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SOME OBSERVATIONS ON NATURAL LAW

– Michael Pakaluk –

Abstract. The paper offers some observations with a view to correcting ostensible misunderstandings of the so-called New Natural Law (“NNL”) theory, concluding that the NNL theory is unworkable and unsustainable, even on its own terms. It is argued that the NNL theory is based on fundamental misunderstandings of the nature of necessity in Aquinas; the nature of propositions which are “known in themselves” (*per se nota*); and the nature of fundamental practical reasoning. It is argued that, where the NNL theory differs from that of Aquinas, the latter provides a better framework for the development of accounts of natural law today.

Keywords: natural law, Aquinas, is-ought distinction.

According to the New Natural Law (“NNL”) theorists, practical reason as prescriptive is distinct in kind from speculative reason as descriptive; practical reason starts from axioms or first principles that are wholly underived, and which therefore *a fortiori* are not derived from any truths of speculative reason; these first principles articulate basic human goods; and, moreover, these first principles are directives addressed to the individual engaged in practical reasoning, that he should pursue these goods.

I maintain that for St. Thomas Aquinas, in contrast, practical reason and theoretical reason largely overlap; the first principles on which practical reason relies are in an important sense derived from speculative truths; these first principles do not articulate but rather presuppose basic human goods; and, finally, their form is law-like, that is, they state in the first instance what human beings in general should do, not what some particular, reasoning individual should pursue or do.

I believe that the NNL theory is based on fundamental misunderstandings of the nature of necessity in St. Thomas; the nature of propositions which are “known in themselves” (*per se nota*); and the nature of fundamental practical reasoning. Where the NNL differs from St. Thomas, according to the correct interpretation, as understand it, I regard St. Thomas as providing a better framework for the development of accounts of natural law today.

In this paper, I will offer some observations with a view to correcting what I regard as the misunderstandings of the NNL, and I will conclude by arguing that the NNL theory is quite unworkable and unsustainable, even on its own terms.

First observation. 'Ought' statements differ from 'is' statements, at first glance at least, not in the manner of distinct grammatical moods, but rather as two ways of asserting an actual ordering.

According to John Finnis, "When discerning what is good, to be pursued (*prosequendum*), intelligence is operating in a different way, yielding a different logic, from when it is discerning what is the case (historically, scientifically, or metaphysically)."¹ Robert George puts it that "The distinction between what 'is the case' (about human nature or anything else in the natural order) and what 'ought to be' is logically significant. Muddle is the best we can hope for if we ignore this distinction or sweep it under the rug. A pretty good example is [Henry] Veatch's own claim that 'the very "is" of human nature has an "ought" built into it.' That claim is not flatly wrong; it is just muddled."² Both of these quotations concern the alleged separateness of statements which describe how things are from those which state how things ought to be. Note that this distinction is different from that between (a) statements which either describe how things are or state how things ought to be, and (b) statements which state how you or I, or human beings in general, ought to act. The NNL theorists tend to conflate these distinctions, as for instance when George says in connection with denying an 'is' – 'ought' distinction that "moral conclusions inasmuch as they state reasons for action can be derived only from premises that include still more fundamental reasons for action. They cannot be derived from premises (e.g., facts about human nature) that do not include reasons for action."³ For the moment I wish to consider the first distinction, as clarity about that, I believe, contributes to clarity about the second.

As a preliminary, I wish to sketch a contrast between what may be called the "classical" and the "modern" views on the nature of necessity. St. Thomas holds a classical conception of necessity, according to which necessity is in the world, in contrast the dominant tendency in modern philosophy is to regard necessity as something imputed by human beings.

¹ John Finnis, *Natural Law and Natural Rights, Second Edition*, Clarendon Press, Oxford 2011, p. 34.

² Robert George, *In Defense of Natural Law*, Clarendon Press, Oxford 1999, p. 89. George is referring to Veatch, *Natural Law and the 'Is' – 'Ought' Question*, "Catholic Lawyer" (26) 1981, p. 254.

³ *Ibidem*, p. 84.

The “classical” approach is to reason along something like the following lines. Take that which is necessary to be that which is not possible not to be. Now reality could not have a rational structure or ordering, if it were never the case that the existence of one thing made it such that it is not possible for something else not to be—if there were not a dependence of some things upon others. However, we presuppose that reality is a *cosmos*, an ordered whole, permeated with *logos* and intelligible. Therefore, there is necessity in reality, in the sense that the existence of one thing makes the existence of something else necessary. It is not the case that each existent is independent of everything else.

The “modern” approach in contrast tends to regard necessity as imputed. Hume is the best example. He holds that when it comes to the world--to “matters of fact” rather than “relations of ideas”--each thing can be conceived separately from everything else; therefore, that thing might in fact not exist, while everything else continued to exist; and so each thing is entirely independent from everything else. Any alleged necessity in the world, Hume holds, is merely a psychological projection of some internal felt compulsion. Kant holds in effect that our experience would be as Hume describes, were it not for the activity of the human understanding, which makes it such that we cannot but have experience which has the character of necessity. For Kant, necessity is always the mark of some active influence of human cognition, which is prior to experience. Generally modern and contemporary philosophers favored either a Humean or Kantian approach to necessity, until Kripke’s revival of a classical view with his “necessary *a posteriori*” — the exception which proves the rule.

Because St. Thomas takes the classical approach, for him, statements about how the world is, typically imply statements about how something in the world must be. Perhaps the best text for understanding his view is his discussion of the various types of necessity in *ST I q.82 a.1c*. To understand the discussion there, we should not that St. Thomas is presupposing that necessity is associated with ordering; that ordering is the result of causation; and that there can be causation in the manner of each of the four Aristotelian causes. That is why, when St. Thomas wishes to explain the various ways that there can be necessity in the world, he takes as his organizing principle the Aristotelian scheme of formal, material, final, and efficient causes:

The word "necessity" is employed in many ways. For that which must be is necessary. Now that a thing must be may belong to it by an intrinsic principle--either material, as when we say that everything composed of contraries is of necessity corruptible--or formal, as when we say that it is necessary for the three angles of a triangle to be equal to two right angles. And this is "natural" and "absolute neces-

sity." In another way, that a thing must be, belongs to it by reason of something extrinsic, which is either the end or the agent. On the part of the end, as when without it the end is not to be attained or so well attained: for instance, food is said to be necessary for life, and a horse is necessary for a journey. This is called "necessity of end," and sometimes also "utility." On the part of the agent, a thing must be, when someone is forced by some agent, so that he is not able to do the contrary. This is called "necessity of coercion."

