

should think it proper to teach such views to those in training for the priesthood. And, indeed, their actions are helping to transform the Church into something distinctly fraudulent. On the one hand, we have an official teaching on contraception which, in many Western countries, is, I understand, simply repudiated by most practising Catholics; on the other, a clergy which, to the extent to which Professor Sheehan is right and the seminary teachers are successful, holds a whole battery of Liberal Protestant beliefs which they are chary of revealing to their flocks, so violently do those beliefs conflict with any traditional Catholic understanding of the faith and with most of the laity's understanding of it. The monolithic Church was never a reality and is not an ideal; but the divergence that now obtains between what the Catholic Church purports to believe and what large or important sections of in fact believe ought, in my view, to be tolerated no longer: not if there is to be a rationale for belonging to that Church; not if there is to be any hope of reunion with the other half of Christiandom; not if the Catholic Church is not to be a laughing-stock in the eyes of the world.

Reason, Will and Legalism

Daniel Westberg

Catholic moral theology since Vatican II has largely turned its back on certain aspects of the tradition of moral theology inherited from the time of the Counter-Reformation. What has been rejected is a false view of natural law, legalistic casuistry, and a mechanistic approach to morals which they imply. Quite rightly, theologians have sought more creative, more flexible and above all more spiritual frameworks. We need to be clear, however, about what we are rejecting and for what reason.

For some time, certain Catholic scholars have pointed out the dangers of a voluntaristic view of the nature of law, i.e. seeing law as primarily the product of the will (of man or of God).¹ Francisco Suarez, very important in the development of the theory of natural law, has now become the object of attack, and is being blamed for much of the distortion of the Thomist understanding of law.² William May has

recently criticised him for his voluntarism and also for his 'deductivism'—the creation of a highly elaborate system of laws, ranging from general laws at the top of the system from which are deduced particular regulations.³ This spirit of encompassing all human actions within a network of laws and precepts is the essential characteristic of legalism.

Davitt, Bourke, Finnis, May and others have made a valuable contribution in showing that there is a big difference between the association by St Thomas of law with reason, and the emphasis by Suarez on the will. But they have only partially brought out the difference, because they have concentrated on the question of the will as the source of law. This is an important point, of course: it makes a great difference whether law is a product of the will or of the reason, and where St Thomas describes the function of law as ordering and enlightening, these same functions are assigned by Suarez to the will, and law is given a volitional rather than an intellectual basis.

This shift from *intellectus* to *voluntas* had occurred well before Suarez: the development of a voluntarist view of theology in general had been accomplished by Scotus and Ockham, with important implications for the development of moral theology.⁴ Thus they had already faced the question of the ultimate basis of morality, reason and will, and the question whether we obey God because it is right or because God has commanded us to. It is possible to see in Suarez, however, some of the fruits of the sixteenth-century Thomist revival, and in this respect he has made some improvements on late medieval nominalism. There is in his treatment an attempt to reject some of the results of the teaching of Scotus and Ockham and to re-integrate older natural law doctrine, particularly an appreciation for nature as revealing the basis for certain principles. Thus natural law has a basis in creation according to Suarez, and therefore certain principles governing human behaviour are given a rational basis.⁵

Nevertheless, in spite of this attempt to move from a nominalist and voluntarist view of the created order, Suarez' treatment of law retains and even strengthens some of the distortions inherent in viewing law from a position which emphasizes the will. In particular, we notice the development of a deductive system of commands or laws which man is obliged to obey, and this is not characteristic of St Thomas' ethics. There is a *prima facie* problem, then, in explaining how the ethical system of Suarez could be at the same time closer to elements of Aquinas' understanding of law, and also be moving towards legalistic casuistry. The problem can be clarified by differentiating between the source of law and the object of law.

The problems inherent in voluntarism become more obvious if we change our focus from the nature of law in general to the recipient of the

law, the way in which the law applies to the agent who is subject to it. Instead of asking whether reason or will is the source of law we consider the question whether law is addressed to an agent's mind or to his will. The answer to this question makes a great deal of difference as to the attitude of the agent, how he makes a decision, his relationship to God, and how one describes the nature of his responsibility for right and wrong.

I believe that it will be fruitful to consider the implications of a voluntaristic view of law by a brief comparison of the teachings of St Thomas and of Suarez. Here it is illuminating to take into account not only the *source* of law (whether reason or will) but the way in which law is received by the agent, and how it affects his process of choice. It then becomes clear that legalism—a deductive network of more and more particular laws—is *not* the result of emphasizing reason, but is the logical consequence of a voluntarist view of the purpose and function of law.

