

CONTEMPORARY PERSPECTIVES ON NATURAL LAW

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CONTEMPORARY PERSPECTIVES ON NATURAL LAW

NATURAL LAW AS A LIMITING CONCEPT

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Key to Abbreviations

Aristotle

EE = *Eudemian Ethics*

De An. = *De anima*

Metaph. = *Metaphysics*

NE = *Nichomachean Ethics*

Phys. = *Physics*

Thomas Aquinas

De malo = *Quaestiones disputatae de malo. Opera omnia*, vol. 23
(Rome/Louvain: Leonine Commission/Editori de San Tommaso,
1976).

De pot. = *De potentia*, in *Quaestiones disputatae*, vol. 2 ed. P. Pession (Rome
and Turin: Marietti, 1953).

De princ. Nat. = *De principiis naturae ad Fratrem Sylvestrum. Opera omnia*, vol. 43
(Rome: Leonine Commission/Editori di San Tommaso, 1976), pp. 1–
47.

De ver. = *Quaestiones disputatae de veritate. Opera omnia*, vol. 22 (Rome:
Leonine Commission/Editori di San Tommaso, 1970–1975).

In Ethic = *Sententia libri Ethicorum. Opera omnia*, vol. 47 (Rome: Leonine
Commission, 1969).

- In Phys.* = *In octos libros Physicorum Aristotelis expositio*, ed. P.M. Maggiòlo (Turin and Rome: Marietti, 1965) [contains Leonine Commission text of 1884].
- In Pol.* = *Sententia libri Politicorum. Opera omnia*, vol. 48 (Rome: Leonine Commission, 1971).
- In Sent.* = *Commentum in quatuor libros Sententiarum Magistri Petri Lombardi. Opera omnia*, vols. 6–7 (Parma: Typis Petri Fiaccadori, 1856–1858).
- In Trin.* = *Super Boetium De Trinitate. Opera omnia*, vol. 50 (Rome and Paris: Leonine Commission and Les Éditions du Cerf, 1992), pp. 1–230.
- SCG* = *Summa contra gentiles sive De Veritate Catholicae Fidei contra errores Infidelium. Opera omnia*, vols. 13–14 (Rome: Leonine Commission, 1926).
- ST* = *Summa theologiae. Opera omnia*, vols. 4–7 (Rome: Leonine Commission, 1888–1892).
- Super II Cor.* = *Super Epistolas S. Pauli lectura, t. 1: Super secundam Epistolam ad Corinthios lectura*, 8th edn. (Turin and Rome: Marietti, 1953), pp. 437–561.

Ioannes Duns Scotus

Ox = *Opus Oxoniense. Opera omnia*, ed. Editio nova iuxta editionem Waddingi... recognita (26 vols. Paris: apud Ludovicum Vivés, 1893).

Ord = *Ordinatio. Opera omnia*, ed. Commissionis Scotisticae ad fidem codicum edita (Civitas Vaticana: Typis Polyglottis Vaticanis, 1950 ff).

William of Ockham

Op. Theol. / Op. Philos. = *Opera philosophica et theologica* ad fidem codicum manuseriptorum edita, ed. Instituti Franciscani (10 vols., New York: St. Bonaventure University, 1980).

Sum. Nat. Philos. = *Summa Philosophiae Naturalis*, in *Opera philosophica et theologica* ad fidem codicum manuseriptorum edita, ed. Instituti Franciscani (10 vols., New York: St. Bonaventure University, 1980), vol VI, ed. Stephanus Brown (New York: St. Bonaventure University, 1984), pp. 137–396.

Francisco Suárez

De legibus = *Commentaria ac disputationes in primam secundae D. Thomae, de legibus seu legislatore Deo. Tractatus de legibus, utriusque form hominibus utilis, in decem libros dividitur quorum quinque ultimos in hoc tomo reperie*, in *R.P. Francisci Suarez e Societate Jesu opera omnia*, ed. Nova a D. M. André (28 vols., Paris, Ludovicum Vivés, 1856–1878), vols. V and VI, ed. Carolo Berton (Paris, Ludovicum Vivés, 1856).

Gottfried Wilhelm Leibniz

GP = *Die philosophischen Schriften*, ed. C. I. Gerhardt (7 vols, Hildesheim: Georg Olms, 1965).

Grua= *Gottfried Wilhelm Leibniz. Textes inédits, d'après les manuscrits de la Bibliothèque provinciales de Hanovre*, ed. Gaston Grua (Paris: Presses Universitaires de France, 1948).

Francis Hutcheson

IBV = *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, ed. Wolfgang Leidhold (Indianapolis, IN: Liberty Fund, 1725, 2004).

Richard Cumberland

DLN = *De legibus naturae disquisitio philosophica* (London: 1672).

Immanuel Kant¹

GMS = *Grundlegung zur Metaphysik der Sitten* (1785, 2nd ed. 1786), in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols., Berlin, 1902–), vol. IV, ed. Paul Menzer (Berlin, 1911), pp. 386–463.

¹ Apart from the the *Kritik der reinen Vernunft* all references to Kant are to page number and volume of *Kant's gesammelte Schriften*, edited by the Akademie der Wissenschaften: Immanuel Kant, *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902 ff.). References to the *Kritik der reinen Vernunft* are to the A and B pagination of the first and second editions.

- KpV* = *Kritik der praktischen Vernunft* (1788), in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. V, ed. Paul Natorp (Berlin, 1913), pp. 1–163.
- KrV* = *Kritik der reinen Vernunft* (1781, 2nd edn 1787), ed. Jens Timmerman (Hamburg: Felix Meiner, 1998).
- MdS* = *Metaphysik der Sitten* (1797) in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. VI, ed. Paul Natorp (Berlin, 1914), pp. 203–491.
- Rechtslehre* = *Metaphysische Anfangsgründe der Rechtslehre* (1797), *Metaphysik der Sitten, Erster Teil*, ed. Bernd Ludwig, 2nd rev. edn (Hamburg: Felix Meiner, 1998).
- Religion*= *Die Religion innerhalb der Grenzen der bloßen Vernunft* (1793), , in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. VI, ed. Georg Wobbermin (Berlin, 1914), pp. 1–202.
- Tugendlehre* = *Metaphysische Anfangsgründe der Tugendlehre* (1797), ed. Bernd Ludwig (Hamburg: Felix Meiner, 1990).

Georg Wilhelm Friedrich Hegel

- Enzyklopädie* = *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830), *Gesammelte Werke XX*, (Hamburg: Meiner, 1992).
- Grundlinien* = *Grundlinien der Philosophie des Rechts*, (Hamburg: Meiner, 1995). For English quotes from this work by

Hegel, we have used the translation by H. B. Nisbet for Cambridge University Press, 1991.

Philosophische Propädeutik = *Philosophische Propädeutik, Gymnasialreden und Gutachten über den Philosophie-Unterricht*, in *Sämtliche Werke III*, (Stuttgart: Frommann-Holzboog, 1961).

Geschichte der Philosophie = *Vorlesungen über die Geschichte der Philosophie*, in *Sämtliche Werke XVIII* (Stuttgart-Bad Cannstatt: Frommann, 1965) Glöckner-Ausg.

System der Philosophie I = *System der Philosophie I*, in *Sämtliche Werke VIII* (Stuttgart-Bad Cannstatt: Frommann, 1964) Glöckner-Ausg.

Other abbreviations

Other abbreviations used (some already mentioned) are the following

a. = article

c. = *corpus* (body of an article or solution)

cap. = *capitulum* (chapter)

col. = column

d. = distinction

ll. = lines

INTRODUCTION

In recent years, we have witnessed a new revival of the theory of natural law, together with increasing scholarship on modern natural law. It is true that, as Rommen put it, the theory of natural law is bound to come up again and again at the core of moral theory¹, particularly in times of cultural crisis².

Among the factors explaining its periodic revival is that it seems to promise a clear moral criterion in a world affected by moral ambiguities and disagreement. That such promise is not a vain illusion of our reason, or a moral appeal without legal or political consequence, is part of the challenges natural law theorists should confront.

As we know, natural law was first invoked by the Stoics as a means of providing people with a moral reference, at a moment marked by deep political transformation: the emergence of Alexander's Empire involved the decadence of the *polis* as a moral context for individual action, without providing an adequate political replacement; this meant that the relevance of individual actions had to be sought elsewhere. While Aristotle had still approached *eudaimonia* from the perspective of the citizen of the *polis*, Stoicism introduced a new, more universalistic approach, in which the moral relevant factor was not common citizenship but common human nature³. Of course, this

¹ See Rommen, H., *Die ewige wiederkehr des Naturrechts*, Leipzig, Hegner, 1936.

² 'In moments of crisis, it is true, natural law flowers briefly. John Locke summoned natural law in defence of Whig interests against the claims of monarchy. So also did the American revolutionaries in their struggle against the crown. After World War II natural law emerged as a response to the encounter with appalling human evil, carried out with the matter-of-fact directness of the commonplace'. Weinreb, LL., 'The Moral point of view', in *Natural Law, Liberalism, and Morality*, ed. Robert P. George, Clarendon Press, Oxford, 1996, pp. 195–212, p. 195.

³ See *Stoicorum Vetera Fragmenta*, III, 346, 686; see Cicero, *De fin.* III, 62–4.

did not mean that political life became unimportant. On the contrary. Yet, the moral emphasis was at another place, namely, in a 'life according to nature'. While this demand implied living according to reason, we should not forget that, for the Stoics, this was in turn seen as a way to play one's role within the cosmic order. In other words: the human being, with his reason, was seen as part of nature at large. In addition, to the extent that political order was seen as part of the cosmic order, the Stoic appeal to nature did not necessarily represent a reason to oppose inherited laws and customs, as it had been the case among the Sophists, who systematically opposed living in accordance with nature or the social or political conventions.

In spite of its relevance for the constitution of the very concept of natural law, this book does not dwell specifically on the contribution of Stoicism to thinking on natural law. As the general title states, it focuses more on contemporary points of view on natural law. For this reason it may be compared to some other collections published in recent years⁴. Yet, unlike most of them, this volume does not focus merely on issues with a direct impact on philosophy of law or moral philosophy; it has, instead, a more comprehensive approach, both from a historical and a systematic point of view.

Thus, while the historical section starts with Saint Thomas Aquinas, as the first systematizer of natural law, it goes far beyond him, and traces the transformations of the very notion of natural law through modernity up to Hegel. The whole point of this historical section is to shed light on the controversial issues discussed in the next two

⁴ See George, R. P. (ed), *Natural Law Theory. Contemporary Essays*, Oxford, Clarendon Press, 1992; George, R. P. (ed.), *Natural Law, Liberalism, and Morality*, Oxford, Clarendon Press, 1996. George, R. P. (ed.), *Natural Law*, Ashgate, Dartmouth, 2003; See also Oderberg and T. Chappell (eds), *Human Values: New Essays on Ethics and Natural Law*, London: Palgrave Macmillan, 2004.

sections: one of them dealing more directly with natural law as a moral theory, and the other with the conception of nature underlying natural law theory.

The starting point needs no particular justification. In fact, while Stoic Universalism was in tune with the universal scope of Christian faith, we have to wait until the Middle Ages to find something other than scattered references to natural law within a theological context⁵, and we have to wait for Aquinas in order to find an account that articulates the theological and the metaphysical, the theoretical and the practical aspects involved in the very notion of natural law. Indeed, for Aquinas, natural law serves the purpose of ensuring a basis for harmony between reason and faith, nature and grace, always under the theological principle: grace does not destroy reason or nature, but heals it and elevates it. Yet, on the level of moral philosophy, while retaining the Stoic reference to natural inclinations as expression of *logos*, Aquinas's treatment of natural law also represented a development of Aristotelian practical reason, to the extent that it helped to clarify the principles of prudential judgement⁶.

Thus, after presenting Aquinas's position, both from a systematic and a historical perspective – González and Hittinger's contributions – the historical section continues with a consideration of modern natural law. In this regard, we should recall that, unlike mediaeval natural law, modern natural law was marked by the desire of stressing a common natural ground for political life, in a world deeply affected by religious

⁵ According to O. Lottin it was William of Auxerre who was the first to introduce natural law in theology. See Lottin, O., *Le droit naturel chez S. Thomas d'Aquin et ses prédécesseurs*, Bruges, 1931. This does not mean, of course, that references to natural law were not present in early Christian thinkers (see St. Clement of Alexandria, *Stromata* 1.182.1–3), nor to deny the relevance of Augustine's reformulation of Stoic appeal to a natural/divine order in his notion of 'lex aeterna'.

conflict. In this spirit Grotius had intended a natural law *etsi Deus non daretur*, also as a more palatable alternative to Hobbes contractualism. In the meantime, deeper philosophical differences were also in place. Particularly significant was the devaluation of the Aristotelian teleological conception of nature, in favour of a mathematical and mechanistic one, as was incorporated into triumphant modern natural science.

Undoubtedly, the attempt to develop a moral philosophy independent of religious faith was not the privilege of modern natural law theorists, apart from the fact that many elements of religious faith were still incorporated in their theories. Thus, while in Protestant Europe new accounts of natural law emerged under the above-mentioned conditions, some distinctively modern topics had been already introduced by the Spanish commentators of Aquinas, who tried to remain faithful to Aristotelian metaphysics. Among those distinctively modern topics is the account of obligation, which J. Cruz analyses in the work of Suárez and Vázquez.

In any event, as Haakonssen observes, Protestant accounts of natural law were far from being homogeneous. For some time, realist and voluntarist approaches to natural law lived side by side, influencing subsequent moral theory in a variety of ways. In a contribution which summarizes part of his crucial research on the history of modern natural law⁷, Haakonssen pays special attention to the voluntarist tradition. The other side of the debate is well represented by the next two contributions: J. Edwards explores Hutcheson's interesting alternative to the Grotian natural-law tradition, as represented

⁶ This was in fact advanced by Albert the Great. See Payer, P. J., 'Prudence and the Principles of Natural Law: A Mediaeval Development', in *Speculum*, vol. 54, n° 1, Jan 1979, pp. 55–70.

⁷ See Haakonssen, K., *Natural law and moral philosophy: from Grotius to the Scottish Enlightenment*, New York, Cambridge University Press, 1996; see Haakonssen, K. (ed.), *Grotius, Pufendorf, and Modern Natural Law*, Aldershot (England), Ashgate, Dartmouth, 1999.

by Cumberland or Pufendorf, pointing out Kant's reception of Hutcheson's theory. Likewise, M. J. Soto deals in her paper with one of the major figures of 'moral realism' in modernity, Leibniz, and yet, her contribution does not focus on Leibniz's approach to natural law, but rather on his elaboration of a distinct, scientific concept, of the 'law of nature', based on the achievements of the new natural science. Here we have the new, modern meaning of the concept 'law of nature': one which is closer to natural sciences than to moral philosophy. Soto's approach includes a reference to the elaboration of this notion by the pre-critical Kant.

In this way we arrive at a crucial point in modern ethical thought. For, in spite of Hume's critique, and his proposal of an alternative ethical theory, natural law remained at the heart of moral philosophy until well into the 19th century. Yet, at the turn of the century, Kantian moral philosophy took the lead and became the main reference for every discussion in moral philosophy: almost everyone felt the need to discuss Kant's moral system, before advancing his own.

Now, ostensibly, in Kant's moral philosophy, natural law in the traditional sense – which involved reference either to *orexis* or inclinations – had no role to play: those were empirical elements which, in Kant's view, could not be incorporated within the purity of moral law. It is true that Kant used the term 'natural law' profusely, yet always in the Newtonian, modern, sense. Accordingly, natural law for him means a universal law of causality, whose justification had been the matter of Kant's *First Critique*. As such it has nothing to say on the realm of freedom. A closer look, however, reveals that a central feature of this natural law – namely, its universality – was incorporated into Kant's account of the moral law. Thus, one of the *formulae* of his Categorical Imperative says: 'act as if the maxim of your action were to become by your will a universal law of nature'. (GG, 4: 421). On this basis, Kant also develops an original idea

of natural right, its originality resting, precisely, on the fact that natural right does not work in Kant's system as an ultimate basis for right, as was the case in natural lawyers, but rather is itself a derived concept. This is something A. Vigo explores in his paper, thereby paving the way for Herrero's contribution on the Hegelian reception and critique of Natural Right.

Hegel criticises modern theories of natural right; in his view, these theories presuppose an atheological notion of nature which deprives the ethical–political world of truth. Hegel's response to such lack of truth is involved in his resort to *Sittlichkeit*, which, in his philosophy, plays the role that nature played in modern natural right. If this does not result in a simple subjection of the subject to any given *Sittlichkeit* is only because, unlike the ancients, Hegel regards the theological–political dimension as central in understanding the meaning of natural right.

Hegel's treatment of modern natural right cannot leave reflection on natural law unaffected. It is true that after the Second World War, traditional accounts of Natural Law returned to the philosophical arena⁸. We may interpret this revival as an attempt to recover universal moral criteria beyond particular ethical contexts. In the aftermath of the Holocaust this also implied a particular stress on the dignity and freedom of every individual subject. In this spirit, Natural Law was sometimes proposed as a foundation for human rights, for instance in the work of Jacques Maritain⁹, although the connection between traditional natural law – in the Thomistic sense – and theories of natural rights

⁸ See Simon, Y. R., *The Tradition of Natural Law. A Philosopher's Reflections*, ed. Vulkan Kuyc, with an Introduction by Russell Hittinger, Fordham University Press, New York, 1992 (1st ed. 1965).

⁹ See Maritain, J., *Les droits de l'homme et la loi naturelle*, Paris, Hartmann, 1945.

has remained a controversial issue¹⁰. In fact, as Haakonssen observes, Natural Law theory and Natural Rights theories have a relatively independent origin, in the course of modern moral philosophy. Any attempt to merge both approaches involves theoretical reconstruction. In the 80's John Finnis¹¹ attempted such a reconstruction, which sparked a passionate debate within Thomism¹².

The next section of the book deals systematically with some of the issues that modern and recent moral philosophy have brought to the forefront. Most of the contributions here included revolve around the relationship between natural law and practical reason, as well as on the practical relevance of natural law theory as a whole. Thus, A. Cruz claims that, in spite of the theoretical interest of natural law theory for theology, the theory as such lacks true practical relevance, for the actual practical task consists in directing one's behaviour, and this end is better served by the acquisition of virtue, than by any abstract appeal to natural law. In other words: natural law is not a formula to solve practical problems: clarification of practical problems requires the cultivation of virtue and practical reason. Yet, does this mean that natural law lacks practical significance? In his contribution, A. Llano views natural law mainly as a reference to the first principles of practical reasoning, and sets out to clarify this notion, so to avoid naturalist interpretations of natural law. Also in this context, U. Ferrer examines the extent to which the *Naturalist Fallacy*, as famously formulated by G.E. Moore, affects to some versions of natural law theory, and then tries to connect this

¹⁰ See Tuck, R., *Natural Rights Theories. Their origin and development*, Cambridge University Press, 1981.

¹¹ See Finnis, J., *Natural Law, Natural Rights*, Oxford, Clarendon Press, 1980.

¹² See Nigel Biggara and Rufus Black (eds), *The Revival of Natural Law. Philosophical, theological and ethical responses to the Finnis–Grisez School*, Ashgate, Aldershot, 2000.

theory to other contemporary approaches to morality. Specifically, the connection between natural law theory and virtue ethics is addressed by C. Martin in his contribution. To the extent that any ethical theory should try to articulate goods, virtues and norms, natural law theory cannot dispense with this reflection.

On the whole, the preceding reflections evince the internal vitality of the tradition of natural law, that is, its ability to address metaethical and ethical problems in its own terms. Yet, in spite of the persistence of traditional accounts of natural law, we should not forget that our world is a post-Hegelian world, i.e., a world marked by a limited confidence in our own rational ability both to unveil the rational structure of moral experience and to integrate the results of positive science within a properly human context. From this perspective, C. Vigna's precious contribution constitutes an attempt to show the relevance of the 'Golden Rule' for a better understanding of natural law theory within a horizon of reciprocity and mutual recognition: an approach in tune not only with contemporary philosophy but also with post-Hegelian ways of dealing with moral experience. Indeed: in speaking of the *Golden Rule* as a key to understanding natural law, Vigna not only intends to recover a universal ethical reference, which goes far beyond western culture, but also reminds us of a simple way of insisting on the heart of natural law without embracing our traditional ways of thinking and speaking of natural law¹³. It seems to me that this kind of approach should be further explored, if moral philosophy is not to forget its practical character.

In fact, the present revival of Natural Law constitutes a reminder that moral philosophy cannot be reduced to metaethics, but has rather to recall once and again its practical vocation. After all, contemporary interest in natural law is being nourished once more by a certain feeling of cultural and social crisis, that is, by the perception of

cultural or social change that we associate with words such as ‘multiculturalism’, ‘globalization’, or ‘fundamentalism’. This is not the place to pursue any of those topics in depth. While multiculturalism stresses cultural difference, globalization seems to require some sort of universal standards; on the other hand, apart from more sociological considerations, fundamentalism involves the challenge of thinking again the relationship between reason and faith.

Now, why should these topics arise interest on natural law any more than in other moral theories – particularly, more than Kantian moral theory?

Somehow, if Kantian moral theory succeeds in saving the specificity of the moral law when faced with the natural laws of the empirical world, it remains open to Hegel’s criticism, namely, that it is an abstract morality, which alienates the individual from its historical conditions. A similar objection could be raised also from the perspective of social theory. Contravening the purity of Kantian *a priori*, Emile Durkheim suggested that it was society which imposed its form upon individuals, so that the ‘modern individual’ – specifically the individual presupposed by Hobbes in his contractualist account of society – was in fact the product of certain social conditions, instead of being the pre-condition of society. That this critique could also apply to Kant’s transcendental subject is another matter. As we know, from the 19th century onwards, attempts to naturalize Kantian ethics have followed one after another. The question, of course, is whether the path of naturalization of morality can be followed consequently without affecting the practical relevance of freedom.

At this point, reconsideration of natural law becomes particularly interesting, for, in the traditional approach, reference to natural law was not meant to be naturalistic,

¹³ See C. Vigna & S. Zanardo, *La regola d’oro come etica universale*, Milan, Vita e Pensiero, 2005.

while it was meant to be natural. How to match together both concepts is part of the theoretical challenges Natural Law Theory has to face nowadays. Llano's proposal to speak of natural-rational law rather than simply of natural law takes up this point. At any rate, to the extent that natural law is assumed to be 'natural', and human nature is supposed to be intrinsically affected by society and history, other challenges to be seriously confronted by natural law theorists are how to mediate between universality and historicity, and how to mediate between individualism and sociological holism.

While properly addressing those challenges would require specific reflection upon the relationship between natural law and social sciences, for our present purposes it suffices to note that, precisely at this point, reconsideration of Aristotelian sources becomes pertinent for natural law theorists. The reason is that, in contrast to Durkheim-like approaches, the Aristotelian definition of man as a social being did not imply his consideration as simple matter upon which society had to impose a form. Certainly, Aristotelian individuals are not Hobbessian individuals. Yet, they are not chaotic matter either: they are substances, whose form is received by nature, even if it has to be perfected through social interaction within a political community. In either case, perfection of human nature cannot take place apart from what Aristotle regards as its essential mark: reason, which he understands also from a teleological point of view, that is, as teleologically oriented to truth.

While the perfectionist and communitarian side of Aristotelian ethics has been sufficiently stressed by contemporary virtue-ethics, reference to truth – practical and theoretical truth – as well as reference to substantial nature, seems too demanding for contemporary post-metaphysical sensibilities. I am not sure of the relevance of this criticism: while no theory can claim clear competence to reform sensibilities, post-metaphysical sensibility should not represent an obstacle in the development of any sort

of Natural Law Theory, not even one which assumes Aristotelian substance at its base. After all, according to modern epistemological standards, natural law theory should be possible as long as substantial nature is assumed not merely as a metaphysical datum but rather as an operational concept. At the same time, we should not forget that in last few years much work has been done in the line of getting a better understanding of Aristotle's notion of substance and practical truth¹⁴.

That work is relevant also in addressing some of the challenges posed to natural law by the conception of nature entailed in modern and contemporary natural science, which is the general topic of the section IV of this volume. This is, for instance, what R. Hassing pursues in his contribution, as he explores how the notion of nature employed in natural law theory differs from the notion of nature employed by modern natural science. On the other hand, J. Deely considers natural law ethics within the framework of evolution, which takes mankind as the only species confronted with the problem of moral responsibility.

If consistent inclusion of natural law within an evolutionary frame could not ultimately escape the critique of naturalism, the naturalism here involved represents a form of holism which parallels, in the natural realm, the social-holism I mentioned above. Now, it should be noted that neither holism is compatible with the basic intuition

¹⁴ See Inciarte, F. F., 'Die Einheit der Aristotelischen Metaphysik', *Philosophisches Jahrbuch*, 101, 1994, I, 1–21. «Theoretische und praktische Wahrheit», in *Rehabilitierung der praktischen Philosophie*, vol. 2, ed. Riedel, M., Freiburg, 1974, pp. 155–170; Inciarte, F., 'Discovery and Verification of Practical Truth', in *First Principles, Substance and Action. Studies in Aristotle and Aristotelianism*, ed. L. Flamarique, G. Olms, Hildesheim – Zürich – New York, 2005. See also Vigo, A., *Estudios aristotélicos*, Eunsa, Pamplona, 2006.

of natural law, which, as stated above, assumes the substantiality of individual human beings, and consequently their no-derivable character, either from nature or society.

Yet, while consistent evolutionism is incompatible with the human difference, teleology is not. Speaking of teleology is nevertheless as controversial as speaking of substances: while premodern natural law assumed a teleological conception of nature, according to which every natural being – the human being included – has a natural purpose or *telos*, which represents both its objective and subjective good and perfection, modern natural law tended to assume the de-teleologization of nature implicit in modern natural science as the last word about the natural world. This move was full of consequences for subsequent moral theory. Accordingly, it makes perfect sense, from a contemporary perspective, to reflect upon the reasons for and against teleology. This section includes two contributions dealing with this topic. While Spaemann's paper focuses on the differences between teleology and teleonomy in modern biology, D. Oderberg tries to show the relevance of the classical analysis of teleology, both in the inorganic and the organic world.

In speaking of substances and teleology, natural law theory incorporates two crucial concepts of our metaphysical tradition. Above I said that, according to modern epistemological standards, this is admissible as long as those concepts are included merely as hypothesis. Yet, postponing the resort to metaphysics can never be the last word, since, independently of the name we use, resorting to natural law is one way of conveying the philosophical conviction that moral norms are not merely conventional rules.

Accordingly, the notion of natural law has a clear metaphysical dimension, since it involves the recognition that, from inside human society and history, human beings do

not conceive themselves as sheer products of society and history. And yet, if natural law is to be considered the fundamental law of practical reason, it must also show some intrinsic relationship to history and positive law. The nature of this relationship is implicit in the role of natural law as a principle for moral judgment. If we are able to evaluate particular actions and practices and try to discern the true from the apparent good is only because we can distance ourselves from those particular actions and practices. Yet, this move precisely is not a simple one; it is always loaded with tensions.

To the extent that moral norms emerge through this kind of tension between the metaphysical and the practical, we cannot abstract from either extreme without renouncing the classical concept of natural law. In the end, natural law is not a substitute for practical reason, but rather a way of referring to the principles of practical reason. This is why the philosophical elaboration of natural law presents this notion as a ‘limiting–concept’, in which most characteristic human tensions converge: between metaphysics and ethics, between the mutable and the immutable; between is and ought, and, in connection with the latter, even the tension between politics and eschatology as a double horizon of ethics.

Precisely this idea of natural law as a limiting concept has been explored by A. M. González in her contribution, which deals with the internal tensions of the concept of natural law as expounded by Aquinas. This text provides the background to understanding many of the discussions undertaken in other sections of the book, and has therefore been included in the general title of the volume.

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and the Humanities. In particular, I want to thank Alejandro García, Jose María Torralba and Mario Silar, both for their invaluable contribution in the organization of the conference and the editorial work which followed it. Since some of the papers were originally written in Spanish, Italian, or German, part of the editorial work has involved the translation and revision of their texts. At this stage, Ann Hannigan's contribution has proved decisive. Thanks to her hard work, the reader will be now able to get a real overview of contemporary and international perspectives on natural law.

PART ONE
THE CONCEPT OF NATURAL LAW

CHAPTER 1

Natural Law as a Limiting Concept. A Reading of Thomas Aquinas

Ana Marta González

Thomas Aquinas was not the first philosopher to write about natural law, nor was he the last. We could say that Western ethical thought, from the Stoics until the 18th century, has, in one way or another, revolved around some version of natural law.

It is true that the term ‘natural law’ may include very different ethical theories, however, behind all these theories is the idea that ethics is a rational matter. This does not hinder that, in practice, this rationality will appear in a certain culture. In the words of Heraclitus, ‘Nature loves to hide’¹, and in fact it usually hides behind culture.

Certainly, presenting natural law as a choice in favour of the rationality of the ethical order would be too vague a definition. As we know, contrasting versions of natural law have developed throughout the modern age, and these deviate from the Thomistic synthesis in different ways. Thus, whilst some appealed to a moral order intrinsic to the nature of human actions and relationships, others insisted that there is no natural law unless we appeal to the will of a legislating God.

Although none of the modern theories lacks mediaeval precedents, the modern ones, particularly the voluntarists, are marked by their abandonment of the teleological vision of nature inherited from mediaeval Aristotelian philosophy. For this reason, despite the opposition the thinking of ‘evil Hobbes’ encountered among his

¹ Heraclitus, *Fragment 123* (Themistius, *Orations* 5.69b), in Heraclitus, *Fragments. A Text and Translation with a Commentary by T. M. Robinson* (Toronto, Buffalo and London: University of Toronto Press, 1987). I modify Robinson’s translation.

contemporaries, a large part of modern ethics embarked with increasing enthusiasm on a theoretical adventure similar to his, which consisted in founding moral law upon an independent investigation of nature, which will no longer have scholastic reasoning for a guide, but rather, the paradigm of the new science of nature.

At any rate, many varied theories of nature law emerged throughout the 18th century. It is unlikely, as Haakonssen observed, that they can be based on one single principle because they are often not reconcilable. Nonetheless, beyond their undeniable differences, it is true that in every case, appealing to a natural law serves, at least, for the modest purpose of setting a certain limit to arbitrariness and the coarsest forms of scepticism or ethical relativism². During the modern era, this appeal was also conditioned by a historical context marked by wars of religion, which seemed to advise removing the traditional theological foundation of moral order, and searching for the common bases of coexistence elsewhere. This is why the modern theorists of natural law were mostly jurists or philosophers, and not theologians.

During the early days of the modern era, the search for those common bases of coexistence certainly did not exclude either an appeal to God as the supreme legislator or references to the Holy Scriptures, common to the various Christian confessions. However, little by little the reference to God was disconnected from the revealed element until it became a conceptual piece of an autonomous philosophical system, thereby making way for the project of a purely secular ethics. When Hume wrote the *Treatise on Human Nature*, ethics appear for the first time with no theological references, not only in terms of content, but also in terms of its obligatory force.

² It seems that Grotius developed his theory of natural law partly as a reply to a sceptical Montaigne, who would be personified in the figure of Carneades. See Jerome B. Schneewind, *The Invention of Autonomy. A History of Modern Moral Philosophy* (Cambridge, 1998), p. 71.

However, the reference to natural law still existed. Indeed, although Hume made a place for himself in the history of ethics precisely by declaring that the transition from enunciations of being to enunciations of duty was logically illegitimate, this did not prevent him from speaking about natural laws, with the peculiarity that, in his view, these laws ultimately designated the basic conventions upon which social order rests. Precisely because of this, it is not incorrect to think that Hume's vision of natural law contributed powerfully to build a naturalist ethical framework for modern economy. Kant himself, according to Schneewind, would have received, if not the answer, the main subject of his practical philosophy³ from natural law theoreticians: the need to temper the conflict, which is omnipresent in the theory of Grotius. Kant refers to this again and again when he talks of the 'unsocial sociability of men'.

It is possible that many current hopes regarding natural law will continue along the same lines: providing a normative framework for economic exchange and peaceful coexistence. This is why I believe it is important to point out that, if we are to adequately assess Saint Thomas's position regarding natural law, it is necessary to broaden our horizons.

There can be no doubt that the Thomistic systematization of natural law is due to the political context in which he lived. Nevertheless, to a certain extent, his concept of natural law, with clear metaphysical implications, is more relevant in terms of anthropology than in politics. This can be recognized in the said concept which has all the characteristics of a 'limiting concept', where apparently contradictory aspects converge in a difficult balance. However, this is precisely what, beyond its possible validity in a certain historical context, makes the Thomistic concept of natural law a

³ See Jerome B. Schneewind, 'Kant and Natural Law Ethics', in Knud Haakonssen (ed.), *Grotius, Pufendorf and Modern Natural Law* (Aldershot, 1999), p. 471.

philosophically and anthropologically relevant concept, which incorporates the most characteristic human tensions: the tension between metaphysics and ethics, between what is permanent and what is variable, between what is and what should be, and, with reference to the latter, even the tension between politics and eschatology as an ethical doubled-edged sword.

In the following pages, I shall try to explain the conceptual knots that, in my opinion, justify the consideration of the Thomistic concept of natural law as a ‘limiting concept’: a concept loaded with tensions, the understanding of which represents a true intellectual achievement. In my view, this explains why Thomas Aquinas is a key author, for both systematic and historical reasons, for the understanding of the conceptual transformations carried out in the modern doctrines of natural law.

For this very reason, before going on to examine these tensions, it may be suitable to begin by highlighting the most striking of facts: despite having entered the history of ethics for his doctrine on natural law, the truth is that the space Saint Thomas expressly devoted to this subject was rather small, compared to the space he devoted to other issues of moral philosophy.

Natural law at the basis of moral order

In fact, Saint Thomas often refers to moral order without making any explicit references to natural law. In a paragraph that is revealing, but has received little comment, he wrote:

Now there should be a threefold order in man: one in relation to *the rule of reason*, in so far as all our actions and passions should be commensurate with the rule of reason: another order is in relation to *the rule of the Divine Law*, whereby man should be directed in all things: and if man were by nature a solitary animal, this twofold order would suffice. But since man is naturally a civic and social animal,

as is proved in Polit. i, 2, hence a third order is necessary, whereby man is directed in relation to other men among whom he has to dwell⁴.

If I may digress, I would say that this passage includes a surprising concession that Saint Thomas seems to make to individualism, at least from a methodological point of view: ‘if man were by nature a solitary being’ the moral order could be kept just by attending the rule of reason and the rule of divine law.

This concession to individualism is doubtlessly no more than a methodological resource: man, as Saint Thomas reminds us, in the words of Aristotle, is a political and social animal. None the less, this theoretical resource reminds us that the moral order cannot be merely equated to the order of justice; justice is only one aspect, an essential aspect, of moral order.

Evidently, if man were a solitary being, if there were no other men, there would be no need to order actions through the virtue of justice, the mission of which is precisely to regulate relationships with others – whether it is the other in general (in the case of legal justice) or the individual other (in the case of special justice). In such conditions it would be enough for man to introduce order into his passions through temperance and fortitude in order to live in harmony and organise himself better for the union with God, as divine law prescribes⁵.

⁴ *ST I–II*, q. 72, a. 4. See also *De Regno*, I. 2.

⁵ ‘Now man is united to God by his reason or mind, in which is God’s image. Wherefore the Divine law proposes precepts about all those matters whereby human reason is well ordered. But this is effected by the acts of all the virtues’ (*ST I–II*, q. 100, a. 2) – both intellectual and moral, and, among these, not only justice, which introduces order in the external actions whereby we relate to others, but also temperance and fortitude, whereby we introduce order into our passions. Although these precepts are also somehow included in the common good – specifically, in what Saint Thomas called ‘the natural common good’: ‘Temperance is about the natural concupiscences of food, drink and sexual matters, which are indeed

In any case, Saint Thomas's words in the passage quoted above suggest that the moral order is sufficiently defined by the reference to the rule of reason, divine law and human law. However, he does not refer to natural law at all. In view of this, we could ask: what would the role of natural law be? Is it not simply superfluous?

The answer should be a careful one. In order to understand, it is necessary to point out that the Thomistic notion of natural law stems from a deep consideration of the very nature of practical reasoning. This consideration leads us to acknowledge that any rational operation – theoretical or practical – must ultimately refer to something natural. But 'what is natural' in this case, is no less than *a law*. In fact, according to Saint Thomas,

Every act of reason and will in us is based on that which is according to nature... for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end. Accordingly the first direction of our acts to their end must needs be in virtue of the natural law⁶.

That is, in the case of human behaviour, the first principle of practical reason, the main principle which orders our actions is not simply nature, but rather, a natural *law*. Natural law thus appears as a metaphysical premise for the operation of practical reason, but this premise is compatible with freedom: in addition, it is the basic condition of possibility. In fact, law, as Thomas Aquinas insistently repeated, 'belongs to reason',

ordained to the natural common good, just as other matters of law are ordained to the moral common good'. *ST*, I–II q. 94 a. 3 ad 1.

⁶ *ST* I–II, q. 91, a. 2. See also: 'Every act of reason and will in us is based on that which is according to nature... for every act of reasoning is based on principles that are known naturally, and every act of appetite in respect of the means is derived from the natural appetite in respect of the last end. Accordingly the first direction of our acts to their end must needs be in virtue of the natural law.' *ST* I–II, q. 91, a. 2 ad 2.

specifically, a universal judgement relating to action, which, as we shall see, practical reason promulgates on the basis of the natural will for good and the ultimate goal.

Natural law as an oxymoron

Nevertheless, natural law is not a law like others. This is manifest in the very fact that it is called 'natural law'. Such an expression is paradoxical to a certain extent, because one of the keystones around which Saint Thomas articulates his account of morals is the division between intrinsic and extrinsic principles of human actions. Habits are among the former, laws are among the latter. However, if laws are extrinsic principles of human action then one must explain how there can be a natural law, as that which is natural always refers to something intrinsic to the agent. In this paradox we can recognise one of the ways whereby natural law is something of a limit concept. Therefore, it makes sense to ask: in what way is natural law natural?

To begin with, the answer to this question requires a momentary study of the Thomistic definition of natural law in terms of participation, not just passive, but active, in eternal law. Only for a moment, because the consequence of correctly understanding this doctrine implies immediately examination of practical rationality itself.

Indeed, according to Saint Thomas, man, as a rational creature, participates in eternal law in a specifically different way from irrational creatures: they only participate in a passive way, 'in so far as, from its being imprinted on them, they derive their respective inclinations to their proper acts and ends'. A rational creature, however, 'is subject to Divine Providence in the most excellent way, in so far as it participates of a share of providence, by being provident both for itself and for others. Wherefore it has a

share of the Eternal Reason, whereby it has a natural inclination to its proper act and end⁷.

There is a double reading to this quote: on the one hand, it allows us to state that active participation in natural law means that man is not only subject to legislation, but also a *legislator*. It is true that he is not an absolutely independent legislator. But his following of the law is not comparable to that of an irrational creature. As Rhonheimer pointed out, the reference to *proper* acts and aims, instead of a simple reference to their *own* acts and ends, with which Saint Thomas illustrated the participation by irrational creatures in eternal law earlier, has the strength of underlining the highly moral sense of human participation in eternal law⁸. Therefore, upon examining the Thomistic doctrine on natural law, it is logical to pay attention to the natural dynamism of practical reason. In order to understand it, however, it is necessary to bring in two ideas that are obscured in modern thinking: the notion of intellect and the notion of natural will.

Intellect and *voluntas ut natura*

According to Saint Thomas, intellect and reason do not refer to different powers, but to different dimensions of the same power: whilst the intellect is the repository of the first universal principles of knowledge and action, reason mediates between those principles and the conclusions, using intermediate premises, which are more or less universal.

However, Saint Thomas insists that intellect and reason are one and the same power, and therefore it is possible to say that the intellect, being the repository of the first principles, orders the activity of reason from within, therefore, in a natural way, in

⁷ *ST* I-II, q. 91, a. 2.

⁸ See Martin Rhonheimer, *Ley natural y razón práctica. Una visión tomista de la autonomía moral*, (Pamplona, 2000), pp. 89, 101.

both the theoretical the practical spheres, so that it achieves its proper end, that is, truth, both theoretical and practical. From this point of view, the intellect behaves as *the law of our reason*, in both the speculative and the practical spheres.

How can the intellect do this? Here, it may be useful to remember the difference between intellect and reason set out by Aristotle. According to Aristotle, reason is a power *open to opposites (ad opposita)*: he who understands one thing, simultaneously understands its opposite. He who knows how to cure is also he who best knows how to cause harm. On the other hand, the intellect, which contains universal and necessary principles, is *always upright*.

Now, according to Saint Thomas, who follows Aristotle on this issue, those universal and necessary principles have been acquired: *they are not innate*. Therefore, when he states that the intellect is a natural habit, his words must not be interpreted as if he were defending the innate nature of ideas, in the Platonic or Rationalist sense, as even those first universal and necessary principles are acquired through experience, given, of course, the intellectual nature of the soul.

For, according to Saint Thomas, ‘it is owing to the very nature of the intellectual soul that man, having once grasped what is a whole and what is a part, should at once perceive that every whole is larger than its part: and in like manner with regard to other such principles. Yet what is a whole, and what is a part – this he cannot know except through the intelligible species which he has received from phantasms’⁹. That is to say, the habit of the first principles, also called the intellect of principles, is formed from sensitive knowledge, given the nature of the intellectual soul. This is why Saint Thomas does not simply say that the habit of intellect is natural, but that it is ‘inchoactively natural’.

A similar argument is put forward on the habit of the first practical principles, also called practical intellect or synderesis, but with one important difference.

Indeed, it may initially seem that, as with the intellect, synderesis is also an inchoactively natural habit, which rescues our reason from its original *ad opposita* opening, empowering it for practical reason. However, Saint Thomas observes that, in contrast with the intellect, synderesis, and therefore the universal judgements that express its content, are not enough to direct practical reasoning, because correcting the latter is not a purely intellectual matter, rather, it also requires rectitude of appetite, for which it needs virtue. To put it another way, the intellect regulates practical reasoning in a more imperfect way than it does speculative reasoning: due to the co-implication of intellect and appetite, without which there is no action, all that synderesis can provide are ‘certain *principles* of habit’, ‘in the same way as the principles of common law are called the seedbeds of virtue (*semina virtutum*)’¹⁰.

The principles of virtues, which, significantly, Saint Thomas identifies with the principles of common law, are everything contained in synderesis. Therefore, if in the case of the intellect, Saint Thomas said that it is an inchoactively natural habit, in the case of synderesis *one cannot even say that*: all that synderesis provides are certain *principles of habit*. Having said that, in order to reason with rectitude in practical matters, the seedbeds and the principles of habit are not enough, rather, it is necessary to develop the habits, that is, the virtues.