Let us focus for a moment on two of these types of necessity, formal and final: it seems that the existence of each can be naturally affirmed using the word, "ought."

Suppose a triangle exists, that is, something in the shape of a triangle exists. Then, whatever follows of necessity about a triangle, follows of necessity as regards that thing, insofar as it is a triangle. If the area of a triangle is of necessity half the product of the base and the height, then, of necessity likewise, the area of this thing which is a triangle is the product of the base and the height divided by two." Of course if we were to analyze the triangular thing in accordance with what I have called the tendency of modern thought, to regard any necessity as imputed, then we might wish to say some such thing as that these relationships hold only of our *concept* or *theory* of what that existing is, our 'mathematical model' of it, and that it is only with respect to this model that we deduce consequences, which then subsequent experience on our part potentially verifies or disconfirms. But on the classical view, it should be emphasized, the triangular form is imminent in the triangular thing—although it would presumably be impeded or limited in its expression, by the matter of that thing in which it is found—and therefore that these consequences hold would be true, necessary characteristics of that thing.

Not surprisingly, perhaps, various idioms have arisen in ordinary language to express these necessary, formal relationships in things. As regards that thing which is a triangle, one could also say, with respect to the necessary consequence we were considering:

1. It *needs* to have an area of half the base times height.
2. It *must* have an area of half the base times height.
3. It *is* to have an area of half the base times height.
4. It *ought* to have an area of half the base times height.

These idioms could be used for any other consequence that follows of necessity from the positing of a triangle. Perhaps there are other such idioms in English as well, or idioms in other languages with no exact equivalent in English.

Again, consider as an example of final necessity a young plant. It aims to grow and to flourish; that is its end and therefore good. Water is that without which the plant cannot attain this end. So having water is necessary for the plant according to “the necessity of end.” This fact can be expressed with the same series of expressions that had expressed formal necessity:

1. It *needs* to have water.
2. It *must* have water.
3. It *is* to have water.
4. It *ought* to have water.

I interpret all of these idioms as asserting the same necessity, but with different emphases and suggestions. A statement of *need* seems to conceive of something under the aspect of what it lacks, what contributes to its fulfillment or perfection, or that which makes it do well: the plant under the aspect of imperfection or not yet perfect, or the triangle in relation to a distinct idea (“area”), which was not posited when we posited a triangle, but which nevertheless completes our understanding of the triangle. Etymologically “need” (compare Polish, *naćda*) suggests a forced condition of departure from fulfillment: when we say that the triangle “needs” to have a certain area it is as though we compare the triangle to all of the theorems which can be derived about it and regard the postulation of the triangle alone as a kind of forcible diminution of this fullness of truth.

A statement of what *must* be for something connotes in contrast what it demands, what it calls for, what it requires. When we say that the plant “must” have water we are considering it under the aspect of dynamism, looking forward in time, as it were, and making a claim as regards what it is aiming to be. Similarly, “must” as regards the triangle suggests what on the basis of what is posited one is additionally led to posit. These suggestions match the etymology of “must”, which originally suggested something’s being *measured* or *measured out* correctly; hence what “must” be is the measure to which what something being realized is to conform.

A statement of what *is to be* for something suggests what is appropriate to a thing in virtue of its existence, what complements it, what fits it. This sort of claim is expressed with a gerundive in Latin, where the verb “to be” is separated from the adjective expressing appropriateness and is perhaps to be understood in the manner of “It is: to have water” (for the plant) or “It is: to have an area of half its base time height” (for the triangle).

Finally, a statement of “ought” suggests what is, or is in principal, or is potentially, due to it from another. It applies to the plant under the aspect of making a general claim on some agent, or to the triangle as regards the conclusion that can

be claimed against, for example, someone considering the triangle. Again, these observations are in accord with the separate etymology of “ought”, which comes from words related to “owned” and “possessed”: thus, “A owes B five shillings” would express “A owns five shillings which belong to B.” An ought claim is a claim about where what is found separately in fact belongs: the water belongs to the plant; an area of half base times height belongs to the triangle.

From these observations it is plain that, on the supposition that there is “real” necessity, then there are at least some “ought” statements that are of a piece with “needs” statements, “must” statements, and “is to be” (gerundive) statements. These are all statements in the indicative mood. If we take statements in the indicative mood to be intended, at least, to indicate facts or features of the world, then these statements, by their surface grammar, are descriptive. Veatch is correct that a statement of what ‘is’ has statements involved ‘ought’ built into it.

I suspect that much of the force of the claim that “ought” statements cannot be derived from “is” statements depends upon a surreptitious presupposition that an “ought” statement must be in the imperative mood, a command addressed by the speaker either to himself, or to others similarly situated. We can grant that no statement in the imperative mood can follow from one indicative mood, just as a wish does not follow from a question. But in the cases we have considered, plain statements in the indicative about “what ought to be so” follow from claims likewise in the indicative about “what is so”. The statement about “what is so” states something which implies an ordering (either formal or final), and the statements about what ought to be and must be so are simply statements of that ordering considered under various aspects. For example, as regards the plant, “ought” statements follow from “is” statements in the indicative mood which refer to something which has a goal and which therefore import the notion of a goal: it is the notion of a goal which allows us to infer that these other things hold of necessity and which guides us in asserting this necessity in various ways.