St Thomas says in *Summa Theologiae* I—II 90.1 that law is a kind of rule and measure of our actions; this function belongs to reason, which is 'the first principle of human actions'. The function of practical reason is to determine what one should do; and law is a kind of dictate of practical reason (91.3). It is reason's function to order all things which men regard; thus everything that can be regulated by reason is contained under the law of reason (94.2 and 3).

Suarez saw it very differently. At the beginning of his *De Legibus* he explicitly dealt with Thomas' position, but could not accept that law was a *dictamen practicae rationis*. His reasoning was thus: a judgment of reason does not have the force of obligation, nor of moral suasion, because that must come from law. A command, said Suarez, if it were to come from reason, would not seem any different from advice.⁶ When a person deliberates he often makes a reasoned judgment about what he ought to do, but he is not obliged to follow his reasoning. Suarez could not see how a judgment of the reason could have any motive force for action, any *decisive* power, and thus law addressed to the reason would be just good advice.

There is a weakness not only in Suarez's view of the origin of law, but in his view of man's decision-making process. According to Suarez, choosing one thing out of many, or preferring something to others, can never be done by the intellect.⁷ Thus it is the will that decides what a person is going to do, and the reason, in deliberating, merely makes the best proposal. Therefore the law, to have a direct effect on action, must be addressed to the will, not the reason.

This aspect of voluntarism is of even greater importance than that of the source of law, because it is possible to combine an intellectualist account of the nature of law with a voluntarist view of the agent's decision. In this way one would avoid certain philosophical problems,

but would still have to accept certain other consequences, as we shall see below. St Thomas himself has often been wrongly understood to teach that human choice (*electio*) is a matter of the will, when he really teaches that action and choice involve an intimate combination of reason and will.⁸

It should also be remarked at this point that the key to understanding St Thomas' view of the function of law in the process of human action (as described in ST I—II qq 12—17) is not the *imperium*—which is only the technical term for reason's direction of the execution of the agent's decision already made—but the *iudicium*. This operation of the intellect, the judgment of choice, provides the specification of a decision by seeing the conjunction of a particular action with the appropriate general principle. It is here that law operates, by being the rule or measure by which the agent sometimes needs to judge particular actions. When the intellect and will work in harmony, as they are meant to, then the decision is expressive of the agent's rational judgment as well as his desires.

A voluntarist view of decision-making has at least two important consequences. First, if it is the will that makes the choice or decision, then it must also take the blame for errors. And if reason provides input but does not determine the will's choice, then evil is reduced to disobedience, and disobedience and sin arise from an imperfect will. Sin then tends to become a problem solely of disordered desire and affection.

The second consequence is that if the will is responsible for action, and obedience is the key, then the will needs good instructions—it needs to know what it should decide to do. St Thomas could treat of law in a general way, give the first few principles, refer to the ten commandments, and leave the rest to the Holy Spirit informing the mind and the heart. This is because Thomas saw the Christian agent making the right choices on the basis of right affection or love, and right reason, which was to be involved in discerning, judging and deciding—hence the importance of the virtue of prudence. But when it is the will which is to decide, it cannot, as a matter of definition, discern and judge since these are functions of reason. Therefore the will needs detailed instructions: to do what is right it needs actions to be specified by particular principles, and to *do* these, it needs them in the form of obligatory commands.

There are thus two features of this legalism with which we are concerned: obligation and particularity. The law must include a motivation which is imposed from the outside; and it must also be a particularised instruction if the agent is to obey it. Both of these characteristics follow from making the will the prime factor in making decisions. When the will is addressed by law it is 'obliged', and thus its choice is merely to obey or disobey. And because it does not discern or judge, the command to the will needs to be made as particular as necessary.

Suarez did not shrink from facing a practical consequence of this conception of the moral life: could there be something which is wrong to do and which has not been prohibited by God? If the will decides, and it needs clear guidelines, then Suarez was consistent when he answered that God could not fail to prohibit bad actions and command good ones.⁹ If the will makes the decision, then the moral quality of its choices needs to be specified beforehand. We can see here that the notion of a complete set of laws, a system of very particular principles deduced from more general ones, is implied by the voluntarist view of decision-making.