As we shall see, the virtues and positive law are, to a certain extent, natural developments of these principles. Obviously, when speaking of ‘natural development’ in this context we do not intend to exclude the preceptive dimension of practical reason.

⁹ *ST I–II*, q. 51, a. 1.

¹⁰ *ST I–II*, q. 51, a. 3.

It is clear that the promulgation of law and the practice of virtue are not natural in the same sense as are the growth of trees or the fall of weights. Rather, it is natural in the sense that Aristotle reserves for virtue, of which he says that ‘Neither by nature, then, nor contrary to nature do the virtues arise in us; rather we are adapted by nature to receive them, and are made perfect by habit’¹¹. Nevertheless, this aptitude is not actualised unless there is a positive effort to that effect, the rule of practical reason.

However, practical reason receives its strength from its principle, that is, natural law. The comparison to Kant is enlightening here. As we know, for Kant, reason is practical in itself; it is immediately practical, identical to the will. Saint Thomas, conversely, follows Aristotle when he states that the first motive of practical reason is realisable good¹². Notwithstanding, in Saint Thomas’s view, behind that particular good, one must still presume the existence of a natural will for good in general, which is exclusive to rational beings. It is true that that natural will cannot be realised in practice if it is not because of particular reasons, such as those that lead us to seek one certain particular good and not another. As Leonardo Polo would say, the *voluntas ut natura* is ‘pure reference to the end’. Its goal is good in general. Therefore, in practice, all our attention is focused on what is called *voluntas ut ratio*, in other words, on the will that follows a particular reasoning for good. But this must not obscure the importance of the *voluntas ut natura*.

Indeed, this notion must not be confused with the ‘natural appetite’ attributed to irrational beings, because it does not refer to a blind spontaneity, but a movement following on from knowledge of good in general. With the notion of *voluntas ut natura*, Saint Thomas tries to make it clear that the will, like any other power, has an objective

¹¹ *NE* II, 1.

¹² Aristotle, *On the Soul*, III, 10.

of its own, which in this case is no less and no more than universal good¹³, and also the ultimate goal, of which he says that it ‘stands in the same relation to things appetible, as the first principles of demonstrations to things intelligible’. Furthermore, the object of will includes, in general, ‘all those things which belong to the willer according to his nature. For it is not only things pertaining to the will that the will desires, but also that which pertains to each power, and to the entire man’. Therefore, man naturally wills ‘not only the object of the will, but also other things that are appropriate to the other powers; such as the knowledge of truth, which befits the intellect; and to be and to live and other like things which regard the natural well-being; all of which are included in the object of the will, as so many particular goods’¹⁴.

Therefore, in principle, the object of will contains each and every one of the particular goods that refer to the consistency of our nature and, all in all, the human good. Still, as we said earlier, in practice, the realisation of the human good means informing each particular action with a particular reason. In other words, in practice, the *voluntas ut natura* necessarily translates into *voluntas ut ratio*. And this is where natural law becomes *necessary*. So that the search and realisation of a particular good does not contradict the integrity of human good, practical reason must attend to the first precept in both its aspects: not just the fact that ‘good is to be done and pursued’, but also, that ‘evil is to be avoided’. All other precepts of natural law, observes Saint Thomas, are

¹³ ‘The object of the will is the end and the good in universal. Consequently there can be no will in those things that lack reason and intellect, since they cannot apprehend the universal; but they have a natural appetite or a sensitive appetite, determinate to some particular good. Now it is clear that particular causes are moved by a universal cause: thus the governor of a city, who intends the common good, moves, by his command, all the particular departments of the city...’. *ST I-II*, q. 1, a. 2 ad 3.

¹⁴ *ST I-II*, q. 10, a. 1.

founded on this double precept, ‘so that whatever the practical reason naturally apprehends as man’s good (or evil) belongs to the precepts of the natural law as something to be done or avoided’¹⁵.

Indeed, according to Saint Thomas, what must be done or avoided, in other words, the obligatory or forbidden actions, come under natural law insofar as our reason naturally apprehends them as belonging to human good, that is, as perfective of our nature or otherwise, which may have different causes.

Here Saint Thomas is not thinking about subtle reasons of goodness or malevolence of human actions, available only to the prudent and virtuous. Rather, he is thinking about universal reasons of goodness and benevolence, of which conformity or lack of conformity with the first precept of practical reason is *almost immediately* seen, because these reasons are incorporated into natural inclinations.

Natural law and natural inclinations

This leads us to one of the most controversial points of the Thomistic doctrine on natural law. It is not easy to understand the possible normative role of natural inclinations, particularly after the Kantian proposal of a purely formal moral imperative. Furthermore, such a claim could easily be seen as naturalistic. Moreover, Thomas Aquinas is far from suggesting psychological or biological processes as moral rules. As we have seen, for him as much as for Kant, the moral rule is practical–rational¹⁶.

¹⁵ *ST I–II*, q. 94, a. 2.

¹⁶ Certainly, the difference with Kant is that Saint Thomas considers that rule is not held just as a fact – the *Faktum* of reason – but that we hold it through a habit, called *synderesis*. I find this a relevant remark, because one of the characteristics of habits, as Saint Thomas keeps repeating, following the commentator Averroes, is that ‘one uses it when one wants to’. Doubtlessly, upon acting, it is not the same thing to use

The most notable difference between Kant and Saint Thomas is that the moral rule, for Saint Thomas, is not purely formal— ‘it operates in such a way as to...’— because from the beginning, without ceasing to be a precept, it involves a reference, however vague, to good: ‘good is to be done, evil is to be avoided’. Germain Grisez drew attention to this point, by stressing that usually Saint Thomas uses the gerundive and not the imperative, to formulate the same precept. Still, the gerundive has the peculiarity of encompassing both the perceptive form and the substantive contents of the moral rule. The same does not go for the Kantian precept, which is purely formal. Therefore, the contents of the maxims that Kant compares with the categorical imperative are not moral in the proper sense: for Kant, moral good only appears after having verified that the maxim of the action can be made universal. Conversely, for Saint Thomas, the moral good to be performed is prescribed, albeit in a general manner, in the first principle. The role of practical reason is not to completely constitute it in its morality, but just to specify it. Several levels can be found in this specifying role. According to Saint Thomas, the first and most basic specification is the one stemming from the teleology of our own natural inclinations.

Indeed, it must be noted that the reference to natural inclinations occurs in a very specific article, aimed at answering a very specific question: whether natural law has a diversity of precepts. In other words, Saint Thomas’s purpose, in this article, is somewhat limited: to show that natural law is not restricted to that first precept, but that it includes others which naturally follow from the first. The argument he deploys is the following:

it or not to use it, as it is not the same thing for a linguist, upon speaking, to make use of his habit or not. This is the peculiarity of intellectual and moral laws as opposed to physical laws: the fact that they do not cease to exist if they are infringed.

This is the first precept of law, that ‘good is to be done and pursued, and evil is to be avoided.’ All other precepts of the natural law are based upon this: so that *whatever the practical reason naturally apprehends as man’s good (or evil) belongs to the precepts of the natural law as something to be done or avoided*. Since, however, good has the nature of an end, and evil, the nature of a contrary, hence it is that all those things to which man has a natural inclination, are naturally apprehended by reason as being good, and consequently as objects of pursuit, and their contraries as evil, and objects of avoidance. Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law¹⁷.

This is followed by the well-known classification of precepts according to the three kinds of inclinations: to life, to procreation, to truth and life in society. I shall not dwell on them now. What I wish to emphasise is the fact that, from a normative point of view, what is relevant is not the efficacy of the inclination but its objective sense, which the intellect naturally apprehends, at least in its most immediate implications. This is the basis of the precepts directed at protecting the objective sense of life, sexuality and life in society.

Indeed, the quote emphasises the fact that the sphere of natural law is restricted to those actions (or omissions) that practical reason naturally apprehends as human good. There is no doubt that human good is a complex reality. But as we saw in the section of *voluntas ut natura*, the complexity of human good does not exclude a certain structure:

¹⁷ ‘Et ideo primum principium in ratione practica est quod fundatur supra rationem boni, quae est, bonum est quod omnia appetunt. Hoc est ergo primum praeceptum legis, quod bonum est faciendum et prosequendum, et malum vitandum. Et super hoc fundantur omnia alia praecepta legis naturae, ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta legis naturae, quae ratio practica naturaliter apprehendit esse bona humana. Quia vero bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda. Secundum igitur ordinem inclinationum naturalium, est ordo praeceptorum legis naturae’. *ST I–II*, q. 94, a. 2.

the will *naturally* requires the objects of all the natural powers, which belong to the natural consistency of man. When we say ‘naturally’ we do not mean ‘instinctively’: the *voluntas ut natura*, differently to natural appetite, does not operate without intellectual mediation. And this is decisive for this issue: inclinations only unveil their normative relevance, their ends, specifically, in the light of the intellect, because we are only able to anticipate the ends and the *objective* sense of the said inclinations and to thereby open up the sphere of *due* actions and ends, that is, the ethical sphere, in the light of the intellect.

All in all, Saint Thomas believes that the order of the precepts of natural law is correlative to the order of natural inclinations, purely and simply because in the (metaphysical) light of the intellect, these inclinations are the ones that provide us with information about good and evil: information which, later, in practice, while we are involved in carrying out human good, we must integrate with many other factors, which cannot be determined *a priori*, but which are within the constitution of proper actions in each case. That is a matter of prudence, a habit that perfects practical reason. But natural law contributes to direct practical life insofar as it prescribes the doing of good and the avoidance of actions whose intentional structure includes a deliberate contradiction with the objective aims of natural inclinations; because such actions intentionally contradict the integrity of human beings.

There is no doubt that the intellect can continue investigating those aims in depth and extract more detailed conclusions. In Saint Thomas’s view, this is what the moral philosopher does. All this is not without importance, and can contribute to perfect personal behaviour and legislation, wherever there is a receptive social substratum. But what firstly constitutes natural law is that first precept – good is to be done, evil is to be

avoided— and immediately after that, the conclusions drawn in its light, on the basis of the most immediate inclinations.

It may be useful to talk of ‘conclusions’ in this context. It helps to highlight the rational character of natural law, while it also offers an explanation for the fact that certain conclusions, at certain historical or biographical times, may become obscured. This may happen simply because law is a thing of reason, and reason can be obscured. As Saint Thomas wrote, ‘As to those general principles, the natural law, in the abstract, can nowise be blotted out from men’s hearts. But it is blotted out in the case of a particular action, in so far as reason is hindered from applying the general principle to a particular point of practice, on account of concupiscence or some other passion... But as to the other, i.e. the secondary precepts, the natural law can be blotted out from the human heart, either by evil persuasions, just as in speculative matters errors occur in respect of necessary conclusions; or by vicious customs and corrupt habits’¹⁸.

However, rather than investigating possible corruption, it is more interesting to assess the positive display of natural law, both in the sphere of virtue and in the legal sphere.

Natural law, virtue and positive law.

We saw above that there is a natural aptitude for moral virtue in human beings. In addition, insofar as human beings are social by nature, it can also be said that it is natural for them to develop a legal order. In this sense, virtues and laws constitute personal and social specifications of the practical principles contained in synderesis. These specifications, however, are not merely identified with natural law.

¹⁸ *ST I-II*, q. 94, a. 6.

As we pointed out earlier, according to Saint Thomas, there is a sense whereby it is natural to act according to virtue, simply because natural law prescribes the doing and pursuing of good. Thus Saint Thomas answers the question of whether acts of virtue belong to natural law in the affirmative. But, at the same time, he observes that considered in themselves, according to their species, not all virtuous actions belong to natural law, ‘for many things are done virtuously, to which nature does not incline at first; but which, through the inquiry of reason, have been found by men to be conducive to well–living’¹⁹.

These words seem to indicate that there is a place in Saint Thomas’s work for a distinction between ‘natural virtues’ and ‘artificial virtues’, which is similar to that established by Hume. Thus, one could only properly call natural virtues those virtuous actions immediately resulting from an inclination: not in the sense that they are, so to speak, ‘spontaneous’ or ‘irrational’, as in that case they would not be virtuous, but in the sense that they follow an immediate perception, not mediated by great reasoning, of what must be done.

Saint Thomas reserved a similar distinction for the natural law, for that part of natural law that regulates social coexistence according to the common good. He wrote:

A thing is said to belong to the natural law in two ways. First, because nature inclines thereto: e.g. that one should not do harm to another. Secondly, because nature did not bring in the contrary: thus we might say that for man to be naked is of the natural law, because nature did not give him clothes, but art invented them. In this sense, ‘the possession of all things in common and universal freedom’ are said to be of the natural law, because, to wit, the distinction of possessions and slavery were not brought in by nature, but devised by human reason for the benefit of human life²⁰.

¹⁹ *ST I–II*, q. 94, a. 3.

²⁰ *ST I–II*, q. 94, a. 5 ad 3.

As Richard Tuck stressed, this extract clearly shows what separates classical natural law, of which Thomas Aquinas was one of the final representatives, from modern theories of natural rights²¹. Certainly, Saint Thomas admits a sense of the natural whereby joint ownership of goods and liberty belong to natural law, not as a result of a positive natural inclination to such goods, but rather, because nature does not impose the opposite, in other words, because it does not impose slavery or private ownership.

Clearly, this line of thought could link his words to that tradition of modern political thought that refers to a state of nature as a criterion for social life. But that would be going too far: as we said earlier, Saint Thomas takes man's natural inclination to social life seriously, and therefore considers that the natural lack of determination regarding slavery or property can eventually be covered by art, by social institutions ordered for the common benefit, in the same way that natural nakedness requires the invention of clothing.

The comparison is significant, because in the same way as the art of clothing can be called natural in a derived sense, as a work of reason, natural to man, the institutions of private ownership and slavery could also be considered natural, in a derived sense: as works of reason which, insofar as they are ordered to common benefit or good, become part of the natural law in a second stage.

Certainly, this reasoning becomes disturbing from other perspectives. To begin with, the view of private property not as an absolute right, but as a natural right in a secondary stage, is uncomfortable for liberal thought. In addition, the idea that the institution of slavery could at some point be justified as a natural right is scandalous, in general, to our modern ears. It is true that Saint Thomas sees slavery as a consequence

²¹ See Richard Tuck, *Natural Rights Theories* (Oxford, 1980).

of sin. Still, its inclusion as a natural right in a secondary stage, on an equal footing with the right to property is evidence that classical natural law, upon examining relationships of justice within a given social–historical context, does not necessarily intend to question that context, appealing to natural pre–political rights, but simply order an existing social reality according to justice.

Conversely, in modern political thought the appeal to that which is natural, to the origin, takes on a revolutionary meaning that questions the given social context at its very root: man is born free and everywhere he is in chains, said Rousseau. Coming from him, these words are an invitation to free ourselves from all slavery: not just slavery as such, but also, in general, from all artifice, all social conventions. The irony is that the recovery of freedom demands, in Rousseau’s view, the construction of a gigantic edifice, in which the freedom of the individual is subordinated to the general will.

History is certainly not that simple. The fact that classical natural law seems, in certain circumstances, to justify the *status quo*, does not turn it into a politically inoffensive thing, because it always carries inalienable demands for justice, which may even involve disobedience towards a certain law²². It is true that such a possibility should not be the norm. Because, as Saint Thomas observes, positive law constitutes a determination of natural law in a given society²³. However, I believe it is more important to stress the fact that, according to Saint Thomas, natural law is not exhausted by those historical determinations; rather, it works as a motor–force for change in human law.

Indeed, ‘human law – says Saint Thomas – is a dictate of reason, whereby human acts are directed. Thus, there may be two causes for the just change of human law: one

²² See *ST I–II*, q. 96, a. 4.

²³ See *ST I–II*, q. 95, a. 2.

on the part of reason; the other on the part of man whose acts are regulated by law. The cause on the part of reason is that it seems natural to human reason to advance gradually from the imperfect to the perfect. Hence, in speculative sciences, we see that the teaching of the early philosophers was imperfect, and that it was afterwards perfected by those who succeeded them. So also in practical matters: for those who first endeavoured to discover something useful for the human community, not being able by themselves to take everything into consideration, set up certain institutions which were deficient in many ways; and these were changed by subsequent lawgivers who made institutions that might prove less frequently deficient in respect of the common weal. On the part of man, whose acts are regulated by law, the law can be rightly changed on account of the changed condition of man, to whom different things are expedient according to the difference of his condition'²⁴.

The above paragraph illustrates how natural law operates. It is true that sometimes what is natural appears abruptly, in a negative way: 'we have knowledge of that which is natural through what is not, rather than through what is', said Inciarte. And, indeed, we generally do not question positive laws unless we believe they are unjust or openly contradict natural principles. Then it is of little importance that we formulate our indignation by appealing to natural principles. As Hittinger wrote, if there is a natural law, its validity is independent from the theories we develop about it²⁵. In any case, we must bear in mind the idea that, according to the classical theory of natural law, nature usually works in hiding, behind the positive laws, pointing out gaps, deficiencies, aspects to be improved.

²⁴ *ST I-II*, q. 97, a.1.

²⁵ See Russell Hittinger, 'Natural Law and Virtue', in Robert P. George (ed.), *Natural Law Theory*, (Oxford: Oxford University Press, 1994), p. 65.

Naturally, I have above limited myself to considering the relationship between natural law and positive human law. This is because, in positive divine law, the relationship is rather to the contrary: ‘The written law – says Saint Thomas, referring to divine law– is said to be given for the correction of the natural law, either because it supplies what was wanting to the natural law; or because the natural law was perverted in the hearts of some men, as to certain matters, so that they esteemed those things good which are naturally evil; which perversion stood in need of correction.’²⁶ Therefore, even to preserve natural law, it is at times necessary to resort to divine law.

Thomas the theologian, with his sacred science, cannot but complete what reason, nature unveils for him, negatively of course, as a flaw in nature itself.

Final reflections

It is time to sum up: as we have seen, natural law as understood by Thomas Aquinas is a limit concept for a number of reasons.

Firstly, it is law, and therefore an *extrinsic principle*, with its ultimate origin in God, the legislator; but at the same time it is natural, and therefore an *intrinsic principle* in human reason. This is because it is an intellectual principle and, as such, metaphysically *constituent* of moral action, that is, of rational and free action, *without being innate*, because it is based on the notion of good, which the rational soul shapes through experience. In any case, the first difference in the sphere of action is introduced because of that principle, in the same way as the principle of non-contradiction introduces the first difference in the sphere of thought.

Thus, the first practical principle prescribes something as basic as doing good and avoiding evil. In practice, reason may or may not uphold this principle, and, depending

²⁶ *ST* I-II, q. 94, a. 5 ad 1.

on this, it will be true or false, and the action will be morally good or evil. But, in any case, its metaphysical validity remains.

Secondly, natural law is a *law of reason*; however, it does not exclude a reference to the good announced in *natural inclinations*. Indeed, although the first principle is very simple, it is not purely formal: the reference to good, at the principle level, involves a reference to a not yet specified content. According to Saint Thomas, the first specification of that content, with a universal value, is provided by reason, which understands that the aims of natural inclinations are good. In accordance, those precepts that forbid actions whose intentional structure involves a direct contradiction of the proper good of those inclinations belong to natural law, insofar as the intellect recognises them as constituting human good.

Thirdly, natural law is *universal, but not minimalist*; because when it prescribes doing good it is effectively shown to be a seedbed virtues, which demands putting virtue into practice.

Fourthly, natural law is *universal, but not a-historical*, because due to its very lack of determination it demands a positive determination. However, natural law does not identify with positive laws; rather, in human laws, it operates from within them as a corrective criterion, and in the divine law, demands correction by them.

As I indicated at the beginning, it is all these tensions, the never-ending instances of 'yes, but no', that make the Thomistic concept of natural law a particularly significant concept; perhaps not from the point of view of political confrontation, because its very complexity seems to discredit it for action, but from a philosophical point of view. Because what appears from these tensions is not simply a programme for reform or for revolution, but an attempt to do justice to the truth of man himself, with all his paradoxes and tensions: the tension between metaphysics and ethics, between the

permanent and the changeable, between what is and what should be, and, in relation to the latter, even the tension between politics and eschatology as a double horizon of ethics.

Bibliography

Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.

Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).

Heraclitus, *Fragments. A Text and Translation with a Commentary by T. M. Robinson* (Toronto, Buffalo and London: University of Toronto Press, 1987).

Hittinger, Russell, 'Natural Law and Virtue', in Robert P. George (ed.), *Natural Law Theory* (Oxford: Clarendon Press, 1994), pp. 42–70.

Kant, Immanuel, *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (Berlin, 1902–).

——, *Kritik der reinen Vernunft*, ed. Jens Timmerman (Hamburg: Felix Meiner, 1998).

Rhonheimer, Martin, *Ley natural y razón práctica. Una visión tomista de la autonomía moral* (Pamplona: Eunsa, 2000). [Original edition: *Natur als Grundlage der Moral. Die personale Struktur des Naturgesetzes bei Thomas von Aquin: Eine Auseinandersetzung mit autonomer und teleologischer Ethik* (Innsbruck and Wien: Tyrolia-Verlag, 1987). English translation: *Natural Law and Practical Reason: A Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000)].

Schneewind, Jerome B., *The Invention of Autonomy. A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998).

——, ‘Kant and Natural Law Ethics’, in Knud Haakonssen (ed.), *Grotius, Pufendorf and Modern Natural Law* (Aldershot, Hants., Brookfield, Vt.: Ashgate, Dartmouth, 1999), pp. 469–490.

Tuck, Richard, *Natural Rights Theories* (Oxford: Oxford University Press, 1980).

PART TWO
HISTORICAL STUDIES

CHAPTER 2

Natural Law and the Human City¹*Russell Hittinger***Introduction**

In the *Tusculan Disputations*, Cicero famously said that Socrates was the first to summon philosophy down from the heavens and compelled her to engage the questions of the human city². This morning, I will speak of how natural law philosophy came into the midst of the city. By ‘the human city’ I mean political community – that special unity–of–order organized by the rule of law and devoted to the most general and excellent virtue, which Thomas Aquinas called ‘legal justice.’

I spoke in the past tense because, in this paper, I am chiefly interested in a particular historical moment. Namely, the legal and political renaissance of the 12th and 13th centuries, when the subject of natural law began to receive the serious attention of philosophers, theologians, and jurists. Of course, in the Christian culture of previous centuries, the general idea of natural law was not contested. As Augustine said, Christians believe that God is not only the ‘true creator’ but also the ‘true rector’ of the universe³. Whether the order of nature is an expression of Divine Providence was not a disputed question.

But the disposition and use of the idea of natural law developed in remarkable ways during the period that I wish to examine. The rise of natural law thinking

¹ This essay has some overlapping content with a paper delivered under the title “St Thomas and the Rule of Law”, at the Thomistic Center in Palermo, Italy, in the Annual Aquinas Lecture in 2005.

² See *Tusc.*, d., 5. 10.

³ See *Conf.*, III, 8.

coincided with the recovery of ancient scientific and legal texts. It also developed in tandem with a dramatic renewal of interest in political life – in municipalities, corporations, universities, and new constitutional forms of religious life. Above all, natural law thinking was spurred by the discovery and by the rapid growth of the art of legislation. It would be only a slight exaggeration to say that it was positive law that brought natural law into the human city, for this art needed to be tamed and contextualized and located in a broader order of things.

From the Court of Mars to the Bosom of Minerva

Peter Abelard's autobiography, written about 1132, furnishes a 'snapshot' of this change afoot in western Europe. Abelard writes:

I had a father who had won some smattering of letters before he had girded on the soldier's belt. And so it came about that ... he saw to it that each son of his should be taught in letters even earlier than in the management of arms. Thus indeed did it come to pass. And because I was his first born, and for that reason he loved me more dearly, he sought with double diligence to have me wisely taught. For my part, the more I went forward in the study of letters, and ever more easily, the greater became the ardour of my devotion to them, until in truth I was so enthralled by my passion for learning that, gladly leaving to my brothers the pomp of military glory, the right of heritage and all the honours that should have been mine as the eldest born, I fled utterly from the court of Mars that I might win learning in the bosom of Minerva⁴.

Fleeing the court of Mars for the bosom of Minerva, Abelard personally typifies the European *renovatio*.

At the time of Abelard's birth in 1079, we must imagine a western European culture bound not by systems of positive law, but rather by feudal oaths and the chivalric code. This was a Christian, warrior culture. The nobility trained their eldest

⁴ *Historia Calamitatum*.

sons in the art of war. With the arrival of clement weather in springtime, they betook themselves to combat. In 1095, when Abelard was 16 years old, Pope Urban II preached the First Crusade, urging these sons of Mars to take the cross and to become warriors of Christ rather than enemies of one another.

At the beginning of the 12th century, no realm of western Europe had an organized legal system. Criminal procedures made use of the so-called trial of ordeal – by combat, by fire, or by water. The Court of Mars, in fact, was not a ‘court’ in any sense that we would recognize. One procured the *ad hoc* judgment of a lord, and then sent one’s family and vassals to execute the judgment. Indeed, it was a decentralized system of private law and vindication. Abelard himself would become the victim of a private vendetta when his wife’s family had him castrated for a secret marriage.⁵

He tells us that his father loved him too much to send him into the warrior culture. Instead, he was sent to school. Within a generation, this preference for Minerva over Mars was being re-enacted throughout western Europe. Fathers who had financial resources sent their sons to cathedral schools and to universities.

As universities sprouted up like mushrooms, the faculties of law were the prototype of other faculties. At Bologna in the early 12th century, Guarnerius was the first Master to use the Justinian Code in its entirety as textbook. What did the masters and students find when they studied the newly recovered books of Roman law?⁶ In the

⁵ A century later, Thomas Aquinas himself would be the beneficiary of this cultural change. His two brothers became military retainers while he went to the University of Naples; as you know, Thomas’s decision to join the Dominican order was almost stymied by his family, who used force against him in the old-fashioned way of kidnapping.

⁶ On these aspects of the legal renaissance, see Stephan Kuttner, ‘The Revival of Jurisprudence,’ and Robert L. Benson, ‘Political *Renovatio*: Two Models from Roman Antiquity,’ in Robert L. Benson and

first paragraph of the *Digest* they read the boast of the jurist Ulpianus: ‘those who profess the law are priests’⁷. Priests of what? *Cultus pacis, cultus iustitiae* – the cult of peace and justice. They also contemplated the first sentence of Justinian’s *Institutes*: ‘The imperial majesty must be not only distinguished in arms but also armed with laws.’⁸

Until the 12th century, there was no free-standing discipline of law. Law was a branch of rhetoric, leading to a practical career in writing and notarizing official documents. Lawyers were little more than scribes. But when the scientific study of law emerged at Pavia and Bologna, it would have remarkable and almost immediate results. In 1139, Gratian produced the *Decretum*, the first systematic exposition of canon law, which became a template for the scholastic method in theology and philosophy. Civilian legal scholars did the same for the Roman law, accumulating and organizing as many as 100,000 different glosses on the *Digest* and other books of the law. In both systems, the *dicta* of authorities were transformed into a coherent whole; rescripts and responses to individual cases were organized into a system of precedents; legal procedures replaced trials by ordeal – indeed, in 1215, Pope Innocent III forbade clerics from taking part in such trials. Popes and Emperors had their own legal opinions collected into books and published into order to facilitate their study by legal professionals. In 1158, the Emperor Frederick I issued a decree giving imperial protection to anyone traveling in Italy for academic purposes. Thus, there came into existence the third trans-national culture of western Europe: the first, of course, was the Graeco-Roman culture of antiquity; the

Giles Constable with Carol D. Lanham (eds), *Renaissance and Renewal in the Twelfth Century* (Cambridge: Cambridge University Press, 1982), pp. 299–323 and pp. 339–386.

⁷ *Dig.*, I, I, 1.

⁸ Justinian, *Institutes*.

second was the Cluniac monastic confederation, which came to include more than 1000 monasteries from England to Poland; and the third was university culture spearheaded by the lawyers.

Above all, Europeans discovered the art of legislation. The Nobel Prize winning economist, Friedrich Hayek wrote: ‘[T]he deliberate making of law, has justly been described as among all inventions of man the one fraught with the gravest consequences, more far-reaching than in its effects even than fire and gun-powder.’⁹ We can roughly mark the date when this new kind of gunpowder was invented. The year was 1231. Thomas Aquinas was only six years old. The Holy Roman Emperor, Frederick II, who was also King of Sicily, sat down and wrote a constitution. It was called the *Liber Augustalis*, or more commonly the *Constitutions of Melfi*. The Emperor ordered his scholars to survey the feudal customs and common law of his kingdom. He then proceeded to transform it into royal law. If customs needed to be changed, he changed them; if laws were missing, he simply created them; he outlawed private vendettas; he provided for civil and criminal procedures. Here indeed was a new kind of sovereign who did something more than exercise judgment in cases and controversies. He wrote the law.

Law as Force, the Force of Law

When Thomas, in the mid-13th century, wrote his 18 questions on law in the *Summa Theologiae*¹⁰, he inherited a world that was shaking off its feudal customs. We can see how Thomas appropriated and contributed to this movement if we consider the first

⁹ Friedrich A. Hayek, *Law, Legislation, Liberty* (London, 1973), p. 72.

¹⁰ See *ST I-II*, qq. 90–108.

question of his treatise on law. The moment is so quiet that we are apt to pass over it without noticing the ambient noise of the original setting.

In question 90, Thomas sets out in four articles to gather an essential definition of law. Law, he writes, is an ordinance of reason, for the common good, made by a competent authority, and promulgated¹¹. We should note that coercion, or what was called the *vis coactiva*, is not included among the four essential traits of law. In the very first article, Thomas asks ‘whether law pertains to reason.’ He answers that law directs human acts by way of a moral rather than a physical necessity; that is to say, law moves rational agents to an end not by force but by obligation. *Lex* is derived from the verb *ligare* – to bind. However, this is not to be understood in a physical sense of a superior motion necessitating a motion in another body. This kind of necessity, as the ancient jurists said, ‘knows no law.’ For example, a legislator might try to post a law that no one shall get sick on a boat, or digest their food, but everyone understands that such events are not bound by law in the proper sense of the term. To be sure, we read two questions later¹² that coercion is an act of law – it is the instrument, as it were, of the law, but it is not the law itself. Without the law, coercion is violence.

The idea that law is essentially a precept, a binding directive communicated by one mind to others was implicit in the legal renaissance of the 12th and 13th centuries. Indeed, it summarizes the new humanism under the auspices of Minerva rather than Mars. But, it met with serious resistance.

Not only in Jewish scripture, but in the New Testament itself, there seemed to be ample evidence that in the order of Divine Providence human law principally has a corrective and penal function. In Paul’s *Letter to the Romans*, for example, we read that

¹¹ See *ST I-II*, q. 90, a. 4.

¹² *ST I-II*, q. 92, a. 1.

‘law works wrath’ and ‘where there is no law there is no transgression’¹³. Paul goes on to say of a ruling authority: ‘he beareth not the sword in vain: for he is the minister of God, a revenger to execute wrath upon him that doeth evil’¹⁴. In *1 Thessalonians*, Paul says ‘God hath not appointed us unto wrath, but to received salvation’¹⁵. No less an authority than St. Augustine contended that temporal law exists only for one class of men: the ‘unhappy class,’ namely those men who are not properly subordinated the eternal law, and who therefore need an *imposed law*¹⁶. Such law is just, as a punishment for sin. Indeed, imposed law is a constant reminder of our loss of dignity, while the absence of imposed law is the sign of the recovery of that dignity under the sway of charity.

The penal function of law was deeply engrained in the European imagination. Take, for example, Eusebius of Caesarea’s *Triennial Oration* in praise of the Emperor Constantine. At the outset, Eusebius calls the Emperor’s attention to Divine Providence, by which God creates, subjects, and preserves the order of nature. For his part, the Emperor imitates God insofar as he ‘subdues and chastens the open adversaries of the truth in accordance with the usages of war’¹⁷. Natural law is most evidently translated into human affairs by means of retribution – by judgment, and then by the exercise of executive power.¹⁸ Even Frederick II saw fit to begin his *Constitutions of Melfi* on this

¹³ Rom. 4:15.

¹⁴ Rom. 13.4.

¹⁵ 1 Thes. 5.9.

¹⁶ See *De Lib. Arb.*, XV, 31.

¹⁷ *Tri. Or.*, II.1.

¹⁸ The idea that the kingly power imitates the eternal law chiefly through ‘preservation’ runs forward, too, notably in the political philosophy of Thomas Hobbes. Hobbes, however, did not pattern his account on

note: ‘by the inspiration of Divine Providence, princes of nations were created through whom the license of crimes might be corrected. And these judges of life and death for mankind might decide, as executors in some way of Divine Providence, how each man should have fortune, estate, and status.’¹⁹ Such was the ancient narrative. Law comes into existence with criminal law, which, of course, is that part of law that conjoins command with physical force. We are reminded of the trial by fire and water. After rocks are heated in boiling water, the defendant is made to pull them out with his bare hand. The authorities then wait to see whether blisters form on the flesh and then whether they heal in due course. In other words, the punishment is applied, and then God is invited to remove it (or to assist nature’s own removal of it) in the case of innocence.

Against this wrath–model of law, Thomas offered a counter–factual hypothesis. Suppose that the original state of innocence was never ruptured. Would there have been need for one man to command another? He concedes right away that there would have been no need for the corrective or penal function of authority. But there would have been need for directive authority. He writes: ‘First, because man is naturally a social being, and so in the state of innocence he would have led a social life. Now a social life cannot exist among a number of people unless under the presidency of one to look after the common good; for many, as such, seek many things, whereas one attends only to one. Wherefore the Philosopher says, in the beginning of the *Politics*, that wherever

what we might call the reactive model (subduing unruly powers), for he had a well–developed understanding of legislation.

¹⁹ *Lib. Aug.*, Prooemium.

many things are directed to one, we shall always find one at the head directing them²⁰.

In the *De Regno*, he makes the same point:

Wherefore, if man were intended to live alone, as many animals do, he would require no other guide to his end. Each man would be a king unto himself, under God, the highest King, inasmuch as he would direct himself in his acts by the light of reason given him from on high. Yet it is natural for man, more than for any other animal, to be a social and political animal, to live in a group... If, then, it is natural for man to live in the society of many, it is necessary that there exist among men some means by which the group may be governed²¹.

Wherever a plurality of rational agents seek through their united action a common good, and whenever there is a plurality of valid means for achieving the end, there will be need for binding directives of a general rather kind, obligating the group to follow this means rather than another one. This level of governance is not to be confused with the removal of a deficiency, for there is no issue of anyone selecting morally wicked means to an end. The directive or coordinative function of law would have been necessary even without sin. And therefore the corrective or penal function of law is accidental – to be sure, it is a very important ‘accident,’ and for all practical purposes, no ruling authority could hope to preserve the common good by ignoring it. Even so, it should not be confused with the essence of law.

Thomas’s question, which represents the new humanism of the legal *renovatio*, is not whether law is entitled to coerce and punish, but whether we can discern a more purely political office of law. The counter-factual scenario of a state of nature as yet untrammelled by sin and injustice is meant to turn our attention to what law does every day: namely, to coordinate the actions of the good and the bad alike to a common good. It was this idea that began to reverberate in European cities.

²⁰ *ST I*, q. 96, a. 4.

²¹ *De Regno* I.2, 4, 8.

Even as Thomas was at work on the *Summa Theologiae*, the city of Bologna in 1256 brought those in servitude within the city, put them under ecclesiastical jurisdiction, and emancipated them. The act was memorialized in the *Liber Paradisus*, which, of course refers to the original condition of Adam.²² Bolognese authorities understood that slavery did not derive from the natural law, but rather from sin; the yoke of servitude was recognized at customary law and the law of nations. But, for this very reason, servitude is not a moral or political necessity. Human prudence, in accord with natural law, can rule otherwise. In Bologna, the enactors of the *Liber Paradisus* reasoned that Christ liberated mankind from sin, and therefore human history is something more than a perpetual task of rearranging the chains of servitude merited by the sin of our first parents. They also reasoned that in the concrete situation of the city, such servitude is more corruptive of the common good than it is retributive of past injustices. In this event of 1256, we can see two ideas working in tandem. First, the quest for natural justice that transcends the punitive function. Second, the more audacious judgment that human law can develop the natural law in reference to both the permanent and contingent affairs of the city.

Law and Prudence

In his well-known definition of natural law, Thomas proposes:

Now among all others the rational creature is subject to Divine Providence in the most excellent way, insofar as it partakes of a share of providence by being provident both for itself and for others. It has a share of the eternal reason because it has a natural inclination to its proper act and end, and this participation of the eternal law [*participatio legis aeternae*] in the rational creature is called the natural law. Hence, the Psalmist after saying, ‘Offer up the sacrifice of justice,’ as though someone

²² I rely here on the account by John T. Noonan, Jr., *A Church that Can and Cannot Change* (Notre Dame, IN, 2005), pp. 50–52.

asked what the works of justice are, adds: ‘Many say, Who showeth us good things?’²³ In answer to which question he says: ‘The light of Thy countenance, O Lord, is signed upon us,’ thus implying that the light of natural reason whereby we discern what is good and what is evil and which pertains to the natural law, is nothing else than an imprint on us of the divine light. It is evident that the natural law is nothing else than the rational creature’s participation of the eternal law²⁴.

For Thomas, natural law is one of two exemplary models of law that is *not imposed*. The other is the new law (*lex nova*). Both the natural and the new law are called *lex indita*, indited or instilled law²⁵. In different, but analogous ways, the creature is moved by natural law and by the new law to a common good from the inside–out. One of Thomas’s favorite scriptural passages for natural law is *Wisdom* 8.1, where God is said to order creatures ‘sweetly’ (*suaviter*).²⁶ That is to say, they are moved *naturaliter*, naturally through their own nature.²⁷ This is the opposite of promulgation by imposition, particularly where imposition is combined with punishment. But it is not the opposite of law itself. Rather, what is true and right of punishment stems from a law that is not essential penal.

Moved naturally to know the rudimentary precepts of obligation, the human intellect participates in Divine Providence by exercising three kinds of prudence. First, on the basis of natural law, the individual is empowered to draw–out such additional concepts and to render such judgments as are fitting to make the natural law effective in

²³ Ps. 4.6.

²⁴ *ST* I–II, q. 91, a. 2.

²⁵ *ST* I–II, q. 106, a. 1.

²⁶ *De caritate*, 1, in *Quaestiones Disputatae*, vol. 2. For other uses of *Wisdom* 8:1: (on creation) *SCG*, III, 97; (on the virtue of charity) *ST* II–II, q. 23, a. 2; (on divine justice) *De pot.*, II, 6; *Quaestiones Diputatate*, vol. 2, ed. P. Bazzi, M. Calcaterra, T. S. Centi, E. Odetto, and P. M. Pession (Turin, 1949).

²⁷ See *ST*, I–II, q. 90, a. 4 ad 1. In the case of the *lex nova*, by the Holy Spirit moving the will through charity.

his own conduct. From the first precept of law held by the habit of *synderesis*, the individual judgment terminates not in another law, but rather in the ordinary *imperio* or command of practical reason about operable things.²⁸ Second, on a similar basis, individuals are empowered to devise additional commands suitable for social common goods other than the *civitas*. This is called domestic prudence. It consists of ordering–judgments for a community.²⁹ Third, there is the architectonic prudence, which is jurisprudence proper. Here, the political authority takes the rules and measures of the natural law and goes onto to make new laws.³⁰ The technical term for the making of a new law from the antecedent natural law is *determinatio*³¹. The legislator is said to make more determinate the natural law in the human city.

In each of the three modes, there is movement from law to a common good through the mediation of prudence.³² The key point, however, is that natural law is not a

²⁸ *ST* I–II, q. 94, a. 2.

²⁹ *ST* I–II, q. 90, a. 3 ad 3.

³⁰ *ST* II–II, q. 50.

³¹ *ST* I–II, q. 95, a. 2. Positive law is an admixture of two kinds of derivations from natural law. First, positive contains precepts which are inferred from the primary precepts. For example, at criminal law, the precept against murder is drawn from a primary precept against doing harm. These *conclusiones* have force of law both from being given by natural law and from being enacted by positive law. Second, positive law consists of *determinationes* which specify matters left indeterminate by natural law. For example, the natural law does not specify precisely how or when a criminal is to be punished. While these determinations are related to the moral order of natural law, they have force by dint of human enactment. On Thomas' notion of *determinatio*, see John Finnis, *Natural Law and Natural Rights* (Oxford, 1980), pp. 284–95.

³² Thomas groups these under the triad of *to be*, *to live*, and *to know* — effects of God which are desirable and lovable to all. *ST* II–II, q. 34, a. 1. The triadic structure of first precepts in I–II, q. 94, a. 2, follow this pattern. We are inclined, by nature, to goods in common with all substances, to goods in common with

closed system. It is meant to be completed by human judgments, the capstone of which is political or regnative prudence. Thus, Thomas does something more than grudgingly concede that the natural law can change, ‘by addition,’ as he puts it³³. That is to say, by insight, judgment, and artful ingenuity, the human legislative mind can do two things: (1) in its moral office, to draw–out additional implications of the natural law, especially in light of their application to changing facts; and (2) in its properly political office, to discover new *rationes* of action and go on to impose new obligations, which are called positive laws.

Here, we find Thomas appropriating and giving philosophical shape to the legal and political *renovatio* of his era. Ruling authorities are given something to do besides wielding the sword in their exercise of executive power and rendering occasional judgments on the basis of customary law. And the *legis peritus*, the lawyer, will certainly have more to do than merely act as the notary of the king’s official acts. In short, the sovereign now is a legislator – and hence the invention of the legal ‘gunpowder’ that worried Friedrich Hayek. Legislation, *ius facere*, brings something new into the world of city, and what is more, this novelty is not only said to be in accord with natural law, but even required by it. Perhaps we can say that Thomas’s doctrine gives us a glimpse into the beginning of political modernity. Thomas does not create

living things, and goods appropriate to our rational nature. Notice, however, that even in the mode of individual appropriation of natural law, the first precepts display aspects of common good. The mind is moved first to desire and affirm the good of existence – not as self–preservation, but rather *secundum suam naturam*, according to its nature, which is to say, something common. Second, to desire and affirm the good of procreation, nurture and education of children. Third, to desire and affirm the good of political order. Human inclination always turns toward a common good, which is another way of saying that common goods are not an after–thought imposed by legislative fiat of the human lawgiver.

³³ *ST* I–II, q. 94, a. 5.

these ideas out of whole cloth. Nor is he fashioning a political and jurisprudential theory simply on the basis of abstract considerations of the natural law. Rather, Thomas is responding to the facts–on–the ground. Sovereigns in both the papal and civilian systems already are making law and burnishing their rule with systems of law.