So on the classical conception of necessity sketched above, it would be far too crude to say, as do the NNL theorists, that any “inference from facts to norms” is “illicit.”⁴ At least, until we are told more about why the “ought” found in “norms” is radically different from that found generally, we would be disposed to say instead that “ought” statements are themselves facts, and that there is no reason to regard as illicit an inference from facts to facts.

More than this, “facts” about final necessity seem indispensable when, for instance, someone has care for something or someone. Someone who is taking care

⁴ Finnis, *op. cit.*, p. 33.

of a plant might naturally infer from the “fact” that it needs water that he ought to provide it with water. That he ought to provide the plant with water, needs to do so, must do so, will in turn be a “fact”, if his good is to do so: a clear example would be “a mother needs to see that her child is nurtured and grows,” a fact, if the well-being of the child is an aim or end of a mother.⁵

These statements of “fact” which assert needs, and what must and ought to be the case, seem to constitute a large part of what St. Thomas refers to as “operable matters considered speculatively.”⁶ Statements about things of various kinds, in various situations, need, and what ought to be done to them or for them, are like so many instruments, which become useful precisely when we need to do something which involves those things. Their usefulness is latent; they typically enter into true practical reasoning only potentially.⁷ In this regard consider that St. Thomas takes a very precise view of what counts as purely speculative, and what counts as strictly practical. Reasoning counts as purely speculative, only insofar as its subject matter is something we cannot influence (divine things, the constitution of nature), and are dealing with it in a purely scientific way (by defining and dividing), and we are considering it only in order to know the truth (not also, for instance, to get a good mental workout). If one of these conditions fails, then the reasoning is in some respect practical. On the other hand, St. Thomas is clear that, strictly speaking, practical reasoning in contrast involves deliberating about what is to be done here and now in a particular case. Strictly, practical reasoning is reasoning about things we can change, considered as regards the ordering of actions and action types, and for the sake of attaining some good. If any of these conditions fails, then, St. Thomas considers, the reasoning is not strictly practical reasoning.

Clearly, no distinction which St. Thomas wishes to draw between speculative and practical reason, either as regards the pure and strict senses of each, or the partial senses, can be captured by the distinction between statements in the indicative and prescriptive moods, or between statements which say how things are and statements which give reasons for action. Clearly, too, if he had held the view that NNL theorists ascribe to him, then, when he had occasion to distinguish specula-

⁵ Furthermore, “a mother needs to nurture the child herself” is a “fact” if the well-being of the child is aided by the his mother’s doing so in particular, rather than anyone else.

⁶ “siquidem est operabilia modo speculativo considerare, et non secundum quod operabilia sunt.” See Thomas Aquinas, *Summa Theologiae*, I, q.14 a.16c for the distinctions highlighted in this paragraph.

⁷ Compare “if [descriptive sentences] are understood as signifying the final cause of [an] instantiated nature in a singular man, a moral conclusion follows,” Piotr Lichacz, OP, *Did Aquinas Justify the Transition from “Is” to “Ought”?*, Instytut Tomistyczny, Warszawa 2010, p. 309.

tive from practical reason, as in I q. 14 a.16, he would have drawn the distinction as the NNL theorists do, and not in a manner and with language so obviously inapt for expressing what they regard as the crucial difference.

Second observation. Our familiarity with human nature just is a matter of our familiarity with “inclinations” of human nature.

As mentioned, I wish to argue that for St. Thomas it is indeed the case that, in an important sense, the first principles on which practical reason relies are derived from speculative truths. In this section I wish to consider the main truths of that sort. Not that truths about human nature are truths which are the object of speculative reason for St. Thomas, as he considers that we have no power to change human nature.⁸

As is well appreciated, St. Thomas uses the term *inclinatio* in his account of natural law, when he says in ST I-II.94.2 that precepts of the natural law are based on human inclinations (plural, Latin, *inclinaciones*). However, it is important to understand that this term is not used by him solely or even primarily in the context of natural law, but, rather, it is something like a technical term in St. Thomas’ philosophy of nature generally.⁹

To see that this is so, one should consider that St. Thomas holds that a nature is an internal source of change and of rest in a thing. A nature belongs to something in virtue of the form that that thing has; moreover, the change and rest which a thing’s nature is responsible for are directed toward an end. Nature acts for an end or goal, and because to be a goal is to be a good, the nature of each thing aims at some good. The tendency to achieve its end which is imparted to a thing in virtue of its having a nature is what St. Thomas refers to as a natural *inclinatio*. Thus, this notion of a natural *inclinatio* is basic to St. Thomas’ teleological understanding of nature. Thus he says, for instance, “Upon the form follows an *inclinatio* to the end, or to an action, or to something of that sort; for everything, in so far as it is in actuality, acts and tends towards that which is in accordance with its form,” (ST I q.5 a.5c); “It is common to every nature to have some *inclinatio*; and this is its natural appetite or love. This inclination is found to exist differently in different natures but in each according to its mode,” (I q.60 a.1c); “It is necessary to assign an appetitive power to the soul. To make this evident, we must observe that

⁸ Reason is speculative “ex parte rerum scitarum, quae non sunt operabiles a sciente, sicut est scientia hominis de rebus naturalibus vel divinis.” (ibidem)

⁹ St. Thomas largely follows Aristotle in these matters, but in what follows I will speak as though ideas which derive from Aristotle are St. Thomas’. Also, I will use the Latin *inclinatio* rather than the English, to help keep clear that the term is such a technical term.

some *inclinatio* follows every form: for example, fire, by its form, is inclined to rise, and to generate its like," (I q.80 a.1c);¹⁰ and "Every *inclinatio* follows upon some form," (I-II q.8 a.1c).

It can be seen that for St. Thomas the most important ideas are that an *inclinatio* follows upon form and that it tends to some end. It follows that the best way to identify the natural *inclinatio* (or, plural, *inclinaciones*) of a thing would be to identify its natural form (or forms).

