over a community. The difficulty is that this is never claimed. A greater authority is claimed, that of an authoritative interpretation of natural law, which to some extent is a usurpation of the light of reason with

which all of us are endowed. For Aquinas the move from "the light of reason" to conclusions elaborated on the basis of such reason already moves us into the area of moral science or of legislation. Canon law is clearly human law. Papal encyclicals are clearly a function of the Magisterium, but often appear closer to moral science than to legislation, although in fact just what they propose to be may vary from one pontificate to another. The difficulty lies in the idea itself of an authoritative interpretation of natural law, as if it were some kind of text. And for Aquinas, it quite clearly is not a text, and it does not take the form of propositions, except perhaps in its assimilation to the Biblical ten commandments. One wonders if it may be because of such ambiguities that the Second Vatican Council, in the Pastoral Constitution *Gaudium et Spes*, instead of appealing to natural law, appeals simply to "the Gospel and human experience."¹⁰ Perhaps for Aquinas, this would be very nearly the same thing, human experience being the exercise of reason in real human situations. Difficulties arise out of some modern conceptions of natural law, which owe as much to the Enlightenment as to the greater Catholic tradition.

The New Law

This reading of Aquinas on natural law has a striking parallel in his brief treatment of "The law of the Gospel, which is called the New Law." His first question is simply "What is it like, is it a written law, or an inward one?" And the answer is quite clear:

As Aristotle says, *it is plain that each thing can be identified with its predominant characteristic*. Now it is the grace of the Holy Spirit, given through faith in Christ, which is predominant in the law of the new Covenant, and that in which its whole power consists. So before all else the New Law is the very grace of the Holy Spirit, given to those who believe in Christ (1–2, 106, 1, *corpus*).¹¹

This is clarified in the following article where, citing Augustine, Aquinas notes that

The other, secondary, aspect of the Gospel Law is found in the testimonies of the faith and the commandments which order human attachments and human actions. In this respect the New Law does not justify. So Paul says, The letter kills, but the spirit gives life. Augustine interpreting this says that by the letter is meant any written text external to man, even when it is concerned with moral precepts such as are found in the Gospel. Thus even the Gospel letter kills unless the healing grace of faith is present within (1–2, 106, a. 2, *corpus*).

The parallel with Aquinas's notion of natural law is almost too neat. Yet both fit very well with the Aristotelian model of virtue rather than with a law-centred ethic. The value of law is not denied, but it is quite secondary to the central element of virtue. Here one suspects that the discussion of natural law as unwritten, or written in the hearts of men, is a model for the more difficult question of Charity and the Grace of the Holy Spirit, as an *intrinsic* principle of human action, natural to the subject in the first case, and a freely-granted gift of God in the second. And while human law on the one hand, written and promulgated by human authority, is both good and necessary, it is extrinsic and secondary, *as indeed are the written Gospels and any other documents produced by the Church*, compared to the Grace of the Spirit. Charity, *agapé*, is at the centre of the whole structure. Again, the Aristotelian notion of virtue is an analogy for the understanding of Charity as a *virtue*, as a God-given intrinsic principle that is *embedded*, that begins, as it were, from the human subject *in context*, in the subject's particular web of relationships with other subjects, so that none of these can be abstracted from in the action of the subject, at least not without the distortion of certain kinds of ethical training. One of the difficulties with any law-centred ethic is precisely that one can abstract from real human relationships that need to be considered in a fully human, or fully Christian decision. In this kind of abstract exercise the problem is not too much casuistry, but not enough. Aquinas's *lex naturalis*, like Aquinas's *Charity*, is embedded in the acting subject which normally has an awareness of the connectedness of things, of context, of human relationships. One sympathises with Mr. Bumble when one encounters examples of laws, or of interpretations of them, that are out of touch with existential realities. In the Catholic tradition, at least since the middle ages, there has always been an awareness of the problems posed by conflict between law—or laws—and conscience, and when Aquinas gave a primacy to conscience he was consistent with his structure, which gives a primacy to the role of virtue over the secondary role of law. And while virtue needs to be nurtured, there are definite limits to the role of authority in this conception of theological ethics. A law-centred ethic is much more prone to become the prey of experts, and these, whether clerical or lay, are equally prone to the temptations of misplaced concreteness, to the facile assumption that a concrete decision is but the application of a rule to a particular case. And while perhaps those who make laws tend to be authoritarian in their approach, experts who appropriate them may be equally authoritarian. The result may be a kind of tyranny of the expert, of the scientist, of the legislator.

An ethics centred on the virtues is less subject to this authoritarian

tendency precisely because law is kept, as it were, at arm's length. The expert cannot really make a decision for someone else. No one can. That, in a sense, is basic to any ethic. But when the point of departure is virtue rather than law, there is less chance that the authority, or the expert, will attempt to supplant the decision of the subject. There is less chance of the kind of abuse of authority that brings law into disrepute.

- 1 See G.E.M. Anscombe, "Modern Moral Philosophy", in *Philosophy*, 1958, pp.1-19, *passim*.
- 2 art. cit.
- 3 Translation: English Dominicans, London, Burns, Oates, Washbourne, 1926.
- 4 For Aquinas the Gifts are not a rare privilege of saints, but part of the normal economy of salvation for the Christian.
- 5 The allusion is to Ivan Illich, *In the Vineyard of the Text* (Chicago, 1993): "With the detachment of the text from the physical object, the *Schriftstück*, nature itself ceased to be an object to read and became the object to be described. Exegesis and hermeneutics became operations on the text, rather than on the world" (p. 117).
- 6 Alasdair MacIntyre, *After Virtue* (Notre Dame, Indiana, 1981) p. 141. The distinction is important to avoid anachronism.
- 7 See MacIntyre, *op. cit.* , p. 167. This is also why the Gifts of the Spirit are so important in Aquinas's notion of Christian life. Human decisions are inherently fallible. Those who are led by the Spirit may expect greater certitude in their decisions.
- 8 See also my brief note on this question: "Bonhoeffer's Footnote and the Moral Absolute," in *New Blackfriars*, September 1981, pp. 387-393.
- 9 This is also why most legal systems exclude ex post facto legislation, and while in criminal matters changes in legislation are applied so that criminals, even convicted ones, are subject to the more benign of the punishments after laws are changed.
- 9 Translation for 1-2, 106: Blackfriars, London, 1969.

CORRECTION

The title of David Braine's article in the June issue should have read

What makes a Christology into a Christian Christology?