Political Order and the Sovereign’s Power

Now, I must retrieve the thread of our earlier discussion about law as force. I said that the ancient penal model of law was one source of resistance to the idea that law is only accidentally coercive in nature. The second source of resistance came, interestingly, from the Roman civil tradition being recovered in the schools and courts of Europe. Both the papal and the imperial legal traditions were preoccupied with the legitimacy of their titles to rule. One of those titles was the imperial ideal itself. Here was the problem. The Roman legal tradition, first codified by Justinian, was deeply tintured with the premises of imperial absolutism. Justinian himself asserted: ‘God had sent among men the emperor as a ‘living statute’, to whom statutes themselves were subject’³⁴. There was the famous dictum that the ruler’s will has the force of law (*quod voluntas principis habet vigorem legis*)³⁵. And, finally, the most blunt instrument in the toolkit of imperial power, *princeps legibus solutus est* – the ruler is not bound by the laws.

This notion of a unilateral kingly power, exempt from its own laws, was a problem distinct from, but nevertheless intertwined with, the problem I discussed earlier in connection with Augustine’s idea that imposed law is meant for bad men. According to a venerable tradition, it was held that human law is made chiefly, if not solely, for the

³⁴ Nov. 105, 2, 4.

³⁵ *Dig.* I, 4, 1; *ST*, I-II, q. 90, a. 1 ad 3.

correction of bad men. Law is retributive force deployed by a ruling authority. This explains why, for most of the middle ages, the mark of aristocracy was immunity from law. The idea of immunities as the privilege of aristocracy emerged from two traditions. First, from the notion that law is made for bad men, and thus good men ought to enjoy immunities. Second, from the echoing effect of the ancient imperial ideal *princeps legibus solutus est* – the ruler is not bound by the laws. Aristocrats therefore participate in the kingly power by having their own piece of his immunity. These immunities included everything from taxation to uses of lethal force. Historically, indeed for many subsequent centuries, kings endeavored to eliminate these pockets of immunities, and they did so without realizing how the principle cuts back in the other direction, against unilateral kingly power.

At issue is not whether the ruler of a political community should rule by law, but whether the rule of law proceeds from executive power. And this in turn depends on how we understand the relationship between the intellect and the will. No one, of course, would deny that the ruler ought to govern intelligently. The question, rather, was whether the intellect is but an instrument of the will willing. Or, to put it in another way: Is law superior force conjoined with instrumental rationality?

Consider what was at stake for the legal renaissance of that era. What's the point of the new scientific study and organization of the law? What do we mean when we say that law should rule? On a voluntarist model, all of this work is ordered to the acquisition of the titles and instrumental resources put at the disposal of superior force. In other words, law is studied in terms of the technical armature facilitating the will of the sovereign. On an intellectualist model, such as what Thomas defends, study of the

rationes legis (reasons of the law) is organically related to the intellect's governing what ought to be willed. Command, Thomas contends, is chiefly an act of the intellect³⁶.

To the much vexed question of whether the ruler is immune from his own laws, Thomas faced a deeply entrenched tradition – even as he wrote these questions on law, spiritual Franciscans, relying upon the eschatological prophesies of Joachim de Fiore, claimed to be solely under the guidance of the Holy Spirit. This expression of antinomianism had remarkable affinity to the imperial notion that the Emperor is a 'living statute.'

Thomas tackles the problem, as usual, by making a some distinctions³⁷. In the first place, law contains two things. On the one hand, its essential property, namely, to be a rule and measure of human acts toward a common good. Second, its use of coercion for the disobedient. Therefore, any agent (not just the ruler) can be said to be either above or subject to law in two quite different ways. Those who are good are subject not to law's coercive power but only, or for the most part, to its essential, directive function. Indeed, the virtuous are more rather than less subject to law's directive purpose. The exemplar, once again, is the natural law itself. Perfection in virtue renders one more rather than less subject to the law.

In the second place, someone may be exempt from a law because the ruler does not have jurisdiction over the matter. So, for example, the natural law requires both rectitude in the external act and rectitude in the internal act of the will³⁸. Human authorities, however, have no immediate jurisdiction over the *actus interior*. Moreover, someone might enjoy exemption from a particular command because the ruler has no

³⁶ See *ST I-II*, q. 17, a. 1; and q. 90 a. 1.

³⁷ See *ST I-II*, q. 96, a. 5.

³⁸ See *ST I-II*, q. 91, a. 4.

jurisdiction over the exterior act. For example, the king has no power over the sacramental order. But in neither of these cases is one exempt from law – for such commands lacking proper jurisdiction are not laws at all³⁹.

As for the political sovereign, Thomas writes:

it should be said the sovereign is said to be exempt from the law as to its coercive power, since, properly speaking, no man is coerced by himself, and law has no coercive power save from the authority of the sovereign. Thus is the sovereign said to be exempt from the law, because none is competent to pass sentence on him if he acts against the law. Hence, on the text of the Ps. 50 [‘To Thee only have I sinned’],⁴⁰ a gloss says that ‘there is no man who can judge the deeds of a king.’⁴¹ But as to the directive force of law, the sovereign is subject to the law by his own will; according to the *Decretals*: ‘whatever law a man makes for another, he should keep himself.’⁴² And a wise authority says: ‘Obey the law that thou makest thyself.’⁴³ Moreover, the Lord reproaches those who ‘say and do not,’ and who ‘bind heavy burdens and lay them on men’s shoulders, but with a finger of their own they will not move them,’ as had in Mt. 23.⁴⁴ Hence, in the judgment of God the sovereign is not exempt from the law as to its directive force, yet he should fulfill it of his own free-will and not of constraint. Yet the sovereign is above the law, insofar as, when it is expedient, he can change the law and dispense it according to time and place⁴⁵.

To summarize. The ruler is exempt from the law as to its coercion. He cannot coerce himself. But this leaves entirely intact the primary predicate of law, the obligatory directive precept, regarding which the ruler is not exempted. In another way, a ruler can be exempt from the law insofar as he is supreme, which is to say, he is the

³⁹ See *ST I–II*, q. 96, a. 4.

⁴⁰ Ps. 50.6.

⁴¹ *Glossa Lomb.* (PL 191, 486).

⁴² *Decretals*, Greg. IX, Lib. I, tit. 2, cap. 6 (RF II, 8). See Arthur P. Monahan *Consent, Coercion and Limit. The Medieval Origins of Parliamentary Democracy* (Leiden, 1987).

⁴³ Decius Ausonius, *Sept. Sap. Sent.*, vers. 5 (PL 19, 876).

⁴⁴ Mt. 23.3–4.

final arbiter. This, however, does not entitle the ruler, in his adjudicative function, from being directed by the law applying to the facts of the case. In yet another way, he can be exempt from a law because of purely jurisdictional reasons. The positive law of the Kingdom of Sicily, for example, does not apply in Scotland. Finally, a ruler can be exempt from laws insofar as he has the office of amending or changing laws. This, however, does not imply an exemption from law as such.

Political Friendship

Above all, Thomas was concerned that the dictum *princeps legibus solutus est* was incompatible with the broader context and indeed the *telos* of the rule of law. Namely, the natural ordination to political community. Whereas a parent is exempt from his commands to a child, political community entails a certain reciprocity that is destroyed by despotism. In his *Commentary on the Politics*, he writes:

Now the city is governed by a twofold rule, one political and the other regal. Regal rule obtains when the one who presides over the city has full power; political rule, when his power is limited by civil laws.... For when a man has sole and absolute power over everything, his rule is said to be regal. When, on the other hand, he rules in accord with the disciplined instructions [*sermones disciplinales*], that is, in accordance with laws laid down by the discipline of politics, his rule is political. It is as though he were part ruler, namely, as regards the things that come under his power, and part subject, as regards the things in which he is subject to the law.⁴⁶

For Thomas, regal rule is a species of despotism. We should recall the difference between despotism and tyranny. The tyrant orders the common good to his own private good. The despot, however, orders things to a common good, but in such a way that the things ordered cannot resist or talk back. There are natural modes of despotic rule. The

⁴⁵ *ST I-II*, q. 95, a. 5 ad 3.

⁴⁶ *In I Pol.*, lect. 1 n. 13.

soul animates the corporeal body despotically, in the sense that the body has no choice but to be the body of this form. Insofar as the parent substitutes his own judgment for that of the child, the child has no choice. The child cannot make it otherwise.

Political community, on the other hand, requires the unity of parts which have their own proper operations and activities. Each person senses, thinks, wills, and pursues the life of a farmer, a soldier, a monk or a merchant. The ‘parts’ of this kind of unity can ‘talk back,’ as it were. Reciprocity is an essential characteristic of the political. Therefore, the dictum *princeps legibus solutus est* needed to be qualified. First, because it would put the ruler outside of the political community; he would stand to the political society as soul stands to the body, or as parent to child. This would spell the death of political friendship. Second, because a unilateral projection of power is inconsistent with civic virtue. For Thomas, as for Aristotle, civic virtue is not mere passivity in receiving commands. ‘Rulers imposing a law,’ he writes, ‘are in civic matters as architects regarding things to be built,’ whereas civic prudence is concerned ‘with individual operable things.’ As legislative prudence ‘gives the precept,’ so also ‘civic prudence puts it in effect and conserves the norms stated in the law’⁴⁷. Notice that the civic virtue governs the action where by those who receive a law conserve and effect it. Citizens therefore are not only directed but also direct themselves. So, too, the ruler will always come under (and hence conserve) the law he makes. To stand outside of this circle is to stand outside the rule of law and political friendship.

The superiority of the political community requires a proper estimation of this new legal prowess – *ius facere*, or legislation. Much depends on whether law is merely a new-fangled technique of kingly force, or whether it is deployed within a system that is properly political. This will become an ever more acute problem as medieval peoples

moved toward the task of state–formation two centuries after Thomas’s death in 1273. When that time came – roughly, in the late 15th century, during the age of Absolutism – Thomas’s natural law theory would be retrieved and put to work on the problem of the origin and ends of political power.

Concluding Thoughts

Thomas propounded a rather ‘high’ doctrine of natural law. It has a thoroughly political dimension, beginning in the doctrine of the individual p⁴⁸articipating in the eternal law that governs the entire created commonwealth, and then in the idea that the individual’s most primitive epistemic possession is a precept of *law*⁴⁹, and in his division of rules into species of *lex*, and continuing to the *telos* of natural law, which is the virtue of legal justice. Legal justice is the greatest of the natural virtues, comparable to charity.

For just as charity may be called a general virtue in so far as it directs the acts of all the virtues to the Divine good, so too is legal justice, in so far as it directs the acts of all the virtues to the common good. Accordingly, just as charity which regards the Divine good as its proper object, is a special virtue in respect of its essence, so too legal justice is a special virtue in respect of its essence, in so far as it regards the common good as its proper object.⁵⁰

I have sketched only a few of the themes and problems forming the matrix of Thomas’s philosophy of natural law. Of course, there is much more to say. But one thing is clear. His doctrine of natural law ought not to be separated from the political level of life. For this reason, among others, Thomas’s doctrine will prove very difficult to reproduce today. While our political entities are much larger and more complex than

⁴⁷ *In VI Ethic.*, lect. 9 (1197).

⁴⁸ See *ST I–II*, q. 91, a. 1.

⁴⁹ *ST I–II*, q. 94, a. 2.

⁵⁰ *ST II–II*, q. 58, a. 6.

the emerging polities of the 13th century, our ‘liberal’ conception of political order is actually very narrow, and suspicious of what John Rawls calls ‘comprehensive doctrines’ which either locate political life in a broader scheme of human flourishing, or which constitute legislative reasons-for-action. Such reasons often are regarded as sectarian beliefs, best left to the private rather than the public sphere. In Thomas’s place and time, however, the political dimension of human life was being rediscovered; it was an ideal still to be achieved. Thus, we see Thomas, equipped with a philosophy of nature and a metaphysics of participation running political analogies backward and forward in order to show that human freedom is naturally situated in, and destined to, political order within which we can acquire and enjoy the highest and most complete of the natural virtues.

Of special importance is Thomas’s understanding of how natural law grounds, and interlaces, the three modes of prudence: individual, societal, and political (or regnative). This scheme is highly synthetic. It does not correspond to the ‘liberal’ notions of private and public. After all, for Thomas, what is most primitive or private in practical reason is the precept of ‘law’⁵¹. In other words, natural law is not a piece of merely private moral information which has to go in search of warrants of authority before it can enter the human city. Perhaps certain constituent elements of Thomas’s natural law doctrine can be disaggregated, and thus made suitable for a model of ‘public reason’ that is concerned merely with justice ‘as fairness.’ But this is problem that raises many other questions which would have to be pursued on some other occasion.

Bibliography

⁵¹ See *ST I-II*, q. 90, a. 4.

- Abelardus, Petrus, *Historia calamitatum*. Texte critique avec une introduction publié par J. Monfrin, 3rd edn (Paris: Vrin, 1967).
- Agustin, Saint, *Sancti Aureli Augustini Opera Sect. I, pars I, Confessionum libri tredecim* (New York: Johnson Reprint Corporation, 1962–). English translation by Vernon J. Bourke, *Confessions* (Washington: The Catholic University of America, 1966).
- Agustin, Saint, *Sancti Aurelii Augustini Contra academicos; De beata vita; De ordine; De magistro; De libero arbitrio* (Turnholti: Brepols, 1970). English translation by Dom Mark Pontifex, *The problem of free choice* (New York: Newman, 1955).
- Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.
- Aquinas, Thomas, *Summa contra gentiles* (Notre Dame: University of Notre Dame, 2001–2003). Translated by Pegis, Anton C., James F. Anderson, Vernon J. Bourke, and Charles J. O’Neil (*On the Truth of the Catholic Faith (Summa Contra Gentiles)*). 5 vols. New York: Doubleday, 1955–57).
- Aquinas, Thomas, *De caritate*, in *Quaestiones disputatae*, vol. 2, eds. P. Bazzi, M. Calcaterra, T. S. Centi, E. Odetto, and P. M. Pession (Turin–Rome: Marietti, 1953), pp. 753–791.
- Aquinas, Thomas, *Sententia libri Ethicorum*, in *Opera omnia*, vol. 47 (Rome: Leonine Commission, 1969).
- Aquinas, Thomas, *De potentia*, in *Quaestiones disputatae*, vol. 2 ed. P. Pession (Rome and Turin: Marietti, 1953).
- Ausonius, Decius, *Septem Sapientum Sententiae*, in *Opera omnia Patrologia Latinae*, vol. 19, ed. J.–P. Migne (Paris: Garnier Fratres et J.–P. Migne, 1841–1969).

- Benson, Robert L., 'Political *Renovatio*: Two Models from Roman Antiquity,' in Robert L. Benson and Giles Constable with Carol D. Lanham (eds), *Renaissance and Renewal in the Twelfth Century* (Cambridge: Harvard University Press, 1982), pp. 339–386.
- Cicero, *Tusculanae Disputationes* (Stuttgart: Teubner, 1965).
- Eusebius of Cesarea, *Eusebius Werke* (Berlin: Akademie-Verlag, 1972).
- Finnis, John, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980)
- Gregorio IX, *Decretals*, in Johannes Franciscus Herthals, *Gregorii IX Decretalium libri I. II. III. per principia et exempla explicati, per rationes et auctoritates confirmati* (Olisipone: apud Antonium Rodericium Galliardium, 1771).
- Hayek, Friedrich A., *Law, Legislation, Liberty* (London: Routledge and Kegan Paul, 1973).
- Justinian, *Institutes* in *The Institutes of Justinian*, text, translation, and commentary by J. A. C. Thomas (Amsterdam: North-Holland Pub. Co., 1975).
- Kuttner, Stephan 'The Revival of Jurisprudence', in Robert L. Benson and Giles Constable with Carol D. Lanham (eds), *Renaissance and Renewal in the Twelfth Century* (Cambridge: Harvard University Press, 1982), pp. 299–323.
- Lombardi, Petrus, *Glossa Lombarda*, in *Opera omnia. Patrologia Latinae*, vol. 191, ed. J.–P. Migne (Paris: Garnier Fratres et J.–P. Migne, 1841–1969).
- Monahan, Arthur P., *Consent, Coercion and Limit. The Medieval Origins of Parliamentary Democracy* (Leiden: Brill, 1987).
- Noonan, John T. Jr., *A Church that Can and Cannot Change* (Notre Dame, Indiana: University of Notre Dame Press, 2005).
- Ulpian, *Digest*, in P. Krueger and T. Mommsen (eds.), *Corpus Juris Civilis. I, Institutiones. Digesta*, (Berolini: Apud Weidmannos, 1954).

Chapter 3

The Formal Fundament of Natural Law in the Golden Age. The case of Vázquez and Suárez

Juan Cruz Cruz

1. The ‘formal foundation’ of natural law does not pose an existential question of *an sit*, but one of *quid sit*. In terms of phenomenology, it is a question of ‘essence’, not a question of ‘genesis’, and that is how it was put forward by the Golden Age Spanish authors, who had no difficulty in accepting that there indeed was a *natural law*.

With regard to the word ‘nature’ (apart from the ontological statute given to it by Aristotle, that is, the principle of movement and rest), its metaphysical sense is immediately called into question. Let us not forget the alarming objection by Sartre in the mid-20th century: ‘There is no human nature, because there is no God to have a conception of it’,¹ he wrote. With these words, Sartre necessarily connects the reality of human nature to the reality of God, or rather, to the reality of a God who conceived it. So if God does not exist, nor does human nature; and a human being lacking nature will not have been planned or supported by God, and consequently, the human being will have to plan or create itself.

Sartre’s words are not trivial. We could say that the Spanish Golden Age philosophers would have changed those words positively in the following way: because human nature exists, the thought of conceiving it exists in God. And that thought is an eternal project, in other words, an eternal law. Therefore, nature would not be

comprehensible if it were not connected to that eternal law. In this way, just as Sartre did, but inversely, those philosophers connect human nature necessarily to the projective thinking of God.

Saint Thomas Aquinas had already done this. His definition of natural law offers a psychological thesis in which human beings ‘derive their respective inclinations to their proper acts and ends’; and this thesis is necessarily connected to the metaphysical one in which the teleological inclination is the ‘participation of the eternal law in the rational creature’. The same effect or repercussion of that natural inclination, that is, to ‘discern what is good and what is evil’ it is due to the ‘imprint on us of the Divine light’². So, natural law is not completely different from eternal law; and on metaphysical grounds, it appears as a requirement which is also prior to social fact, in other words, prior to the mutual dependency of human beings. Thus it cannot be explained by purely contingent and empirical factors, because as a commandment, precept of absolute content it is above all individual or social conscience.

But this determination of ‘natural law’, in reference to participation, is more etiological than ontological because it refers to its ultimate basis. It does not still define, among other things, the formal character of the mentioned law.

¹ ‘Il n’y a pas de nature humaine, puisqu’il n’y a pas de Dieu, pour la concevoir’ Jean Paul Sartre, *L’existentialisme est un humanisme* (Paris, 1946), p. 22.

² *ST* I–II, q. 91, a. 2: ‘Cum omnia quae divinae providentiae subduntur, a lege aeterna regulentur et mensurentur, ut ex dictis patet; manifestum est quod omnia participant aliquantulum legem aeternam, in quantum scilicet ex impressione eius habent inclinationes in proprios actus et fines. Inter cetera autem rationalis creatura excellentiori quodam modo divinae providentiae subiacet, in quantum et ipsa fit providentiae particeps, sibi ipsi et aliis providens. Unde et in ipsa participatur ratio aeterna, per quam habet naturalem inclinationem ad debitum actum et finem. Et talis participatio legis aeternae in rationali creatura lex naturalis dicitur’

2. Consequently, we have a precise kind of law. Saint Thomas had defined *law* as a ‘rule and measure of acts, whereby man is induced to act or is restrained from acting’³. It means that a law is a rule, that is, an active norm that directs the life of a human being to a determined end.

This means that law’s formal cause is the act of reason itself. And because law cannot be created by a reason without will, it has to be pointed that it is the act of the reason with the combination of will that creates the formality of law. So, for Saint Thomas law is the act of ‘reason *chosen by will*’⁴.

Therefore, if law is the rule and measure of human acts, the primary task of the reason is to rule and measure them; reason knows the end of the human being and the order that leads to that end. Furthermore, the precise and specific acts of law are to command and forbid; they are two sides of the same coin, that is, command⁵. It is precisely the command that belongs to reason, always ‘presupposing an act of the will,

³ *ST* I–II, q. 90, a. 1: ‘Lex quaedam regula est et mensura actuum, secundum quam inducitur aliquis ad agendum, vel ab agendo retrahitur, dicitur enim lex a ligando, quia obligat ad agendum. Regula autem et mensura humanorum actuum est ratio, quae est primum principium actuum humanorum, ut ex praedictis patet, rationis enim est ordinare ad finem, qui est primum principium in agendis’.

⁴ ‘Reason *chosen by will*’ has the meaning of *imperium* and translates ‘razón voluntariada’ from Spanish [Editor’s note].

⁵ In this chapter, ‘command’ is used both to translate ‘command and forbid’ as ‘specific acts of the law’, and the proper character of law, the *imperium* as in ‘...quia lex est imperium’ (Suárez, *De legibus*, Lib. II, c. 5 n° 13). [Editor’s note]

in virtue of which the reason, by its command, moves (the power) to the execution of the act'⁶.

We must stress that Saint Thomas is not dealing with a theoretical epistemological horizon, but with a practical one.

Aristotle had already explained that truth is the absolute and the only object of the rational intellect. But when this is maintained regarding an apprehended truth, in the sense of a mere contemplation, it is called theoretical intellect. If the contemplation or theoretical intellection adds the application to the practical order (that is, when knowing the truth, is known and perceived as that which regulates behaviour), the intellect is called *practical*.

Law belongs to practical reason or truth⁷. It is not, in a governor, mere knowledge of good. Law does not fit into the area of speculation, neither because of the mission it legislates, nor because of its object or effects: law directs human operations in order to regulate them in an order which leads to a end; as Saint Thomas stated it is the 'dictate of practical reason'⁸.

We may even draw a parallel between theoretical and practical reason; using this comparison is how Aquinas determines the concept of law. He begins by saying that

⁶ *ST I-II*, q. 17, a. 1: 'Imperare est actus rationis, praesupposito tamen actu voluntatis... Imperare autem est quidem essentialiter actus rationis, imperans enim ordinat eum cui imperat, ad aliquid agendum, intimando vel denuntiando; sic autem ordinare per modum cuiusdam intimationis, est rationis'.

⁷ *ST I-II*, q. 90 a. 2 ad 3: 'Sicut nihil constat firmiter secundum rationem speculativam nisi per resolutionem ad prima principia indemonstrabilia, ita firmiter nihil constat per rationem practicam nisi per ordinationem ad ultimum finem, qui est bonum commune. Quod autem hoc modo ratione constat, legis rationem habet'.

⁸ *ST I-II*, q. 91 a. 1: 'Nihil est aliud lex quam quoddam dictamen practicae rationis in principe qui gubernat aliquam communitatem perfectam'.

every action produces something, brings something about. In an external act we consider two different things: the operation in itself and what it is done by that operation, the ‘*operatum*’. Similarly, we can find two different dimensions in every internal act: intellect itself (as *nóesis*) and the object of intellection (as *nóema*). The main ‘*operatum*’ or *nóema* or *object* of the act of the theoretical intellect is the *proposition* expressing what is defined and understood. Similarly, practical reason also produces an *object* of its operation, the expressive *proposition* of what is defined or understood. The *universal propositions of practical reason commanded to the action have the character and nature of law*. In this comparison we can see that law is not an operation, a *nóesis*, or ‘opus rationis’, but the object of an operation of the reason⁹, an ‘*operatum rationis*’¹⁰, a *nóema*.

⁹ *ST I-II*, q. 90 a. 1 ad 2: ‘Sicut in actibus exterioribus est considerare operationem et operatum, puta aedificationem et aedificatum; ita in operibus rationis est considerare ipsum actum rationis, qui est intelligere et ratiocinari, et aliquid per huiusmodi actum constitutum. Quod quidem in speculativa ratione primo quidem est definitio; secundo, enunciatio; tertio vero, syllogismus vel argumentatio. Et quia ratio etiam practica utitur quodam syllogismo in operabilibus, ut supra habitum est, secundum quod Philosophus docet in *VII Ethic.*; ideo est invenire aliquid in ratione practica quod ita se habeat ad operationes, sicut se habet propositio in ratione speculativa ad conclusiones. Et huiusmodi propositiones universales rationis practicae ordinatae ad actiones, habent rationem legis. Quae quidem propositiones aliquando actualiter considerantur, aliquando vero habitualiter a ratione tenentur’.

¹⁰ ‘Cuncti vero thomistae dicunt legem consistere formaliter in imperio, quod sequitur immediate ad electionem, et solet appellari *iudicium* de mediis electis. Ex thomistis vero aliqui cum Conrado dicunt legem formaliter adhuc non consistere in ipso *actu* imperio, sed in *termino producto* per illud, qui potius dici debet *opus productum* et constitutum per actum intellectus quam actus ipse imperio elicitus ab intellectu: et quia haec est verior sententiae et conformior Divi Thomae pro eius declaratione’. Francisco de Araujo, *In Primam Secundae Divi Thomae Commentariorum*, Salamanca, 1638, Quaestio 90, Disputatio I, Sectio III, n. 6 (p. 501). ‘Verumtamen, quia huiusmodi dictamen, seu verbum, et terminus

In this way, when determining the formal foundation of ‘natural law’, we must say that it is always in the area of practical reason; the rational order of law is neither the mere contemplation of the truth, nor a simply theoretical product of that reason. It is an ‘operatum’ of practical reason, a rule which is applied to the acts of beings. And it is these beings that have to be regulated by the first principles of the practical order. The first objective principle of practical order is the ultimate end, a goal that law has to take into account above all; the final goal is common good precisely.

Moreover, if the formal cause of law is ‘reason chosen by will’, and its final cause is the common good, its efficient cause must be also added. Saint Thomas says that such a cause can only be a person in *authority* (in the sense that he ‘is in charge of (*habet curam*) the whole multitude’). Because if law is created by reason with a view to the common good, it is never the result of a particular or private reason, but the result of a common and public reason, which is invested with power and constituted in authority with a view to the common good. That is why ‘natural law’ must also appeal to an authority¹¹. The importance of clarifying this point will be seen below.

ordinatur ad complementum ipsius intellectionis ab illaque dependet in fieri et conservari, ita ut tamdiu duret quamdiu intellectio ipsa et non amplius: propterea diximus parum referre, sive legem constituamus in ipsa practica intellectione producente verbum et dictamen practicum, sive in ipso verbo ac dictamine producto quo transacto adhuc manet lex non formaliter aut actu, sed virtualiter et habitu’. *Ib.*, n. 9 (p. 504).

¹¹ *ST* I–II, q. 90, a. 3: ‘Lex proprie, primo et principaliter respicit ordinem ad bonum commune. Ordinare autem aliquid in bonum commune est vel totius multitudinis, vel alicuius gerentis vicem totius multitudinis. Et ideo condere legem vel pertinet ad totam multitudinem, vel pertinet ad personam publicam quae totius multitudinis curam habet. Quia et in omnibus aliis ordinare in finem est eius cuius est proprius ille finis’.

3. We must now move on to my question, that is, ‘What is the formal foundation of natural law?’ As soon as Saint Thomas began studying natural law, he focused on this issue, as he wished to know if natural law dealt with nature or with reason.

And this he does, stressing the objections of those hypotheses that claim it as part of nature. Because in that sense, ‘natural’ would, for example, be the faculty of knowledge and wanting, the habit of knowing and wanting, together with their respective acts; and finally, also the decisions or qualities that spring from such faculties¹².

Saint Thomas does not mention the possible authors who might be representative of those hypotheses. It is well known that Saint Bonaventure’s master, Alexander of Hales (†1245), considered that natural law was ‘habit’¹³. He pointed out that natural law is congenital to nature and always constant, which are qualities of habits and not of acts. In contrast, Saint Thomas considers that if the command is absolutely essential to any concept of the law, law can therefore not be natural. He thinks that it can even not consist of rational nature itself, but of something that comes from that nature, ‘something worked out by reason’, an ‘operatum rationis’. The crucial point is that an intellectual quality, or even better, one of its works: a *dictate* of the reason, intervenes in what is merely natural. It is then understood, that natural law, with the character of work or product, it is not a habit in the strict sense, as habit has the character of natural instrument or means, added to the faculty as a quality that reinforces it, and so it becomes the medium of the faculty to act firmly and promptly.

¹² *ST I-II*, q. 94, a. 1: ‘Videtur quod lex naturalis sit habitus. Quia ut Philosophus dicit, in *II Ethic.*, tria sunt in anima, potentia, habitus et passio. Sed naturalis lex non est aliqua potentiarum animae, nec aliqua passionum, ut patet enumerando per singula. Ergo lex naturalis est habitus’.

¹³ *In III Sent*, q. 27, memb. 2.

Just because it maintains one of the qualities of habit, that is, permanence, it could be said in less proper sense, that natural law is a habit, since it is neither temporary nor momentary, but firm and stable. However, when talking about qualitative nature, habit cannot be natural law. Nor is human nature the formal foundation of natural law, because it is not capable of creating the moral obligation that characterises natural law.

Consequently, Saint Thomas points out that natural law is not a habit of nature, but an ‘opus rationis’, this one understood as an ‘operatum rationis’. To explain this ‘operatum rationis’, Saint Thomas mentions once again the analogy between the theoretical and practical order¹⁴. He reminds us that in the scope of speculation there is a supreme principle, which cannot be proven, and which is the cause of all proof; it is the first in descendent cognitive movement and the last in ascendant movement. Similarly, in the practical order, there must be another principle of similar character and extension. In the order of a theoretical knowledge, it is the *being* that the intellect perceives first of all. In the order of an action, it is the *good* that intellect primarily perceives. This is because practical intellect is ordered towards operation, which, in turn, necessarily seeks an end; and this end has a reason of good. The true object of the practical faculty is the good.

As at the peak of theoretical knowledge an initial proposition arises, which is called the principle of contradiction, a first truth immediately developed from the concept of being, at the peak of practical knowledge another proposition emerges, which is directly derived from the concept of good: ‘good is to be done and pursued,

¹⁴ *ST I–II*, q. 94, a. 2: ‘Praecepta legis naturae hoc modo se habent ad rationem practicam, sicut principia prima demonstrationum se habent ad rationem speculativam: utraque enim sunt quaedam principia per se nota’.

and evil is to be avoided'¹⁵. This proposition is the supreme principle of natural law, which is guided by the end, the motive of all practical order, and answers the teleology of rational nature. Natural law is the rule and norm for the inclinations of our nature to its end, which is its own good.¹⁶ All other precepts are an application of this one.

4. Having thus explained the formal foundation of natural law, the law of a practical reason, one must remember that Saint Thomas also evaluated the treatment of natural law with a metaphysical approach, from the perspective of participation: natural law is a participation of eternal law. This metaphysical approach is no coincidence with regards of the main subject of natural law because of the reasons that Saint Thomas himself gives and which organise that crux of the law.

Thus appears the task of understanding 'eternal law', taken as the thought of God, within the very coherent remark made by Sartre: there would be no 'nature' if there

¹⁵ *ST I-II*, q. 94, a. 2: 'Nam illud quod primo cadit in apprehensione, est ens, cuius intellectus includitur in omnibus quaecumque quis apprehendit. Et ideo primum principium indemonstrabile est quod *non est simul affirmare et negare*, quod fundatur supra rationem entis et non entis, et super hoc principio omnia alia fundantur, ut dicitur in *IV Metaphys*. Sicut autem ens est primum quod cadit in apprehensione simpliciter, ita bonum est primum quod cadit in apprehensione practicae rationis, quae ordinatur ad opus, omne enim agens agit propter finem, qui habet rationem boni. Et ideo primum principium in ratione practica est quod fundatur supra rationem boni, quae est, bonum est quod omnia appetunt. Hoc est ergo primum praeceptum legis, quod *bonum est faciendum et prosequendum, et malum vitandum*. Et super hoc fundantur omnia alia praecepta legis naturae'.

¹⁶ *ST I-II*, q. 94, a. 2: 'Ut scilicet omnia illa facienda vel vitanda pertineant ad praecepta legis naturae, quae ratio practica naturaliter apprehendit esse bona humana. Quia vero bonum habet rationem finis, malum autem rationem contrarii, inde est quod omnia illa ad quae homo habet naturalem inclinationem, ratio naturaliter apprehendit ut bona, et per consequens ut opere prosequenda, et contraria eorum ut mala et vitanda'.

were no God to conceive it. How does God conceive it, for this conception to be considered *law*?

But I would like once again to emphasise that ‘law’ has its precise formal origin in practical reason. If law is a dictate of practical reason of whoever governs a perfect community, and taking into account that God governs providentially the perfect community of the universe, such a dictate of governance, eternal law, must have existed within Him forever. The world is not chaos; neither chance nor destiny rules its elements. The philosopher who has proved the existence of God, sees the universe as an ordered march of every being towards a single end. This is so because infinite wisdom had to formulate and apply some laws when He created all beings.¹⁷ The strength and stability of the essence of every single being answers to the reason of order of those same things. The affirmation of an eternal law is due to human reason in use of its natural capacities, and not to a merely supernatural revelation.

Eternal law combines the elements that constitute law: its rational origin and its reference to common good, which is the order that establishes that this law is the true good of the universe. In this way, this order could be considered, in a first reading, as what artists do about their work of art. However, I have to reiterate, that this comparison is just approximate: eternal law must be considered within the practical order, and as a result, as an ordering and commanding reason. To understand eternal law, it is not

¹⁷ *ST* I–II, q. 91, a. 1: ‘Nihil est aliud lex quam quoddam dictamen practicae rationis in principe qui gubernat aliquam communitatem perfectam. Manifestum est autem, supposito quod mundus divina providentia regatur, ut in primo habitum est, quod tota communitas universi gubernatur ratione divina. Et ideo ipsa ratio gubernationis rerum in Deo sicut in principe universitatis existens, legis habet rationem. Et quia divina ratio nihil concipit ex tempore, sed habet aeternum conceptum, ut dicitur Prov. VIII; inde est quod huiusmodi legem oportet dicere aeternam’.

enough to invert Sartre's aforementioned sentence, to reach a theoretical order, full of exemplary ideas, that is, of ideas that are characteristic of divine wisdom. Because the exemplary divine idea, that is, its knowledge is not linked to a rational dictate that has always regulated the movements and acts of beings towards an end. Eternal law is not simply wise reasoning, but at the same time *wise and directive* reasoning of all action and movement. Eternal law is not an exemplary idea or archetype to which the order of the universe could be adjusted in theory, rather it is the wise reasoning of God that rules and prescribes the order of everything. *Commanding* in eternal law, a matter of prime importance, must also be taken into account.

If it were possible to apply the comparison of art to the area of God himself, it could be said that his exemplary ideas are *prior to creation*, whereas eternal law is *simultaneous* with creation, in which case, it could also be said that 'the wise reason of God, *in so far as it creates* things, is art, an exemplary idea'.¹⁸ On the other hand, eternal law must not be understood as Divine Providence, which is *after* eternal law, and

¹⁸ *ST* I-II, q. 90, a. 1: 'Sicut in quolibet artifice praeexistit ratio eorum quae constituuntur per artem, ita etiam in quolibet gubernante oportet quod praeexistat ratio ordinis eorum quae agenda sunt per eos qui gubernationi subduntur. Et sicut ratio rerum fiendarum per artem vocatur ars vel exemplar rerum artificiarum, ita etiam ratio gubernantis actus subditorum, rationem legis obtinet, servatis aliis quae supra esse diximus de legis ratione. Deus autem per suam sapientiam conditor est universarum rerum, ad quas comparatur sicut artifex ad artificia, ut in primo habitum est. Est etiam gubernator omnium actuum et motionum quae inveniuntur in singulis creaturis, ut etiam in primo habitum est. Unde sicut ratio divinae sapientiae in quantum per eam cuncta sunt creata, rationem habet artis vel exemplaris vel ideae; ita ratio divinae sapientiae moventis omnia ad debitum finem, obtinet rationem legis. Et secundum hoc, lex aeterna nihil aliud est quam ratio divinae sapientiae, *secundum quod est directiva* omnium actuum et motionum'.

carries out what eternal law prescribes in regards of the *government* of beings.¹⁹ It is obvious that eternal law is not simply an order, but the ordering reason itself. Because order is the effect, while ordering divine reason is the cause. Eternal law is also ‘reason chosen by will’, and, in consequence, the origin of all law and the starting point of all ethical commands. Eternal law is not within the confines in the free will of God, but in his immutable reason. If God created this or any other world, once the present one was created, the laws governing it would not change.

This means that the area of eternal law is as broad as the area of divine government; it extends to anything which has been created, necessary and possible, natural and free, good and evil, particular and generic, in such a way that the whole of the universe is subordinated to its action and rule. Every being follows the force divine reason gave them through its laws.

However, not every single being is on the same level regarding that eternal law. Irrational beings do take part in eternal law, but in a different way, receiving that law in a passive way. This is because God gives the principle to every being and is the cause of its activity. On the contrary, the human being is the proper subject of eternal law, because he takes part in that law not only by action or passion, just like the irrational ones, but also by active knowledge. The human being is capable of being his own

¹⁹ *De Ver.*, q. 5 a. 1: ‘Scientia enim se habet communiter ad cognitionem finis, et eorum quae sunt ad finem. Per *scientiam* enim Deus scit se et creaturas. Sed *providentia* pertinet tantum ad cognitionem eorum quae sunt ad finem, secundum quod ordinantur in finem; et ideo providentia in Deo includit et *scientiam* et *voluntatem*; sed tamen essentialiter in cognitione manet, non quidem speculativa, sed *practica*. Potentia autem executiva est providentiae; unde actus potentiae praesupponit actum providentiae sicut dirigentis; unde in providentia non includitur potentia sicut voluntas’.

providence and that of others.²⁰ That active and passive participation of eternal law in rational beings is what is called *natural law*.

The doctrine of Saint Thomas on natural law, as I have presented it, was accepted without difficulty in the foremost Spanish academic societies, such as the Dominicans, Jesuits, Mercedaries and Carmelites, blossoming into treatises entitled *De Iustitia et Iure* and *De legibus*²¹ during a splendid era that began in the 16th century, which includes not only the individuals who flourished in this century, but also those who were born and educated then and developed their intellectual activity until the mid-17th century approximately. This was The Golden Age²², with such illustrious scholars as Domingo de Soto, Bartolomé de Medina, Pedro de Aragón, Gregorio de Valencia, Luis

²⁰ *ST I-II*, q. 91, a. 2: ‘Lex, cum sit regula et mensura, dupliciter potest esse in aliquo, uno modo, sicut in regulante et mensurante; alio modo, sicut in regulato et mensurato, quia in quantum participat aliquid de regula vel mensura, sic regulatur vel mensuratur. Unde cum omnia quae divinae providentiae subduntur, a lege aeterna regulentur et mensurentur, ut ex dictis patet; manifestum est quod omnia participant aliquantulum legem aeternam, in quantum scilicet ex impressione eius habent inclinationes in proprios actus et fines. Inter cetera autem *rationalis creatura* excellentiori quodam modo divinae providentiae subiacet, in quantum et ipsa fit providentiae particeps, sibi ipsi et aliis providens. Unde et in ipsa participatur ratio aeterna, per quam habet naturalem inclinationem ad debitum actum et finem. Et talis participatio legis aeternae in rationali creatura lex naturalis dicitur... Unde patet quod lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura’.

²¹ In most cases, many *Commentaries* on *ST I-II* approach the matter *De legibus* (qq. 90–108); the *Commentaries* on *ST II* approach the matter of *De Iustitia et Iure*. Other authors, like Soto, Báñez, Molina, Suárez, Hurtado and Lugo make an effort to include in their treatises many aspects that systematically would be too large to fit in commentaries.

²² Ángel González Palencia, *La España del Siglo de Oro* (Madrid, 1939); Marcelin Defourneaux, *L’Espagne au Siècle d’Or* (Paris, 1996); Bartolomé Bennassar, *Un Siècle d’Or espagnol (vers 1525–vers 1648)* (Paris, 1990).

de Molina, Domingo Báñez, Gabriel Vázquez, Pedro de Lorca, Juan de Salas, Francisco Suárez, Francisco de Araújo, Tomás Sánchez, Gregorio Martínez, Juan de Lugo, Rodrigo de Arriaga and Juan Martínez de Prado²³.

²³ Among the main authors, the next ones have to be mentioned: Domingo de Soto (†1560): *De Iustitia et Iure libri decem*, Salamanca, 1553. Bartolomé de Medina (†1580): *De legibus*, in *Expositio in Primam Secundae Angelici Doctoris Divi Thomae Aquinatis*, Salamanca, 1577. Pedro de Aragón (†1592): *In Secundam Secundae Divi Thomae Doctoris Angelici Commentaria*, Tomus secundus, *De Iustitia et Iure* (qq 57–90 and q100), Salamanca, 1590. Gregorio de Valencia (†1603): *Commentariorum theologicorum et Disputationum in Summam Divi Thomae*, tomi quatuor. *De legibus*, in Tomus secundus, complectens materiam Primae Secundae D. Thomae, Ingolstadt, 1592. *Disputatio septima generalis: De Iustitia*, in Tomus tertius, complectens materiam Secunda Secundae Divi Thomae, Ingolstadt, 1595. Luis de Molina (†1600): *De Iustitia et Iure*, I–III/1, Cuenca, 1593– 1597; III/2, Amberes, 1609; IV–VI, Amberes, 1609. Domingo Báñez (†1604): *De Iustitia et Iure Decisiones*, Salamanca, 1594. Gabriel Vázquez (†1604), *Commentariorum ac Disputationum in Primam Secundae Sancti Thomae: De legibus*, in Tomus secundus, Alcalá, 1605. Pedro de Lorca (†1612), *Commentariorum et Disputationum in Primam Secundae Sancti Thomae: De legibus*, in Tomus secundus, Alcalá, 1609. Juan de Salas (†1612), *Tractatus De Legibus in Primam Secundae Divi Thomae*, Lyon, 1611. Francisco Suárez (†1617): *Tractatus De Legibus ac de Deo legislatore in decem libros distributus*, Coimbra, 1612. Tomás Sánchez (†1635): *Consilia seu Opuscula moralia duobus Tomis contenta, Opus posthumum*, Lyon, 1625. First volumen: *De Iure el Iustitia commutativa, distributiva el judiciaria*. Gregorio Martínez (†1637): *Commentaria super Primam Secundae Divi Thomae*, 3 vols.: *De legibus*, t. III, Valladolid, 1637. Gaspar Hurtado (†1646): *Tractatus De Iustitia et Iure*, Madrid, 1637. Juan de Lugo (†1660): *Disputationum De Iustitia et Iure*, Tomus primus: *De rerum Dominio*, Lyon, 1642. Tomus secundus: *De Contractibus*, Lyon, 1642. Rodrigo de Arriaga (†1667): *Disputationum theologicarum in primam secundae D. Thomae tomus secundus... tractatus De legibus...* Lugduni, 1642. Juan Martínez de Prado (†1668): *Theologiae moralis quaestiones praecipuae*, Tomus secundus, *De Iustitia et Iure*, Alcalá, 1656. Francisco de Araujo, *In primam Secundae commentariorum, De legibus in Tomus secundus*, Madrid, Melchor Sánchez, 1646.