Inclinatio is an analogical term for St. Thomas, like many other important terms in Aristotelian philosophy. What this implies is that, for different kinds of things, and in different circumstances, correspondingly different phenomena will count as an *inclinatio*. A stone's falling toward the earth is an *inclinatio* for St. Thomas, but also a dog's hungering for food, an angel's love of self, and a human being's love of knowledge. One kind of inclination will not be exactly like another kind, and not entirely different, but rather the one varies relative to another in an understandable way given the difference in kind or circumstance. Like other analogical terms, then, *inclinatio* cannot be defined through identifying some common trait that is found in the same way in all cases of inclination. But one can clarify it through likenesses and closely related terms: thus, according to St. Thomas, an inclination is like a relation to an end (I.28.1 c); it is a tendency (*In Physic.*, lib. 1 l. 10 n. 5); an impetus (*In Physic.*, lib. 8 l. 8 n. 7); an ordering ("love is like an inclination or order in a natural thing," *S.c.G.* IV.26.8); an aptitude (I-II.23.4 c); and even a kind of law, insofar as that which has an inclination is like something subject to a law directing it to that end (I-II.91.6 c).

St. Thomas' notion of *inclinatio* must be viewed in connection with his conviction that the realm of nature is a distinctive kind of reality precisely because it manifests change. Thus, anything in nature must, through the kind of thing that it is, be ordered towards participating somehow in movement and change. Its *inclinatio* is that through which it so participates. That to be a natural being is to be ordered toward movement and change is so central a conviction for St. Thomas that he uses it to argue that there cannot be any natural beings which are infinite in magnitude, since an infinite being could not move: it could not move in a straight line, because there would be no place where it was not, into which it could move, and it could not move through rotation, because radii at infinite distances from the center would be infinitely distant also from themselves, and therefore no point on one radius would ever be able to occupy the same place as another.

¹⁰ See also I-II.26.2 c.

er point equidistant from the center on another radius---which is what the rotational motion of that thing would require (see *ST I q.7 a.3c*).

Since an *inclinatio* is consequent upon form, then there are as many natural *inclinatioes* in a human being as there are natural forms. St. Thomas thinks that the definition of a human being, in terms of genus and species, reveals the relevant forms. A human being is defined as a rational animal: thus the genus, animal, indicates one natural form, and the species, rational, indicates another.

What is meant by “form” in this connection? A form is an intelligible structure which serves to sort something into a kind. So, to speak of the natural forms of a human being is to speak of the kinds into which a human being is sorted in virtue of what it intelligibly is by nature. Hence, another way of approaching this question of the natural forms of a human being is to ask into what kinds a human being is naturally sorted, or, alternatively, what are the main commonalities that a human being has by nature with other existing things. So, in saying that a human being is in the genus, animal, one is saying that an aspect of what a human being intelligibly is, by nature, establishes a commonality between human beings and animals in general. Or, in saying that a human being is in the species, rational, one is saying that an aspect of what a human being intelligibly is, by nature, establishes a commonality between human beings and rational beings in general.¹¹

This way of identifying commonalities, through considering with which sort of things it is by nature grouped, implies that there is a third natural form, grouping, and commonality which can be attributed to human beings, namely, that which a human being has in virtue of being an existing thing within the category of substance. Aristotle’s doctrine of the categories is a doctrine of highest kinds or *ultima genera*, the most general kinds into which beings are sorted in virtue of their form. Hence, besides looking to the definition of a human being, to identify its natural forms and its *inclinatioes*, one may also look to the doctrine of the categories, note that a human being is a being in the category of substance, and therefore say that a human being also has a commonality with all other natural substances.¹²

These three *inclinatioes* – substance (category), animal (genus), rational (species) – are exactly those that St. Thomas identifies in his discussion of natural law:

¹¹ But this is “proper” and “distinctive” of human beings because, St. Thomas thinks, no other animals are rational.

¹² Compare the opening of the *De Anima*, where Aristotle suggests that prior to giving the genus and species of something is identifying the category to which it belongs: 402a24-6.

[...] in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances. ... Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals ... Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him.

So, not only is *inclinatio* a technical term taken from a broadly Aristotelian philosophy of nature, but also St. Thomas' method of identifying *inclinaciones* depends upon the Aristotelian doctrine of the categories and his conviction of the possibility of devising satisfactory definitions in envisaged within Aristotelian logic and philosophy of nature. Of course we are speaking of St. Thomas' precision of ordinary thought. He of course would grant that people in general are familiar with human nature just as they are aware of the distinction between quantity and quality, or between substance and attributes existing in substances.

Third observation. It is possible for *per se nota* propositions to depend on other propositions even if they are not demonstrable.

From the first two observations presented above, one might maintain that the natural law for St. Thomas consists of statements of final necessity, having the form of "must" or "ought" statements, which we formulate from discerning inclinations and therefore ends which we have by nature, identifying action types which are immediately compatible or not with our attaining those ends. That is, the natural law is the rational formulation of the ordering which results from our having the nature that we do. This captures the traditional construal of St. Thomas on natural law, and I believe that this is basically correct, although it would need to be qualified in certain ways.

However, first an objection needs to be addressed and a confusion clarified, about *per se nota* propositions. On the view which I am proposing, it looks as though the natural law would consist of propositions which were derived from propositions about human nature. Now, if all natural law propositions were so derived, it seems, none would be "known just in themselves" (*per se nota*), and none would be indemonstrable first principles. However, this seems contrary to what St. Thomas explicitly holds, as John Finnis has argued:

Propositions about primary (*secundum se*) human goods are not derived from propositions about human nature or from any other propositions of speculative reason; as Aquinas says with maximum clarity, and never wavers from saying,

they are *per se nota* and *indemonstrabilia* (I-II q. 58 aa. 4c and 5c; q.91 a.3c; q.94 a.2c; *In Eth.* V, lect. 12 [para. 1018]).¹³

In the texts that Finnis cites, St. Thomas develops his familiar analogy between speculative and practical reasoning, as both needing to start from first principles, as when St. Thomas states, for example, that it is “by the virtue of understanding that we know self-evident principles both in speculative and in practical matters” (I-II q.58 a.4c); and that “just as, in the speculative reason, from naturally known indemonstrable principles, we draw the conclusions of the various sciences, the knowledge of which is not imparted to us by nature, but acquired by the efforts of reason, so too it is from the precepts of the natural law, as from general and indemonstrable principles, that the human reason needs to proceed to the more particular determination of certain matters” (I-II 1.91 a.3c). We are presented, then, with a familiar difficulty: how can the view that I am defending here be rendered consistent with these texts?