In practice, of course, there can be no such complete set of laws; but the above view of human action requires that there be such a system in principle. This then generates the need for moral science which resulted in the old moral theology handbooks: a body of principles and rules for their application which becomes the province of expertise for casuists, and a view of the Christian life far different from that described by St Thomas under the virtue of prudence. The development of legalistic moral science—worked out by reason, to be sure, but as a tool for the use of the will—can thus be seen to be a characteristic of a Scotist-Suarezian view of human action rather than of a Thomist one. Suarez saw more clearly than his predecessors the logical implications of the will making decisions, and so he laid the foundations for the complicated system of legalistic casuistry dominant until very recently.

It is misleading, therefore, to speak of Suarez's system of law as 'highly rationalistic'.¹⁰ The deductivism in his view of law comes not from his emphasis on reason but from his emphasis on the will! Because choice is a matter of the will, the will needs to obey commands, and the commands cannot be left too general. Thus Suarezian morality requires a complex set of commands, at least in principle. St Thomas, however, precisely because he made reason involved in the decision itself, could make each individual situation a matter for the reason (and the will, agreeing with it) to judge what principle was to apply. This meant that the principles could be left general; it also meant that for the Christian, help from the Holy Spirit becomes not so much a matter of the desire to obey God's commands (though this is important) as wisdom to see how the general principles are to be applied. The difference in spirit between the ethics of St Thomas and of the Suarezian legalistic casuistry is vast, and still needs to be brought out more forcefully.

With this in mind it is instructive to reflect on the structure and method of G. Grisez's *The Way of the Lord Jesus*. For one who has also been critical of Suarez's view of law, Grisez is not as removed from that system as we should like. He has removed the notion of obligation from the principles of practical reason, emphasizing the rationalist rather than the voluntarist basis of law.¹¹ The first principle of practical reason, 'Do good and avoid evil', then becomes the starting point for the instructions

that the agent needs, first in 'modes of responsibility' and then in more specific 'moral norms'. Behind this rather fantastic, complicated network of principles developed from Christian tradition and common sense, and partly from twentieth-century liberal assumptions of equality and freedom, we see lurking a view of the human decision-making process which in principle requires external specification of the particular action. This is the 'deductivism', the need to particularise the principles governing action, which we have seen as a logical consequence of a voluntarist view of choice. Thus the spirit of Suarez is still at least partly alive, despite Grisez's attempts to exorcise it from moral theology.

We will not be brought closer to the authentic position of St Thomas until we see not only that law has a rational basis in God's creation of the world, but also that human actions are decided not just by the agent's will, but by the harmony of his reason and will choosing together.

- 1 See T.E. Davitt, *The Nature of Law*, St. Louis: Herder, 1951, and V.J. Bourke, *Will in Western Thought: an Historico-Critical Survey*, NY: Sheed and Ward, 1964.
- 2 Davitt, pp. 86—108; Bourke, 176 ff.; Suarez figures in J. Finnis, *Natural Law and Natural Rights*, Oxford: Clarendon, 1980, esp. 337 ff.
- 3 Wm. E. May, 'The Natural Law Doctrine of Francis Suarez' *New Scholasticism* 58 (1984) p. 409.
- 4 S. Pinckaers, O.P., in *Les sources de la morale chrétienne: sa méthode, son contenu, son histoire*, Fribourg-Paris, 1985, demonstrates the connection between nominalism and voluntarism, and the consequences of law seen as something exterior, a threat to liberty, and morality seen in terms of obligation.
- 5 *De Legibus*, Lib. II c. 5, Vives ed. V, 100 ff.; cf. May, p. 417.
- 6 *De Legibus* I c.5, n.5, V, p. 18.
- 7 *De voluntario et involuntario*, Disp. III, sect. 1, IV, p 256.
- 8 The standard interpretation of St. Thomas' psychology of action, especially at the point of choice or decision, has been a voluntarist one, i.e., that it is the will that chooses (cf. O. Lottin, *Psychologie et morale*, Vol. I, Gembloux, 1957). That Thomas actually teaches the intimate combination of both reason and will has been recognised by Pinckaers, *Les Sources*, ch. 16.
- 9 *De Legibus*, II, c. 6, nn. 14—17, 21—24, V, p 109 ff.; cf. May, p. 419.
- 10 May, pp. 409, 422.
- 11 Germain Grisez, *The Way of the Lord Jesus*, Vol I, *Christian Moral Principles*, Chicago: Franciscan Herald Press, 1983.