5. The dilemma Spanish university students of the Golden Age had in connecting human nature to an eternal thought arose from questions that authors immediately after Saint Thomas, such as Duns Scotus and William Ockham, had already left in the Spanish universities established in the 15th century, particularly in the University of Alcalá and in the University of Salamanca²⁴. As it is well-known, when founding the University of Alcalá, Cardinal Cisneros suggested among other novelties the creation of three different cathedrae: Saint Thomas, Scotus and Nominales. In the University of Salamanca too, the academic regime was established, apparently, in three schools: Saint Thomas, Scotus and Nominales. But soon, these were substituted in the University of Salamanca by professors who openly lectured on the doctrine of Aquinas.

Regarding the relationship that the natural law might have with an eternal fundament, the schools in Salamanca and Alcalá had indeed heard about the solution of Duns Scotus († 1308). For this author, the relationship between moral rules and the divine fundament is not principally a relationship of knowledge, but a relationship of love. There was a very basic form of love, *friendship*, characterised by generosity and selflessness.²⁵ Another form of love, but an inferior one, would be *concupiscence*, which does not tend to a particular object because the object is good in itself, but

²⁴ José Barrientos García, ‘La Escuela de Salamanca: desarrollo y caracteres’, *Ciudad de Dios*, 208 (1995): 1048–1052; Juan Belda Plans, *La Escuela de Salamanca y la renovación de la teología en el siglo XVI* (Madrid, 2000), pp. 55–60; Miguel Anxo Pena González, ‘Aproximación histórica al concepto Escuela de Salamanca’, *Salmanticensis*, 52 (2005): 73–77.

²⁵ Ioannes Duns Scotus: *Opus Oxoniense (Ox)*, vols. 8–21 (Paris: Ludovicus Vivés, 1893). *Ox*, III, d. 27 q. 1 n. 17: ‘Hoc enim magis diligo... pro cuius bono salvando magis me ‘expono’ ex amore, quia ‘exponere’ sequitur amorem’.

because it is good for the individual who loves it²⁶. The first kind of love is a real moral feeling (*affectio iustitiae*), whereas the second one is just a useful feeling (*affectio commodi*)²⁷. From Scotus's point of view, natural will, *velle naturale*, which is also the one of natural inclinations, is identified with a utilitarian inclination²⁸. On the other hand, moral feeling expresses the most common feature of free will. Free will is precisely wanting good for good's sake, independently of natural inclinations, which are bound to appetites and instincts. Will is only free when, independently of natural inclinations, it tends to good, just because it is good²⁹.

In this way, Scotus began a process of separating the concepts of *natural inclination* and *moral relationship*. Since, if natural will (*velle naturale*) is understood in an utilitarian sense, it is no longer possible to determine, from nature, the content of what is moral.

This disconnection is complicated by the metaphysical inflexion of God's will in the moral–anthropological process. If nature is not enough to determine the content of morality, and thus, to determine a natural law of universal principles, then, where does the human being get the determination of his practical principles of action from? Without any doubt they proceed from divine will. This does not mean that the free will of the human being, which is directed to good for good's sake, acts without rational sensitivity or judgment; on the contrary, free will is guided by intellectual knowledge³⁰.

²⁶ *Ox*, IV, d. 49, q. 5 n. 3: 'Actus amicitiae tendit in objectum, ut est in se bonum; actus autem concupiscentiae tendit in illud, ut est bonum mihi'.

²⁷ *Ox*, IV, d. 49, q. 5 n. 3.

²⁸ *Ox*, III, d. 17, q. 1 n. 3; *Ox*, III, d. 33, q. 1 n. 23.

²⁹ *Ox*, III, d. 17, q. 1 n. 3.

³⁰ *Ox*, II, d. 43, q. 2 n. 2: 'Voluntas agit per cognitionem intellectualem'.

Reason is what illuminates the path of will; but the acts of the reason are not *the conditions for the action of will*, but *mere conditions* of necessity for will to act, without which it would not act. Formal determination and necessary condition must not be confused. In consequence, we cannot rationally explain why the will wants an object, since wanting it means receiving it with love, simply because will is will³¹. And that is why will is the only real cause of the determination of will.

With this basis argument, Scotus underlines that will is not only free when speaking of nature, that is, natural inclinations; it is also free, when speaking of *rational evidence*, that is, an intelligible foundation that as an objective cause would impose natural necessity³². Such a rational imposition would not permit moral action³³. Only a will that can refuse to follow rational evidence is completely free³⁴.

Hence, it is supposed that divine will creates all law, its action always being necessarily fair and ordered. In other words, if God changed his way of acting, it would be because He had created a new law; thus His action would also be orderly³⁵.

But if God has no relation with any previous rational order, if laws are *the contingent expressions of divine will*³⁶, it is pointless to ask why God has created the

³¹ *Ox*, I, d. 8, q. 5, a. 3 n. 24: ‘Quare voluntas voluit hoc, nulla est causa, nisi quia voluntas est voluntas’.

³² *Ox*, II, d. 25, n. 22: ‘Nihil aliud a voluntate est causa totalis volitionis in voluntate’.

³³ *Ox*, IV, d. 49 q. 4 n. 17.

³⁴ *Ox*, I, d. 17, q. 13, a. 3 n5.

³⁵ *Ox*, I, d. 44, q. 1, n. 1: ‘Quando in potestate agentis est lex et rectitudo eius, ita quod non est recta nisi quia est ab illo statuta, tunc potest recte agere agendo aliter quam lex illa dictet, quia tunc potest statuere aliam legem rectam, secundum quam agat ordinate; nec tunc potentia sua absoluta simpliciter excedit potentiam ordinatam, quia tunc esset ordinata secundum illam aliam legem, sicut secundum priorem; tamen excedit potentiam ordinatam praecise secundum priorem, contra quam vel praeter quam facit’.

world in the way he has, with this order and this temporality. Only the divine will is the first and direct reason, and if God has wanted it so, it is then good.³⁷

So, in the *connection* between the beings of the world and the absolute fundament, there is a law of proper action, established by divine will, a law that does not respond to any intelligible necessity³⁸.

Not everything in the world has a value in itself; it has a value to the extent that God approves of it³⁹. And if God can to act in a different way, He can also establish as just another law that He has approved⁴⁰.

³⁶ *Ox*, II, d. 7, q. 1 n. 18: ‘Potentia ordinata Dei est illa quae conformis est in agendo regulis praedeterminatis a divina sapientia vel magis a divina voluntate’.

³⁷ *Ox*, I, d. 1, q. 2 n. 9: ‘Ista voluntas Dei, qua vult hoc et producit pro nunc, est immediata prima causa, cuius non est aliqua alia causa quaerenda; sicut enim non est ratio quare voluit naturam humanam in hoc individuo esse, et esse possibile et contingens, ita non est ratio quare hoc voluit nunc et non tunc esse; sed tantum quia voluit hoc esse, ideo bonum fuit illud esse; et quaerere huius propositionis, licet contingentis, immediate causam, est quaerere causam sive rationem cuius non est ratio quaerenda’).

³⁸ *Ox*, I, d. 44, q. 1 n. 2: ‘Leges aliquae generales rectae de operabilibus dictantes praefixae sunt a voluntate divina, et non quidem ab intellectu divino ut praecedit actus voluntatis divinae...; quia non invenitur in illis legibus necessitas ex terminis’.

³⁹ *Ox* III d32 q1 n6: ‘Nec tamen illa inaequalitas est propter bonitatem praesuppositam in objectis quibuscumque aliis a se, quae sit quasi ratio sic vel sic volendi: sed ratio est in ipsa voluntate divina. Quia sicut ipsa acceptat alia in gradu, ita sunt bona in tali gradu, et non e converso. Vel si detur, quod in eis ut ostensa sunt ab intellectu, ostenditur aliquis gradus bonitatis essentialis, secundum quem rationabiliter debent complacere voluntati, hoc saltem est certum, quod complacentia eorum quantum ad actualem existentiam, est mere ex voluntate divina absque alia ratione determinante ex parte eorum’.

⁴⁰ ⁶*Ox*, I, d. 44, q. 1 n. 2: ‘Sicut potest aliter agere, ita potest aliam legem statuere rectam, quia, si statueretur a Deo, recta esset, quia nulla lex est recta, nisi quatenus a voluntate divina acceptante statuta’.

In short, a first principle of acting in a practical way cannot be inferred from the inclinations of human nature, and so, does not answer to an *eternal law*, that is, to the divine intelligence that created it. Only the *legislator* is eternal, but his law is not connected to any action *good or evil in itself and by its own nature*. In this way, and perhaps this is taking Scotus's interpretation too far, murder, adultery, or theft, for instance, would not be evil actions in themselves.

From Scotus's perspective, what is *natural* cannot be taken as a fundament that establishes the content of the basis norms of moral acting; nor should the 'nature' of the human being fill the first precept of 'natural law' with its concrete content. There is no 'bridge' between *human nature and its law*. The content of moral laws comes from on high, from God, not from below, from human nature. There is a radical division between natural inclinations and the free loving of spiritual love. Consequently, free action is not good because it coincides with an inferior good inclination, but because it follows the will of God.

6. William Ockham takes also some of Scotus's theses and then he expands on them. Firstly, he accepts the thesis of *voluntarism: will is absolutely undetermined*⁴¹. Secondly, he assumes the theory that it is impossible to comprehend divine will in any given rational truth: God could also have come to earth in the form of a stone, or a piece of wood, or as a ass, and we would have had to believe it, since there is no *rationaly verifiable* proposition of faith.

⁴¹ *Opera philosophica et theologica ad fidem codicum manusccriptorum edita: Opera theologica*. 9, *Quodlibeta septem* (New York: St. Bonaventure University, 1980). *Quodlibeta* I, q. 16: 'Non potest probari libertas per aliquam rationem... Potest tamen evidenter cognosci per experientiam, quod, quantumcumque ratio dictet aliquid, voluntas tamen potest hoc velle et nolle'.

Moreover, moral imperatives are subordinated to *God's absolute power* and are based simply on the will of God, which is not connected to any rational truth. God could as well have commanded *adultery and theft* and these acts would have been good and praiseworthy. Concepts such as theft, adultery and so on, do not refer to an ethical quality, that is, a moral quality of the action. They refer to the *prohibition* of the action itself, in such a way that, if the prohibition were interrupted, the action would no longer be theft and adultery. Moreover, *the prohibition of hating God is not derived with rational necessity from the essence of God*. There is no contradiction in the fact that God commands hate for himself; if he did so, it would be then something good and praiseworthy.⁴² Taking these theses into account, it is impossible to *show a path where*, with the help of the concept of nature, it would be possible *to fill the principles* of a natural law with *precise content*.

Is it obvious that a clear *moral positivism* dominates Ockham's ethical doctrine, which does *not recognise any relationship based on an objective nature*, because it bases all ethical value on *decisions of the will of a greater power*. Without a superior prohibition or command the human act loses immediately all its ethical good or evil.

7. In line with intellectual movements in Europe at the end of the 15th century, Ockham's doctrine on natural law began to be studied in such important schools as the University of Paris, which seriously worried many Spanish philosophers. It is true that the doctrine of the rationality of natural law could not be accepted by the Ockhamists, who believed that natural law consisted completely of command or prohibition from the will of God, as the author and governor of nature, in such a way that all natural law is

⁴² *In Sent.*, IV, q. 14: 'Deus potest praecipere, quod voluntas creata odiet eum... odire Deum potest esse actus rectus in via, puta si praecipiat a Deo: ergo et in patria'. *Quodlibeta* III, q. 14 and 15.

made up of divine precepts given by God, which He can eliminate or change. Nevertheless, in a strict sense, such a law is not natural, but positive, it is a pure *positum* of God. But Ockham explains that it is called natural since it is *in proportion to the nature* of things, and not because it is established by God in an extrinsic way. But Pierre de Ailly⁴³ (†1420) and Jean Gerson⁴⁴ (†1429) were of that opinion; for them divine will is the first law and can create human beings with reason without any law; Andrés de Novocastro⁴⁵ (†1400) taught this also.

For these authors good and evil in matters regarding natural law lies neither in the judgment of reason, nor in the things forbidden or banned by that law, but in the will of God. God does not forbid something because it is evil or good; it could be said that something is evil or good because God wants it to be so.

8. Almost every single Spanish author from the Golden Age reacted to this tremendous thesis of voluntarism, but none in such an extreme way as the Spanish Jesuit Gabriel Vázquez († 1604). For this Jesuit, natural law was just the opposite; natural law is not more than *rational nature* itself⁴⁶. And he warned that rational nature had to be

⁴³ Pierre de Ailly, *In I Sent* q. 14, a. 3.

⁴⁴ *Opera omnia* (174): *Monotessaron, seu Concordantiae quattuor Evangelistarum*, etc. (I); *De perfectione cordis*, etc. (II); *De consolatione theologiae*, etc. (III); *Sermo de vita clericorum*, etc. Coloniae: Johannes Koelhoff, 1483–84.

⁴⁵ *Primum scriptum sententiarum*, editum a fratre Andrea de Novo Castro ordinis fratrum minorum, ... Venundatur Parrhisiis: a Iohanne Grantion, 1514 (*In I Sent* d. 48, q. 1 a. 1).

⁴⁶ *Commentariorum ac Disputationum in Primam Secundae S. Thomas* (Alcalá, 1599), dp. 150, 3, 22: ‘Lex naturalis in creatura rationali est ipsa natura rationalis, quatenus rationalis, quia haec est prima regula boni et mali’. (Cit. *Commentariorum*). See José M. Galpasoro Zurutuza, *Die Vernunftbegabte*

considered in itself, that is, because of its own essence there are certain determinations that are suitable for it and some which are not. That natural law is the rational nature itself means that it is nature *itself* as such⁴⁷, because due to its essence, it is of such kind that such actions naturally fit it, and the opposite actions do not fit it. Vázquez maintains that natural law, in as much as it does not involve contradiction, is rational nature itself. This is the formal fundament of the morality of all human action, both for what is good or corresponds to nature, or what is evil and does not correspond.

This is a hypothesis that many present-day authors maintain as the most acceptable, perhaps without feeling in debt to Vázquez.

Vázquez argues that there are acts that are intrinsically evil by nature, i.e. independently from an extrinsic prohibition, or on divine judgment or will. And similarly, there are some other acts which are intrinsically good and do not depend on this extrinsic matter either⁴⁸. Thus, the intrinsic nature and the immutable essences of moral acts do not depend on an extrinsic reason or will. If things, in essence, are completely independent from divine knowledge, they will have also to ‘consist’ of themselves, although God did not know them⁴⁹. Vázquez could even have added that this would have happened even if there were no God.

Vázquez claims that there is moral value in those actions not because of the *conformity to the judgment of reason*, but because of the *conformity to a pre-rational*

Natur, Norm des Sittlichen und Grund der Sollensanforderung: systematische Untersuchung der Naturrechtslehre Gabriel Vázquez's (Bonn, 1972).

⁴⁷ *Commentariorum*: dp. 58 c. 2, dp. 95 c. 5, dp. 96 c. 2, dp. 97 c. 3, dp. 102 c. 4, dp. 150 c. 3.

⁴⁸ *Commentariorum*, dp. 97, 3, 6: ‘Vera sententia, quae docet, non omne peccatum eo esse peccatum, quia lege, aliquave prohibitioni imperante vetitum sit, sed quia natura sua malum sit homini’.

law, that is, due to conformity to the rational nature itself; this means that nature itself is the natural law regarding all those things that are commanded or forbidden, approved or allowed. This can be clearly seen with an example: *lying is not evil because it is judged as evil by reason, but on the contrary, it is judged as evil because it is evil in itself*. Judgment is not the measure of the malevolence of the act, and no law would be needed to forbid it. An act is considered to be evil because it is inappropriate to rational nature. And this means that nature itself is the measure of such an act, and is therefore natural law.

In conclusion, Vázquez defends four fundamental theses. First: natural law is not a true and proper command. Second: natural law is not a judgment of the reason. Third: natural law is not a manifestation of the will. Fourth: natural law is prior to the other three, so the name of law would be more suitable for positive law than for natural law. Vázquez wishes to base the obligation of natural law on human nature, without taking into account divine will.

What structure and scope do the precepts of that law have in Vázquez' opinion? In fact, they are either the principles of law known by their terms, or conclusions derived from these terms with clear necessity, which must prior to any judgment of the reason, but not only from created intellect, but also from divine intellect itself. A comparison could be established here with the essences of the other things, which are one thing or another in their own essence *before* any causality of God and regardless of him. Thus, in the same way, the moral evil of a lie and the moral good of the veracity are so in themselves; so, regarding those acts or precepts, and supposing that before all judgment they are all either good or evil, and hence, commanded or forbidden, judgment cannot

⁴⁹ *Commentariorum*: d. 104, 3, 9–10: ‘Si alias Deus esset, etiamsi non cognosceret... tamen creaturae essent possibles, hoc est, ex se ipsis non implicarent contradictionem, talis, aut talis naturae esse’.

have the function of a law. There can be no law regarding them, except rational nature itself.

I truly believe that many contemporary authors can be really overcome by the doctrine of Vázquez, because he proposes that natural law frees itself from the weight of eternal law, and simply demands to admit a general law, an incisive understanding of the inclinations and motives of human nature itself.

9. Nevertheless, at the end of the 16th century many philosophers realised how many problems Vázquez' doctrine caused. It was another Jesuit, Francisco Suárez (†1617), who wrote most about Vázquez in his treatise *De legibus* (1612). Suárez wanted to take advantage of Vázquez' radical affirmation about law being ontologically submissive to nature emphasise its inaccuracy. The great theorist from Granada underlines that *rational nature itself is, as such, an essence* and not a law. However, nature does not command, and it does not show moral goodness or malevolence, neither does it guide nor illuminate, or does it have any other effect of law; in fact, nature cannot be called law, unless it is metaphorically. It should not be called law, insists Suárez, because not *any* thing related to the fundament of goodness or malevolence of the act can be called law. Even if it is true that rational nature is the *fundament* of the objective goodness of human moral acts, that is not reason enough to call it *law*. And similarly, in spite of being called *measure*, nature is not a law, since the concept of *law* is far more limited than that of *measure*. That is why, says Suárez, in an act of economic donation, the neediness of the recipient and the capacity of the donor are the foundation of the goodness of the act of donation, and nevertheless, the neediness of the recipient is not

the law of the donation. This means, then, that the idea of *rule and measure is broader than the idea of law*⁵⁰.

Furthermore, Suárez adds, in the naturalistic thesis of Vázquez what is understood is that *natural law is not a divine law and that it does not come from God*. Since, following Vázquez' point of view, it could be said that the precepts of the divine law are not the precepts of God, since they have enough goodness, it could also be said that rational nature, which according to Vázquez is the measure of moral goodness, does not depend on God in the *essential* order of the reason, despite depending on the *existence* order – that is, in the order of creation⁵¹. For instance, lying, which is not fitting to human nature, would also be intentionally prior to the judgment of God. Natural law would precede the judgment and will of God and would not have God as author, but would be stamped on human nature, being this of such an essence, and not any other.

⁵⁰ *Tractatus de legibus ac Deo legislatore* (cit. *De legibus*) , in decem libros distributus, Conimbricæ, 1612. *De legibus*, Lib. II, c. 5 n. 5: 'Natura ipsa rationalis præcise spectata, ut talis essentia est, nec præcipit, nec ostendit honestatem aut malitiam, nec dirigit aut illuminat, nec alium proprium effectum legis habet; ergo non potest dici lex nisi vellimus valde æquivoce et metaphoricæ nomine legis uti, quod evertit totam disputationem... Non omne id, quod est fundamentum honestatis seu rectitudinis actus lege præcepti, vel quod est fundamentum turpitudinis actus lege prohibiti, potest dice lex, ergo licet natura rationalis sit fundamentum honestatis obiectivæ actuum moralium humanorum, non ideo dici potest lex; et eadem ratione, quanvis dicatur mensura, non ideo recte concluditur quod sit lex, quia mensura latius patet quam lex'.

⁵¹ *De legibus*, Lib. II c. 5 n. 8: 'Deinde sequitur, legem naturalem non esse legem divinam, neque esse ex Deo. Probatur sequela, quia iuxta illam sententiam præcepta huius legis non sunt ex Deo quatenus necessariam honestatem habet, et illa conditio, quæ est in natura rationali, ratione cuius est mensura illius honestatis, non pendet a Deo in ratione, licet pendeat in existentia'.

At the beginning Suárez is convinced of the fact that only rational nature, which would act as a measure or fundament of moral goodness, is not enough to make laws. Thus, rational nature cannot properly be called natural law.

Nevertheless, not wishing to discard an important part of the work of Vázquez, Suárez considered that it was necessary to distinguish two aspects in rational nature. The first one is *nature* itself, which would be the basis of how fit or not human acts were to it. This aspect was emphasised by Vázquez. The other one is the capacity or *faculty* of that nature, faculty to distinguish between the different human operations those that are fitting or not to that nature: that that faculty is what must be called *natural reason*. As a result, nature would just be the *remote* basis of natural goodness; and the rational faculty would express the same natural law, which commands or forbids what human will can do on moral grounds⁵². Suárez truly believes that this is Saint Thomas's opinion, which was followed, among many other authors of the Golden Age, by Domingo de Soto⁵³ and Bartolomé de Medina⁵⁴.

Therefore, in its strict sense *natural law does not lie in God, since it is temporal and was created*; it is outside human beings either, but is engraved inside the human being. However, *it is not immediately in the nature of human being, neither in the will, since it does not depend on the will of the human being, but on the contrary it obliges*

⁵² *De legibus*, Lib. II c. 5 n. 9: 'Est ergo secunda sententia, quae in natura rationali duo distinguit, unum est natura ipsa, quatenus est veluti fundamentum convenientiae vel disconvenientiae actionum humanarum ad ipsam; aliud est vis quaedam illius naturae, quam habet ad discernendum inter operationes convenientes et disconvenientes illi naturae, quam rationem naturales appellamus. Priori modo dicitur haec natura esse fundamentum honestatis naturalis; posteriori autem modo dicitur lex ipsa naturalis, quae humanae voluntati praecipit, vel prohibet, quod agendum est ex naturali iure'.

⁵³ *De Iustitia et Iure* I, 1 q. 4, a. 1.

⁵⁴ *In ST I-II*, q. 94, Salamanca, 1577.

and forces it; then it must necessarily be in the reason. The dictate of reason directs, obliges and is the rule of conscience that accuses or approves facts. And it is in this dictate that law consists.

In summary: what corresponds to law is to *rule*, that is, to dominate and govern. But this must be attributed to upright human reason in order to be properly governed according to nature. So, in reason, natural law has to be constituted as an *intrinsic proximate rule* of human acts⁵⁵.

Most 16th and 17th century authors agree to a large extent with Suárez. A quick glance at the *Commentaries on S.Th. I-II q94 a1* written by Báñez, Gregorio Martínez and Araújo, among others, is enough to realise that Suárez' argument against Vázquez had had its effect on the intellectuals. And all those commentaries teach that natural law clearly means an act or judgment of reason, as Saint Thomas had explained.

10. There is also another interesting aspect to be considered: the Spanish philosophers of the Golden Age, following Saint Thomas's doctrine, taught that natural law is a *second act*, and not a *first act*. Why? Because law is *rule*, which consists of an act, and because the act is precisely the *rule* that directs. This is what Cayetano and Conrado, and later the Spaniards Domingo de Soto, Luis de Molina, Francisco Suárez⁵⁶, Gregorio Martínez or Francisco de Araújo taught in their *Commentaries on S.Th. I-II*.

⁵⁵ Suárez, Francisco, *De legibus*, Lib. II c. 5 n. 12: 'Proprium est legis dominari et regere, sed hoc tribuendum est rectae rationi in homine, ut secundum naturam recte gubernetur; ergo in ratione est lex naturalis constituenda tanquam in *proxima regula intrinseca* humanarum actionum'.

⁵⁶ Suárez, Francisco, *De legibus*, Lib. II c. 5 n. 13: 'Solet hic interrogari, an haec lex consistat in actu, vel in habitu, seu in lumine ipso naturali, id est, in aliquo *actu primo*. Nam in hoc etiam dissentiunt Theologi;

It is then important to remember that when natural law is discussed in this debate, it is considered to be inside human beings and not in the divine legislator, in which case we would be talking precisely about *eternal law*. But the human being does not only have the actual judgment or rule, but also the light itself in which that law is always stamped and he can always represent it *in acto*.

After Suárez' criticism of Vázquez, different philosophers from the Thomist school also made an effort to stress that in Vázquez' hypothesis natural law cannot be called the participation of eternal law, given by God as *legislator*. In such a 'naturalistic' hypothesis it could be admitted that natural law is given by God as first *cause*, but not as God himself as *legislator*. Because it is different to say that law comes indeed from God as first *cause*, and saying that it comes from God as the *legislator* who commands and obliges. The former comment is an initial metaphysical thesis: God is the first cause of all natural things, which the honest use and light of reason can find. However, despite the fact that God is the maker of natural law, it does not follow from Vázquez' perspective that He is the legislator, since natural law does not point towards God as the commander, but indicates what is good or evil, in the same way as seeing a certain object indicates that it is white or black.

In contrast, the Spanish authors who followed Saint Thomas's doctrine stressed that there is no doubt that natural law is not just *indicative* of good and evil, it is also *preceptive*, because it contains the *prohibition* of evil and the *command* of good, as Saint Thomas had already said⁵⁷. Thus, although regarding human law not all moral

multi enim volunt esse *actum secundum*, quia lex est imperium, quod in actu consistit et quia actus est proprie regula dirigens⁷.

⁵⁷ ST I-II, q. 71, a. 6 ad 4: 'Cum dicitur quod non omne peccatum ideo est malum quia est prohibitum, intelligitur de prohibitione facta per ius positivum. Si autem referatur ad ius naturale, quod continetur

offences are evil because they have been forbidden, regarding natural law, which is contained mainly in eternal law and secondly in the judgment of natural reason, all moral offences are evil because they have been forbidden. And reintroducing the analogy between the theoretical and the practical order, it has to be said that the judgment that merely indicates the nature of the action is not an action of the superior, it can be found in an equal or an inferior, who does not have the power to oblige. Therefore, it cannot be a law that commands or obliges. Something similar happens in curative art: the doctor who shows the patient what is good or evil is not imposing a law. Then law is a rule that imposes an obligation; for the judgement to be law it would have to express a command from which such an obligation derives.

11. Up to now, I have tried to stress that if natural law is not considered a strict law, we can ignore the fact that the law is a common precept of the superior, and might erroneously consider it as a general concept, a generic rule for good and evil.

I am sure that the errors made in the comprehension of natural law lie in having misunderstood that what is against natural law is also necessarily against true law and the prohibition of a superior. The authors of the Golden Age, such as Vitoria, Soto, Báñez, Molina Suárez, Araújo, just to mention the most distinguished, have unambiguously taught that, in as much as natural law is in the human being, it does not only *indicate* the thing in itself, but it also *prescribes* an action as commanded or forbidden by a superior. Those authors have also insisted on the fact that if law only consisted intrinsically in the object itself or in the expression of that object, the violation of natural law would not be intrinsically against law of the superior; in the end, the

primo quidem in lege aeterna, secundario vero in naturali iudicatorio rationis humanae, tunc omne peccatum est malum quia prohibitum, ex hoc enim ipso quod est inordinatum, iuri naturali repugnat’.

violation of natural law is the violation of the eternal law as the reason and will of God, who is, in this case, the superior.

What I have said makes the Sartre quote at the beginning easier to understand: that there is no nature if there is no God to conceive of it. It would be necessary to clarify that the practical thought of God is eternal law; and if an act is a moral violation it is because God forbade it. And natural law, as it is in the human being, has the force of divine command, since it is not only expressive of the nature of the thing.

The fact that natural reason indicates what is or good or evil for human nature needs to be understood under the metaphysical hypothesis in which God has perfect providence of human beings and, as supreme governor of nature, avoids evil and commands the good. Since God is the author and governor of such nature, he commands to do or to avoid that which reason dictates that it is necessary to do or to avoid.

In the meaningful case of the Spanish Jesuit Gabriel Vázquez, the result is that natural law has the foundation of its obligatory force in human nature itself, thus it open to the possibility of leaving out the relation between natural law and God, which is what the modern rationalists did. Although Vázquez supports a metaphysical link between natural law and God *the creator*, it is however a link with God as legislator. Natural law would not obtain its original force to oblige from the divine will, but from the very nature of the human being. In other words, many acts would be immoral and reprehensible, but not by divine will, rather because of the very nature of the human being; so that morality would not depend on any will, not even on the will of God. The prohibition of such acts, would come from human nature in as far as it is seen as rational: this is the rule which differentiates between good and evil. There would be a multitude of acts forbidden by nature itself ignoring any authority.

12. This necessity of the ‘presence of the natural law’ in the moral action of the concrete person is shown very clearly in the structure of the morally evil act. St. Thomas explains this as follows: ‘For in all things of which one ought to be the rule and measure of another, good results in what is regulated and measured from the fact that it is regulated and conformed to the rule and measure, while evil results from the fact that it is not being ruled or measured. Therefore, suppose there is a carpenter who ought to cut a piece of wood straight by using a ruler; if he does not cut straight, which is to make a bad cut, the bad cutting will be due to his failure to use the ruler or measuring bar. Likewise, pleasure and everything else in human affairs should be measured and regulated by the rule of reason and God’s law. And so the nonuse of the rule of reason and God’s law is presupposed in the will before the will made its disordered choice. And there is no need to seek a cause of this nonuse of the aforementioned rule, since the very freedom of the will, by which it can act or not act, is enough to explain the non–use. And absolutely considered, not actually attending to such a rule is itself not evil [*malum*], neither moral wrong [*culpa*] nor punishment [*pena*], since the soul is not held, nor is it able, always actually to attend to such a rule. But not attending to the rule first takes on the aspect of evil because the soul proceeds to make a moral choice without considering the rule. Just so, the carpenter errs because he proceeds to cut the piece of wood without using the measuring bar, not because he does not always use the bar. And likewise, the moral fault of the will consists in the fact that the will proceeds to choose without using the rule of reason or God’s law, not simply in the fact that the will does not actually attend to the rule. And it is for this reason that Augustine says in the *City of God* that the will causes sin insofar as the will is deficient, but he compares that

deficiency to silence or darkness, since the deficiency is just [that] negation [*ille est negatio sola*]⁵⁸.

The most significant thesis of this text is found towards the middle, where it says that that which formally constitutes culpability (or moral evil) derives from the fact that the will undertakes the act of choice without *at the same time* taking the rule or law into account (the ‘nonuse of the rule of reason and God’s law’). This means: 1) the ‘primary’ and ‘only’ cause of the production of evil is found in the fact that the will performs two things *freely*: first, the nonuse of the rule; second, it executes the act of choosing. 2) The evil of the ‘action’ has its origin in a defect, freely brought about, in the will of the agent: this voluntary deficit is that which underlies the free evil act. 3) This defect

⁵⁸ *De Malo* (q. 1 a. 3): ‘In omnibus enim quorum unum debet esse regula et mensura alterius, bonum in regulato et mensurato est ex hoc quod regulatur et conformatur regulae et mensurae; malum vero ex hoc quod est non regulari vel mensurari. Si ergo sit aliquis artifex qui debeat aliquod lignum recte incidere secundum aliquam regulam, si non directe incidat, quod est male incidere, haec mala incisio causabitur ex hoc defectu quod artifex erat sine regula et mensura. Similiter delectatio et quodlibet aliud in rebus humanis est mensurandum et regulandum secundum regulam rationis et legis divinae; unde non uti regula rationis et legis divinae praetelligitur in voluntate ante inordinatam electionem. Huiusmodi autem quod est non uti regula praedicta, non oportet aliquam causam quaerere; quia ad hoc sufficit ipsa libertas voluntatis, per quam potest agere vel non agere; et hoc ipsum quod est non attendere actu ad talem regulam in se consideratam, non est malum nec culpa nec poena; quia anima non tenetur nec potest attendere ad huiusmodi regulam semper in actu; sed ex hoc accipit primo rationem culpae, quod sine actuali consideratione regulae procedit ad huiusmodi electionem; sicut artifex non peccat in eo quod non semper tenet mensuram, sed ex hoc quod non tenens mensuram procedit ad incidendum; et similiter culpa voluntatis non est in hoc quod actu non attendit ad regulam rationis vel legis divinae; sed ex hoc quod non habens regulam vel mensuram huiusmodi, procedit ad eligendum; et inde est quod Augustinus dicit in *XII de Civit. Dei*, quod voluntas est causa peccati in quantum est deficiens; sed illum defectum comparat silentio vel tenebris, quia scilicet defectus ille est negatio sola’.

consists – in its ontological meaning of the act – in ignoring the moral rule or law in order to pass directly to the action. And this defect is possible because the ‘rule of freedom’ (its *rational* aspect) is distinguished from freedom itself (its *natural* aspect). Reason and nature truly always maintain this dialectical relation in moral acting. 4) The act is evil when it is performed without its rule, that is, without its normative ‘good’: it is deprived of a *good that should have been present*. 5) Insofar as there is a ‘nonuse of the rule’, freedom takes on a truly negative or destructive function, which is not due to a simple theoretical distance from the law. In averting one’s gaze, during practical action, from the rule, one introduces a ‘privation’ of goodness, an existential wound, which consists of damage to the good that should have been present. 6) The philosopher (or moralist) will be able to understand, *later*, that this ‘free deficiency’ need not be sought elsewhere, since ‘the very freedom of the will, by which it can act or not act, is enough to explain the nonuse’. That is, the deficiency must be sought precisely where, lamentably, it has already come about. 7) From a philosophical–moral perspective, therefore, human freedom is the ‘faculty of good and evil’ only insofar as it is ‘the faculty to consider or not to consider the rule’ (that is, the law).

Therefore, there is no ‘distant presence’ or mere symbolic actuation of natural law in the human act.

13. Before I finish I would like to summarise the nine main points of the doctrine that that Spanish authors of the Golden Age maintained, in debates and comments, on the formal fundament of natural law. They are taken from the *Commentary* of Araújo.

First: Natural law is the work of the reason (*opus rationis*) or something constituted by the reason (*quid constitutum per rationem*). In that sense, natural law is truly a law, which without any doubt comes from God as the first ‘measurer’

(*mensurans*). It can also be found in the human being as a second ‘measurer’ (*mensurans*), subordinate to and ‘measured’ by God and eternal law. In fact, Saint Thomas asserted that *natural law consists formally in a dictate of the practical reason, or in a command and precept, which is the act of the reason itself or its object*, that is, the object produced by the act. However, all this has to be understood as inside human beings, because when it is in God as a legislator, it is the same eternal law that commands the precepts of the act and the regime of nature, in the same way as the written code is the human law as far as it is outside the legislator. This is the thesis that was so flawlessly defended in Spain by Domingo de Soto in *De iustitia et iure* I q4 a1; Bartolomé de Medina in *In S.Th.* I–II q94 a1; Pedro de Valencia, dp7 q4 p1; Juan Azor, in *De legibus* VI q1; Francisco Suárez in *De legibus* II c5; and Francisco de Araújo in *S.Th.* I–II q94 a1.

Second: Since law in itself is an act of reason, or a work of reason, under the form of a practical dictate or command and precept, natural law is not formally the rational nature itself, as Vázquez stated.

Third: Law has to be distinguished from those on whom it is imposed; in the same way that there is a difference between what obliges and who is obliged. And taking into account that rational nature, and also the substance of the human being, cannot be differentiated from the human being, it is clear that rational nature cannot be law at all. Regardless of any kind of naturalism this argument is definitive. Natural law is *formally* the true dictate of reason to follow good or avoid evil. In short, it is formally a law based on reason.

Fourth: Once the formal meaning of law had been analysed, which is fundamental for its understanding, the Spanish authors of the Golden Age also claimed somewhat improperly, that natural law could also be understood in a *causal* sense: as the principle

in which natural law is virtually and habitually contained. Therefore, such a natural law is in the human being in a permanent and enduring way, even in children, where no actual dictate of reason exists.

Fifth: In order to clarify the hierarchization of both the formal and the causal approaches, the authors abovementioned authors remind us that even though *natural law* is formally an act of the reason or real knowledge, it is sometimes taken in its *causal* sense and it is given the name of its principle, that is, *habit of the first moral principles*. This was done by Saint Thomas also⁵⁹. This is why Saint Thomas calls natural law the light of our intellect, that is, *synderesis*. In this way, even though natural law is formally an *act* or work of the reason, it is, however, considered by those Spanish authors in its *causal* sense. It is sometimes considered as the *faculty* of the reason, and others as the ‘*habit of the first moral principles*’, *synderesis*; it is so when it is said to be permanent and enduring. In contrast, it is sometimes considered as the *gathering* of all species and contents of those things that are good in themselves and must be sought, and those things that are evil in themselves and must be avoided. This is how it is considered when it is called ‘habitual and permanent light’.

Sixth: This approach makes it clear that *natural law* is different from *conscience*. The abovementioned authors teach that both coincide in that they are not an habit, but a *real* knowledge of practical reason, produced by the habit of the first practical principles (*synderesis*). However, there are several differences between them. *First:* conscience is

⁵⁹ *ST I-II*, q. 94, a. 1: ‘Alio modo potest dici habitus id quod habitu tenetur, sicut dicitur fides id quod fide tenetur. Et hoc modo, quia *praecepta* legis naturalis quandoque considerantur in actu a ratione, quandoque autem sunt in ea habitualiter tantum, secundum hunc modum potest dici quod lex naturalis sit habitus. Sicut etiam *principia indemonstrabilia* in speculativis non sunt ipse *habitus principiorum*, sed sunt principia quorum est habitus.’

about future, present and past things, and at times it errs. *Second*: conscience deals with a particular act, which is to be performed. On the contrary, natural law is the universal rule of what has to be done and avoided generally on an issue. In other words, natural law expresses a rule constituted in general about everything that should be done (*omnia agibilia*), whereas conscience expresses a specific practical dictate and it is as an application of the law to a particular action. Therefore, the concept of *conscience* is broader than the concept of *natural law*, because conscience does not only apply natural law, but also any other law, including civil law. *Third*: natural law only applies to future events and not past events, that is, it refers to what should be done. But since conscience also applies to past events, it will not only bind the will, but also accuse, testify and defend⁶⁰. *Fourth*: natural law can never be erroneous if it is true law. Thus, its obligation is permanent and perpetual. But conscience not only applies to true law, but also that which is thought to be true; thus, at times, there may be an erroneous conscience. On the contrary, there are no erroneous laws, because they would not be laws, which is primarily true regarding natural law, which participates in eternal law.

Seventh: Once established the difference between the *formal* and the *causal* approach of natural law, it can be concluded that from a *causal* point of view the rational nature mentioned by Vázquez commands and forbids as an *efficient cause*, that is, as a *radical* efficient principle. Similarly, the habit of the first practical principles commands and forbids as a *proximate* efficient principle.

Eighth: Only the *true dictate* of reason is the *formal* foundation of ruling and prohibiting, and hence, the character of law is here and not in the causal aspect, as with the character of rule or measure of the human acts, which cannot be found either in the

⁶⁰ ST I, q. 79; I-II q. 19, a. 6. *Tractatus de legibus ac Deo legislatore* (cit. *De legibus*), in decem libros distributus, Conimbricæ, 1612.

efficient principle, or in its subject, but in the *act* that is the reason for the regulation. Natural law depends on the true or virtual judgment of the practical intellect in such a way that it does not exist formally without it. However, when the act finishes, it would exist causally or habitually, because in the habit of the first practical principles (*synderesis*) and in its species and contents remains the habitual dictate and judgment which is according to natural reason..

Finally, the ninth: Taking these explanations into account, Araújo comes to the conclusion that natural law has two components: the *object* of reason and the *dictate* of the reason. The dictate of the reason directly (*in recto*) expresses the formal and essential component. On the contrary, the object of reason expresses the same component in an indirect and connotative way (*in obliquo ac de connotato*).

In order to finish my exposition, I have to say that I have reached this point with the help of the Sartre's compromising phrase: 'There is no human nature, because there is no God to have a conception of it', which means that each nature lacks a certain 'destiny' which should be expressed in natural law.

When, in this first part of the 21st century, we experience the growth of knowledge of the makeup and natural function of beings, when we also know so much about the nature of the human being, of our biological origin, our evolution, the variety of our accomplishments throughout history and our achievements, it may be true that we do not have time to question the full significance of the adventure of our species.

This is when we most need to investigate, not so much about our makeup and function, rather about our goal, that is, the ultimate purpose linked to this project called natural law.

But I would like to caution on the inappropriate direction which the questions could take. The authors of the Golden Age, such as Vitoria, Soto, Báñez, Molina, Suárez or Araújo, have made it clear that natural law, in as much as it is in the human being, does not only indicate the moral or immoral things, but also *prescribes* an action as being forbidden or required by a superior. If some naturalist philosophers still think that the phenomenological and metaphysical mission of natural law should be centred on the study of nature itself or on the manifestation of that nature, I would say to them, as Dante said at the entrance to hell in *The Divine Comedy*: ‘Lasciate ogne speranza, voi ch’intrate’: abandon all hopes of understanding natural law, in spite of the huge volume you may have written on the subject. What Sartre said in fact, is that such naturalist philosophers think that the violation of the natural law would not be, in itself, and intrinsically, against the law of a superior; whilst on the contrary, the violation of natural law is *basically* a violation of eternal law, which is the reason and will of God, who is, in this case, the superior who has given a meaning to our venture of being human.

Bibliography

- Ailly, Pierre de, *Quaestiones super Libros Sententiarum cum quibusdam in fine adjunctis. Petrus de Ailliaco* (Frankfurt: Minerva G.M.B.H., 1490/1968).
- Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.
- Aquinas, Thomas, *Quaestiones disputatae de malo. Opera omnia*, vol. 23 (Rome/Louvain: Leonine Commission/Editori de San Tommaso, 1976. [English edition, *The De Malo of Thomas Aquinas*, Translated by Richard Regan, edited

with introduction and notes by Brian David (New York: Oxford University Press, 2001).

Barrientos García, José, 'La Escuela de Salamanca: desarrollo y caracteres', *Ciudad de Dios*, 208 (1995): 1041–1079.

Belda Plans, Juan, *La Escuela de Salamanca y la renovación de la teología en el siglo XVI* (Madrid: Biblioteca de Autores Cristianos, 2000).