The resolution involves getting clear on what it means, for St. Thomas, for a proposition to be *per se nota*. In this regard, it helps to consider an example of a *per se nota* proposition which St. Thomas gives incidentally in I-II q.94 a.2c, namely: “An angel is not circumscriptively in a place” (*Angelus non est circumscriptive in loco*). Admittedly he says that this proposition is *per se nota* only to experts; however, that is irrelevant for the purpose of understanding exactly what it means for a proposition to be *per se nota*. What the example shows with maximal clarity is that, for St. Thomas, a *per se nota* proposition may depend upon prior knowledge about the world. As St. Thomas says explicitly, the proposition is *per se nota* precisely to someone who already understands and accepts the proposition that “An angel is not a body” (*Angelus non est corpus*). Now, it would be absurd to hold that we know that angels are not bodies by interior reflection, introspection, intuition, or anything else of the sort. Indeed, whether angels have bodies was a live, disputed question in St. Thomas’s day. Consider that when St. Thomas takes up the question, in ST I q.50 a.1c, his argument that they are not depends upon various claims of speculative reason which themselves require ample justification, such as that the perfection of the universe requires that as an effect it be assimilated to a cause; that the assimilation of the universe to God as its cause requires that there be intellectual creatures; and that intelligence cannot be the operation of any body or corporeal power. Note that this last claim depends upon the complex and prob-

¹³ John Finnis, *Is and Ought in Aquinas*, [in:] *Reason in Action: Collected Essays*, Oxford University Press, Oxford 2011, p. 147.

lematic argument of Aristotle in *De Anima* III.4, and therefore, in addition, all of the philosophical psychology on which that argument itself in turn depends.

So how can it be that “An angel is not circumscriptively in a place” is *per se nota*, yet it is so to someone only in virtue of his grasping a rich body of complex theory and argument? Does St. Thomas think that that proposition derived for such a person, or not derived?

The correct resolution to this difficulty depends upon distinguishing the dependence of the grasp of a term on prior knowledge, from the dependence of the proposition on prior propositions. In common speech, when we say “this proposition is derived from others”, we mean that the assertion of the one depends somehow on our grasp and acceptance of those others. However, when St. Thomas claims that some proposition is not demonstrated from others, he means, precisely, that we do not affirm it in the manner of a conclusion of a syllogism, in which the terms of that proposition are linked to each other solely through their connection to a middle term. We do not affirm it as the conclusion of a syllogism, because we see the connection between the terms immediately and can assert the proposition on its own. For an expert, the proposition “*Angelus non est circumscriptive in loco*” is indeed derived from prior knowledge, according to the common way of speaking, as one cannot grasp the subject nor the predicate properly without expert knowledge. However, to that same expert, the proposition is *per se nota* and not “derived”, that is, not demonstrated on the basis of others, because the expert sees immediately the connection of the term, without needing to rely on a syllogism which connects them through a middle term. That is to say, someone’s understanding of the terms of a *per se nota* proposition may certainly be derived from much other knowledge and observation, without its ceasing to be the case that the proposition itself is nevertheless *per se nota*.

There are many rich considerations which we must pass over here. For example, we can see why Newman, still working within the framework of Aristotelian logic and method which he learned from Whately, wished in the *Grammar of Assent* to distinguish “assent” from what he called “conditional” propositions, which were asserted *qua* depending on other propositions.¹⁴ Again, we may wonder if the requirement that there be first principles of reasoning for human beings is something like a mainly pragmatic requirement, viz. that we could not work out

¹⁴ Conditional propositions “express a Conclusion (e.g. Free-trade therefore benefits the poorer classes), and at once imply, and imply their dependence on, other propositions” (I.1. § 1). Assent in contrast is “the absolute acceptance of a proposition.”

and reason through to something, if everything had to be worked out and reasoned through.¹⁵

But to apply the point above to the case at hand: we can certainly maintain that the most fundamental *propositions* of natural law are *per se nota*, and at the same time maintain that the *terms* of those propositions are understood through much theory and observation, including speculative knowledge about human nature. Yet that seems to be precisely St. Thomas' view. Consider the proposition of the natural law, "man is not to be killed." We may regard that as a statement of an ordering using the gerundive, expressive of final necessity, relative to an end of man, namely, the object of the natural inclination which we share with all substances which aims at self-preservation and continuation in existence. The inclination posits a good, human life; and "not to kill" excludes an action-type which must be excluded if that end is to be attained. That human life is a good for us, although known easily and, as St. Thomas says, "naturally" (*apprehenditur naturaliter*), is nonetheless something known through speculative reason.

Assume with St. Thomas the most fundamental principle that "good is to be pursued and bad to be avoided." Assume also, obviously, that if human life is good then the action-type, to deliberately take human life, is bad. Then "human life is to be preserved and protected, and not to be deliberately taken" is *per se nota*, as the subject states a good, and the connection between the positing of a good and the assertion that it is to be pursued (and the contrary evil avoided) is underwritten by the primary principle.¹⁶ The subject term states something understood to be good on the basis of common experience; the proposition is *per se nota* because of the obvious connection between good and pursuit, bad and avoidance. Hence, it is as we have said: the term in a *per se nota* proposition can be "derived" whereas the proposition itself is not, and thus It is possible for *per se nota* propositions to depend on other propositions even if they are not demonstrable.