Bennassar, Bartolomé, *Un Siècle d'Or espagnol (vers 1525–vers 1648)* (Paris: Robert Laffont, 1990).

Defourneaux, Marcelin, *L'Espagne au Siècle d'Or* (Paris: Hachette, 1996).

Duns Scotus, Ioannes, *Opus Oxoniense*, in *Opera omnia*, vol. VIII–XXI (Paris: Ludovicum Vives, 1893)

Galpasoro Zurutuza, José M., *Die Vernunftbegabte Natur, Norm des Sittlichen und Grund der Sollensanforderung: systematische Untersuchung der Naturrechtslehre Gabriel Vázquez's* (Bonn: Rheinische Friedrich–Wilhelms Universität, 1972).

Gerson, Jean, *Opera omnia*, (Coloniae: Johannes Koelhoff, 1483–84), (Hildesheim: Olms, 1706/1987).

González Palencia, Ángel, *La España del Siglo de Oro* (Madrid: S.A.E. de Traductores y Autores, 1939).

Medina, Bartolomé de, *Expositio sive scholastica commentaria in D. Thomae Aquinatis I–II, qq.1–114* (Salamanca, 1577).

Ockham, William, *Opera philosophica et theologica ad fidem codicum manuseriptorum edita* (New York: St. Bonaventure University, 1980).

Novocastro, Andrea de, *Primum scriptum sententiarum, editum a fratre Andrea de Novo Castro ordinis fratrum minorum*, (Venundatur Parrhisiis: a Iohanne Grantion, 1514).

Pena González, Miguel Anxo, 'Aproximación histórica al concepto Escuela de Salamanca', *Salmanticensis*, 52 (2005): 69–119.

Sartre, Jean Paul, *L'existentialisme est un humanisme* (París: Nagel, 1946).

Soto, Domingo de, *De Iustitia et Iure* (Lugduni: apud heredes Iacobi Iuntae, 1569).

Suárez, Francisco, *Tractatus de legibus ac Deo legislatore*, in decem libros distributus, (Conimbricae, 1612).

Vázquez, Gabriel, *Commentariorum ac Disputationum in Primam Secundae S. Thomas* (Alcalá, 1599), (Compluti: Ex officina Iusti Sanchez Crespo, 1605).

CHAPTER 4

Natural Law Without Metaphysics: A Protestant Tradition¹*Knud Haakonssen*

In order to appreciate the role of natural law in the 17th and 18th centuries, it is important to know that most Protestant Europeans saw it as a modern phenomenon. Seventeenth and eighteenth century thinkers were well aware that natural law was prominent in both ancient and medieval thought, but in their eyes it acquired a new role with the division of Christianity and the emergence of modern statehood. The concern of modern Protestant natural law was to find a basis for moral life that, without conflicting with the tenets of Christianity, was neutral with respect to confessional religion. Natural law was thus central to one of the defining debates of the Enlightenment, namely whether and to what extent the cognitive – including moral – powers of humanity were adequate to the conduct of life in this world. While all the sciences were invoked to this purpose, the discussion of the foundation, nature, and extent of natural law made the central issue particularly explicit.

The debate ran deep in every Protestant community – Reformed, Lutheran, and Episcopalian – and this is hardly strange, for at issue was the foundation for the social world. Natural law's replacement of revealed religion with natural religion led to a

¹ This paper is a revised version of 'Protestant Natural Law Theory: A General Interpretation' in Natalie Brender and Larry Krasnoff (eds), *New Essays on the History of Autonomy. A Collection Honoring J.B. Schneewind* (Cambridge, 2004), pp. 92–109). It has been reproduced here with the permission of Cambridge University Press. The text sums up an interpretation of modern Protestant natural law, elements of which have been put forward in many different contexts; hence the number of self-references.

highly ambivalent view of morality and its institutional forms, ranging from the family and the economy to the state, as either the creation or the expression of natural man. Not least, the idea of religion as both a common bond and a shield between ruler and ruled was called into question, as was the status of the church.

The debate had to a large extent been provoked by Hobbes and Pufendorf, according to whom God had dumped humanity into a world in which moral characteristics were only instituted by the exertion of man's will. The question was, what guidance did humanity have in this voluntary effort? According to Hobbes, it had a minimal natural law stating the rational precepts of self-interest, to which Pufendorf added humanity's natural sociability, though whether the latter was the expression of a moral faculty or an implication of self-interestedness is disputed. In the ensuing debate, which was significantly influenced by Richard Cumberland², attacks on the new natural law were generally to the effect that its voluntarism was tied to egoism. We find this, at the theological level, in both Anglican and orthodox Lutheran reactions; and we find it, at the philosophical level, in 'rationalistic' thinkers, such as Samuel Clarke and Leibniz³. Equally universally, voluntarist natural law was defended through attempts to

² See Richard Cumberland, *A Treatise of the Laws of Nature*, trans. John Maxwell (1727), ed. Jon Parkin (Indianapolis, IN, 2005); Knud Haakonssen, 'The Character and Obligation of Natural Law According to Richard Cumberland', in Michael A. Stewart (ed.), *English Philosophy in the Age of Locke* (Oxford, 2000), pp. 29–47; Jon Parkin, *Science, Religion and Politics in Restoration England. Richard Cumberland's De legibus naturæ* (Woodbridge, Suffolk, 1999); Jerome B. Schneewind, 'Voluntarism and the Origins of Utilitarianism', *Utilitas*, 7 (1995): 87–96.

³ See Frederick C. Beiser, *The Sovereignty of Reason: The Defense of Rationality in the Early English Enlightenment* (Princeton, NJ, 1996), ch. 7; Patrick Riley, *Leibniz' Universal Jurisprudence: Justice as the Charity of the Wise* (Cambridge, MA, 1996); Hans-Peter Schneider, *Justitia Universalis*.

show that the exercise of will that is naturally enjoined on man encompasses the happiness of all humanity. The major defendant in this vein was Christian Thomasius who formulated a theory of natural law as the specification and rule of the passions that make social life possible.

At the turn of the 18th century we have, then, a major discussion across Protestant Europe that can be said to be a three–cornered contest between, first, a variety of traditional confessional standpoints according to which morality has its basis in revelation; secondly, the new, provocative voluntarism started by Hobbes and Pufendorf and continued by Thomasius; and, thirdly, a rationalist and realist view of natural law that had significant debts to scholastic, especially Thomistic, theory and is typified by Clarke, Leibniz, and Christian Wolff. The interaction between these intellectual currents was, however, exceedingly complex, being often over–determined by particular cultural and political circumstances. Hobbes’s voluntarism was premised on a view of the divinity as so inscrutable that the sovereign had to legislate for both religious and civil life. In the case of Pufendorf and Thomasius, voluntarism was accompanied by fideism that allowed man access to the divine will in the religious while he was denied it in the civil life where convention and sovereign rule held sway. For their part, the rationalists could insist that natural reason was indeed capable of knowing the transcendent concepts and moral laws that issued from the divine mind, even if in doing so they imbued human reason with some of the key features of divine understanding.

These fluid intellectual lines must be understood in their interaction with the religious and political circumstances in which they unfolded, but that is a task for a fuller historical discussion. Here we use them as background for making the point that

Quellenstudien zur Geschichte des 'Christlichen Naturrechts' bei Gottfried Wilhelm Leibniz (Frankfurt a.M., 1967); René Sève, *Leibniz et l'école moderne du droit naturel* (Paris, 1989).

the Protestant natural law tradition was not a tradition in the sense of a coherent body of doctrine unfolding during the early–modern period. It is more adequately described as a genre in moral and political philosophy, characterized by the attempt to account for morals and politics by means of juridical concepts that were derived from Roman law and its medieval and early modern commentators. The central concepts were those of law, duty, obligation, right, contract, property and their many subdivisions. But this apparatus of juridical concepts was in the service of fundamentally different philosophies, and one may say that the tradition was as much characterized by disputes between opposing theoretical standpoints as by the coherence of its concepts. In other words, ‘the tradition’ is an artifact that has to be analyzed before we can begin to assess its various components. A full account, however, would require much more than a conceptual analysis, for the different natural law theories were potent weapons in a variety of moral, theological and political battles and they were, in large measure, shaped for such purposes. A brief synoptic account, such as the present one, can at best gesture towards this multiplicity of contexts⁴.

⁴ For general surveys of early modern natural law see: Otto von Gierke, *Natural Law and the Theory of Society, 1500–1800* (Cambridge, 1958); Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, 1996), ch. 1; Haakonssen, ‘German natural law’, in Mark Goldie and Robert Wokler (eds), *Cambridge History of Eighteenth–Century Political Thought* (Cambridge, 2006); Gerald Hartung, *Die Naturrechtsdebatte. Geschichte der Obligatio vom 17. bis 20. Jahrhundert* (Freiburg and Munich, 1998), part 1; Hermann Friedrich Wilhelm Hinrichs, *Geschichte der Rechts– und Staatsprinzipien seit der Reformation bis auf die Gegenwart in historisch–philosophischer Entwicklung* (3 vols, 1848–52) (repr., Aalen, 1962); Tim Hochstrasser, *Natural Law Theories in the Early Enlightenment* (Cambridge, 2000); Ian Hunter, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge, 2001); Ian Hunter and David Saunders (eds), *Natural Law and Civil Sovereignty. Moral Right and State Authority in Early Modern Political Thought* (Basingstoke,

We can underline these points through a different consideration. During the 17th and 18th centuries, the new natural law became established as an academic subject in nearly all universities and colleges in Protestant Europe. Like philosophy of law in our time, it was taught both as a ‘liberal arts’ subject in colleges and the philosophical faculties of universities, often as part of moral philosophy, and in the law faculties as a ‘foundation course’. Sometimes there were bitter ideological disputes between faculties concerning the appropriate place for the teaching of natural law and these, again, were extensions of ‘ideological’ disputes in and between church and state. As an academic discipline, natural law harboured many different schools of thought both concerning the philosophical basis for natural law and concerning its practical role in morals and politics. Considered as a genre and as an academic subject, natural law is a striking, in fact a dominant, feature of early modern thought, but it is exactly this prominence that easily gives the misleading impression that it was a much more coherent phenomenon than in fact it was.

As indicated in the introduction, the fault–lines in modern natural law are many and intersecting; they do not form any simple pattern. They are philosophical, theological, political and institutional in nature, and, as might be expected, they vary

Hamps., 2002); Karl–Heinz Ilting, *Naturrecht und Sittlichkeit. Begriffsgeschichtliche Studien* (Stuttgart, 1983); Jerome B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge, 1998), part 1; Michael Stolleis, *Geschichte des öffentlichen Rechts in Deutschland* (3 vols, Munich, 1988), vol. 1: *Reichspublizistik und Policywissenschaft 1600–1800*, ch. 6; Giovanni Tarello, *Storia della cultura giuridica moderna*, vol 1: *Assolutismo e codificazione del diritto* (Bologna, 1976); Hans Thieme, *Das Naturrecht und die europäische Privatrechtsgeschichte* (Basel, 1954); Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, 1999), chs. 1–5; Eric Wolf, *Große Rechtsdenker der deutschen Geistesgeschichte*, 4th rev. edn (Tübingen, 1963).

profoundly from place to place and shift significantly over the roughly two centuries in question, namely from the last significant ‘scholastic’ thinker, Francisco Suárez, and the first ‘modern’ natural lawyer, Hugo Grotius, to the post–Kantian debates about the foundation of justice and law. In order to account for some of the most significant contributions to modern thought that emerged from this composite tradition of natural law, I will concentrate on just a few, mainly philosophical disputes, though these cannot be discussed without reference to several other problem–areas as we shall see.

In the triangular discussion within Protestantism that I outlined above, I will disregard the purely theological line of argument. My main concern is to explain the so–called voluntarist version of natural law, but in order to put this into clear relief, I will first compare it with its so–called realist opposition, suggesting how each has had a shaping influence on modern moral thought. This opposition has commonly been seen as a prolonged debate about the ontological status of moral values, but the core of my argument is that voluntarism is an anti–metaphysical philosophy of convention which sidesteps the whole issue of ontology.

The main representatives of the realist tradition, such as Leibniz and Christian Wolff in Germany, the so–called Cambridge Platonists (esp. Benjamin Whichcote, Henry More and Ralph Cudworth) in England, drew self–consciously on ancient and medieval theories of values as ontologically inherent in the natural world. In the case of Leibniz, the inspiration was mainly, though not exclusively neo–Platonist; in the case of Wolff, it was neo–Thomist. The Englishmen, despite the label given them in the late 19th century, drew on Aristotelian as well as Platonist sources, an eclecticism epitomized in Nathaniel Culverwell and cultivated in the so–called ethical rationalists, such as Samuel Clarke and William Wollaston.

While philosophically multifarious, these thinkers have a number of basic features in common. Their approach is metaphysical in the sense that both the theory of knowledge and the theory of action are dependent upon a view of how the mind and the community of agents are positioned and function in the universal system of being. They are, therefore, ‘rationalists’ in the sense that they assume a structure to be inherent in reality that is consonant with and, hence, accessible to Reason, including human reason. Further, as far as the active side of human nature is concerned, they insist that actions must be understood and evaluated in terms of their position in, or contribution to, the communities of activity in which they occur, ultimately the system of moral beings as a whole. As a consequence, natural law is seen as an explication and prescription of that which is inherently good by this criterion.

This metaphysical, realist tradition is now often seen as a last out-post of scholasticism and as the casualty that defines its victor, namely the modernity of voluntarist natural law and its empiricist heirs, or, in other words, individualistic rights theory and, eventually, utilitarianism. This is not, however, a plausible interpretation of the trajectory of moral and political thought in Protestant Europe from the Reformation to the end of the 19th century. The realist and rationalist tradition was clearly a prominent form of practical philosophy well into the 18th century, as seen in the popularity of ethical rationalism.⁵ Furthermore, the main-stream of British moral philosophy in the Enlightenment, namely moral-sense and common-sense theories, are best seen as elaborate attempts at making something akin to moral realism, namely a broader idea of objectivity in morals, compatible with the new approach through theories of the individual person’s moral sentiments. From Joseph Butler, Francis Hutcheson and George Turnbull to Richard Price, Thomas Reid and Dugald Stewart,

there is no danger that the emphasis on individual moral perception will lead to a questioning of the objectivity of morals⁶. Nor do these thinkers cease to see morals within a metaphysical framework, though this has been transformed into a naturalistic providentialism⁷. This type of moral philosophy remained a potent force far into the 19th century as we may gauge from the fact that the utilitarians felt a constant need to assail it. The common-sense philosophy of Reid and Stewart, in particular, was of the first importance for basic philosophical education in France and in America for decades into the 19th century.

As far as Germany is concerned, it is commonly recognized that the metaphysical tradition in moral philosophy was a dominant force through the 18th century. In fact, here the greater danger is that we forget the opposition which, thanks to Pufendorf, Thomasius and their followers at the new universities of Halle and Göttingen, made voluntarist natural law theory into a formidable presence. Nevertheless, Wolffianism eventually won the war for control of the universities and, hence, for the education of the governing elite, and the history of 18th century German philosophy has largely been written from the perspective of the winners ever since⁸. What is more, the metaphysical

⁵ See Beiser, *The Sovereignty of Reason*.

⁶ See Haakonssen, *Natural Law and Moral Philosophy*, chs. 2 and 6–8.

⁷ See Isabel Rivers, *Reason, Grace, and Sentiment. A Study of the Language of Religion and Ethics in England 1660–1780* (2 vols, Cambridge, 2000), vol. 2: *Shaftesbury to Hume*, and the discussions of Hutcheson, Turnbull and Kames in David Fate Norton, *David Hume: Common-Sense Moralist, Sceptical Metaphysician* (Princeton, NJ, 1982).

⁸ For important recent attempts to redress the balance, see Hochstrasser, *Natural Law Theories*; and Hunter, *Rival Enlightenments*. Concerning the dominance of Wolffianism, see Eckhart Hellmuth, *Naturrechtsphilosophie und bürokratischer Werthorizont: Studien zur preußischen Geistes- und Sozialgeschichte des 18. Jahrhunderts* (Göttingen, 1985).

approach to ethics went far beyond the Wolffians. While interpretation of Kant's ethics for a long time, not least in Anglo-American scholarship, has been dominated by the theme of personal autonomy and the epistemology of individual moral judgement, Kant was also a metaphysician, not least in morals where the metaphysical postulate of the two worlds inhabited by humanity is fundamental to everything.⁹ Beyond Kant, idealism – German, British and American – has perpetuated the main features of metaphysical realism in morals.

In other words, a main point in the significance of protestant natural law in the early modern period is that it harboured a realist and anti-individualist strand that provided some basic continuity between scholastic and 19th century moral and social thought. Within this historical main-stream, voluntarist individualism crops up as little more than floating islands. These have, however, come to assume quite disproportionate dimensions in the contemporary search for the ancestry of human rights ideas and, in a different key, as objects of vilification in the criticism of 'the Enlightenment project.' The rest of this essay is devoted to giving a more adequate picture of the so-called voluntarist tradition.

It was a line of argument that was mainly developed by Thomas Hobbes, Samuel Pufendorf and Christian Thomasius. While these thinkers were very well versed in ancient and, to some extent, in scholastic thought, and while they were aware of the similarities between their standpoint and some aspects of Epicureanism, they did not support their actual voluntarism by reference to the most obvious medieval precursors of this line of argument, especially William Ockham. Whether rightly or wrongly, they seem to have considered their argument to be significantly different from that of Ockham and his followers. They clearly shared with the medieval thinker a divine

⁹ See above all Hunter, *Rival Enlightenments*, ch. 6.

voluntarism according to which the existence of values in the world ultimately is due to an act of God's will. That is to say, the natural world can be distinguished from the realm of values and the latter is superimposed upon nature through divine willing. However, this was not the important issue for the 17th century philosophers; their emphasis was on human voluntarism.

The central point for the voluntarists was that humanity has no access to the divine mind by means of reason, as opposed to revelation, except through the world of experience. However, the use of allegedly empirical facts of nature and history to interpret Divine Providence, i.e. to find prescriptions for human behaviour, was seen by these thinkers as the main source – apart from the even more contentious use of revelation – of the religious divisions and thus of the wars that had rent Europe since the Reformation. Basic to their intellectual enterprise, therefore, was an effort to understand what orderliness human nature is capable of without other assumptions about divine intentions than the absolutely minimalist claims of natural religion. They reduced the sum of the law of nature to, 'seek peace' (Hobbes), or 'be sociable' (Pufendorf), because they saw it as a universal lesson of experience that human existence could not be solitary, but they took this existence itself as a natural fact and did not see it as part of their philosophical enterprise to interpret it in terms of any *telos* beyond the purposes set by human beings themselves. This does not question the sincerity of their religious beliefs; their ambition was to close off religion and philosophy from each other and pursue them as entirely separate human endeavours; they did not want to replace one with the other.

The logic of their argumentative situation was, therefore, to focus on the human will as the key explanatory factor in understanding the value-schemes that make up humanity's cultural world. And this is the point where the question of the ontological

status of values crosses another line of inquiry that divided not only natural law theory but early modern philosophy over a much wider front. I am referring to what is sometimes seen as an epistemological turn that made the question, ‘what can we know?’, into the centre of philosophical endeavour. However, this way of characterizing the development in question is something of an anachronism deriving from Immanuel Kant’s rewriting of the history of philosophy as a set of premises for his own critical philosophy. It distorts some of the major features of early modern philosophy and the casualties include the true nature of the voluntarists’ moral theory. In order to get closer to the latter, therefore, we have to widen our inquiry, even though this can be done only in briefest outline in the present context¹⁰.

The problem with the Kantian interpretation is that it suggests that early modern philosophy saw knowledge primarily as propositional in character and subject to assessment in terms of truth–value. Setting to one side, for present purposes, the question of how far this might be true of Descartes’s view, it seems clearly to be a distortion and stream–lining of much post–Cartesian thought, i.e. of the late 17th and main part of the 18th centuries. The central point in the Lockean revolution was to ask, ‘What does knowledge do to the knower?’, or, ‘What are the conditions under which a knowing subject holds knowledge?’ That is to say, the primary object of attention was the subject as such, and knowledge was only one of the conditioning factors of the

¹⁰ For further consideration of what Kant’s re–writing of the history of philosophy meant to our perception of early modern philosophy, see; Haakonssen, ‘The History of Eighteenth–Century Philosophy: History or Philosophy?’, in Haakonssen (ed.), *Cambridge History of Eighteenth–Century Philosophy* (Cambridge, 2006), ch. 1; Hochstrasser, *Natural Law Theories*; Richard Tuck, ‘The ‘modern’ theory of natural law’, in Anthony Pagden (ed.), *The Languages of Political Theory in Early–Modern Europe* (Cambridge, 1987), pp. 99–109.

subject. The person became seen as a cross-roads for environmental factors, and in order to analyze personality, philosophers had to use such factors as central parts of their explanans. The turn towards the subject led to the invocation of the situational factors forming the subject, and personhood in effect was transformed into a notion of situationally reactive powers, most obviously shown by the fact that the passions – stream-lined as desire – became the focus for explanation of action¹¹. It is within this broad development that we have to place the many new attempts to conceive of conscience, the moral sense, the active powers, etc. The overall result may be called a performative notion of knowledge according to which knowledge first of all was to be seen as part of the total behavioural scope of the individual, and it was the task of philosophical inquiry correctly to portray this scope¹².

Like most Enlightenment science, these efforts to create a science of human nature distinguished themselves from most of their 17th century predecessors by having an even more pronounced teleological twist. The various features and functions of human nature, including the powers of the mind, were generally understood in the 18th century within a providential framework for which science was supposed to provide empirical evidence. In the case of the moral powers, their providential goal was to guide human behaviour so that it contributed to some divinely appointed system of moral perfection or happiness or beatitude. As indicated above, for a great many philosophers, this providentialist view of the moral powers in effect replaced a straightforward realism in morals with which they were uncomfortable for metaphysical and theological

¹¹ For the seventeenth-century background to this development, see Susan James, *Passion and Action: The Emotions in Seventeenth-Century Philosophy* (Oxford, 1997).

¹² I am here indebted to a similar perspective on early modern ideas of language, see Hans Aarsleff, 'Language', in Haakonssen (ed.), *The Cambridge History of Eighteenth-Century Philosophy*, ch. 10.

reasons, seeing it as scholastic essentialism. Without making such metaphysical commitments, the teleology of Providence lent a transcendent objectivity to moral values that was needed to stave off scepticism – or, as we would call it, relativism. The transition from moral realism proper to providentially guaranteed objectivism is well exemplified in Britain by the passage from Cambridge Platonism to Hutcheson’s moral sense theory, and in Germany by the transformation of Wolffianism into the ‘Popularphilosophie’ of Johann Georg Heinrich Feder or Christian Garve.

It has often appeared difficult to pinpoint the difference between the mainstream idea of a science of human nature in providentialist *régie* and the voluntarism in morals with which we are particularly concerned here. The voluntarists were clearly, as I have already indicated, part of the turn toward theories of the subject and the associated adoption of a performative view of knowledge as a condition or quality exhibited by the subject in its behaviour. However, the argumentative logic of their standpoint meant that they were inclined to be radically reductivist in their approach. The crux of the matter may be put as follows. Since, on their view, the human mind has no access to the divine mind, it is impossible to know whether the functions of the former, such as moral judgments and moral and social institutions, are evidence of the meaning or intentions of the latter. Accordingly the philosopher, as distinct from the religionist, has no other recourse than to search for efficient causes since final causes are not accessible.

Now whether or not this train of reasoning was clearly articulated by anyone before David Hume, it was the underlying rationale for the classic voluntarists’ shying away from ad hoc acceptance of cognitive powers, including moral powers, whose veridical performance, or objectivity, was supposed to be certified by their providential *telos*. Instead, Hobbes, Pufendorf and Thomasius concentrated their efforts on a theory of human nature as primarily characterized by its exertion of will. By reducing the

assumptions made about the powers of the mind, they increased the explanatory demands on environmental factors. If the various types of human behaviour were not to be explained as springing from a will informed by cognitive powers designated to judge the behaviour in question, then the shaping of the will would have to be accounted for by reference to factors external to the mind's naturally provided equipment. The most elaborate attempt among the thinkers referred to here is Hobbes's well-known explanation of the act of willing as the last swing of the pendulum of attraction and repulsion that characterizes the relation between a person's biologically given vital motion and any particular object of possible action.

This may be simple psychology, but the very simplicity of it helped force one of the most interesting developments in early modern philosophy, namely theories of language as the mediator of the causal influences on the mind. Pufendorf in particular felt the need to account for mental operations, including deliberations about action, as linguistic in nature, but the language that was required for such inner dialogue must derive from external dialogue, that is, from the social interaction between people.¹³ This idea of knowledge as socio-linguistic performance is at the core of the performative notion of knowledge that I referred to above, and it was an idea which reached a high

¹³ Pufendorf, *De iure naturae et gentium* (1672), translated as *The Law of Nature and Nations* by B. Kennet, 5th edn (London, 1739) re-edited with introduction and commentary by Haakonssen (Indianapolis, IN, forthcoming), II.4.13 and IV.1; 'Apologia pro se et suo libro ...', para. 24, in *Eris Scandica* (Frankfurt a.M., 1705), pp. 33–5. See especially the discussion in Hochstrasser, *Natural Law Theories*, pp. 87–95.

point when Condillac liberated language from its (supposedly) Lockean slavery of labeling ‘ideas’¹⁴.

If the voluntarists were headed into a social theory of the mind and of its language, we need to ask how they could provide social explanations, that is, explanations in which the primary explanans was the interaction between individuals considered simply as agents of will. The standard metaphor for this interaction was that of the contract or covenant between two or more individuals, and the natural lawyers provided contractarian accounts of so to speak all aspects of human culture. The question is, then, how they, within their reductionist scheme, could account for ties between individual wills, or, as they would say in their juridical language, for obligation. Commonly they have been seen either as subscribing to a hopeless, pure ‘will–theory’ of obligation, or as harbingers of game–theoretical accounts of rational choice¹⁵. Neither approach seems accurately to capture what is important in their enterprise.

The central issue is one that only was completely clarified when David Hume reflected upon nearly a century’s attempts to shape a language adequate to the

¹⁴ See Etienne Bonnot de Condillac, *Essay on the Origin of Human Knowledge*, trans. and ed. Hans Aarsleff (Cambridge, 2001); Aarsleff, *From Locke to Saussure: Essays on the Study of Language and Intellectual History* (Minneapolis, 1982), pp. 146–224; Aarsleff, ‘Language’. As Aarsleff explains, Locke’s own view of language was considerably more sophisticated than allowed by the common interpretation gestured towards in my text.

¹⁵ The former is particularly well represented by James Gordley’s sharp criticism in neo–Thomist vein, *The Philosophical Origins of Modern Contract Doctrine* (Oxford, 1991). The latter is well known from prominent lines of interpreting Hobbes, such as David Gauthier, *The Logic of Leviathan* (Oxford, 1969); Gregory S. Kavka, *Hobbesian Moral and Political Thought* (Princeton, NJ, 1986); and Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge, 1986).

conventionalist theory of culture that the voluntarists were trying to establish. How can a voluntary agreement create a moral bond, or an obligation, unless people already have the idea that voluntary agreement is the sort of thing that creates obligation, in which case obligation is not a moral feature of the world that is first introduced by such acts of will? Or to put it differently, how can an act of will – considered as purposive behaviour – create an obligation without having obligation as its purpose, i.e. without assuming that obligation already is part of humanity's moral culture? While there were many false starts on the way from Hobbes via Pufendorf to Hume, all the voluntarists were trying to get to clarity about – and to find a language in which to express – one line of argument. They needed an account of social behaviour that people engaged in out of simple, 'natural' motives, that is motives relating to each individual's immediate ways of being in the world (eventually Hume's 'natural virtues') but behaviour which had collective results that *post hoc* were perceived as socially functional, i.e. as having a function and, in that sense, a point or meaning not originally intended by the participants but which subsequently could be used as a reason for maintaining the behaviour in question.

The natural motives ranged from Hobbes's idea of man's unavoidable need for cognitive order in moral matters, through Pufendorf's combination of self-interest and spontaneous sociability, to Hume's similar ensemble of limited self-love and confined benevolence. In the case of Hobbes, the social result was a linguistic performance in which members of any accidental, or historically given, group would assure each other of their allegiance to some centre of authority – the would-be sovereign – provided that the allegiance was mutual. The usual criticism of Hobbes has been that no rationally self-interested individual would be the first performer of such an agreement because it would expose such a person to the possibility that the other parties to the contract would not perform and, thus, that there would be no sovereign and hence no protection against

these others. But that is clearly not Hobbes's problem for the simple reason that there is nothing to perform – other than the act of promising itself. If the act of promising, or 'contracting', is an act done in common within the group, then the situation of any would-be defaulter is that of contemplating defection from the collectivity of those who are promising – and thus from the sovereign power. Now, promising as something that is 'done in common' in a group can be understood in many different ways, ranging from the simultaneous voting of the assembled people (as in the literal interpretation of a founding contract that takes individuals out of the state of nature), through the voting of one or more layers of representatives of the members of the group, to the historically constituted 'common act' of traditional allegiance (e.g. Hume's idea of 'opinion' as the foundation for authority)¹⁶. Whatever makes a number of individual actions 'common', whether literal simultaneity or the drift of history, the collective effect of naturally motivated (e.g. spontaneously benevolent or self-interested) individual acts, transforms the nature of these individual acts so that they have a hold on each person, a hold that was not there before (or in abstraction from) the commonality. The situation in which the individual exerts his or her natural motives has been transformed by the make-believe of the other person's words¹⁷.

The crucial factor in this transformation is, of course, language, whether language in the literal sense of a contractual promise or language in the wider sense of traditional

¹⁶ Hume, 'Of the first principles of government', in Hume, *Political Essays*, ed. Haakonssen (Cambridge: Cambridge University Press, 1994), pp. 16–19.

¹⁷ This argument can be made much more effectively if one rejects the whole tradition of seeing the contract as a transaction or process, but that requires a much lengthier analysis than can be afforded here; hence my attempt to state the argument in the usual process-terminology. But see Bernd Ludwig, *Die*

meanings of individuals' behaviour in a group. It is as figures of speech that individuals make up a social group for it is through what they say, irrespective of what they 'really' *are*, that they become a social presence in each others' lives. When I think that 'all the others' of my group are signaling allegiance to the party or the king, then the party or the king becomes a factor in my life as an effect of the 'linguistic' or signal-giving performances – whether literal or metaphorical – of my fellows. As a consequence, the natural persons of my fellows – the persons whom otherwise I interpret in terms of shared natural motives, such as love or self-interest – are, for the purposes of social intercourse, hidden behind the socio-linguistic mask of the 'party member' or the 'subject'.

This separation of the public or social persona from the private and 'natural' was of immense importance, and it was Pufendorf's merit to pursue it with particular clarity. His idea was that culture as such, not just the central political institution of government, had to be analyzed in terms of the many different social personae that men undertake in the course of life. Life in its moral (i.e., inter-personal or social) aspect consists in the performance of such *officia* that arise in the interchange between people, and it is in the discharge of the offices – or duties – which come one's way that one obeys the basic natural law of being sociable. From this we can see that the performative notion of knowledge that was outlined above is at its most radical in this voluntarist theory. Here the central issue in practical knowledge – knowledge of what should be done, including moral knowledge – is not whether such knowledge can be formulated in propositions that are true in some absolute sense. The real interest is in knowing what sort of social persona you adopt – 'become' – by the signs you send to your fellows. In order to know

what to do in the world, you have to know what the use of a uniform or a title or a form of words or the occupancy of a job or position tell others that you ‘are’, socially speaking. It was Thomasius who saw the full meaning of this for education and its role in political society. For him, the fundamental philosophical discipline had to be moral philosophy in the sense of the general theory of practice indicated here, while any discipline – meaning here especially theology and ‘school’ metaphysics – that laid claim to being foundational because of its teaching of ‘true’ doctrine had to be put in its place. The faculty of theology in universities had to accept that its appropriate role was to teach social discipline to pastors for propagation in the population at large, just as the law faculty had to educate lawyers to the practical service of government¹⁸.

This is not to say that Hobbes, Pufendorf or Thomasius were disbelievers in the absolute truth of the Christian faith, but the implication of their theological doctrine of the divine mind’s inaccessibility to humanity was that such belief was irrelevant to the foundation of practical knowledge and social action. To the modern charge of relativism, they would likely answer that this begs the question by assuming an absolute standard of practical truth as something that is being denied by the changing standards thrown up by social conventions. Driving home the logical conclusion of their position, one may say that these thinkers were agnostics in the matter of absolute standards for social life in this world and that their whole endeavour was to sort out what makes practical debate and its institutionalization in social life possible in the absence of such certainty.

This profoundly conventionalist view of the moral life of the species virtually demanded an historical interpretation, that is to say, a theory of history as the record of how humanity had engaged in conventions – or, in the language used above, had

¹⁸ For a splendid analysis of Thomasius in this regard, see Hunter, *Rival Enlightenments*, ch. 5.

reached common views that subsequently achieved prescriptive force. The 17th century voluntarists already had a deep understanding of the importance of history to their enterprise, demonstrated not only by the fact that they all wrote extensively on the past but also by their keen sense of the contemporary context in which they themselves argued. However, it was mainly in the 18th century and especially in the works of David Hume and Adam Smith that the idea of the historicity of the moral world was fully appreciated and worked out in detail. These works are commonly seen as part of a wider Enlightenment historicism, but this can easily mislead. It is important to distinguish between two different kinds of historicism in the period. On the one hand, there was the mainstream view that history was the record of how humanity's native moral powers had scored over time in making true or false moral judgments and that this provided the empirical evidence for the march of providence in the world – 'progress'. On the other hand there was the conventionalist approach outlined above, according to which history simply was the record of the moral beliefs that humanity has happened to hold under different circumstances.

These two bases for an historical view were confused already in the 18th century and this is a clear indication of how difficult it was fully to understand the conventionalist view of morality and, as a consequence, how unclear it was that the great 17th century voluntarist natural lawyers, by supplementing the revival of scepticism and Epicureanism, had prepared the way for Mandeville, Hume and Smith. We have already pointed to some of the crosscurrents which help explain this lack of clarity, especially the vagueness of the notion of moral powers. To these, we must now add one more, namely the development of a theory of rights for – then as now – no other concept had as much potential for creating conceptual chaos as this notion.

The ‘father’ of modern Protestant natural law, Hugo Grotius, had argued that the primary characteristic of being a moral agent was to have basic rights in one’s person and its claims on the world, but exactly because they were the individual’s rights, they could be given up.¹⁹ The history of humankind was the record of the rights that people had given up, ranging from the whole of their liberty (in slavery), via their political freedom (in the absolutist state), to the retention of such freedom (in republican government)²⁰. Hobbes took this general approach further with his theory of the necessity of giving up all rights in order to secure life. But in the case of Grotius, there were other sides to the idea of rights. First, he thought that rights conceptually presupposed relations of justice²¹. Secondly, the idea that some right or rights were so tied up with moral personality that they could not be given up at all seems at least to be implied by Grotius’s argument. When this idea was matched with the traditional Calvinist notion of the inviolability of conscience, the idea of a basic right as not only ‘natural’ but also ‘inalienable’ had become clear.

¹⁹ Hugo Grotius, *De iure belli ac pacis* (1625), anonymously translated as *The Rights of War and Peace*, (London, 1738) re–edited with introduction and commentary by Richard Tuck (Indianapolis, IN, 2003), I.1.

²⁰ See Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979), chapter 3; Tuck, *Philosophy and Government, 1572–1651* (Cambridge, 1993), chapter 5; Tuck, *The Rights of War and Peace: Political Order and the International Order from Grotius to Kant* (Oxford, 1999), chapter 3; Schneewind, *The Invention of Autonomy*, pp. 66–81; and, for criticism, Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150–1625* (Atlanta, GA, 1997), chapter 13.

²¹ See Haakonssen, ‘The Moral Conservatism of Natural Rights’, in Ian Hunter and David Saunders (eds), *Natural Law and Civil Sovereignty*, pp. 27–42.

In most Calvinist theory, conscientious self-judgment was the unavoidable core of humanity's moral existence, for only in the private conscience could the individual find evidence as to whether he or she was among the divinely elect, indeed, whether there was reason for believing that there is a divinity at all. Conscientiousness was, therefore, at one and the same time the basic law of nature and the basic natural right. 'Judge for yourself in matters of conscience!' was both God's command to each individual and His grant of a liberty from interference by anybody else. Since the exercise of this right was demanded by God – and unavoidable even if God's existence was denied – it was considered inalienable, and this is an important root of the idea that became so significant in the much later rights-ideologies of the American and the French Revolutions.

This idea of inalienable right arose out of debates about the legitimacy of resistance to the French king among the intellectual leaders of the French Huguenots who had been exiled by the revocation of the Edict of Nantes in 1685, the most prominent of these leaders being Pierre Jurieu and Pierre Bayle. But from the point of view of natural law theory, the crucial figure was a man of the next generation, Jean Barbeyrac, who in effect transformed the older Grotian theory of rights as an argument for absolutism into a theory of the right of resistance²². It should be stressed, however, that Barbeyrac himself and most of the other Huguenots by no means saw their theory of rights as a revolutionary doctrine. Exactly because each person had to judge for

²² See Elisabeth Labrousse, 'The Political Ideas of the Huguenot Diaspora (Bayle and Jurieu)', in Richard M. Golden (ed.), *Church, State, and Society under the Bourbon Kings* (Lawrence, AR, 1982), pp. 222–83; Tim Hochstrasser, 'Conscience and Reason: The Natural Law Theory of Jean Barbeyrac', in Haakonssen (ed.), *Grotius, Pufendorf and Modern Natural Law* (Aldershot, Hants., Brookfield, Vt., 1998).

himself, citizens could not judge for each other or for the magistrate, except in ultimate self–defence of the right of self–judgment.

These ideas of inalienable rights were taken up for debate in Scotland by Francis Hutcheson and others²³, but the radical potential in this debate was largely muted by the idea of overriding duty to the common good²⁴. Much the same applies to the most interesting of the French–language natural lawyers in the generation after Barbeyrac, the

²³ Hutcheson, *An Inquiry into the Original of our Ideas of Beauty and Virtue* (1725), ed. Wolfgang Leidhold, (Indianapolis, IN, 2003), Section 7; *Short Introduction to Moral Philosophy* (1747), ed. Luigi Turco (Indianapolis, IN, forthcoming), II.2; *A System of Moral Philosophy* (1755), ed. Haakonssen (Indianapolis, IN, forthcoming), II.3; all in *The Works and Correspondence of Francis Hutcheson*, ed. Haakonssen (7 vols, Indianapolis, IN, 2003). Concerning the important contribution of Hutcheson’s predecessor, Gershom Carmichael, see *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael*, ed. James Moore and Michael Silverthorne, trans. Michael Silverthorne (Indianapolis, IN, 2001); James Moore and Michael Silverthorne, ‘Gershom Carmichael and the Natural Jurisprudence Tradition in Eighteenth–Century Scotland’, in Istvan Hont and Michael Ignatieff (eds), *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge, 1983), pp. 73–87; Moore and Silverthorne ‘Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael’, in Vincent Hope (ed.), *Philosophers of the Scottish Enlightenment* (Edinburgh, 1984), pp. 1–12.

²⁴ See Haakonssen, *Natural Law and Moral Philosophy*, ch. 2; and Haakonssen, ‘Natural Jurisprudence and the Theory of Justice’, in Alexander Broadie (ed), *The Cambridge Companion to the Scottish Enlightenment* (Cambridge, 2003), pp. 205–221. For different perspectives, see James Moore, ‘The Two Systems of Francis Hutcheson: On the Origins of the Scottish Enlightenment’, in Michael A. Stewart (ed.), *Studies in the Philosophy of the Scottish Enlightenment* (Oxford, 1990), pp. 37–59; Moore, ‘Natural Law in the Scottish Enlightenment’, in Mark Goldie and Robert Wokler (eds), *Cambridge History of Eighteenth–Century Political Thought* (Cambridge, 2006).

Swiss Jean–Jacques Burlamaqui²⁵. And it was in this less than clarified state that the theory of a natural right reached the American colonists and combined with traditional English ideas of political rights. While this combination did not contribute to conceptual clarification, it did accentuate the radical potential of the whole idea of a natural right²⁶.

The development of the notion of natural right was *not* central to early modern natural law. It was not only in Scottish, Swiss and American thinking that the concept remained derivative from the natural–law duty to promote the common good. The same was, of course, the case with moral realist theories such as Christian Wolff's²⁷. However, the most confusing aspect of the historiography of rights is that they played a similarly secondary role in the voluntarist theories of Pufendorf and Thomasius. One might have expected that these thinkers in this, as in so many other respects, would have developed the basic idea of Hobbes, in this case that rights were the aspects of life that could be alienated, i.e. put outside each individual's control through contracts. The reason for the two Germans' rejection of such a fundamental role for rights was that their Lutheran sensibilities led them to see rights as theologically dangerous. They had no difficulties with natural rights to the means of performing the duties imposed by the natural law of sociability; but the Hobbesian idea of natural right as morally justified

²⁵ For this interpretation of Burlamaqui's *Principes du droit naturel* (1747) and *Principes du droit politique* (1751), see Haakonssen, 'Moral Conservatism of Natural Rights', where Burlamaqui's dependence upon Hutcheson is also referred to. The contemporary English translation of Burlamaqui has been re–edited: *The Principles of Natural and Politic Law*, trans. Thomas Nugent (1763), ed. Petter Korkman (Indianapolis, IN, 2006).

²⁶ See Haakonssen, *Natural Law and Moral Philosophy*, ch. 10; Morton White, *The Philosophy of the American Revolution* (New York, 1978); and Terrance McConnell, 'The Inalienable Right of Conscience: A Madisonian Argument', *Social Theory and Practice*, 22 (1996): 397–416.

²⁷ See Haakonssen, 'German Natural Law'.

freedom and conceptually independent of natural-law duty was in their eyes tantamount to a claim to know God's moral intention with human life. They found confirmation of such suspicion in Grotius's idea that rights could be understood as moral abilities, a suggestion over which Pufendorf accused the Dutch master outright of scholastic essentialism²⁸. In other words, the Lutheran voluntarists would undoubtedly have been as unsurprised as they would have been unimpressed with the Huguenot rights-debate and its issue in the idea of inalienable rights. They would have seen it as little more than a rephrasing of scholastic realism.

As I have suggested elsewhere, we can take Hume's studied avoidance of the theory of rights as a continuation of this voluntarist tradition²⁹. The other great heir to that line of thought, Adam Smith, forged his own original compromise when he replaced the metaphysical (theological) basis of rights with a socio-psychological theory according to which rights always are socially embedded and have to be understood historically, except for a minimal, empirically established content of rights that seems to be definitive of any recognizably human form of life (and which accordingly can be called 'natural' and 'inalienable')³⁰. However, Smith only left this theory in the minds of his students and not in print. Consequently Jeremy Bentham's

²⁸ See Pufendorf, *De iure*, I.2.6 and I.6.4. Significantly Hutcheson explicitly took up Grotius's suggestion when he developed his own theory of the moral sense. See Haakonssen, *Natural Law and Moral Philosophy*, pp. 80–81, and, concerning Pufendorf, see also pp. 35–43.