¹⁵ This is indeed how St. Thomas speaks, in the passages quoted above, but also when he discusses the third condition for a first principle in *Sententia Metaphysicae*, lib. 4 l. 6 n. 4 [82164]: "Tertia conditio est, ut non acquiratur per demonstrationem, vel alio simili modo; sed adveniat quasi per naturam habenti ipsum, quasi ut naturaliter cognoscatur, et non per acquisitionem. Ex ipso enim lumine naturali intellectus agentis prima principia fiunt cognita, nec acquiruntur per ratiocinationes, sed solum per hoc quod eorum termini innotescunt. Quod quidem fit per hoc, quod a sensibilibus accipitur memoria et a memoria experimentorum et ab experimento illorum terminorum cognitio, quibus cognitis cognoscuntur huiusmodi propositiones communes, quae sunt artium et scientiarum principia." The difference between such "pragmatism", and that expressed in the famous quip of Quine (the question of what the postulates are of a system is "as meaningless as asking which points in Ohio are starting points," in *Two Dogmas of Empiricism*, Harvard University Press, Cambridge, Mass., p. 35), would be that St. Thomas holds we are so constituted by nature as to take some principles as first principles.

¹⁶ Precisely how it is underwritten is not relevant to our purposes here.

Fourth observation. Human practical reason is primarily generic and social, and secondarily particular and individual.

My goal in this section, which is a kind of interlude, is simply to offer a few intuitive remarks in the hopes of prompting a *Gestalt* change in some readers. It is not possible to develop my points with any great degree of rigor. The main idea I wish to convey is what practical reasoning looks like for someone who looks at the good of an individual as always a question of the good of someone *qua* member of a natural kind.

To start, consider the famous piece of advice found on the forecourt of the Temple of Apollo at Delphi, “Know thyself” (*gnōthi seauton*). A modern reader takes this maxim as telling its reader to know himself individually, who he is, as distinct from other human beings. Yet classical scholars will say, instead, that the maxim was actually an injunction, to the reader, to understand the *kind* of being that a man was, neither a god nor a beast.¹⁷ The example represents another key difference between the classical outlook, shared by St. Thomas, and the dominant tendency of modern thought. In the classical outlook, reasoning was regarded as primarily about types, characters, and kinds; only secondarily is reasoning brought down to the level of individuals, and applied there. In contrast, the dominant modern view is to take reasoning about individuals as primary and basic, and then to attempt to derive, if possible, results about classes or kinds from these. This difference in approach is clearly seen in logic and natural science; but it applies also to practical reasoning. St. Thomas shares the classical outlook, and a failure to understand this can lead to serious misunderstandings in construing his thought.

For St. Thomas, the practical reasoning of an individual begins with premises about what is good for the kind of thing which he is. What is good for me is primarily what is good for human beings as such, as applied to me. Similarly, practical reason begins with reasoning about what is good for the communities to which he belongs, and, to the extent that actions are neither commanded nor forbidden in those communities, and scope for his own action is therefore allowed and permitted, to that extent his practical deliberations consider just what he is to do. What is good for me to do, as an individual, involves deliberation about what I am free to do, only after I have taken into account what is commanded or forbidden by the community of human kind (the association of “men as men”, in the

¹⁷ Plato’s various references to the maxim corroborate that interpretation.

admirable phrase of Richard Hooker¹⁸), the laws of my city-state, or the ordering of my household. Again, in contrast, from the dominant modern point of view practical reason is primarily about me and my projects and only secondarily, if at all, about what I should or must not do in consequence of being a member of a certain kind. Similarly, practical reason is conceived of as being concerned with what is expedient for me as an individual, and obligations to follow the law or social responsibilities are regarded as derivative and highly problematic.

These points are important for understanding how St. Thomas holds we arrive at precepts of law from considerations of human nature, and also why those precepts are cannot be trumped by considerations of my individual advantage. Indeed, if one does not take this sort of approach, then it is unclear how one could arrive at fundamental principles of practical reason like those which St. Thomas articulates and endorses, that is, which have the character of fundamental law. After all, a precept of the form “Life is to be pursued by me” lacks the character of law: it is not directed at a community, for the common good of that community. So one must understand the fundamental precepts of natural law, according to St. Thomas’ approach, to be arrived at in something like the following way. I naturally know, in the manner explained, that life is by nature a good for human beings. But I reason about my own good, only through reasoning about myself *qua* human being: any good I enjoy, I must acquire, possess and enjoy *qua* human being. Since I am reasoning about my own good as a member of a kind, then the commonor simultaneous attainment of good, by members of the kind, is a common good for me, and my reasoning therefore has the character of universalizability: human life is good for any human being, as a human being; so human life is to be promoted and safeguarded, and its destruction avoided, by any human being, as a human being; so I am to promote and safeguard human life, and avoid its destruction (“Thou shalt not kill”).

That is to say: that the first principles of practical reason have the force of obligation, comes from their articulating a rational ordering based on a goal aimed at by human nature; that they are first principles known in themselves, is guaranteed by the obvious connection between something’s being a good, and its needing to be pursued, and its contrary avoided; and that they have the character of law, is insured by our practical reasoning being primarily about the kind of being we are and derivatively about an individual as an individual.

¹⁸ “Law which simply concerneth men as men” is Hooker’s way of describing the natural law. See *Laws of Ecclesiastical Polity*, I.x.12; xv.1, 4.

Natural law as we have described it is something that could be arrived at by a god surveying the human race; understanding the kind of creature a human being is; and formulating laws for how beings of that sort should associate with one other, to attain in common their natural ends. Indeed, for St. Thomas, to say that the natural law is a participation in the divine law is as if to say that what God intended to be the way in which human beings relate to one another is the way that we fundamentally understand we should relate to one another: the participation is our interpreting God's providential design as a "measure" by which we take our own actions to be "measured." Or, again, when God gave the Ten Commandments, he was setting down precepts which He as well as we could understand to be fundamental or quasi-fundamental precepts of the natural law. The first-person point of view seems not to be favored simply in point of grasping what the natural law is for us.