²⁹ See Haakonssen, *Natural Law and Moral Philosophy*, pp. 117–20.

³⁰ See Adam Smith, *The Theory of Moral Sentiments*, ed. Haakonssen (Cambridge, 2002), II.ii; *Lectures on Jurisprudence*, ed. R.L Meek, D.D. Raphael and P.G. Stein (Oxford, 1978), (A) I, 1–25 and (B) 5–11. See Haakonssen, *Natural Law and Moral Philosophy*, chapter 4; Haakonson, *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge, 1981), pp. 99–114; Haakonssen, Introduction to *Theory of Moral Sentiments*.

slash-and-burn rhetoric about natural rights as ‘nonsense upon stilts’ has been – and is still being – allowed to stand as the great break with natural law theory in English-language moral and political theory. In fact, Bentham was, in this regard, firmly in a long tradition of voluntarist natural lawyers with a deep-seated suspiciousness of rights considered as ultimate or inalienable. When he rejected first the American declarations and then the French, it was precisely with reference to their metaphysical foundation³¹. It is very likely that he himself did not understand this tradition for he clearly was instrumental in creating the subsequent idea of ‘natural law’ as a monolithic metaphysical monstrosity in which all the distinctions and divisions outlined above were either ignored or down-played. Ironically, Bentham thus helped create one of the most considerable ‘fictions’ in modern thought, one deserving of Benthamite deconstruction.

In sum, with Hume’s agnosticism and Bentham’s atheism, the fundamental voluntarist thesis about the gulf between the divine and the human mind reaches new

³¹ See Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, eds J.H. Burns and H.L.A. Hart (London, 1970), ‘Concluding Note’, especially pp. 309–10; and ‘Anarchical Fallacies’, in *The Works of Jeremy Bentham*, ed. John Bowring (11 vols, Edinburgh, 1838–43), vol. II. See also his remarkable pronouncement on the Americans’ Declaration of Independence at the time: ‘If to what they now demand they were entitled by any law of God, they had only to produce that law, and all controversy was at an end. Instead of this, what do they produce? What they call self-evident truths.... At the same time, to secure these rights, they are content that Governments should be instituted. They perceive not, or will not seem to perceive, that nothing which can be called government ever was, or ever could be, in any instance exercised, but at the expense of one or other of those ‘rights’ to life, liberty, or the pursuit of happiness.’ From ‘A Short Review of the Declaration’, in John Lind and Jeremy Bentham, *An Answer to the Declaration of the American Congress* (London, 1776), pp. 119–200. I am grateful to Tim Hochstrasser and David Armitage for this reference.

depths, and this serves to reinforce and radicalize the rejection, begun by Pufendorf, of Grotian rights–theory as the appropriate means of formulating the conventionalist theory of the moral life. As long as the notion of rights had connotations of a divine legacy in the human mind, it could not be used as the explanans in theories of mutual adaptation between individuals (‘contracts’) without begging the question, namely the central voluntarist thesis that morals are instituted by such adaptations. Only Adam Smith’s much deeper take on the problem could supply a non–metaphysical notion of rights that was based on a Humean theory of the mind.

Hopefully enough of a sketch has now been given to indicate why Protestant natural law theory had a significance in the history of early modern philosophy that went far beyond being a phase in the emergence of the Kantian notion of autonomy. Modern natural law was not simply one phenomenon but, rather, a genre within which the most profound differences in moral thought were set out. On the one hand, natural law theory sustained the continuous development of a metaphysically based realism and objectivism as the dominant force in moral theory from late scholasticism to the 19th century. On the other hand, natural law in an entirely different vein, that of voluntarism which has been my main concern here, simultaneously provided all the elements of an anti–metaphysical conventionalism in morals which, while repeatedly drowned out, eventually helped to question the religious foundation of moral theory and foster empirical study of the moral conventions by which the species lives.

Bibliography

Aarsleff, Hans, *From Locke to Saussure: Essays on the Study of Language and Intellectual History* (Minneapolis: University of Minnesota Press, 1982).

- , ‘Philosophy of Language’, in Knud Haakonssen (ed.), *Cambridge History of Eighteenth–Century Philosophy* (Cambridge: Cambridge University Press, 2006), pp. 451–496.
- Beiser, Frederick C., *The Sovereignty of Reason: The Defense of Rationality in the Early English Enlightenment* (Princeton, NJ: Princeton University Press, 1996).
- Bentham, Jeremy, *An Introduction to the Principles of Morals and Legislation*, eds J.H. Burns and H.L.A. Hart (London: The Athlone Press, 1970).
- Bentham, Jeremy, ‘Anarchical Fallacies’, in *The Works of Jeremy Bentham*, ed. John Bowring (11 vols, Edinburgh, 1838–43), vol. II.
- Bentham, Jeremy, ‘A Short Review of the Declaration’, in John Lind and Jeremy Bentham, *An Answer to the Declaration of the American Congress* (London, 1776).
- Burlamaqui, Jean–Jacques, *Principes du droit naturel* (1747), in Jean–Jacques Burlamaqui, *The Principles of Natural and Politic Law*, trans. Thomas Nugent (1763), ed. Petter Korkman (Indianapolis, IN: Liberty Fund, 2006).
- Burlamaqui, Jean–Jacques, *Principes du droit politique* (1751), in Jean–Jacques Burlamaqui, *The Principles of Natural and Politic Law*, trans. Thomas Nugent (1763), ed. Petter Korkman (Indianapolis, IN: Liberty Fund, 2006).
- Carmichael, Gershom, *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael*, trans. Michael Silverthorne, ed. James Moore and Michael Silverthorne (Indianapolis, IN: Liberty Fund, 2001).
- Cumberland, Richard, *A Treatise of the Laws of Nature*, trans. John Maxwell (1727), ed. Jon Parkin (Indianapolis, IN: Liberty Fund, 2005).
- Condillac, Etienne Bonnot de, *Essay on the Origin of Human Knowledge*, trans. and ed. Hans Aarsleff (Cambridge: Cambridge University Press, 2001).

- Gauthier, David, *The Logic of Leviathan* (Oxford: Clarendon Press, 1969).
- Gierke, Otto von, *Natural Law and the Theory of Society, 1500–1800* (Cambridge: Cambridge University Press, 1958)
- Gordley, James, *The Philosophical Origins of Modern Contract Doctrine* (Oxford: Clarendon Press, 1991).
- Grotius, Hugo, *De iure belli ac pacis* (1625), anonymously translated as *The Rights of War and Peace* (London, 1738) re–edited with introduction and commentary by Richard Tuck (Indianapolis, IN: Liberty Fund, 2003).
- Haakonssen, Knud, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (New York: Cambridge University Press, 1996).
- , *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1989).
- , ‘The Character and Obligation of Natural Law According to Richard Cumberland’, in Michael A. Stewart (ed.), *English Philosophy in the Age of Locke* (Oxford: Clarendon Press, 2000), pp. 29–47.
- , ‘The Moral Conservatism of Natural Rights’, in Ian Hunter and David Saunders (eds), *Natural Law and Civil Sovereignty. Moral Right and State Authority in Early Modern Political Thought* (Basingstoke, Hamps.: Palgrave, 2002), pp. 27–42.
- , ‘Natural Jurisprudence and the Theory of Justice’, in Alexander Broadie (ed.), *The Cambridge Companion to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 2003), pp. 205–221.
- , ‘Protestant Natural Law Theory: A General Interpretation’ in Natalie Brender and Larry Krasnoff (eds), *New Essays on the History of Autonomy. A Collection*

- Honoring J.B. Schneewind* (Cambridge: Cambridge University Press, 2004), pp. 92–109.
- , ‘German Natural Law’, in Mark Goldie and Robert Wokler (eds), *Cambridge History of Eighteenth–Century Political Thought* (Cambridge: Cambridge University Press, 2006).
- , ‘The History of Eighteenth–Century Philosophy: History or Philosophy?’, in Knud Haakonssen (ed.), *Cambridge History of Eighteenth–Century Philosophy* (Cambridge: Cambridge University Press, 2006)
- Hampton, Jean, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986).
- Hartung, Gerald, *Die Naturrechtsdebatte. Geschichte der Obligatio vom 17. bis 20. Jahrhundert* (Freiburg and München: Alber, 1998)
- Hellmuth, Eckhart, *Naturrechtsphilosophie und bürokratischer Werthorizont: Studien zur preußischen Geistes- und Sozialgeschichte des 18. Jahrhunderts* (Göttingen: Vandenhoeck & Ruprecht, 1985).
- Hinrichs, Hermann Friedrich Wilhelm, *Geschichte der Rechts- und Staatsprinzipien seit der Reformation bis auf die Gegenwart in historisch-philosophischer Entwicklung* (3 vols, 1848–52) (repr., Aalen: Scientia, 1962).
- Hochstrasser, Tim, *Natural Law Theories in the Early Enlightenment* (Cambridge: Cambridge University Press, 2000).
- , ‘Conscience and Reason: The Natural Law Theory of Jean Barbeyrac’, in Knud Haakonssen (ed.), *Grotius, Pufendorf and Modern Natural Law* (Aldershot, Hants., Brookfield, Vt.: Ashgate, Dartmouth, 1998).

- Hume, David, 'Of the first principles of government', in David Hume, *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), pp. 16–19.
- Hunter, Ian, *Rival Enlightenments: Civil and Metaphysical Philosophy in Early Modern Germany* (Cambridge: Cambridge University Press, 2001).
- Hunter, Ian and Saunders, David (eds), *Natural Law and Civil Sovereignty. Moral Right and State Authority in Early Modern Political Thought* (Basingstoke, Hamps.: Palgrave, 2002).
- Hutcheson, Francis, *The Works and Correspondence of Francis Hutcheson*, ed. Knud Haakonssen (7 vols, Indianapolis, IN: Liberty Fund, 2003).
- , *An Inquiry into the Original of our Ideas of Beauty and Virtue (1725)*, ed. Wolfgang Leidhold (Indianapolis, IN: Liberty Fund, 2004).
- , *Short Introduction to Moral Philosophy (1747)*, ed. Luigi Turco (Indianapolis, IN: Liberty Fund, forthcoming).
- , *A System of Moral Philosophy (1755)*, ed. Knud Haakonssen (Indianapolis, IN: Liberty Fund, forthcoming).
- Ilting, Karl–Heinz, *Naturrecht und Sittlichkeit. Begriffsgeschichtliche Studien* (Stuttgart: Klett–Cotta, 1983).
- James, Susan, *Passion and Action: The Emotions in Seventeenth–Century Philosophy* (Oxford: Clarendon Press, 1997).
- Kavka, Gregory S., *Hobbesian Moral and Political Thought* (Princeton, NJ: Princeton University Press, 1986).
- Labrousse, Elisabeth, 'The Political Ideas of the Huguenot Diaspora (Bayle and Jurieu)', in Richard M. Golden (ed.), *Church, State, and Society under the Bourbon Kings* (Lawrence, AR: Coronado Press, 1982), pp. 222–283.

- Lind, John and Bentham, Jeremy, 'A Short Review of the Declaration', in John Lind and Jeremy Bentham, *An Answer to the Declaration of the American Congress* (London, 1776), pp. 119–200.
- Ludwig, Bernd, *Die Wiederentdeckung des Epikureischen Naturrechts: Zu Thomas Hobbes' philosophischer Entwicklung von 'De Cive' zum 'Leviathan' im Pariser Exil 1640–1651* (Frankfurt a. M.: Vittorio Klostermann, 1998).
- McConnell, Terrance, 'The Inalienable Right of Conscience: A Madisonian Argument', *Social Theory and Practice*, 22 (1996): 397–416
- Moore, James, 'The Two Systems of Francis Hutcheson: On the Origins of the Scottish Enlightenment', in Michael A. Stewart (ed.), *Studies in the Philosophy of the Scottish Enlightenment* (Oxford: Clarendon Press, 1990), pp. 37–59.
- , 'Natural Law in the Scottish Enlightenment', in Mark Goldie and Robert Wokler (eds), *Cambridge History of Eighteenth–Century Political Thought* (Cambridge: Cambridge University Press, 2006).
- Moore, James and Silverthorne, Michael, 'Gershom Carmichael and the Natural Jurisprudence Tradition in Eighteenth–Century Scotland', in Istvan Hont and Michael Ignatieff (eds), *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1983), pp. 73–87.
- , 'Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael', in Vincent Hope (ed.), *Philosophers of the Scottish Enlightenment* (Edinburgh: Edinburgh University Press, 1984), pp. 1–12.
- Norton, David Fate, *David Hume: Common–Sense Moralist, Sceptical Metaphysician* (Princeton NJ: Princeton University Press, 1982).

- Parkin, Jon, *Science, Religion and Politics in Restoration England. Richard Cumberland's De legibus naturæ* (Woodbridge, Suffolk: The Boydell Press (for the Royal Historical Society), 1999).
- Pufendorf, Samuel F. von, *De iure naturae et gentium* (1672), translated as *The Law of Nature and Nations*, by B. Kennet (5th edn, London 1739) re-edited with introduction and commentary by Knud Haakonssen (Indianapolis, IN: Liberty Fund, forthcoming).
- Pufendorf, Samuel F. von, 'Apologia pro se et suo libro ...', para. 24, in *Eris Scandica* (Frankfurt a.M., 1705), pp. 33–35.
- Riley, Patrick, *Leibniz' Universal Jurisprudence: Justice as the Charity of the Wise* (Cambridge MA: Harvard University Press, 1996).
- Rivers, Isabel, *Reason, Grace, and Sentiment. A Study of the Language of Religion and Ethics in England 1660–1780* (2 vols, Cambridge: Cambridge University Press, 2000), vol. 2: *Shaftesbury to Hume*.
- Schneewind, Jerome B., 'Voluntarism and the Origins of Utilitarianism', *Utilitas*, 7 (1995): 87–96.
- , *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press, 1998).
- Schneider, Hans-Peter, *Justitia Universalis. Quellenstudien zur Geschichte des 'Christlichen Naturrechts' bei Gottfried Wilhelm Leibniz* (Frankfurt a.M.: Vittorio Klostermann, 1967).
- Sève, René, *Leibniz et l'école moderne du droit naturel* (Paris: Presses Universitaires de France, 1989).
- Smith, Adam, *The Theory of Moral Sentiments*, ed. Knud Haakonssen (Cambridge, Cambridge University Press, 2002).

- Smith, Adam, *Lectures on Jurisprudence*, eds R.L. Meek, D.D. Raphael and P.G. Stein (Oxford, Oxford University Press, 1978).
- Stolleis, Michael, *Geschichte des öffentlichen Rechts in Deutschland* (3 vols, München: Beck, 1988), vol. 1: *Reichspublizistik und Polizeywissenschaft 1600–1800*.
- Tarello, Giovanni, *Storia della cultura giuridica moderna*, vol 1: *Assolutismo e codificazione del diritto* (Bologna: Il Mulino, 1976).
- Thieme, Hans, *Das Naturrecht und die europäische Privatrechtsgeschichte* (Basel: Helbing & Lichtenhahn, 1954).
- Tierney, Brian, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church Law 1150–1625* (Atlanta, GA: Scholars Press, 1997).
- Tuck, Richard, *Natural Rights Theories: Their Origin and Development* (Cambridge: Cambridge University Press, 1979).
- , ‘The ‘modern’ theory of natural law’, in Anthony Pagden (ed.), *The Languages of Political Theory in Early–Modern Europe* (Cambridge: Cambridge University Press, 1987), pp. 99–109.
- , *Philosophy and Government, 1572–1651* (Cambridge: Cambridge University Press, 1993).
- , *The Rights of War and Peace: Political Order and the International Order from Grotius to Kant* (Oxford: Oxford University Press, 1999).
- White, Morton, *The Philosophy of the American Revolution* (New York: Oxford University Press, 1978).
- Wolf, Eric, *Große Rechtsdenker der deutschen Geistesgeschichte*, 4th rev. edn (Tübingen: Mohr, 1963).

CHAPTER 5

Natural Law And Obligation In Hutcheson And Kant

Jeffrey Edwards

Even the most superficial examination of Hutcheson's thought on ethics and natural jurisprudence will encounter basic systematic components that resist straightforward combination. Hutcheson is well known for his sentimentalist approach to the foundations of ethics as an account of moral virtue.¹ Yet his method of determining the moral qualities of actions in connection with a concept of overall good seems unavoidably to lead to a form of utilitarianism. Moreover, he seems to rely on deontological aspects of modern natural-law contractualism when integrating his *sensus moralis* approach with a consequentialist view of principles of right action. And he evidently understands his sentimentalist portrayal of the source and grounds of moral virtue as the theoretical platform for an account of action-guiding principles that interprets the overall good in terms of the universal good of human beings: 'the greatest Happiness of the greatest Numbers'.² Thus, one might think of Hutcheson's system of

¹ Knud Haakonssen's interpretation of Hutcheson as a moral realist involves the repudiation of the historically standard view that Hutcheson's thought is representative of sentimentalist ethics. See, e.g., Knud Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge, 1996), pp. 65–75. Arguing against Haakonssen's interpretation, Jerome B. Schneewind has defended the standard view: see Jerome B. Schneewind, *The Invention of Autonomy: A History of Modern Moral Philosophy*, (Cambridge, 1998), p. 339 (note). I find Schneewind's argument persuasive, but nothing in the present paper depends on acceptance of the standard view.

² Francis Hutcheson, *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, ed. Wolfgang Leidhold (Indianapolis, IN, 1725, 2004), 125. Hereafter *IBV*: 125. For extended discussion of these

moral philosophy as a sort of patchwork fabric stitched together just to fall apart into the various strains of sentimentalist, utilitarian, and contractualist thought that have crowded the landscape of European moral philosophy for the past several centuries.

My own view is that the Hutcheson's conception of system is in fact coherent. I also hold that a textually adequate interpretation of Hutcheson's views on the various components and the different theoretical levels of moral thinking can vastly enhance our understanding of how modern natural-law theory is linked to the development of Scottish sentimentalist ethics as well as to the emergence of modern utilitarianism.³ Although I do not argue these broad claims here, I will focus on a pivotal feature of Hutcheson's foundational theory of ethics that allows for – and indeed requires – the peculiar combination of sentimentalist, utilitarian, and natural-law components just mentioned. Specifically, I want to concentrate on the theory of obligation that, as Hutcheson supposed, presents a radical alternative to the type of account of obligation that underlies the work of two key representatives of modern natural-law thinking: Richard Cumberland and Samuel von Pufendorf. Some preparatory work is needed, however, if we are to put into proper perspective the historical significance of Hutcheson's theory of obligation. Thus, before turning to Hutcheson and his considerations on Cumberland and Pufendorf, I will discuss the assessment of Hutcheson's ethical theory that we find in Immanuel Kant's work on the foundations of ethics.

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themes, see Jeffrey Edwards, 'Hutcheson's Sentimentalist Deontology?', *The Journal of Scottish Philosophy*, 3 (2006): forthcoming.

³ On this, see Edwards, 'Hutcheson's Sentimentalist Deontology?'

Kant's assessment of Hutcheson and his place in the history of modern moral philosophy evidently diverges from the kind of interpretive view summarized in the first paragraph of this paper. Kant's works on moral philosophy give no indication that he was especially concerned about the seemingly eclectic character of Hutcheson's systematic thinking. There is also reason for us to think that Kant regarded Hutcheson as the chief emblematic figure among the 18th century Anglophone theorists of the moral sentiments. Indeed, there is good reason to believe that Kant judged Hutcheson to be, historically, the most important of these figures, even when compared with the likes of Shaftesbury, David Hume, and Adam Smith. In the *Grundlegung zur Metaphysik der Sitten* (1785) and in the *Kritik der praktischen Vernunft* (1788), it is Hutcheson whom Kant singles out as the thinker who typifies sentimentalist ethics.⁴ Even more interesting in this regard, however, are some considerations pertaining to Hutcheson that we encounter in Kant's 'pre-critical' ethics of the early 1760s. I refer here to the Fourth Reflection of Kant's *Untersuchungen über die Deutlichkeit der Grundsätze der natürlichen Theologie und der Moral*.⁵

In § 2 of the Fourth Reflection of *Untersuchungen über die Deutlichkeit*, Kant discusses basic conditions of practical cognition and moral action as a way of clarifying the problem of moral obligation. He begins by presenting what he takes to be the most comprehensive formulation of the principle of obligation: 'One ought to do this or that and omit doing something else'⁶. He then explicates the notion of 'ought' that this

⁴ See *GMS* 4:442; *KpV* 5:40.

⁵ Hereafter *Untersuchungen über die Deutlichkeit*. For analysis of this section in relation to the overall development of Kant's ethics during the 1760s, see Edwards, 'Egoism and Formalism in the Development of Kant's Moral Philosophy', *Kant-Studien*, 91 (2000): 420–429.

⁶ *Untersuchungen über die Deutlichkeit* 2:298.

abstract formula employs. According to Kant, every morally relevant employment of ‘ought’ aims to express the necessity of an action. But the notion of practical necessity at issue in this employment must be understood in one of two ways – either as the necessity of means (*die Notwendigkeit der Mittel* or *necessitas problematica*) or else as the necessity of ends (*die Notwendigkeit der Zwecke* or *necessitas legalis*). Kant uses this distinction between forms of practical necessity to argue that two historically influential types of ethical doctrine – namely, perfectionism and theonomous ethics – are not in a position to address the nature of obligation in its specifically moral sense.⁷ He holds that the concept of the necessity of ends is the key to understanding obligation as a moral relation, and he maintains that the ‘immediate necessity’ of actions⁸ is the essential feature of that concept. He holds further that neither the perfectionist approach to moral thinking nor the theonomous explanation of the binding force of moral law can come to grips with this conceptual feature, which is what genuine understanding of moral obligation requires.⁹

How, then, are we to come to grips with the deontic modality here at issue? How is it possible for us to know (a) that the performance (or non-performance) of certain types of action is immediately necessary simply as an end of our acting, and (b) that the necessity of this performance (or non-performance) is knowable independently of any

⁷ The distinction between the necessity of means and the necessity of ends of course directly anticipates the distinction between hypothetical and categorical imperatives, which Kant would soon work out in all its ramifications.

⁸ *Untersuchungen über die Deutlichkeit* 2:298.

⁹ Christian Wolff presents the particular target of Kant’s attack on the foundations of perfectionist ethics, while Christian August Crusius serves the same function for the attack against the theonomous conception of moral law. But Kant would no doubt have been happy to see his criticism extended to include many strains of Aristotelean ethics and voluntarist moral theology.

other end that is to be achieved by means of our actions? According to Kant's thinking in *Untersuchungen über die Deutlichkeit*, we explain this possibility by clarifying the relationship between formal grounds of obligation and material principles of obligation.

The clarification can be summarized as follows:

(1) The sort of practical necessity at issue in the necessity of ends can be expressed only by an 'immediate supreme rule of all obligation'¹⁰. On the basis of this fundamental principle of moral obligation, it is possible to specify first formal grounds of obligation with respect to acts of commission and omission. By themselves, however, these formal grounds (or rules¹¹) do not provide a sufficient basis for determining what we are obligated to do or not to do. For no 'determinate obligation'¹² could ever be made known to us unless the first formal grounds of obligation were combined with 'indemonstrable material principles of practical cognition'.¹³

(2) Our capacity to know such material principles depends on our sensible and affective constitution and not simply on our rational faculty. Thus, if we are to know any determinate obligation, we must possess the sensitive faculty that affords us with an 'unchangeable feeling of the good'¹⁴ once the understanding has performed its appropriate task in practical cognition, which is to 'dissolve and render distinct the

¹⁰ *Untersuchungen über die Deutlichkeit*: 299.

¹¹ Kant uses Grund interchangeably with Regel in this context.

¹² *Untersuchungen über die Deutlichkeit* 2:299.

¹³ *Untersuchungen über die Deutlichkeit* 2:299.

¹⁴ *Untersuchungen über die Deutlichkeit* 2:299.

composite and confused concept of the good by showing how it arises from simple sensations of the good'.¹⁵

(3) Given the simplicity of the deliverances of our sensitive faculty, which are known by means of the analytic operations of the understanding, we can make the following inference concerning moral judgment. Our judgments of moral good must be 'the immediate effects of the consciousness of the feeling of pleasure'¹⁶ that is associated with objects which we represent as good on the basis of what we discern to be simple sensations of the good. And from this we can conclude further that whenever an action is immediately represented as good (i.e., is judged to be good in itself¹⁷), the judged necessity of the action's performance is what qualifies as the required 'indemonstrable material principle of obligation'.¹⁸

¹⁵ *Untersuchungen über die Deutlichkeit* 2:299. At least in the passage being examined, Kant is evidently willing to countenance an empiricist account of the origin of the concept of good in general and the concept of moral good in particular.

¹⁶ *Untersuchungen über die Deutlichkeit* 2:299.

¹⁷ Kant evidently holds that, if an action is immediately represented as good (wenn eine Handlung unmittelbar als Gut vorgestellt wird), it is thereby represented as intrinsically good. Apparently, he also holds such an action cannot be represented as good merely with reference to an extrinsic good because what is represented as extrinsically good is knowable as good only by means of analysis of the representation of something immediately good (see *Untersuchungen über die Deutlichkeit* 2:299). Needless to say, the underlying line of argument in question is complicated. Kant no doubt assumes that an action immediately represented as good is one whose immediate necessity is known on the basis of material principles of obligation that are linked to the concept of the necessity of ends (as distinguished from the necessity of means). But Kant does not make this assumption explicit in the text under consideration.

¹⁸ *Untersuchungen über die Deutlichkeit* 2:299. One is tempted to say that the judgment by which the necessity of the action is expressed is what furnishes the material principle in question. But when treating

(4) The particular imperatives by means of which the immediate necessity of actions is expressed – e.g., ‘Love him who loves you’¹⁹ – furnish practical propositions that ‘stand under’ the aforementioned formal grounds of obligation. As material practical principles, they therefore fall ‘formally, though immediately, under the . . . supreme universal formula of obligation’.²⁰ Yet despite their dependence on this supreme principle and the formal grounds (or rules) that it contains, these first material principles of obligation play an indispensable role in practical philosophy because of their foundational standing in morally practical cognition. They serve as ‘postulates’ that ‘contain the foundations of the remaining practical principles’.²¹

Immediately after characterizing this epistemic and systematic standing of first material practical principles, Kant concludes his main line of argument in the section under consideration. He does this by calling attention to ‘Hutcheson and others’ who ‘under the name of moral feeling have made a fine beginning’²² with regard to the essential relevance of material practical principles for the theory of moral obligation. Apart from the occurrence of Hutcheson’s name, the reference is vague, and Kant does not shed further light on theoretical steps that ought to follow from the sentimentalist beginning to which he alludes. It is therefore not possible to determine the extent to which Kant’s account of the deontic significance of material principles is supposed to incorporate the central tenets of the type of ethical theory that had been presented by

simple sensations of the good as sensible conditions for judgments of (moral) good, Kant says that the necessity of the action is an indemonstrable material principle of obligation when an action is immediately represented as good.

¹⁹ *Untersuchungen über die Deutlichkeit* 2:300.

²⁰ *Untersuchungen über die Deutlichkeit* 2:300.

²¹ *Untersuchungen über die Deutlichkeit* 2:300.

Hutcheson.²³ Nevertheless, we can confidently say that Kant, in *Untersuchungen über die Deutlichkeit*, accepts the following tenets with regard to the ‘Hutchesonian’ side of his view of the grounds of obligation:

- There are certain sense–based principles of practical cognition that qualify as non–formal, i.e., *material*, principles of *obligation*.
- These principles must serve as basic elements in any theory of obligation that can determine types of action that we are actually bound to perform or to refrain from performing.
- The account of the grounding role of such principles requires a properly developed description of the *sensible* conditions of human *moral* agency. In other words, it requires a portrayal of the human agent’s affective constitution, a portrayal that completes the kind of description of sensible conditions offered by Hutcheson (and others similarly minded).
- It is because it is supported by such a portrayal that a materially well–grounded theory of moral obligation can furnish a philosophically viable alternative to historically influential forms of perfectionist and theonomous ethics.

Taken together, of course, these tenets signal an approach to the foundations of ethics and to moral philosophy in general that runs counter to the approach that Kant would take in his critical works of the 1780s and 1790s. In the classic moral philosophic texts of Kant’s later critical period, the types of action to which we are morally bound

²² *Untersuchungen über die Deutlichkeit* 2:300.

²³ In the announcement for his lecture program of winter semester 1765–66, Kant states that Shaftesbury, Hutcheson, and Hume have ‘reached furthest in the quest for the first grounds of all morality,’ but he also holds that their attempts are ‘incomplete and defective’ (*Untersuchungen über die Deutlichkeit* 2:311).

are determined by imperatives of duty that have their source in rational self-legislation. The imperatives of duty that derive from this autonomous operation of our rational faculty are expressed by practical laws which articulate the universality requirements of non-empirical or pure practical reason. And these *a priori* specifiable requirements are grounded by showing that they have their source in the non-sensible conditions of the moral agency of finite rational beings. In the context of this later account of the possibility conditions for human moral agency, Kant asserts that there are *no* material (or empirical) practical principles which, by satisfying the formal universality requirements of pure practical reason, furnish the practical laws by which we are obligated to act. These laws are furnished only by the formal principles of practical reason that set forth duties as actions we are obligated to perform. While these duties comprise the matter of obligation (*die Materie der Verbindlichkeit*), the laws that prescribe them must be understood as providing purely formal grounds.²⁴ In the framework of Kant's mature theory of practical law, there can be no such thing as a material ground of obligation of the type suggested in *Untersuchungen über die Deutlichkeit*.²⁵

The Hutchesonian dimension of Kant's ethical project in *Untersuchungen über die Deutlichkeit* is standardly evaluated in view of these factors and the interpretation of

²⁴ See, e.g., *GMS* 4:427; *KpV* 5:27, 32–35, 41, 64, 75, 109; *MdS* 6:222, 388–389.

²⁵ In *Untersuchungen über die Deutlichkeit* (2:299), Kant explicitly mentions 'first material grounds' (as distinguished from first material principles) only in connection with non-moral judgments. It is contextually clear, however, that he recognizes the notion of material grounds of obligation: 'Und gleichwie aus den ersten formalen Grundsätzen unserer Urtheile vom Wahren nichts fließt, wo nicht materiale erste Gründe gegeben sind, so fließt allein aus diesen zwei Regeln des Guten keine besonders bestimmte Verbindlichkeit, wo nicht unerweisliche materiale Grundsätze der praktischen Erkenntniß damit verbunden sind.'

non-empirical practical reason's universally prescriptive function that is supposed to support it. Kant's involvement with that sentimentalist dimension is usually regarded as indicating a merely passing phase in the early development of his moral philosophy – a phase that Kant was to overcome soon after he had brought into focus the key components of his theory of moral autonomy. There are perfectly good reasons for this kind of treatment, especially if we consider the fact that Kant's classificatory schemes for historically given types of ethical theory include Hutcheson among the chief representatives of heteronomous ethics.²⁶ Still, even when we accept that the standard evaluation of Kant's reference to 'Hutcheson and others' is accurate, we should still realize that there is something quite extraordinary about Kant's systematic intentions with regard to Hutcheson in *Untersuchungen über die Deutlichkeit*. It is in fact remarkable that Kant, at any point in his career, would appeal to the name of Hutcheson in order to indicate a promising point of departure for an account of the grounds of moral *obligation*. Why is that?

At least on a superficial reading, the problem of obligation does not appear to be a pivotal theme in Hutcheson's work on the basic elements of ethical theory. Moreover, Hutcheson has hardly ever been known for offering groundbreaking considerations on deontic concepts in general. Indeed, the very idea of obligation may seem to be a rather marginal feature of Hutcheson's theoretical work if we consider his *Inquiry* concerning moral good and evil, which arguably proves to be Hutcheson's most influential work when regarded from the perspective of 18th century moral philosophy. Hutcheson's entire treatment of obligation in the *Inquiry* might plausibly be viewed as a kind of afterthought. For it seems to have been offered as a set of rather sketchy reflections that were relegated to the concluding section of the book after the really interesting

²⁶ See the passages cited in note 4 above.

arguments of the sentimentalist approach had been presented. In *Untersuchungen über die Deutlichkeit*, however, Kant obviously works with a very different view of the import of Hutcheson's dealings with the question of obligation since he explicitly recognizes the groundbreaking import of what Hutcheson (and other similarly minded thinkers) had already accomplished in that area of inquiry. What could have led Kant to this unusual assessment?

It almost goes without saying that a fully developed response to this last question would require close examination of each one of Hutcheson's major works on moral philosophy. But even if we limit our focus to the *Inquiry* alone, we can still understand why Kant would find Hutcheson to be of great interest precisely in connection with the question of material grounds of obligation. We can do this if we regard Kant's claims in *Untersuchungen über die Deutlichkeit* concerning the subjective sources of obligation as referential background for investigating the *Inquiry's* connections with modern natural-law theory.

II

In the 1725 *Inquiry* concerning moral good and evil, Hutcheson maintains that benevolence constitutes 'the universal Foundation of our Sense of moral Good or Evil'²⁷. Benevolence therefore supplies 'the one general Foundation of our Sense of Virtue'²⁸ and thereby furnishes 'the Foundation of all apparent moral Excellence'²⁹. That is to say, benevolence must be assigned an epistemically foundational and virtue-founding role in the philosophical account of moral good and evil. It is in keeping with

²⁷ *IBV*: 120.

²⁸ *IBV*: 88.

²⁹ *IBV*: 118.

this view of benevolent desire's dual role that Hutcheson takes up the question of obligation in the final section of the *Inquiry*. He asserts there that 'the Original of moral Ideas' is furnished by our 'moral Sense of Excellence in every Appearance, or Evidence of Benevolence'³⁰. According to this empiricist conception of the sensual origin and source of moral ideas, our acquisition of the idea of obligation must be explained 'abstracting from any Law, Human or Divine'³¹. Consequently, Hutcheson wants to explain how we can have a sense of obligation 'abstracting from the Laws of a Superior'³². His aim, then, is to show that our capacity to be aware of obligation does not ultimately depend on an intellectual faculty by which we apprehend the meaning of prescriptive laws or recognize the authority of an external lawgiver. He seeks to achieve this aim by emphasizing that benevolent desire has an *intrinsically* deontic quality. He takes this quality to be the primitive morally salient feature of the human soul's non-rational aspect, and he intends to establish that the basis of obligation for human beings must be understood in terms of the motivational efficacy of this feature of human moral sensibility. For Hutcheson, the 'internal Sense, and Instinct *toward* Benevolence' is also the 'Obligation placed upon all Men *to* Benevolence'³³.

Given this identification, it is essential that we bear in mind the following point. Hutcheson holds that the obligation-*founding* character of benevolent desire is fully explicable without reference to *any* concept of practical law. On this account of benevolence as the ultimate ground of obligation, it would even be incorrect to say that an agent is her *own* law by virtue of the structure of human moral sensibility as long as

³⁰ *IBV*: 176.

³¹ *IBV*: 176.

³² *IBV*: 176.

³³ *IBV*: 176. Italics are mine.

her actions are motivated by benevolent desire.³⁴ For not only is our idea and sense of obligation to be explained in abstraction from the legislative agency and sanctioning authority of every external superior.³⁵ The source of obligation itself has to be grasped as something entirely independent of any lawgiving determination of the human mind that could be deemed superior to the sensitive faculty exhibiting benevolence as its morally salient motivating feature. The position that Hutcheson takes in this regard is therefore strikingly radical. And it is far removed from the corresponding position that Kant comes to take in his later autonomous ethics when he grounds moral obligation exclusively with reference to our non-sensible and higher-order capacity for rational self-legislation. For Kant of the 1780s and 1790s, it is this autonomous capacity of human agents that constitutes the sole basis for the explanation of moral obligation. That is because it indicates reason's moral role as the only possible source of practical laws, i.e., the only possible source of the practical propositions that furnish purely formal grounds for the determination of the duties comprising the matter of obligation.³⁶ Given his radical concern to isolate the entire explanatory *basis* of obligation from all concepts of law, Hutcheson is perhaps further removed from the foundations of Kant's autonomous ethics than any other major figure in modern moral philosophy's history.

For obvious chronological reasons, none of Kant's conceptions of obligation and its grounds could supply the primary target of the considerations by which Hutcheson

³⁴ See Romans 2:14–15. For discussion of the significance of this passage for the history of modern moral philosophy, see Schneewind, *The Invention of Autonomy*, pp. 17–21, 32–36, 126–127, 144, 343–344 and 483.

³⁵ See *IBV*: 180–182. See also Hutcheson, *A System of Moral Philosophy* (2 vols, Bristol, 1755, 2000), vol. 1, 56, 264–266, 272, 276–277; *An Essay on the Nature and Conduct of the Passions and Affections, with Illustrations on the Moral Sense*, ed. Aaron Garrett (Indianapolis, IN, 1728, 2002), 146.

seeks to break the connection between prescriptive law and obligation. Hutcheson's intent is to provide a clear alternative to the doctrines of obligation prevalent in the Grotian natural-law tradition. He singles out for explicit refutation the doctrines put forward by Samuel von Pufendorf and Richard Cumberland.

In *De jure naturae et gentium* (1672) and in *De officio hominis* (1673), Pufendorf maintained that the obligatory force of law as such is, in the final analysis, unintelligible unless law is connected with the will and sanctioning power of a superior – ultimately, of course, with the will and power of God.³⁷ In his *De legibus naturae* (1672), Cumberland similarly stressed the connection between the precepts of natural law and God's will even when he also sought at least to mitigate the voluntaristic import of the type of approach to obligation taken by thinkers like Pufendorf. Thus, Cumberland accepted that moral obligation is, as he put it, to be resolved into 'the will and counsel of God'³⁸. At the same time, however, he insisted that it is *necessarily* the will of God to promote the happiness of the whole system of rational creatures. Accordingly (in keeping with the proto-utilitarian aspects of his theory of the laws of nature), Cumberland maintained that God has established as natural laws a particular set of empirically knowable propositions, namely, the set of practical propositions that indicate to us the ways and means by which we are best able to promote the happiness of everyone as the natural good of humankind.³⁹ Hutcheson targets both of these

³⁶ See, e.g., *GMS* 4:389–390, 431–432; *KpV* 5:21–22, 28–29, 31, 33; *MdS* 6:221–223, 225–226.

³⁷ See Samuel Pufendorf, *De officio hominis et civis juxta legem naturalem libri duo*, in *Gesammelte Werke*, ed. Gerald Hartung (Berlin: Akademie Verlag, 1672, 1997), vol. 2, book I, chapters II–III.

³⁸ Richard Cumberland, *De legibus naturae disquisitio philosophica* (London: 1672), V.xxii. Hereafter *DLN* V.xxii.

³⁹ See *DLN*: Intro. Xv–xvi, xxiii; V.i, iii–v, viii–xii, xvi, xxii–xxiii, xxvii, xxxiv, xxxv, xlv, xvii, lvii.

accounts of prescriptive natural law and the grounds of obligation, although he does this without taking special note of their basic difference in orientation with regard to the necessitation of God's will. His critical interest in Pufendorf and Cumberland is directed quite specifically to the connection between obligation and practical law, and to not the metaphysical problem of voluntarism *per se*.⁴⁰

Somewhat surprisingly, Hutcheson does not take direct aim at the arguments that Pufendorf and Cumberland had presented in order to establish the connection between the concepts of obligation and (superior-imposed) practical law. He proceeds by addressing the connection that the two natural lawyers sought to establish between benevolence and the natural good of rational beings. Hutcheson is willing to grant that both Pufendorf and Cumberland succeeded in proving 'a constant Course of benevolent and social Actions, to be the most probable means of promoting the natural Good of every individual'⁴¹. He also states that they accomplished this 'without relation to a Law'⁴². Consequently, Hutcheson acknowledges that there is a certain sense in which Pufendorf and Cumberland can be said to have established the obligation that human agents are under to pursue their advantage wisely and, moreover, that the two theorists accomplished this independently of any appeal to the legislative and sanctioning power of a superior. But Hutcheson also holds that this line of prudential argument cannot get

⁴⁰ Hutcheson does, of course, provide an argument against voluntarism in the seventh section of the *Inquiry* (see *IBV*: 180–181), but he uses this argument in order to account for the acquisition of 'our first Ideas of moral Good' and in order to show how the distinction between constraint and obligation is possible with respect to divine laws. He does not require the anti-voluntarist argument for his account of obligation as such.

⁴¹ *IBV*: 177.

⁴² *IBV*: 177.

beyond the characterization of obligation as ‘a Motive from Self–Interest’⁴³ and that no such characterization can provide for an account of obligation in the properly moral sense of the term. For when obligation is understood in its proper sense, it can *only* denote ‘a Determination, without regard to our own Interest, to approve actions and to perform them’⁴⁴. The ‘determination’ here at issue is benevolence which, since it must be understood as the feature of the human affective constitution that furnishes the deontic basis of both moral judgment and moral motivation, cannot be explained reductively in terms of self–love or predominant benevolence toward oneself. Thus, although Pufendorf and Cumberland did succeed in providing one kind of account of obligation without ‘relation to a law,’ this cannot be the foundational account that grounds principles of duty distinguishable from mere maxims of (enlightened) self–interest.

On Hutcheson’s view, a proper grounding of the relation of obligation must eschew the very notion that there is any *necessary* connection between the idea of obligation and the concept of practical law. There is indeed an obvious relation between obligation and law, but this is in fact a function of contingent anthropological factors. Law comes into play only when ‘our moral Sense be suppos’d exceedingly weaken’d, and the selfish Passions grown strong’⁴⁵. According to Hutcheson, it makes no difference whether one seeks to explain the debilitation of moral sense and the corresponding strength of egoistic impulse in terms of an original corruption of human nature (‘some general Corruption of Nature’) or simply in terms of historical custom (‘inveterate Habits’). The key point is this: especially if we suppose that human

⁴³ *IBV*: 177.

⁴⁴ *IBV*: 176.

⁴⁵ *IBV*: 177.

understanding is weak, we often run the danger of judging that malicious actions best promote our advantage. Hence:

in such a case, if it be inquir'd what is necessary to engage Men to beneficent actions, or induce a steady sense of an Obligation to act for the publick Good; then no doubt 'A Law with Sanctions, given by a superior Being, of sufficient Power to make us happy or miserable, must be necessary to counter-balance those apparent motives of Interest, to calm our Passions, and give room for the recovery of our moral Sense, or at least for a just View of our Interest⁴⁶.