Yet for all that there is something like a practical contradiction, St. Thomas holds, which obtains when a human being contradicts a precept of the natural law: this phenomenon is peculiar to a first-person point of view. The reason is the analogy which St. Thomas asserts, following Aristotle, between affirmation and pursuit on the one hand, and between negation and avoidance on the other. Affirmation and negation are characteristics of judgment; pursuit and avoidance of appetite broadly construed. If someone looks at a plant and says "water is not good for it", or any of the alternative formulations we considered (for example, "it does not need to have water"; "it is not to be watered"), such a statement is simply false. But suppose the plant became rational and could say "Plants do not need to be watered." Then the statement would be not simply false but a kind of practical contradiction, because plants aim at their flourishing and desire to grow with a natural appetite which is analogous to the judgments that "flourishing is good" and "having water is good," if having water is necessary for flourishing. The supposititious rational plant would not simply be saying something false about itself but also saying something at odds with itself, not unlike someone's saying "I am not now speaking" or even "I am now saying something false" — as the latter is a practical contradiction because presumably the speaker wishes to attain the truth and says what he says to attain it.

Fifth observation. First principles of practical reason cannot be corroborated dialectically.

NNL theorists claim that what they regard as basic goods can be established only dialectically¹⁹: basic goods cannot be shown to be good by showing that they are instrumentally useful for attaining some other good, because they are basic; and they cannot be established as goods starting from any observations about the world, because, NNL theorists insist, there is no inferring of statements about how things “ought” to be from statements about how the world “is.” To test this view, and to see whether it has any advantages over the view defended here, let us consider an example of such a dialectical argument given by Robert George in an article replying to criticisms of the NNL theory.²⁰ The putative dialectical argument purports to identify “health” as a basic good.

George imagines a professor engaging in various hypothetical conversations with a promising and busy graduate student as to why the student has recently taken a late night job flipping hamburgers in a fast food restaurant. The professor “knows” that the student is rational, George says, so the professor is convinced that the student must have a reason for taking that job. Accordingly, the professor asks the student why the student has taken the job. Now then, as George imagines: suppose the student were to reply that he had taken the job to get money, and yet he could not name anything he needed to spend money on. Or suppose the student said that he regarded money itself as worth pursuing as an end-in-itself, for no other purpose. Then the professor would remain baffled. He would not yet understand the student’s behavior. The student would not yet have offered a satisfactory reason for his behavior. According to George, “The general lesson to be drawn from reflection on the matter ... is that money can only have ... instrumental value. It cannot serve as a reason for action that requires reference to no further reason in order to ground the action’s intelligibility.”

George then continues the thought experiment and imagines further conversations between the professor and the student. Suppose the student were to say that he wanted the money which he would get from the job, in order to buy expensive medicine. Now that answer begins to make sense. However, suppose that the student, when further questioned, were to say that he had no plans to use the medicine for anything: then once again the professor would be baffled, for similar reasons, because, it seems, medicine has only “instrumental value.” Finally, suppose that the student were to say at last that he wanted to earn money, to buy the

¹⁹ Aristotle’s “dialectical” argument for the Principle of Non-Contradiction in *Metaphysics* IV is presumably the model.

²⁰ Robert George, *Recent Criticisms of Natural Law Theory*, [in:] *In Defense of Natural Law*, Clarendon Press, 1999, p. 31–82, and in particular Section E, *The Identification of a First Practical Principle*, p. 45–48.

medicine, so that his sister could take the medicine and regain her health. Then he would have given a satisfactory reason. The professor would at last be able to see the point of the student's taking the job.

According to George, what these reflections show is that health, unlike money or medicine, is an "end-in-itself": "health is one of those things worth having just for its own sake," he says. "Generalizing from our inquiry," George concludes, "we can affirm, as a self-evident practical truth, the proposition that 'health is a good to be done and pursued,' (i.e. preserved, protected, restored). Thus, we have identified a basic precept of natural law." However, is that really so? Can such a conversation succeed in identifying and in some way corroborating a putative basic precept?

There are many difficulties. First, it may be wondered how the argument avoids the stricture of the NNL theorists, that one cannot argue from "is" statements to "ought" statements. Supposing that such a conversation actually were to take place, then we could give a description of it along the following lines. The student begins working at a night job flipping hamburgers. The professor asks certain questions. The student makes statements in reply. The professor sometimes fails to understand the student (more precisely, he states that he understands him), and sometimes understands the student (more precisely, he states that he understands him). In particular, after the student states that he is seeking money just for itself, then the professor states that he does not understand the student. But after the student states that he is seeking his sister's health just for itself, then the professor states that he does understand him. Such is the description of the conversation which we could give. However, from these and like observations (which could equally be reported in a psychological study), what would follow, or be suggested or identified, about what should be done, pursued, or avoided? After all, the NNL theorists claim, there is no possibility of arguing from "is" to "ought." So how can a "basic principle of natural law," which contains an "ought" claim (health is a good which ought to be pursued), be supported by such a description of a conversation?

Note that it makes no difference whether one describes the conversation or takes part in it. It even makes no difference whether the student is carrying on the conversation with himself, because from observations about himself as asserting certain things, and asserting that he understands or fails to understand himself, nothing normative can follow or be suggested. Nor is the NNL theorist helped if he says that the hypothetical exchange is not meant to *deduce* or *imply* any normative principle, but only to *identify* it, because the same problem arises in that case: What would be the relation between a set of descriptive statements, and a particu-

lar normative statement, such that the former could serve to indicate or pick out the latter? The matter is completely obscure and gets brushed over by George's non-rigorous talk about how "generalizing from our inquiry ... we can affirm..." the supposed precept of natural law.²¹ This looks very muddled.