What Hutcheson says here concerning the relationship between self-interest, on the one hand, and law, sanctions, superior power, and obligation, on the other, is meant to apply generally to any theory that purports to explain the possibility of moral obligation on the *basis* of a presumed connection between egoistic motivating grounds, law, and coercive force (or else the power to reward). Hutcheson's intention is to show that no such 'law-based' theory can complete this explanatory task because it cannot come to grips with the deontic role of benevolence as an invariant underlying determination of the human being's sensible nature, i.e., with its role as an intrinsic and originally prescriptive attribute of human moral sensibility that cannot be motivationally inert even when the demands of self-love would hold sway over conduct in the absence of the external sanctioning power of a superior.

Such is Hutcheson's critical intention. But a significant general question arises as soon as we are clear about Hutcheson's aim with regard to law and obligation. Why exactly should every law-based theory be incapable of coming to grips with benevolence when this is taken to be an originally prescriptive attribute of our sensible nature as human being? Obviously, the historical scope of this query is so broad that even its restriction to 17th and 18th philosophy would take us far beyond what can

⁴⁶ *IBV*: 177–178.

reasonably be addressed in this paper. (One immediately thinks of Kant, for example, especially given the conception of obligation that underlies his later autonomous ethics.) So the specific question to pose is this. How does Hutcheson's criticism relate to the two central figures mentioned in the passages under consideration, namely, to Pufendorf and Cumberland? The consideration of Pufendorf's extensive work on natural law and obligation in view of this particular question demands a separate investigation. But we can clarify the implications of our line of questioning if we focus on Cumberland alone.

III

Cumberland insists that obligation proceeds 'wholly from the law and the lawgiver'⁴⁷, although he also holds that 'the whole force of obligation'⁴⁸ derives from the sanctions (the rewards and punishments) that the lawgiver has annexed to the performance or non-performance of actions in conformity with its laws. Accordingly, moral obligation must be understood as the immediate effect of nature's laws; and the ground of this natural obligation must be conceived to lie in the will and counsel of God *insofar* as God enacts as laws of nature the practical propositions that direct all rational agents to promote the common good, i.e., the happiness of all rational beings conjoined with the honor of God. We human beings, however, can *discover* the obligation of law only on the strength of law's sanctions. Thus, the particular precepts of duty that tend to the achievement of this common good and ultimate end of all action furnish practical dictates of reason – the *dictamina rationis rectae* – by which we know that good and evil follow upon our actions to extent that these actions are consistent with, or are contrary to, the principle of universal benevolence contained in the most general

⁴⁷ *DLN*: V.xxii.

⁴⁸ *DLN*: V.xi.

formula of the law of nature.⁴⁹ Now each of us is determined by ‘a kind of natural necessity’⁵⁰ to pursue good and to avoid evil. Moreover, the attainment of good and the avoidance of evil is necessarily connected with each rational being’s pursuit of its own happiness. Consequently, the necessity of any action to be performed in conformity with the principle of universal benevolence can qualify as necessity *for* a finite rational agent only when such an agent understands the required action to be a cause of his own happiness (or at least a way of avoiding of his own misery). This is true even if the law of nature requires each of us to promote the happiness of *all* rational beings, thereby honoring God. Hence, natural necessity being what it is with respect to human nature, an action can be necessary *to* a human agent only ‘when it is certainly one of the causes necessarily required for that happiness which he naturally, and so necessarily, desires’⁵¹.

According to Cumberland, then, no precept of natural law that sets forth a universality requirement of practical reason can obligate *me* unless it makes known to me some means of promoting my own happiness. And this is true even if the obligation in question proceeds wholly from the will and counsel of the lawgiving agent – God – who has so disposed the nature of things that I can maximize my own happiness only by acting in conformity with the universal law of nature that enjoins the promotion of the common good of rational beings.

Cumberland is greatly concerned to clarify and justify his conception of the relationship between natural necessity and practical necessitation around which he

⁴⁹ ‘Lex naturae est propositio natura rerum ex voluntate primae causae menti satis aperte oblata vel impressa, actionem indicans Bono Rationalium communi observientem, quam si praestetur praemia, sin negligatur poenae sufficientes ex Natura Rationalium sequuntur’. *DLN*: V.i.

⁵⁰ *DLN*: V.xxvii.

⁵¹ *DLN*: V.xxii.

constructs his account of obligation. He has good reason to be concerned. For it is hardly obvious to begin with why every human agent capable of reasoning should *not* know herself to be morally obligated to promote the common good whenever (by reason of her understanding of the law of nature) she apprehends that God wills every agent to promote the happiness of all rational beings.

Perhaps the most interesting – and certainly the most remarkable – response to this type of objection can be found in the thirty–fifth section of chapter V of *De legibus naturae*. The relevant line of argument runs as follows. The universal law concerning the promotion of the common good is a practical proposition that commands the pursuit of this most general good as the highest and greatest ‘effect’ (i.e., end) that is achievable by means of human action. But if the promotion of this end is held to be a necessary means to one and the same end’s achievement, then the practical proposition in question will be identical (i.e., will have the form ‘A is A’). Thus, since no identical proposition can contain (or generate) an incentive to action, our promotion of the common good as the highest and greatest good that we are capable of promoting must be regarded as the necessary means to the promotion of a dependent but lesser good, namely, the own–happiness that each of us is rightly supposed to desire.

One may wish to ask how such an argument responds to the line of objection mentioned above, since it is not clear why even an identical proposition cannot contain an incentive to action as long as (a) it *is* a *practical* proposition and (b) the type of action that it enjoins derives its necessity from a volitional act of the lawgiver (namely, God). Be that as it may, we can grasp the position that Cumberland is attempting to establish, especially if we take into account what he says elsewhere about the

relationship between practical propositions, laws, commands, and prudential reasoning.⁵² As I understand it, the position is this:

A principle of universal benevolence, which is contained in the law of nature, furnishes the general precept that indicates the possible action by which a rational agent will best promote the common good. Because that principle derives from and expresses the will of God, it categorically commands each of us to promote the common good as best we can, thereby promoting the happiness of all human beings and, consequently, our own happiness as a constitutive feature of the happiness of all rational beings. But when taken in abstraction from the notion of sanction, which is also necessarily contained in the general formula of the law of nature, no such precept can express the necessity of beneficent action *to* a particular human being (*qua* rational agent). That is because only sanctions can motivate us to act beneficently by showing how other-directed benevolence is causally linked to the own-happiness of each one of us. Thus, no precept (or principle) of universal benevolence can properly be said to obligate a human agent unless it allows for the specification of some sanction in connection with its demand for conformity with law. In other words, if the law of nature is to obligate *us* – that is, if it is to contain a principle that can qualify as both a practical law *and* a moral imperative that actually binds each of us to action – then the laws of duty that it grounds must be knowable (to us) as hypothetical imperatives of prudence.

Whatever one may think of this position, one can well understand how Cumberland's natural-law theory would present a prime critical target for Hutcheson's sentimentalist foundational deontology.⁵³ In particular, we can see how Cumberland's

⁵² See, e.g., *DLN*: IV.i–ii.

⁵³ On the notion of foundational deontology and its application to Hutcheson, see Edwards, 'Hutcheson's Sentimentalist Deontology?'

account of the law of nature and its obligation falls prey to the blanket charge that Hutcheson levels against doctrines of obligation of Grotian provenience – that is, to the charge that these doctrines must miss the point of a theory of *moral* obligation because they cannot cleanly sever the connection between practical law and maxims of self-love. How, and whether, this critical charge applies to Pufendorf (or to other modern natural lawyers)⁵⁴ is another question, of course. But we can now clearly discern just what Hutcheson has in mind when making his case against modern natural-law doctrines.

IV

Let us consider somewhat more closely the thrust of the general question formulated at the end of this paper's second section. Why should every 'law-based' theory of obligation prove incapable of coming to grips with the deontic role of benevolent desire if our capacity for other-directed benevolence (and hence our motivation to promote the good of others as well as our own-good) is taken to be a determination of human sensible nature that furnishes an originally prescriptive attribute of human moral sensibility? When asking above a similarly formulated question, I emphasized that the historical terrain addressed by the query is too broad to explore in this paper. Nevertheless, it is quite feasible here to inquire whether Kant's conception of rational self-legislation, which includes the notion that morality is the consequence of autonomy of the will,⁵⁵ points to a way of responding to the line of argument against law-based theories of obligation by which Hutcheson supports his view of the connection between

⁵⁴ Hutcheson probably thought that applicability of his charge to Hobbes' theory of obligation was too obvious to merit special notice.

⁵⁵ See *GMS* 4:439, 453.

benevolence and obligation. Before taking up this point, however, let us focus again on the central tenets of the criticism of sentimentalist ethics that we encounter in Kant's ethical theory of the 1780s and 1790s.

As I pointed out above⁵⁶, Kant eventually comes to hold against Hutcheson that no material practical principle can furnish a practical law by which a duty (*qua* matter of obligation) can be specified. I also indicated in this connection that Kantian practical laws must be understood as formal principles of obligation, that is, as principles that provide purely formal grounds of obligation. Finally, I stated that, on this interpretation of the laws of practical reason, there is no ground of obligation which can be construed as a material ground. Kant brings to bear these assumptions at various junctures in his treatments of the foundations of his moral doctrine, perhaps most concerted in the treatment of empirical practical reason that he gives in the first chapter of the *Kritik der praktischen Vernunft*.⁵⁷ We can regard them as the basic tenets of Kant's criticism of Hutcheson's sentimentalist approach if we keep in mind Kant's early (*Untersuchungen über die Deutlichkeit*) conception of the role of material practical principles and its connection with Hutcheson's name.⁵⁸

It is in view of the tenets just treated that we can sketch out a Kantian response to Hutcheson's argument against law-based theories of obligation along the following lines. In Kantian terms, the only philosophically viable theory of obligation is a law-

⁵⁶ See above pp. 160–162.

⁵⁷ See above all *KpV* 5:19–27.

⁵⁸ We can also regard them as basic tenets of Kant's criticism of other historically given forms of heteronomous ethics to the extent that heteronomous ethical theories acknowledge that material determining grounds of the will (*materiale Bestimmungsgründe des Willens*) can qualify as material grounds of obligation. On this, see *KpV* 5:39–41.

based account, and a conceptually consistent law-based account shows the non-viability of a theory of obligation that takes the deontic role of sense-based benevolent desire as its point of departure. For as soon as the concept of a law of practical reason is adequately clarified, it becomes evident that benevolent desire simply has no deontic role to play if it is understood as a determination of human sensible nature. That is because no sensible condition for action, including even other-directed benevolent desire, can furnish a ground of obligation that can be determined by means of a material practical principle. That is to say, there is no determination of human sensible nature that can be understood as an originally prescriptive attribute of any finite rational subject. There is no possible subjective attribute answering to this description since moral prescription is exclusively the function of a rational agent's capacity for universal lawgiving, and this procedure of universal prescription is the only way to establish laws that supply the formal grounds of moral obligation. We must therefore think of such laws as deliverances of practical reason alone, and we must think of practical reason as the self-prescriptive and universally lawgiving faculty that is available to all human agents by virtue of their rational nature.

In Kantian terms, then, Hutcheson had matters arranged in the reverse of their proper order because of his (intrinsically unintelligible) interpretation of benevolence as an originally prescriptive feature of the affective constitution of human beings. But we can well understand (again, in Kantian terms) how Hutcheson was led to his mistaken view of obligation if we bear in mind his concern with corresponding modern natural-law views. Hutcheson was crucially concerned to sever the link that Grotian natural lawyers had sought to forge between prescriptive natural law and obligation, on the one hand, and own-happiness as the object of human self-love, on the other. Yet when endeavoring to separate the problem of moral obligation from the question of own-

happiness, he failed to recognize that there is no necessary linkage between the concept of practical law and egoistic motivational conditions – or indeed between that concept and any other type of sensible conditions for action. Consequently, Hutcheson neglected to entertain the thought that the grounds of moral obligation can be determined only by way of the investigation of our nature–given capacity for rational self–legislation.⁵⁹

So much for a Kantian response to Hutcheson’s approach to the problem of moral obligation. Should that be the end of the story for those who endorse (or are at least sympathetic to) autonomous ethics as an alternative to sentimentalist moral thinking as well as to modern natural–law theory? Not quite yet. In concluding, let us focus on a question that arises when Kant’s critical conception of practical law is held up against its developmental background. The question turns out to be a rather obvious one to ask even if it is unusual to ask it. Precisely why should we have to suppose that no material practical principle can furnish a practical law in Kant’s sense of the term?

If we think through the import of Kant’s early reflections on Hutcheson and relate it to his mature views on practical law and autonomy, two things seem unavoidably to follow. First, it becomes apparent that there *can* be material practical principles which furnish practical laws, i.e., practical propositions whose prescriptive force derives from purely rational conditions of agency. Second, it becomes clear that any law *furnished* by a material practical principle must count as a ground of moral

⁵⁹ This charge of neglect, of course, is anachronistic, if not downright unfair to Hutcheson, if it is leveled from the standpoint that morality must be understood as the relation of actions to the autonomy of the will and as the autonomy of practical reasons (see, e.g., GMS 4:439; *MdS* 6:383). For a comprehensive account of the tortuous roads leading toward this view of morality, see Schneewind, *The Invention of Autonomy*.

obligation even if the motivational efficacy of that law—furnishing material principle derives from a non—rational condition for action.

Consider, for instance, a principle of universal benevolence that enjoins us to promote the happiness of human beings. In keeping with a Hutcheson—type description of moral sensibility, let us assume that this principle is ‘founded’ on benevolence as a non—rational determination of the human soul or mind. In other words, let us suppose that our inclination to adopt it stems from a sensible condition (or from sensible conditions) of human agency. Now given Kant’s definitional accounts of practical propositions, this principle of benevolence will count as a material practical principle since we must understand it as a principle that we can come to adopt on the basis of some sensible condition that is also a motivational condition for action. Thus, insofar as we do come to act both in conformity with and in awareness of this principle, the ground (or grounds) that we have for adopting it will non—formal, i.e., material. So the obvious question to ask, again, is why a principle of the type just described should not be fit to furnish a practical law that accords with Kant’s conception of the universality requirements of morally practical reason. After all, it will necessarily satisfy these formal requirements just because it is a principle of *universal* benevolence.⁶⁰ And there is no readily apparent reason why such principle should not *qualify* for the universal lawgiving by which laws of practical reason are established as morally binding for all finite rational agents. This, it seems, must be true even if there are lawgiving agents who simply lack the affective capacity for other—directed benevolent desire.

Let us very briefly examine the problem presented by the Hutchesonian notion of a material principle of universal benevolence from a slightly different angle, this time

⁶⁰ Kant himself of course insists on the validity of such a principle as a practical law. See, e.g., *MdS* 6:450–452.

from the first-person perspective. If I hold myself subject to the universality demands of morally practical reason, I ought to be able know that I am always obligated to promote the good of others as best I can.⁶¹ This would still be the case in the event that my sensuous nature were so perverse as to incline me to desire the abject misery of all rational and sentient beings. Perhaps it is merely a matter of luck that I am in fact not so inclined. But that gives me no obvious reason to think that I could not know myself to be morally bound to promote the good of others as long as I have the capacity to apprehend the prescriptive meaning of *any* principle of other-directed benevolence. It may well happen that such a principle is not, for me, a material principle in the sense that I have no capacity for benevolent desire that would yield a material ground (that is, would provide a sensible condition) for my adopting it as a principle of my actions. Even so, it should still be fit to *furnish* a law that can govern the actions of every human being. For by reason of its qualification for *universal* lawgiving, that principle does offer a ground by which the will of each finite rational agent can be, and ought to be, determined. In other words, it is a material principle that supplies a binding formal ground for action on the part of every agent who has the capacity to understand its universally prescriptive import.⁶²

Thus, even when one endorses the Kantian interpretation of practical law and autonomous ethics, one is still confronted by a Hutchesonian residue, as it were, of

⁶¹ See, e.g., *GMS* 4:430; *KpV* 5:34; *MdS* 6:387–388, 450–454.

⁶² On the relations between Kant's various concepts of material and formal grounds, see Edwards, 'Self-Love, Anthropology, and Universal Benevolence in Kant's Metaphysics of Morals', *The Review of Metaphysics*, 53 (2000): 902–910, and Edwards, 'Universal Lawgiving and Material Determining Grounds in Kant's Moral Doctrine of Ends', in Marion Heinz and Udo Rameil (eds), *Metaphysik und Kritik* (Berlin, 2004), pp. 221–235.

Kant's original (*Untersuchungen über die Deutlichkeit*) view of material practical principles. We may well accept that there are no material grounds of obligation. That is to say, we may take the position that (a) all grounds of obligation are provided by practical laws, (b) these laws give us strictly formal grounds for action, and (c) only such law-given formal grounds bind us to the performance of certain types of action. But this does not entail that *no* material practical principle can furnish a practical law that sets forth a duty as the matter of obligation. Even if the grounds of obligation are the same as the 'merely formal laws of the will',⁶³ there can still be at least one material practical principle by which the matter of obligation is determined insofar as that material principle in fact furnishes a formal law of the will.⁶⁴

I strongly suspect that the last two centuries in the history of ethics would be quite significantly different from what they have been if Kant had properly addressed this implication of his account of moral obligation. Kant was certainly right to reject the connection that Hutcheson had discerned between prescriptive law and maxims of self-love on the basis of his interpretation of modern natural-law theories of obligation. Yet rejecting that reductive connection by no means provides sufficient reason to claim that *all* material practical principles must be interpreted as principles of own-happiness⁶⁵.

⁶³ *KpV* 5:22.

⁶⁴ Namely, the principle of universal benevolence, which Hutcheson interprets in terms of the requirement to promote 'the greatest Happiness of the greatest Numbers' (*IBV*: 125), and which Kant interprets in terms of the requirement to promote happiness through practical love of humanity (see *MdS* 6:451).

⁶⁵ The second theorem in Kant's *Analytic of Pure Practical Reason* states: 'All material practical principles are, as such, of one and the same kind and fall under the general principle of self-love or one's own happiness' (*KpV* 5:22). For detailed discussion, see Edwards, 'Self-Love, Anthropology, and Universal Benevolence in Kant's *Metaphysics of Morals*': 900–914.

Bibliography

Cumberland, Richard, *De legibus naturae disquisitio philosophica*, (London: 1672).

Edwards, Jeffrey, 'Egoism and Formalism in the Development of Kant's Moral Philosophy', *Kant-Studien*, 91 (2000): 411–432.

——, 'Self-Love, Anthropology, and Universal Benevolence in Kant's Metaphysics of Morals', *The Review of Metaphysics*, 53 (2000): 887–914.

——, 'Universal Lawgiving and Material Determining Grounds in Kant's Moral Doctrine of Ends', in Marion Heinz and Udo Rameil (eds), *Metaphysik und Kritik* (Berlin: Walter de Gruyter, 2004), pp. 55–75.

——, 'Hutcheson's Sentimentalist Deontology?', *The Journal of Scottish Philosophy*, 3 (2006): forthcoming.

Haakonssen, Knud, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (Cambridge: Cambridge University Press, 1996).

Hutcheson, Francis, *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, ed. Wolfgang Leidhold (Indianapolis, IN: Liberty Fund, 1725, 2004).

——, *An Essay on the Nature and Conduct of the Passions and Affections, with Illustrations on the Moral Sense*, ed. Aaron Garrett (Indianapolis, IN: Liberty Fund, 1728, 2002).

——, *A System of Moral Philosophy* (2 vols, Bristol: Thoemmes Press, 1755, 2000), vol. 1.

Kant, Immanuel, *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (Berlin, 1902–).

——, *Untersuchungen über die Deutlichkeit der Grundsätze der natürlichen Theologie und der Moral*, in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902), vol. II (Berlin, 1905), pp. 273–301.

Pufendorf, Samuel, *De officio hominis et civis juxta legem naturalem libri duo*, in Samuel Pufendorf, *Gesammelte Werke*, ed. Gerald Hartung (Berlin: Akademie Verlag, 1672, 1997), vol. 2.

Schneewind, Jerome B., *The Invention of Autonomy: A History of Modern Moral Philosophy* (Cambridge: Cambridge University Press: 1998).

——, ‘Kant and Natural Law Ethics’, in Knud Haakonssen (ed.), *Grotius, Pufendorf and Modern Natural Law* (Aldershot, Hants., Brookfield, Vt.: Ashgate, Dartmouth, 1999), pp. 469–490.

CHAPTER 6

Spontaneity and the Law of Nature. Leibniz and Pre-critical Kant

María Jesús Soto-Bruna

Introduction: the physical–metaphysical framework of the idea of natural law

During the 17th century and for most of the 18th century, philosophical reflection on the idea of natural law was rooted in speculation about the possibility that physical phenomena had a metaphysical basis. Although the concepts ‘law of nature’ and ‘natural law’ were often confused in the context of this inquiry, with the latter sometimes regarded as a synonym of ‘physical law’, the work of Leibniz provides a paradigmatic example of the attempt to distinguish and reconcile the two forms of knowledge to which these concepts belong¹. In fact, as we shall see, Leibniz tries to draw two ideas of nature into closer relation with one another: the ‘ideal nature’ found in eternal ideas, and an idea of nature derived from the creative will of God to which the term ‘natural laws’ is applied². With regard to Kant’s thinking in the pre-critical period, the partial appropriation and re-framing of some of the key elements of Leibniz’s thought provide the critical basis of the natural law.

¹ See R. S. Woolhouse, *Descartes, Spinoza, Leibniz. The concept of substance in seventeenth-century metaphysics* (London and New York, 2002).

² See Gottfried Wilhelm Leibniz, *Discours de Métaphysique*, 7, in Gottfried Wilhelm Leibniz, *Die philosophischen Schriften*, ed. C. I. Gerhardt (7 vols, Hildesheim, 1965), vol. IV, p. 432. (Hereafter *GP* 4:432).

The early work of both Leibniz and Kant centred on the philosophy of nature in order to address questions that are, properly speaking, metaphysical³. The first attempt to solve many of the problems faced by modern physics is to be found – first in the work of Leibniz, and then in pre-critical Kant – in the metaphysical concept of the ‘monad’, which is itself bound up with the problematic relationship between force and matter, and gives rise to the conception of the soul as simple substance. In this article, the implications of this concept for a new understanding of the idea of ‘law of nature’ are analysed, a new understanding that allowed Leibniz to overcome the Cartesian dualism of matter and spirit, and allowed for the development of conceptions of substantial and personal identity that a mechanistic view of nature could not envision.

The original inspiration of the thinking of Leibniz and Wolff gives rise to the new account of metaphysics found in Kant’s early work. Until the end of his pre-critical period, Kant endeavours to provide a rational explanation for physical phenomena, a project which is continued in creationist thinking⁴. Beyond, or as well as, the grounding of the philosophy of nature and the search for a rational basis to natural phenomena, it should also be noted that what comes into play in the long debate between Cartesian thought, occasionalism, Spinozan thinking, Newtonian physics and the work of Leibniz,

³ ‘Die Philosophie des 17. Jahrhunderts entwickelt sich sprunghaft in Wechselwirkung mit den übrigen Wissenschaften’: Anna Simonovits, *Dialektisches Denken in der Philosophie von Gottfried Wilhelm Leibniz* (Berlin, 1968), p. 18; see Heinz Heimsoeth, *Atom, Seele, Monade* (2 vols, Bonn, 1979), vol. II, p. 178.

⁴ This point is made in Erich Adickes’s now classic and indispensable study: *Kant als Naturforscher* (2 vols, Berlin, 1924), vol. I, p. 145.

Wolff and their followers, is the possibility of reconciling the dynamics of the universe with a transcendental end⁵.

For Leibniz, then, not only would the true nature of things have been discovered, but a strictly philosophical account of the permanence in substance of the individual being through its actions might also be offered. This latter would establish both the ontological reality of finite things and, as a consequence, of individual identity and subsistence whose metaphysical basis would be based on the existence of an ‘ideal nature’, the essence of the substance in the mind of God. Leibniz’s re-introduction of this law or substantial form (active force) marked a definitive step towards an ontological explanation of nature which – as Josef Seifert has written – though it may refer to an eternal plan is in no way dependent on or explained by the Cartesian *Veracitas Dei*⁶. However, the new intelligibility of nature, as defined in the terms above, does depend on the discovery of a principle intrinsic to the essence of substances, which in turn defers to its own origin, that is, the idea of that intelligibility in the mind of the Creator of the universe.

Until the writing of *Physical Monadology* between 1755 and 1756, Kant’s participation in the debate concerning active forces involved his acceptance of Leibnizian and Leibniz–Wolffian theodicy; in particular, the notion of a pre-established

⁵ See the recent study: Gianfranco Mormini, *Determinismo e utilitarismo nella teodicea di Leibniz* (Milano, 2005).

⁶ Josef Seifert, ‘Wissen und Wahrheit in Naturwissenschaft und Glauben’ in Hans–Christian Reichel and Enrique Prat de la Riba (eds), *Naturwissenschaft und Weltbild. Mathematik und Quantenphysik in unseren Denk- und Wertsystem* (Wien, 1992), p. 201.

harmony and the consequent rational ordering and structure of nature⁷. According to Kaulbach, the first questions addressed by Kant concern the philosophy of nature; but Kant addressed the questions of the relationships between God, nature and reason on the basis of a metaphysical framework⁸. ‘In this context,’ Kaulbach argues, ‘the Leibnizian notion of force had enormous significance for Kant’⁹.

Kant’s rejection of the idea of harmony in his 1756 work, and his re–definition of the Leibnizian idea of force, led to a gradual rejection of any appeal to infinite wisdom as the basis for the relationship between science and metaphysics in the field of cosmological inquiry. From then on, ways of thinking that brought about ‘an increased confidence in the possibility of responding to many questions without the need to appeal to an infinite goodness and wisdom’¹⁰ would have to be found.

⁷ See the comments in Immanuel Kant, *Pensamientos sobre la verdadera estimación de las fuerzas vivas*, Translation and Commentary by Juan Arana (Bern, Frankfurt a. M., New York and Paris, 1988), pp. 345–347.

⁸ See Ángel Luis González, ‘Kant: la prueba de Dios por la posibilidad’, *Tópicos*, 27 (2005): 25–49, where the rational idea of God in *Beweisgrund* is analysed.

⁹ Friedrich Kaulbach, *Immanuel Kant* (Berlin and New York, 1982), pp. 18–19. [Unless otherwise stated, all translations of secondary literature to English are mine].

¹⁰ Comment from Juan Arana in Immanuel Kant, *Pensamientos sobre la verdadera estimación de las fuerzas vivas*, Translation and Commentary by Juan Arana (Bern, Frankfurt a. M., New York and Paris, 1988), p. 346. By the same author: *Ciencia y metafísica en el Kant precrítico (1746–1764)* (Sevilla, 1982), pp. 102–103: ‘The starting point of any evaluation of *Physical Monadology* ought to be an acknowledgement that this work provides the first glimpse of the rigorous and systematic Kant so evident in the later *Critiques*. (...) The *Monadology* marks the high point of dogmatic rationalism in the overall evolution of Kant’s thought. The significance given to experience will increase from then on; the search for a more fruitful source of *a priori* knowledge is undertaken, while the role of analytic reason is diminished because it has come to be seen as sterile’.

Individuality and substantial identity

Having been wholly involved in the scientific debates of his time, Leibniz provided a dynamic conception of the individual substance whose significance goes beyond mere criticism of the mechanism of the Cartesian *res extensa* and the dualism it inspired. Rather, his reflection on the substance's innate 'power to act', defined as a *vis o lex insita*, bridges the gap between physics and metaphysics and, ultimately, provides an explanation for the independence of individual action¹¹.

In the evolution of Leibnizian thought, the definition of independence of action based on a law intrinsic to existing things marks a shift from the logical–ontological definition of substance given in the *Discourse on Metaphysics* (written in 1686), which was rooted in the relationship between subject and predicates, to the definition of the substance as a monad. In 1714, the monad is a simple, active being – 'windowless' – related to all other beings in the universe through the harmony previously established by the Creator, the origin of all things – a harmony which reconciles the individual actions that arise in monads in a spontaneous, though orderly, way, and take the form of

¹¹ This point is an example of the originality of Leibniz's philosophy on the threshold of modernity; Juan Arana writes: 'He believes that the search for fundamental physical concepts of an absolute nature is an indispensable requirement for linking the world of phenomena with the metaphysical dimension of reality' in Immanuel Kant, *Pensamientos sobre la verdadera estimación de las fuerzas vivas*, Translation and Commentary by Juan Arana (Bern, Frankfurt a. M., New York and Paris, 1988), p. 259; see Martial Gueroult, *Leibniz, Dynamique et Métaphysique* (Paris, 1967) and 'Substance and the primitive simple notion in the philosophy of Leibniz', *Philosophy and Phenomenological Research*, 7 (1946): 293–315.

perceptions (the representation of multiplicity in unity), appetites (an appetite is the orientation of one perception towards another) and apperceptions¹².

The metaphysical principles contained in *Monadology* also reflect the ethical beliefs of its author, as expressions such as, ‘each man makes his own luck’¹³ or is the ‘maker’ of his own destiny, clearly show – *faber fortunae aut fati*, as it is written in a draft preface to the translation of the commentary on the 39 Articles of the Church of England by Gilbert Burnet, Bishop of Salisbury¹⁴. These ideas are grounded in theoretical terms by Leibniz’s well-known thesis concerning the nature of the individual substance as a complete being which acts in accordance with the intrinsic law written in its ideal nature in the mind of God¹⁵, the ideal nature that guarantees the permanence and substantiality of the individual, and which is the basis for moral action in rational substances.

In the sense outlined above, ‘nature’ is not, for Leibniz, a particular thing determined in an external and causal way. Rather, his conception of nature is a

¹² See Gottfried Wilhelm Leibniz, *Letter to Remond*, 1714, *GP* 3:607; see Anne Becco, *Du simple selon Leibniz. Discours de métaphysique et monadologie* (Paris: Vrin, 1975).

¹³ Gottfried Wilhelm Leibniz, *Gottfried Wilhelm Leibniz. Textes inédits, d’après les manuscrits de la Bibliothèque provinciales de Hanovre*, ed. Gaston Grua (Paris: Presses Universitaires de France, 1948), p. 481. (Hereafter: *Grua*, p. 481).

¹⁴ Leibniz, *Preface à G. Burnet*, December 1705, *Grua*, p. 459; see Martine de Gaudemar, ‘De la substance individuelle à la monade: vers l’immanence du destin individuel’ in: Dominique Berlioz and Frederic Nef (eds), *L’actualité de Leibniz: les deux labyrinthes* (Stuttgart, 1999), pp. 182–183.

¹⁵ Leibniz, *Essais de Théodicée*, 20, *GP* 6:60: ‘La réponse est qu’elle doit être cherchée dans la nature idéale de la créature, autant que cette nature est renfermée dans les vérités éternelles qui sont dans l’entendement de Dieu indépendamment de sa volonté’; see James Manns, ‘The Nature of a Nature in Leibniz’, *Studia Leibnitiana*, XIX (1987): 173–199.

theological one, in which the divine act of creation is essential to nature and establishes a law – natural law – which cannot be regarded as an ‘extrinsic designation’ of the creative act of God. What is written into the essence of created things by divine action is an eternal law, the *lex insita*¹⁶; and it is equivalent to the classical conception of ‘natural law’ provided by Suárez and in Spanish scholastic thought¹⁷.

The eternal origin of this law guarantees both the general identity of substances and, in a particular way, the personal identity of the ‘I’¹⁸. M de Gaudemar argues that Leibniz was able to come to these conclusions because of the study of the new science of dynamics in which he engaged between 1689 and 1690, and which led him to re–frame his philosophy and to re–define the notion of substance¹⁹. It is certainly true that Leibniz’s new definition of an active force in nature, its equivalence to the idea of form or entelechy in Aristotle and its significance as an analogy of the soul, brought about a

¹⁶ ‘Quaero enim, utrum volitio illa vel jussio, aut si mavis lex divina olim lata extrinsecam tantum tribuerit rebus denominationem, an vero aliquam contulerit impressionem creatam in ipsis perdurantem, vel (...) legem insitam (...) ex qua actiones passionesque consequantur. Prius autorum systematis causarum occasionalium (...) dogma videtur, posteris receptum est, et ego arbitror, verissimum’, *GP* 4:507.

¹⁷ See Sven K. Knebel, ‘Über die Quelle von Leibnizens Ablehnung des ‘Naturgesetzes’ als extrinsischer denomination vom Handeln Gottes’, in Andreas Hüttemann (ed.), *Kausalität und Naturgesetz in der Frühen Neuzeit* (Stuttgart, 2001), pp. 154–168.

¹⁸ See Samuel Scheffler, ‘Leibniz on Personal Identity and Moral Personality’, *Studia leibnitiana*, VIII (1976): 219–240.

¹⁹ See Gaudemar, ‘De la substance individuelle à la monade: vers l’immanence du destin individuel’, p. 183. Paul Weingarter has shown very clearly how many of the philosophical problems addressed by Leibniz are rooted in questions raised by the science of mathematical physics: Paul Weingarter, ‘Philosophische Probleme und ihre Verwurzelung in der Mathematik’, in Reichel and Prat de la Riba (eds), *Naturwissenschaft und Weltbild*, pp. 147–176.

re-discovery of the power and activity of substances. At the same time, it restored the unity of individual beings, and opened a new perspective on debates then current about the essence of bodily substances and the possible relationship between body and soul in the human being²⁰. In fact, the new unit of substance – the monad – must be regarded as analogous to the form or the soul if its activity, unity and permanence through change are to be understood. Paragraphs 3 and 10 of *A New System of Nature and Communication of Substances* are significant in this regard: ‘Hence, it was necessary to restore, and, as it were, to rehabilitate the *substantial forms* which are in such disrepute today, but in a way that would render them intelligible, and separate the use one should make of them from the abuse that has been made of them. I found then that their nature consists in force, and that from this there follows something analogous to sensation and appetite, so that we must conceive of them on the model of the notion we have of *souls*. (...) In addition, by means of the soul or form there is a true unity corresponding to what is called *the self* [*moy*] in us’²¹.

In Leibnizian thought, the idea of force leads to an idea of law, the *lex insita ex qua actiones passionesque consequantur*²². It is this law which gives finite things their ontological reality; as Leibniz notes in a fragment from his refutation of Spinoza, a point which he repeats in *Theodicy*²³: this law orders the perceptions and changes in

²⁰ In my book, *Individuo y unidad. La sustancia individual según Leibniz* (Pamplona, 1988), the key moments of the evolution of Leibniz’s thinking on this point are described in detail.

²¹ Leibniz, *Système Nouveau*, GP 4:478–479, 482 [The translation has been taken from G. W. Leibniz, *Philosophical Essays*, edited and translated by Roger Ariew and Daniel Garcer (Indianapolis and Cambridge, 1989)]. See Marc Elliott Bobro, *Self and Substance in Leibniz* (Dordrecht, 2004).

²² Leibniz, *De ipsa natura*, 5, GP 4:507. Leibniz also speaks of a ‘*natura seu vis primitiva ex qua sequitur series operationum ejus internarum*’.

²³ See Leibniz, GP V, :484, 518, 542.

monads and allows monads to be distinguished from one another. The attribution of this law to the Absolute Intellect, in line with Leibnizian essentialism, gives rise to considerable debate about the precise status of natural laws. As Juan Arana notes: ‘The necessity or contingency of natural laws was the subject of great debate among almost all 17th and 18th centuries philosophers because the issue raised important questions about the relationship between God and nature, together with the limits and self-sufficiency of rationality’²⁴. In my view, Leibniz’s conception of rationality in no way leads to a Spinozan understanding that would require a defence of the necessity of laws of nature. Rather, the intelligibility of nature, and its origin in the Absolute Intellect, allows Leibniz to argue that the principle by which an individual substance acts is the same principle that gives the individual its identity: it is a *vis activa substantialis*²⁵ and, by definition, the constitutive principle of the substance²⁶: *eodem esse actionis et unitatis fontes*²⁷.

The fundamental purpose of the work carried out by Leibniz during the 17th century was to highlight the inconsistencies in the work of philosophers such as Boyle, Malebranche and Sturm, concerning the hypothetical existence of inert, passive matter; and to replace that flawed thinking with the idea of the permanent establishment of laws of nature. The key points in this theory may be stated as follows: (1) There is a vestige of God in all created things; (2) all created things were made with the ‘capacity’ to

²⁴ Comment in Immanuel Kant, *Pensamientos sobre la verdadera estimación de las fuerzas vivas*, Translation and Commentary by Juan Arana (Bern, Frankfurt a. M., New York and Paris, 1988), p. 344.

²⁵ Leibniz, *GP* 4:395.

²⁶ Leibniz, *Système Nouveau*, *GP* 4:472: ‘C’est pourquoi je la considere comme le constitutif de la substance, estant le principe d’action, qui en est le caractere’.

²⁷ Leibniz, *Letter to de Volder*, 20 June 1703, *GP* 2:249.

‘obey’ divine commandments; (3) this capacity is a ‘form of force’ and (4) is to be regarded as synonymous with ‘nature’ in the classical definition and understanding of that term²⁸. In this context, primitive active force, which derives from the world of immaterial substances, links the physical and metaphysical. In contrast to movement, for example, force – in Leibniz’s thought – is more than a phenomenon available to experience; it is the law established by God.

The understanding of the laws of nature is not an inevitable corollary of this theory because the world that actually exists is only one of an infinite number of divine possibilities²⁹. For Leibniz, nature and its laws are marked by contingency. True contingency arises not only from the creative will of the Absolute, but also from the intellectual consideration of what is best, which cannot be wholly determined by a mathematical formula to measure the ‘quantity of reality’ in essences or possible beings³⁰. The correspondence between Leibniz and Bourguet is significant in this regard: ‘Contingent truths do not derive only from the will of God, but from the

²⁸ See Catherine Wilson, ‘De Ipsa Natura. Sources of Leibniz’s Doctrines of Force, Activity and Natural law’, *Studia leibnitiana*, XIX (1987): p. 166.

²⁹ I have expanded on this idea in: ‘La contingencia como composibilidad en G. W. Leibniz’, *Anuario Filosófico*, XXXVIII (2005): 145–162. In the same volume, José María Torralba provides a description of the development of the relationship between freedom and necessity in Leibniz’s thought: ‘La libertad posible. Acerca de la noción leibniziana de ‘inclinación sin necesidad’’, *Anuario Filosófico*, XXXVIII (2005): 279–291; the article by José Juan Escandell, ‘Espontaneidad de la mónada y metafísica de lo posible en Leibniz’, *Anuario Filosófico*, XXXVIII (2005): 241–254, offers a valuable explanation of the spontaneity of the monad.

³⁰ Eberhard Knobloch’s article is of particular interest in this regard: ‘La détermination mathématique du meilleur’, in Albert Heinekamp and André Robinet (eds), *Leibniz: Le meilleur des mondes* (Stuttgart, 1992), pp. 47–64.

consideration of what is best or for the best, which arises from the intellect'³¹. The consideration of what is best, therefore, defines the reason for the existence of the created world, where what is possible, and compossible for the greatest number of things, is what is best. The principle of compossibility governs the existing world and may be regarded as equivalent to the principle of what is best. The latter principle is valid only for the world as it exists and reflects its contingency. In this context, Leibniz goes on to argue that what is possible but not compossible is impossible – that is, when it is considered in relation to the existing world: ‘And it is very true that what is not, never has been, and never will be is not possible, if we take the *possible* in the sense of the *compossible*, as I have just said’³².

There is an ontological basis, therefore, for thinking that what is merely possible cannot be real, and that is its incompatibility with the *series rerum* that actually exists: what does not concur with the *harmonia rerum* is rejected by God in his choice of what is best, and thus remains merely possible forever. H. Schepers has suggested that the term ‘hypothetical impossibility’ be used to refer to what is merely possible, since it

³¹ Leibniz, *Letter to Bourguet*, GP 3:550 [My translation]. 3:558: ‘Quand je dis, qu’il y a une infinité de Mondes possibles, j’entends, qui n’impliquent point de contradiction, comme on peut faire des Romans qui n’existent jamais et qui sont pourtant possibles. Pour être possibles, il suffit de l’intelligibilité; mais pour l’existence, il faut une prévalence d’intelligibilité ou d’ordre; car il y a ordre à mesure qu’il y a beaucoup à remarquer dans une multitude’. Leibniz, *Letter to Bourguet*, GP 3:558.

³² Leibniz, *Letter to Bourguet*, GP 3:572. [The translation has been taken from Gottfried Wilhelm Leibniz, *Philosophical Papers and Letters*, trans. and ed. Leroy E. Loemker (Dordrecht and Boston, 1976).

remains possible forever although it never becomes real³³. Moreover, it would appear that God in his wisdom has created a world in which evil is permitted to exist precisely in order to allow for the possibility of individual freedom.

Rationality and the law of individual action

The claim of rationality in Leibniz's system forms part of an essentialist framework that aims simultaneously to respond to a need for intelligibility, to the desire to attribute a reason for existence to all things³⁴. From an essentialist perspective, what exists are singular individuals, whose coming into being is in no way gratuitous; rather, each derives from the dynamic process of the self-constitution of beings in the divine mind. It may be said that rather than seeking to discover what exists, an essentialist approach endeavours to explain what exists, the make-up of existing things. The essentialist line of reasoning may be outlined as follows: if something exists, it contains a principle that determines what it is and distinguishes it from other things – that is, the intrinsic principle of the intelligibility of the essence³⁵.

There is no doubt that Leibniz received the key principles of his essentialism from Suárez³⁶, but he places a particular emphasis on the intrinsic, dynamic process by which the essence comes into existence. This coming into existence of a being is caused by a

³³ See Heinrich Schepers, 'Zum Problem der Kontingenz bei Leibniz. Die beste der möglichen Welten', in *Collegium Philosophicum. Studien. Joachim Ritter zum 60. Geburtstag* (Basel and Stuttgart, 1965), pp. 334–335.

³⁴ See Günther Pöltner, 'Zur gegenwärtigen Problematik der wissenschaftlichen Rationalität', in Reichel and Prat de la Riba (eds), *Naturwissenschaft und Weltbild*, pp. 188–222.

³⁵ See Leibniz, *Système Nouveau*, GP 4:484.

³⁶ The idea has been expressed in these terms by Adelino Cardoso in 'Essentialisme et spontanéité des creatures', in Berlioz and Nef (eds), *L'actualité de Leibniz*, pp. 33–42.

creative act, but the movement by which possible becomes real might also be explained by the dynamics of ideal self–constitution of the being as a real being.

It is worth recalling at this point that Leibniz referred specifically to the concept of active force in his attempt, as he put it, to understand the ‘true nature of things’. The idea of force gave rise to a view of nature as dynamic, and laid the foundations for a truly metaphysical account of the universe. Leibniz argued that there is a power or form or force in all things, ‘what we usually call by the name ‘nature’, something from which the series of phenomena follow in accordance with the prescript of the first command. Now, this inherent force [*vis insita*] can indeed be understood distinctly³⁷. Thus, the nature of each substance consists in this active force – that is, the principle by which it changes according to its own laws³⁸.