Second, even if a descriptive account of a conversation could serve to "identify" a particular normative principle, surely the conversations that George imagines could serve to "identify" only that "health is something that *may* be pursued", not that "health *ought to be* pursued." From, "if you are seeking health, you are no longer acting unintelligibly," it does not follow that "you are no longer acting intelligibly if you fail to seek health." From the precept, "Act intelligibly!" together with the premise, "To seek health is to act intelligibly," it does not follow that "Health must be sought in order to act intelligibly." These inferences too are brushed over by the remark that "generalizing from our inquiry ... we can affirm, as a self-evident practical truth, the proposition that 'health is a good to be done and pursued,'."²² This looks to be another muddle.

Third, even if such a description of hypothetical conversations could succeed in establishing or "identifying" a precept which binds rather than permits, it would not establish anything about *health* as being what we were bound to pursue. According to George, because the professor finally understands the student, when the student says he took the job to get money to buy medicine for his sister's health, the conversation illustrates that "Acting for the sake of (his sister's) health as an end-in-itself is perfectly understandable." However, how can we determine whether the "end-in-itself" in this case is "health" or rather his sister? The parenthetical remark in the statement just quoted shows that this question must be dealt with. Suppose that the hypothetical graduate student says that he is working the night job to get money to buy medicine *to restore the health of a wild dog in the Manipur province of India*. Suppose that in response the professor were to ask (as one would expect) what is so special about that dog, and what so important about that province, that the graduate student should be working a night job for money to spend on this matter, and suppose that the graduate student were to say in reply,

²¹ On the other hand, if the dialectical exercise is intended to point out what we already know in the strong sense that we are already committed to it and cannot but be committed to it, then why is the exercise necessary at all, since what difference would it make whether we "identify" the principle in that sense or not? And yet even so if one were simply to ask others plainly whether they already accepted a precept or law having the form "health is a good to be done", *they* would likely fail to understand what *you* meant.

²² The warping of language is usually a good sign that a philosophical mistake is being committed. We should suspect that something is going wrong when we see NNL theorists employing such expressions as "Health is a good to be done," which makes no sense.

“Why does there need to be anything special about these things? Health is a good to be done and pursued. It’s perfectly intelligible, for me to say that I am doing what I am doing for health, and nothing more needs to be said to make it intelligible.” – The professor surely would remain baffled. The student’s mention of health would do nothing to dispel the professor’s bafflement. Change the example so that it is the health of a human being in the Manipur province which the student refers to, rather than that of a wild dog, and even so, unless he says more (“he’s an orphan I’ve become a kind of adoptive benefactor of through Catholic Relief Services”), his explanation remains baffling. All of this is just to say that, if the imaginary conversation could “identify” a binding normative principle, it would hardly serve to establish that “Health is a good to be done and pursued,” rather than “My sister’s good is to be done and pursued.”²³ It would seem odd to claim that “my sister’s good” is a basic, self-evident good, or that there is a basic principle of natural law applying to each of a person’s relatives.

Fourth, the example is artificially described in such a way that the intelligibility or not of the student’s responses is made to hinge only on the good he says he is trying to achieve in taking the job, not on whether his taking the job is well-ordered and in that sense reasonable. For a promising and busy graduate student to take time away from his studies, at substantial personal cost, for no overriding reason, would be irrational in the simple sense that his actions would fail to contribute intelligently to the goal he is seeking. Even if he does take the job for a non-instrumental good, he would still be irrational, unless he could show that this good contributed to his purpose, or that it was in the service of a higher purpose which he correctly regarded as superseding his studies. But these kinds of considerations are put to the side at the start in the stipulation that the professor “know[s] that [the student] is not irrational”: irrationality, in the sense of the failure to adapt means properly to ends, thereby gets excluded by fiat.

Suppose I am hiking with a friend, following a trail to our destination, which is a shelter where we plan to spend the night. Somewhere along the way my friend turns off the trail and starts walking in the wrong direction. I ask him whether he knows that the path he has turned onto does not lead to the shelter: he says he does. I ask him whether he has given up on making it to the shelter or has changed his destination: he says he has not. I ask him how by taking that trail he hopes to get to the shelter, and he can give no response, but he keeps walking.

²³ Indeed, the closer the relation, the less it seems to matter what the student was aiming to get for that person: for example, the student says, “I am working the job to get money to buy a pendant shaped like a plum;” the professor asks, “Why?”; the student says, “For my wife” – which would be enough.

I conclude, then, that either he is lying to me, does not know himself, or has lost his reason. If the first two alternatives could be eliminated, then the correct assessment would *not* be that the friend has “failed to seek the good” and is acting “pointlessly”²⁴ but rather that he is mad and irrational, since he is no longer showing a characteristic attribute of reason, which is the ordering of parts to a whole. The same conclusion applies to the hypothetical case of the student. The student’s actions become intelligible when he explains either how taking the job actually contributes to his studies after all (“my scholarship money ran out”) or that some purpose higher than his studies has necessitated this unusual step (“my sister is sick and no one else can help her”). The stipulation that the student’s rationality is never at insures that questions of the ordering of goods get removed from consideration; only then can it seem that what makes the student’s explanation understandable is whether the good the student says he is pursuing is an instrumental good or not. It is only because questions of the ordering of goods have been excluded arbitrarily by stipulation, that the case can be thought to support the idea that “health is a good to be done” regardless of the ordering of health to anything else.²⁵

Conclusion

In this paper, I offer in a preliminary and exploratory manner some observations which, I believe work to clear away certain misunderstandings and false objections against St. Thomas’s account of natural law. The observations at the same time show that the NNL theory’s approach is untenable, not simply as an account of St. Thomas, but also as a sound account of practical reason. To underline this point, I have argued that the dialectical exercises that the NNL theorists offer as establishing their putative first principles of natural law do nothing of the sort.

²⁴ For NNL theorists, someone who wanted money just because it is money, for no other reason, would be violating the precept, “good is to be done and bad is to be avoided.” They interpret the precept as a rule against “pointless” action, by which they mean that the precept requires that someone always ultimately act for something we can understand him to be taking to be good in a non-instrumental manner.

²⁵ The “basic goods” of the NNL theorists can appear to have no ordering relative to one another only because they are arrived at by the consideration of cases in which questions of ordering have been excluded.

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