This is the precise metaphysical concept of monadology. It implies the introduction of a form or force – an immaterial ‘element’ – in the substance, so that the substance can retain its identity through change, and preserve its original relationship of identity with itself, without which the word ‘responsibility’ could have no place in moral discourse. Leibniz says that the monad is ‘the source of action and the principle of life’³⁹. Therefore, the principle by which the substance retains its identity and acts spontaneously is the *vis activa substantialis*; it is not affected by external influences, for the force moves to action of itself, if nothing impedes it⁴⁰. For Leibniz, the autonomy of

³⁷ Leibniz, *De ipsa natura*, 6–7, *GP* 4:507. [[The translation has been taken from G. W. Leibniz, *Philosophical Essays*, edited and translated by Roger Ariew and Daniel Garcer (Indianapolis and Cambridge: Hackett, 1989)]

³⁸ See Leibniz, *Letter to Jacquelot*, 9 February 1704, *GP* 3:464.

³⁹ See Leibniz, *Système Nouveau*, *GP* 4:482; *GP* 2:118.

⁴⁰ See Leibniz, *Système Nouveau*, *GP* 4:472.

this principle makes free action possible: ‘The autonomy of the monad, free from all external influence, makes spontaneity possible. In other words: ‘the monad is windowless’. The actions of the monad must be explicable in exclusively intrinsic terms, in line with the principle of sufficient reason. If this were not the case, says Leibniz, it would not be possible to speak of authentically free acts⁴¹. The metaphysics of monads ensures the freedom of monads capable of apperception⁴².

The understanding of form or force as an immaterial principle led Leibniz to posit a law in the nature of the substance. As has already been noted above, in framing this definition as an analogy of the soul, all acts of the substance are regarded as perceptions and apperceptions – or, in more general terms, as expressions and representations⁴³. Thus, the rationality of the harmony of the universe gave rise to a universe composed of individuals whose actions are defined as the more or less clear or confused or distinct expressions or representations of one and the same universe.

That each monad is a delineated or individualised view of the world is an idea that must follow from an ordering law that determines the order of their representations: ‘It may be said that the soul is one of the most well designed spiritual automata. A distinction must be made in the argument that a simple being will always act in a uniform way: if *to act in a uniform way* means always to follow a law of order or of

⁴¹ Torralba, ‘La racionalidad práctica según Leibniz. Análisis del determinismo en la elección moral’, *Anuario Filosófico*, XXXVIII (2005): 279–291; see Michael–Thomas Liske, *Leibniz ‘Freiheitslehre. Die logisch–metaphysischen Voraussetzungen von Leibniz ‘Freiheitstheorie’* (Hamburg, 1993), pp. 199–218.

⁴² See Hans Poser, ‘Malum technologicum. Die Technodizee als Transformation der Theodizee’, in Berlioz and Nef (eds), *L’actualité de Leibniz*, pp. 194–205.

⁴³ The most important commentary in this regard is to be found in: *De ipsa natura*, 11, *GP* 4:510–511. For a more specific account of the term ‘expression’, see: Leibniz, *Letter to Arnauld*, September 1687, *GP* 2:112; *Letter to Coste*, 4 June 1706, *GP* 3:383.

continuity, as is the case with certain sequences or sets of numbers, then I think that, in itself, each simple being, or even a composed being, acts in a uniform way; however, if *to act in a uniform way* means to act in a similar way, then I disagree⁴⁴.

The internal law of the substance is always analogous to its active force, for in many cases it is the principle by which the actions of the monad may be explained⁴⁵. Moreover, as Leibniz argues, the nature of the substance consists of this law, which ensures permanence through change⁴⁶ and determines its individuality: ‘...the primitive entelechy or in a word, something analogous to the soul, whose nature consists in a certain perpetual law of the same series of changes through which it runs unhindered’⁴⁷; ‘the fact that a certain law persists which involves all of the future states of that which we conceive to be the same – this is the very fact, I say, which constitutes the enduring substance’⁴⁸. Finally, this law of order determines the individuality of each substance⁴⁹.

⁴⁴ Leibniz, *Letter to Bayle*, GP 4:522.

⁴⁵ See Leibniz, *De Prima Philosophiae emendatione seu de notione substantia*, GP 4:469.

⁴⁶ See Joachim Christian Horn, *Monade und Begriff. Der Weg von Leibniz zu Hegel* (Hamburg, 1982) and *Die Struktur des Grundes. Gesetz und Vermittlung des ontischen und logischen Selbst nach G. W. Leibniz* (Henn, 1970), p. 67: ‘Nach Leibniz’ Überzeugung unterliegt alles dem Prozes mit Ausnahme *des Gesetzes* dieses Prozesses. Das Gesetz selbst *beharrt* in unendlicher Repräsentation in *jeder* Monade’.

⁴⁷ Leibniz, *Letter to de Volder*, 24 March – 3 April 1699, GP 2:171. The translation has been taken from Gottfried Wilhelm Leibniz, *Philosophical Papers and Letters*, trans. and ed. Leroy E. Loemker (Dordrecht and Boston, 1976).

⁴⁸ Leibniz, *Letter to de Volder*, 21 January 1704, GP 2:263–264. The translation has been taken from Gottfried Wilhelm Leibniz, *Philosophical Papers and Letters*, trans. and ed. Leroy E. Loemker (Dordrecht and Boston, 1976).

⁴⁹ See Leibniz, *Eclaircissement des difficultés que Monsieur Bayle a trouvées dans le système nouveau de l’union de l’ame et du corps*, GP 4:518. Along with the link to Suárez, to which reference has already been made, Leibniz’s expression of this law has been read in relation to Scotus’s *haecceitas*; in line with

It is important to note that the teleological and transcendent basis of this law allows Leibniz to provide a metaphysical foundation for natural law.

To sum up, the idea of natural law is expressed in Leibniz' philosophy on two main levels. At the monadic level, that of individual substance, he appeals to God the Creator; this law is promulgated by specifying the individual concept and fulfilled in the harmony of the world of substances. Secondly, in the world of physical things, the natural law is revealed through subordinate laws or rules that may be understood by human beings because of their rationality.

From the account given above it follows that an alleged Leibnizian view of nature as a 'mirror image' has no foundation⁵⁰. Such a view would require that the individual natural law be explained in terms of necessary essences contained in the mind of God and, in logical terms, by reference to necessary propositions. That interpretation is precluded by the final version of the system outlined in *Monadology* where it is clearly established that nothing external to the monad produces action, and that all action derives from a principle internal to the monad.

This internal principle is unique and proper to each substance; moreover, it is what makes personal identity possible. In the case of rational substances, this metaphysical identity allows us to speak of personhood (and responsibility) in the moral

both sources, Leibniz's understanding of individuation refers to the being as a whole, a position which he held from 1663, the beginning of his research project. Both Jan A. Cover and John O'Leary-Hawthorne, *Substance and Individuation in Leibniz* (Cambridge, 1999) and *Nouveaux essais sur l'entendement humain*, Lib. II, Cap. XVII, 3, *GP* 5:214 are of particular significance in this regard.

⁵⁰ See James Manns, 'The Nature of a Nature in Leibniz', *Studia Leibnitiana*, XIX (1987): 173–175.

sphere⁵¹. The different meanings attributed to the term ‘nature’ in Leibniz’s work, which have been detailed in this article, allow this ethical derivation to be understood. The concept of ideal nature comes from a theological–metaphysical framework; on the basis of ideal nature, individual nature is said to be contained in eternal ideas and governed by the dispensation of a universal ‘logos’. On the other hand, we must not forget that, for Leibniz, God is the creator of nature, not the creator of possible beings or eternal essences. Natural law, therefore, refers to the world of existing things, and thus is subject to metaphysical as well as scientific study. Finally, the relationship between natural law and individual action prompts questions concerning the permanence in time and the identity of the morally responsible subject.

The problem of the metaphysical principle of action

Towards the end of the seventeenth, the *vis viva*, Leibniz’s key idea with respect to natural law, began to lose its authentic, strictly metaphysical meaning. In the 18th century, Hans Christian Wolff decided to reformulate Leibniz’ monadological system, paying particular attention to what was then referred to as Leibnizian panpsychism. As part of that project, both the idea of a pre–established harmony in nature and the relationship between force and the action of the substance were to be questioned⁵².

During the pre–critical phase of his work, Kant was aware of Wolff’s revision of Leibniz’s thought; moreover, this phase coincided with the period in which debates

⁵¹ See the account of this question given by Samuel Scheffler, ‘Leibniz on Personal Identity and Moral Personality’, *Studia leibnitiana*, VIII (1976): 235 ff.

⁵² I carried out a detailed study of this question in: ‘El significado de la monadología leibniziana en Christian Wolff’, *Anuario Filosófico*, XXIV (1991): 349–366; the relevant bibliography is given there, along with references to key citations in Wolff’s work.

about monadology in general, and physical force in particular, were on the increase⁵³. In *Physical Monadology*, Kant recognises simple substances as the true atoms of nature⁵⁴. If Leibniz' monads had, in the context of modern science, provided a means by which the dualism of matter and spirit might be overcome, at present, and in a rational attempt to find a basis for the physical sciences, it would also be hard to find a metaphysical principle in the force of bodies due to which the actions of individual substances are ordered following natural law.⁵⁵

In his first writing on vital forces, and in an attempt to respond to the question of the true essence of matter⁵⁶, Kant certainly relied on Leibniz's notion of *vis activa* rather

⁵³ See Arana, *La mecánica y el espíritu. Leonhard Euler y los orígenes del dualismo contemporáneo*, (Madrid, 1994).

⁵⁴ 'Prop. I. Definitio. Substantia simplex, monas dicta est, quae non constat pluralitate partium, quarum una absque aliis sparatim existere potest'. Prop. II. Theorema. Corpora constant monadibus'. Kant, *Monadologiae physicae*, in *Kant's gesammelte Schriften*, 1:476. Hereafter Kant, *Monadologiae physicae*, 1:476.

⁵⁵ For a wider study of this point, see the frequently quoted article by Fabrizio Mondadori, 'Quid sit essentia creaturae, priusquam a Deo producatur': Leibniz's View', in Antonio Lamarra and Roberto Palaia (eds), *Unità e molteplicità nel pensiero filosofico e scientifico di Leibniz* (Firenze, 2000), pp. 185–223. In the Introduction to her book *Tradition und Transformation der Modalität*, vol. I: *Möglichkeit–Unmöglichkeit* (Hamburg, 1966), Ingeborg Pape shows that he shares Mondadori's opinion: 'Trotz jener typisch neuzeitlichen Wende, die im Verhältnis Philosophie/Theologie mit Beginn der Neuzeit eingetreten ist, bleibt doch der christliche Glaubenssatz der 'creatio' noch bis zu Kant hin ein legitimer Ausgangspunkt für philosophische Spekulation'.

⁵⁶ Kant, *Gedanken von der wahren Schätzung der lebendigen Kräfte und Beurteilung der Beweise, deren sich Herr von Leibniz und andere Mechaniker in dieser Streitsache bedient haben, nebst einige Vorhergehenden Betrachtungen, welche die Kraft der Körper überhaupt betreffen* (1747), in Immanuel

than Wolff's *vis motrix*. Nevertheless, until 1756, with the publication of the *Physical Monadology*, Kant strives to bring together Leibniz's metaphysics and Newtonian mathematics⁵⁷, an endeavour from which his interest in discovering 'the fundamental elements of nature' derives⁵⁸. Kant speaks as a 'physicist' in search of the ultimate unity in nature; yet his approach is definitely not that of an 'empiricist', since the purpose that defines his work is the reconciliation of mathematics and physics with metaphysics. If he were to avoid the accusations of panpsychism and idealism that had dogged Leibniz's work, monads, the ultimate elements, had, for Kant, to be physical elements. In contrast with his predecessor, although monads have active force, they are truly connected: they influence each other.

Indeed, influenced by Wolff and master Knutzen, Kant establishes the existence of a real relationship between the force of impenetrability and the force of attraction of substances. Thus, the pre-established harmony of nature is replaced by a theory of physical influence. In line with this argument, Kant maintains that the ambit of activity of the monads is spatial, although the force is in its origin non-spatial.

In my opinion, the cause of the divergence in thinking between Kant and Leibniz on this point is the difficulty, which haunts the latter's work, of finding a metaphysical principle which can account for the unity and order of the individual actions of a substance. As has been alluded to above, it is true that in proposition VII of *Physical*

Kant, *Kant's gesammelte Schriften* 1:1–181. Hereafter Kant, *Gedanken von der wahren Schätzung*, vol. and page number.

⁵⁷ See Adickes, *Kant als Naturforscher*, p. 147.

⁵⁸ '...Quae corporum primitivae sunt partes, me in posterum terminis *substantiarum simplicium, monadum, elementorum materiae, partium corporis primitivarum* tanquam synonymis usurum, in antecessum moneo'. Kant, *Monadologiae physicae* 1: 476.

Monadology he argues for the existence of a non-spatial, or immaterial, principle internal to monads⁵⁹; nevertheless, the question of how the successive actions of the substance are unified in space remains unanswered.

Following on the line of argument taken above, the Dissertation of 1770 posits the ideality of space and time: they are aspects of the human mind, defined as ‘laws’ of understanding⁶⁰. Later, in the *Critique of Pure Reason*, the debate concerning the ‘monadists’ is dealt with in the section of the antinomies of the transcendental dialectic; and is linked to the possibility of knowing things in themselves⁶¹, and the reality of the world is said to be not objective. It follows, therefore, that to attempt to speak of a totality of the series of phenomena united by a natural principle of legality must be regarded as a transcendental illusion of human reason.

Conclusion: finality *versus* rationality and law

In the 17th century, Leibniz defined the principles of independence and autonomy that would come to characterise modern European thought. In a philosophical era dominated by mechanism, he re-introduced the idea of final causes through his ‘idealist’ explanation of the relationship between substances, and his insistence on strict rationality in the law that governs individual action.

⁵⁹ ‘Spatium hoc ipsum est ambitus externae huius elementi praesentiae. Qui itaque dividit spatium, quantitatem extensivam praesentiae suae dividit. At sunt praeter praesentiam externam, h. e. determinationes substantiae respectivas, aliae internae, quae nisi forent, non haberent illae, cui inhaerent, subiectum. Sed internae non sunt in spatio, propterea quia sunt internae’. Immanuel Kant, *Monadologiae physicae* 1:481

⁶⁰ Kant, *De mundi sensibilis atque intelligibilis. Forma et Principiis*, in Kant, *Kant’s gesammelte Schriften* 2: 398–406.

⁶¹ *KrV* A 441–442 / B 469–470.

Renewed attentiveness to the influence of physics – especially in the context of debates then prevalent in modern science – leads, in Kant’s pre-critical work, to the establishment of new metaphysics capable of explaining the rationality of the world, as well as the rationality of individual action, without reference to God; the law of individual action, from then on, must rest in the cognitive subject himself.

This period of modernity provides us with an idea of nature defined in terms of rationality. However, different perspectives on the definition of the substantial form – as principle of unity, permanence and identity, and as the basis for understanding this rationality – produce different conceptions of the natural law. Although the question was initiated in the era of Descartes, following the work of Leibniz the rejection of the traditional ontological inventory in the explanation of natural phenomena and the gradual adoption of a geometrical concept of matter mean that the problem of the ordering and structure of nature remain unsolved. This problem finds an echo in the debate on personal identity.

Bibliography

Adickes, Erich, *Kant als Naturforscher* (Berlin: Water de Gruyter, 1924).

Arana, Juan, *Ciencia y metafísica en el Kant precrítico (1746–1764)* (Sevilla: Secretariado de Publicaciones de la Universidad de Sevilla, 1982).

—, *La mecánica y el espíritu. Leonhard Euler y los orígenes del dualismo contemporáneo*, (Madrid: Editorial Complutense, 1994).

Becco, Anne, *Du simple selon Leibniz. Discours demétaphysique et monadologie* (Paris: Vrin, 1975).

Bobro, Marc Elliott, *Self and Substance in Leibniz* (Dordrecht: Kluwer, 2004).

- Cardoso, Adelino, 'Essentialisme et spontanéité des creatures', in Dominique Berlioz and Frederic Nef (eds), *L'actualité de Leibniz: les deux labyrinthes* (Stuttgart: Franz Steiner, 1999) [= *Studia Leibnitiana*, Supplementa 34], pp. 33–42.
- Cover, Jan A. and O'Leary–Hawthorne, John, *Substance and Individuation in Leibniz* (Cambridge: University Press, 1999).
- Escandell, José Juan, 'Espontaneidad de la mónada y metafísica de lo posible en Leibniz', *Anuario Filosófico*, XXXVIII (2005): 241–254.
- Gaudemar, Martine de, 'De la substance individuelle à la monade: vers l'immanence du destin individuel', in Dominique Berlioz and Frederic Nef (eds), *L'actualité de Leibniz: les deux labyrinthes* (Stuttgart: Franz Steiner, 1999) [= *Studia Leibnitiana*, Supplementa 34], pp. 177–191.
- González, Ángel Luis, 'Kant: la prueba de Dios por la posibilidad', *Tópicos*, 27 (2005): 25–49.
- (ed.), *La metafísica modal de Leibniz = Anuario Filosófico*, XXXVIII (2005).
- Gueroult, Martial, *Leibniz, Dynamique et Métaphysique* (Paris: Aubier–Montaigne, 1967).
- , 'Substance and the Primitive Simple Notion in the Philosophy of Leibniz', *Philosophy and Phenomenological Research*, 7 (1946): 293–315.
- Heimsoeth, Heinz, *Atom, Seele, Monade* (Bonn: Bouvier, 1979).
- Horn, Joachim Christian, *Monade und Begriff. Der Weg von Leibniz zu Hegel* (Hamburg: Felix Meiner, 1982).
- , *Die Struktur des Grundes. Gesetz und Vermittlung des ontischen und logischen Selbst nach G. W. Leibniz* (Henn: Ratingen, 1970).

- Kant, Immanuel, *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–).
- , *De mundi sensibilis atque intelligibilis. Forma et Principiis*, in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. II (Berlin, 1905), pp. 387–419.
- , *Gedanken von der wahren Schätzung der Lebendige Kräfte und Beurteilung der Beweise, deren sich Herr von Leibniz und andere Mechaniker in dieser Streitsache bedient haben, nebst einige Vorhergehenden Betrachtungen, welche die Kraft der Körper Überhaupt betreffen (1747)*, in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. I (Berlin, 1902), pp. 1–181.
- , *Kritik der reinen Vernunft*, ed. Jens Timmerman (Hamburg: Felix Meiner, 1998).
- , *Monadologiae physicae*, in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. I (Berlin, 1902), pp. 476–487.
- , *Pensamientos sobre la verdadera estimación de las fuerzas vivas*, Translation and Commentary by Juan Arana (Bern, Frankfurt a. M., New York and Paris: Peter Lang, 1988).
- Kaulbach, Friedrich, *Immanuel Kant* (Berlin and New York: Walter de Gruyter, 1982)
- Knebel, Sven K., 'Über die Quelle von Leibnizens Ablehnung des 'Naturgesetzes' als extrinsischer denomination vom Handeln Gottes', in Andreas Hüttemann (ed.), *Kausalität und Naturgesetz in der Frühen Neuzeit* (Stuttgart: Franz Steiner, 2001) [= *Studia leibnitiana*, Sonderheft 31], pp. 154–168.

- Knobloch, Eberhard, 'La détermination mathématique du meilleur', in Albert Heinekamp and André Robinet (eds), *Leibniz: Le meilleur des mondes* (Stuttgart: Franz Steiner, 1992) [= *Studia Leibnitiana*, Sonderheft 21], pp. 47–64.
- Leibniz, Gottfried Wilhelm, *Die philosophischen Schriften*, ed. C. I. Gerhardt (7 vols, Hildesheim: Georg Olms, 1965) [= *GP*].
- , *Letter to de Volder*, 24 March – 3 April 1699 (*GP* II) [English translation has been taken from Gottfried Wilhelm Leibniz, *Philosophical Papers and Letters*, trans. and ed. Leroy E. Loemker (Dordrecht and Boston: D. Reidel, 1976)].
- , *Letter to de Volder*, 21 January 1704 (*GP* II) [English translation has been taken from Gottfried Wilhelm Leibniz, *Philosophical Papers and Letters*, trans. and ed. Leroy E. Loemker (Dordrecht and Boston: D. Reidel, 1976)].
- , *Letter to Bourguet* (*GP* III) [English translation of quotations from *GP* III 575–576 has been taken from Gottfried Wilhelm Leibniz, *Philosophical Papers and Letters*, trans. and ed. Leroy E. Loemker (Dordrecht and Boston: D. Reidel, 1976)].
- , *Système Nouveau* (*GP* IV) [English translation has been taken from G. W. Leibniz, *Philosophical Essays*, edited and translated by Roger Ariew and Daniel Garcer (Indianapolis and Cambridge: Hackett, 1989)].
- , *De ipsa natura* (*GP* IV) [English translation has been taken from G. W. Leibniz, *Philosophical Essays*, edited and translated by Roger Ariew and Daniel Garcer (Indianapolis and Cambridge: Hackett, 1989)].
- , *Gottfried Wilhelm Leibniz. Textes inédits, d'après les manuscrits de la Bibliothèque provinciales de Hanovre*, ed. Gaston Grua (Paris: Presses Universitaires de France, 1948) [= Grua].

- Liske, Michael–Thomas, *Leibniz 'Freiheitslehre. Die logisch–metaphysischen Voraussetzungen von Leibniz 'Freiheitstheorie'* (Hamburg: Felix Meiner, 1993).
- Manns, James, 'The Nature of a Nature in Leibniz', *Studia Leibnitiana*, XIX (1987): 173–199.
- Mondadori, Fabrizio, '«Quid sit essentia creaturae, priusquam a Deo producat»:
Leibniz's View', in Antonio Lamarra y Roberto Palaia (eds), *Unitá e molteplicitá nel pensiero filosofico e scientifico di Leibniz* (Florenca: Leo S. Olschki Editore, 2000), pp. 185–223.
- Mormini, Gianfranco, *Determinismo e utilitarismo nella teodicea di Leibniz* (Milano: Franco Angeli, 2005).
- Pape, Ingetrud, *Tradition und Transformation der Modalität*, vol. I: *Möglichkeit–Unmöglichkeit* (Hamburg: Felix Meiner, 1966).
- Pöltner, Günther, 'Zur gegenwärtigen Problematik der wissenschaftlichen Rationalität', in Hans–Christian Reichel and Enrique Prat de la Riba (eds), *Naturwissenschaft und Weltbild. Mathematik und Quantenphysik in unseren Denk– und Wertsystem* (Wien: Hölder–Pichler–Tempsky, 1992), pp. 188–222.
- Poser, Hans, 'Malum technologicum. Die Technodizee als Transformation der Theodizee', in Dominique Berlioz and Frederic Nef (eds), *L'actualité de Leibniz: les deux labyrinthes* (Stuttgart: Franz Steiner, 1999) [= *Studia Leibnitiana*, Supplementa 34], pp. 194–205.
- Schepers, Heinrich, 'Zum Problem der Kontingenz bei Leibniz. Die beste der möglichen Welten', in *Collegium Philosophicum. Studien. Joachim Ritter zum 60. Geburtstag* (Basel and Stuttgart: Schwabe and Co., 1965), pp. 326–350.

- Seifert, Josef, 'Wissen und Wahrheit in Naturwissenschaft und Glauben' in Hans-Christian Reichel and Enrique Prat de la Riba (eds), *Naturwissenschaft und Weltbild. Mathematik und Quantenphysik in unseren Denk- und Wertsystem* (Wien: Hölder-Pichler-Tempsky, 1992), pp. 188–222.
- Scheffler, Samuel, 'Leibniz on Personal Identity and Moral Personality', *Studia leibnitiana*, VIII (1976): 219–240.
- Simonovits, Anna, *Dialektisches Denken in der Philosophie von Gottfried Wilhelm Leibniz* (Berlin: Akademie Verlag, 1968).
- Soto-Bruna, María Jesús, *Individuo y unidad. La sustancia individual según Leibniz* (Pamplona: Eunsa, 1988).
- , 'El significado de la monadología leibniziana en Christian Wolff', *Anuario Filosófico*, XXIV (1991): 349–366.
- , 'La contingencia como composibilidad en G. W. Leibniz', *Anuario Filosófico*, XXXVIII (2005): 145–162.
- Torrallba, José María, 'La racionalidad práctica según Leibniz. Análisis del determinismo en la elección moral', *Anuario Filosófico*, XXXVI (2003): 725–742.
- , 'La libertad posible. Acerca de la noción leibniziana de 'inclinación sin necesidad'', *Anuario Filosófico*, XXXVIII (2005): 279–291.
- Weingarter, Paul, 'Philosophische Probleme und ihre Verwurzelung in der Mathematik', in Hans-Christian Reichel and Enrique Prat de la Riba (eds), *Naturwissenschaft und Weltbild. Mathematik und Quantenphysik in unseren Denk- und Wertsystem* (Wien: Hölder-Pichler-Tempsky, 1992), pp. 147–176.

Wilson, Catherine, 'De Ipsa Natura. Sources of Leibniz's Doctrines of Force, Activity and Natural law', *Studia leibnitiana* XIX (1987): 148–172.

Woolhouse, R. S., *Descartes, Spinoza, Leibniz. The concept of substance in seventeenth-century metaphysics* (London and New York: Routledge, 2002).

CHAPTER 7

Kant's Conception of Natural Right

*Alejandro G. Vigo***I. Introduction**

There are several reasons why Kant has not usually been considered one of the most representative authors of the iusnaturalist tradition in thinking. His name is not even usually mentioned in the narrower group of modern iusnaturalists, such as Grotius, Pufendorf, Leibniz, Thomasius and Wolff. The great strength and notable originality of the Kantian philosophical project not only does not hinder, but, to a great extent, explains this fact. Indeed, in the areas of both theoretical and practical philosophy, Kant's position cannot apparently be pigeonholed under any of the usual titles which characterize and differentiate the dominant currents of thinking in the earlier philosophical tradition, nor in Modernity itself. It is a well-known fact that Kant cannot be seen as either a rationalist thinker, nor indeed as defending empiricism in any of its possible forms, although it is also clear that his thinking includes elements and motives which are central to both philosophical currents. In Kant, this incorporation always means an often drastic recontextualization, which implies not only maintaining some of the essential aspects that are its starting-point, but also, at the same time, improves them.

More strictly, in reference to the question of the fundamentals of ethics and law, a couple of general comments would be enough to illustrate the originality of the Kantian approach, with its curious strategy of assimilating and recontextualizing the defining elements of those concepts Kant wishes to improve. But this is not my intention. Rather,

I simply wish to underline that his desire to improve what he considers to be the lacunas of the explicative models offered in this area by rationalism and empiricism, are as well-known as his effort to retain the most important motives and positive elements of each of these schools of thinking, by placing them in the systematic place where he believes they belong. In the specific area of legal and political philosophy, to these positive elements and motives belong both the idea of the original pact, which gives rise to the different forms of contractualism, and the idea of natural law, whose binding character precedes any possible agreement or convention. Kant accepts both motives, but in such a way as to impede the characterization of his conception as either contractualism or iusnaturalism, in the usual meaning of the words. In fact, Kant, unlike thinkers who represent each of these schools of thought, does not require either of these basic ideas to have a function of ultimate foundation. Indeed, Kant considers that both are derived, but indispensable ideas, whose proper systematic position can only be finally decided by referring to the basic principles of morality and law.¹

I do not intend to deal with how Kant receives and reinterprets the contractualist motive he had inherited from the ample earlier tradition here. I prefer to concentrate wholly on his endeavour to assimilate and reformulate the idea of natural law (*Naturrecht*). This will be based on his thinking on the doctrine of right as expounded in the

¹ The fact that for Kant natural law does not have the statute of a basic idea, in as far as he does not place it as the fundamental principle of his own doctrine, certainly does not mean that this idea does not, in his opinion, play an indispensable role, for the systematic perspective. Unfortunately, scholars have not always done justice to the central systematic importance of the idea of natural law in Kant's thinking, as they have frequently failed to consider the wider context of Kant's appeal to this idea. An example of this type of de-contextualised treatment, which evaluates Kant's position on the basis of extrinsic parameters which do not do justice to his far-reaching ideas, can be found in the brief and over-simplified discussion in Howard P. Kainz, *Natural Law. An Introduction and Re-examination* (Chicago, 2004), p. 40 ff.

first part of *Rechtslehre*, which makes up the first section *Metaphysik der Sitten*.² I will go into some detail on the way Kant introduces the idea together with the significance and function he gives it in the context of doctrine of right. With this in mind, I will try to ascertain some of the most important systematic assumptions which underlie Kant's thinking on the concept of natural law and the principle found in what he calls the 'Universal Law of Right', which, we could say, is the specific legal formulation of the Categorical Imperative³. Finally, I will briefly mention some consequences on the aspect of reflexivity as found in the Kantian view and the role of the idea of rational nature.

II. The concept of right and the universal law of right

Following the characteristics Kant gives at the beginning of *Rechtslehre*, the concept of right (*Recht*) refers us to the set (*Inbegriff*) of conditions which make the unification of choice (*Willkür*) of different subjects possible, according to the Universal Law of Right (*nach einem allgemeinen Gesetz der Freiheit*)⁴. As Kant himself specifically states, in its binding or obligatory character (*Verbindlichkeit*), the concept of right is only concerned with the merely external relation of a person to another, insofar as their actions, taken as facts (*Fakta*), may, mediately or immediately, influence each other⁵. In other words: what is in question here is the form in the reciprocal relation of choice on the part of different people, insofar as their choice is regarded merely as free (*frei*). And all this without going into further deliberation on the matter of this choice, that is, the

² Hereafter *MdS*.

³ Hereafter CI.

⁴ See *Rechtslehre* 6:230.

⁵ See *Rechtslehre* 6:230.

specific content of ends or objectives (*Zweck*) contained, in each case, in the desires and intentions of the agents and the actions by which they intend to carry them out⁶. The example of Kant is very simple: in the case of a licit sales transaction, the question of whether the buyer will truly benefit or not from the goods that he has acquired from the seller for trading, is not a strictly juridical consideration, if the formal requirements (*nur nach der Form*) of the transaction, from the perspective of the relationship between the choices of the two parties, are fulfilled⁷.

Kant believes that the fact that the choice of the agents is and must be free follows from the essential connection which links the ideas of personality, morality and freedom. In fact, moral personality (*moralische Persönlichkeit*) is simply the freedom of a rational being (*Freiheit eines vernünftigen Wesens*), insofar as it is subject to moral laws (*unter moralischen Gesetzen*). This not only explains that people are subjects whose actions are imputable, but also that, as persons, they are not, strictly speaking, subject to any other type of laws. In particular, they are not subject to natural laws, but only to those laws they make for themselves, either individually or in common.⁸ These laws are, as we have said, the moral laws, and come, as such, from will (*Wille*), as determined by practical reason. In as much as it is exclusively linked to such laws, as its origin or source, will itself cannot be said to be truly free or not free either. In fact, in an immediate way, will does not yet refer to actions in themselves, but is limited to providing the legislation which is applicable to the maxims for actions, and, for the same reason, in itself is not subject to any constraint (*Nötigung*). On the contrary, choice, as such, is the source of maxims, which are the subjective principles for action,

⁶ See *Rechtslehre* 6:230.

⁷ See *Rechtslehre* 6:230.

⁸ See *Rechtslehre* 6:223.

and must be defined as free, in as far as the maxims which are based on it may, and must, be subject to the objective principles (laws) provided by will, as determined by reason.⁹

⁹ See *Rechtslehre* 6:226. It is important to warn that Kant considers it an error to attempt to define free choice by referring to decide (*Vermögen der Wahl*), acting for or against the law (*für oder wider das Gesetz*), in the meaning of the classical idea of *libertas indifferentiae*. This is because freedom only appears in us (*in uns*) as a negative property, that is, through the fact that we are not obliged to act on the basis of purely sensitive determinative fundaments of will. The not unusual experience of acting on the basis of mere empirical fundaments of determination of will, and even against moral law, does not directly document our capacity for freedom, precisely because freedom means being able to act according to the prescription of law. Accordingly, says Kant, only freedom, considered with reference to that internal legislation which stems from reason, can be seen as a genuine capacity (*Vermögen*), while the possibility of leaving aside such legislation must be seen, rather, as incapacity (*Unvermögen*), in the privative, and not merely negative sense of the term (see *Rechtslehre* 6:226 ff.). For the Kantian difference between will (*Wille*) and choice (*Willkür*), see Henry E. Allison, *Kant's Theory of Freedom* (Cambridge, 1990), ch. 7. As Allison states (p. 129 ff.), the difference is first expressly formulated in *MdS* (see *Rechtslehre* esp. 6:213 ff., 226), although it is already operative in *KpV* and *Religion* (see e.g. *KpV* 5:33: *Autonomie des Willens / Heteronomie der Willkür*, 5:74, etc.; *Religion* 6:27 *et passim*: (*freie Willkür*). The difference alludes to the different functions of what, in *MdS*, Kant calls the 'faculty of desire in accordance with concepts' (*Begehrungsvermögen nach Begriffen*) (see *Rechtslehre* 6:213). In fact, the notion of choice refers to the executive function of this faculty of desire, as the font of election and decision, while the concept of will, strictly speaking, refers to its legislative function. However, there is no need to say that Kant also habitually uses the concept of will in a wider sense, including both functions. Yet, in its legislative function, will is identified, in fact, with practical reason, and, as such, lays down the law. Therefore, Kant maintains that will itself cannot be correctly typified in terms of the alternative 'free'/'not-free', as this would imply an extrinsic link with the principle of legality, which, as such, takes the shape of constriction (*Nötigung*).

Accordingly, Kant states that the universal principle of right establishes that any action whose maxim allows for the coexistence of the freedom of choice for any person with the freedom of others, in accordance with a universal law, is licit (*recht*).¹⁰ This, in turn, implies that where the action (*Handlung*) or the state (*Zustand*) of a person can coexist with the freedom of other according to universal law, any external hindrance (*Hindernis*) or resistance (*Widerstand*) to this action or state is illicit (*Unrecht*). The reason is that such a hindrance or resistance, by having or (attempting to have) a negative effect on the action or subjective state of an individual person, does not observe the basic condition of permitting the coexistence of freedoms in accordance with a universal law¹¹: the external hindrance to a licit action is in itself, at least, *prima facie*, illicit. As the universal principle of right is a purely juridical principle, and not a moral one, it may only attempt to regulate the maxims of the agents, insofar as they attain fulfilment and external expression through corresponding actions, and there cannot be a juridical demand for the principle to be transformed, in turn, into a maxim for the agents. In fact, all that can be demanded juridically is external respect, in actions and works, for the freedom of others, even if we feel interior indifference for the freedom of others.¹² On the contrary, adopting a maxim to act following what is right, is not, in itself, according to Kant, a juridical, but rather, a moral requirement.¹³

Consequently, the ‘Universal Law of Right’, which is what might be called the specific judicial formulation of the CI, becomes a requirement to ensure the possibility

¹⁰ See *Rechtslehre* 6:230.

¹¹ See *Rechtslehre* 6:230.

¹² See *Rechtslehre* 6:231.

¹³ See *Rechtslehre* 6:230: ‘Das Rechthandeln mir zu Maxime zu machen, ist eine Forderung, die Ethik an mich tut’.

of a *coexistence of freedoms*, and states: ‘Act externally in such a way that the free use (*der freie Gebrauch*) of your choice can coexist (*zusammen bestehen*) with the freedom of everyone in accordance with a universal law’.¹⁴ This law imposes a certain obligation (*Verbindlichkeit*) on the subject, but it does not, nor could it, demand that, exclusively due to this obligation, the subject himself (*ich... selbst*) should limit his freedom to what this same law establishes. It is, rather, a postulate of reason, according to which reason recognises itself as subject, in its own idea (*in ihrer Idee*), to certain limiting conditions, and therefore, also subject to the possibility of being effectively limited *by others* (*von anderen*).¹⁵ Kant considers this last point to be fundamental, because it deals, directly and immediately, with the ultimate justification of the power of coercion (*Befugnis zu zwingen*), which is an essential part of all right.¹⁶ As we have already seen, where an action satisfies the principle of coexistence of freedoms in accordance with a universal law, obstructing it is, for that same reason, illicit. Thus we can say, the legitimacy of the opposite obstruction follows, that is, of the corresponding act of coercion (*Zwang*), the objective of which is precisely to block this illegitimate obstruction of freedom (*Verhinderung eines Hindernisses der Freiheit*).¹⁷

Finally, we can then state that it is in the fact that reason recognises that it is subject to the limiting conditions of the universal law of right where we can find, simultaneously, the true basis of legitimacy, within the strictly judicial area, of the restrictions on freedom by institutions which are exterior to the subject himself. On the contrary, in the moral domain, a similar external restriction of freedom would, Kant

¹⁴ See *Rechtslehre* 6:231.

¹⁵ See *Rechtslehre* 6:231.

¹⁶ See *Rechtslehre* 6:231.

¹⁷ See *Rechtslehre* 6:231.

believes, be a contradiction in itself, simply because, by their very nature, genuinely moral motives resist all external imposition. For the same reason, while in the specifically judicial domain, when establishing whether an action may be considered licit or not, all that matters is its external conformity to the (juridical) law; in the strictly moral domain, on the contrary, mere conformity with the (moral) law does not nor cannot ensure the genuine moral value of actions: the action can only be considered of merit, from a strictly moral perspective, when it does not occur merely in conformity with duty (*pflichtmäßig*), but also, simultaneously, *by* duty (*aus Pflicht*).¹⁸

III. Freedom, community, exteriority

The fact that Kant considers the Universal Law of Right in terms of the abovementioned principle of coexistence of freedom is immediately connected to two central points within his conception of the relationship between morality, personality and freedom.

¹⁸ See *GMS* 4:397 ff. As Wolfgang Wieland correctly states in ‘Kants Rechtsphilosophie der Urteils kraft’, *Zeitschrift für philosophische Forschung*, 52 (1998): 1 ff., the restriction of right to the purely exterior plane shows that it is not really appropriate to typify Kant’s conception as an attempt to reduce the function of right to an ethical minimum, for the simple reason that in right, the question of the genuine motivation for actions is, *a priori*, excluded, and on the contrary, it is indispensable for ethics. But obviously, this does not mean that Kant simply intends to disconnect the juridical order, in its origin and content, from the principles of morality. On the contrary, what Kant sees as the Universal Law of Right, must be taken, conclusively, as a particular application of the moral principle as expressed in the CI. But this application is destined, precisely, to do justice to the distinctive features of a particular normative area, as is the juridical one, where the true interior motive of actions cannot lay down the criterion to establish its legitimacy. A clear contrast between mere legality (*Legalität, Gesetzmäßigkeit*) and morality (*Moralität*) is also established, in an especially illustrative way, in *Naturrecht Feyerabend* 27:1326 ff.

The first concerns the essentially communitarian character of the domain to which these ideas refer. As is common knowledge, Kant emphasises the strict universality of the principle of morality. The CI, which is absolutely unconditional in its prescriptive claims, appears as a universal law. However, here it is not a law of *being*, that is, of what actually is the case, but a law of *ought*, in other words, of what should be the case, even if it never actually occurs.¹⁹ As Kant himself explains, although in nature everything happens following laws, the laws of *ought*, unlike the laws of *being*, can only be intended for rational beings who have the capacity to act following the representation (*Vorstellung*) of laws, or, in other words, who are provided with will (practical reason).²⁰ That is to say: the laws of *ought* can only be intended for persons. Likewise, apart from the reference to the unrestricted character the moral commands, as such, must have, the very universality of the CI also involves a direct reference to the whole universe of all whom its prescriptive claims concern, or, to be more precise, to each and every person. The fact that, in the different versions of the CI, Kant always uses the second person singular of the imperative mood very clearly shows his intention of stressing this very constitutive aspect of the universality of the principle of morality. For the same reason, it can be said that Kant considers morality, from the start, as essentially connected to a universal community of persons. These are the direct recipients of the demands of morality, in a double complementary sense: on the one hand, persons are the beings who must obey the rules of morality, and on the other, it is

¹⁹ See *GMS* 4:427. See also the treatment of the difference between ‘natural law’ (*Naturgesetz*) and ‘law of freedom’ (*Freiheitsgesetz*) in *KpV* 5:69 ff., where Kant not only marks the differences, but also the particular typological function of natural law with reference to moral law. As can be seen below, Kant appeals to a specifically practical–moral sense of the concept of natural law.

²⁰ See *GMS* 4:412.

they who are protected and favoured by these same rules. And it is thus, insofar as they are bearers and recipients of moral law, that persons are beings of absolute and not merely relative value, that is to say, they are beings with dignity (*Würde*), and without price (*Preis*),²¹ and, as such, are also objects of respect (*Achtung*).²² Therefore, Kant explains, persons are the only beings that, due to their own rational free nature, constitute ‘ends in themselves’ (*Zweck(e) an sich selbst*).²³ Likewise, Kant imagines the (possible) community of persons, interlinked in systematic unity through moral laws, by means of the ideal representation of a (possible) ‘kingdom of ends’ (*Reich der Zwecke*).²⁴

However, and this is the second aspect of Kant’s conception to be taken into account, the constitutive freedom of persons, which in itself is not a phenomenal datum, can only be realised and expressed by actions which have their own materiality, as facts within the world of phenomena, which have an effect on objects that exist in that same world, including other persons, in their existence as phenomena. It is well known that the theory of causality by freedom developed by Kant in *KpV* is destined, among other things, to explain the way in which the actions of human agents can and should be considered as an effect and expression of a free cause, and not merely as events in a closed series of phenomenal causes. And in the resolution of the ‘Third Antinomy’ of

²¹ See *GMS* 4:434 ff.

²² See *GMS* 4:401 note, 428.

²³ See *GMS* 4:428 ff.; see also *KpV* 5:87, 131 ff.

²⁴ See *GMS* 4:433 ff. With reference to the concept of a ‘kingdom of ends’, Andrews Reath stresses in *Agency and Autonomy in Kant’s Moral Theory* (Oxford, 2006), ch. 6 the presence of an unquestionably social dimension in the Kantian concept of autonomy, which does not allow it to be understood in terms of the usual individualist conceptions. On the contrary, Reath correctly holds that the capacity to interact with other agents is an essential part of the full meaning Kant brings to this concept (see p. 175).

KrV Kant, on the basis of the critical distinction between the phenomenal and the noumenal planes of consideration, shows the possibility of considering a free cause without contradiction, while assuming, simultaneously, that all phenomena are necessarily linked to other phenomena, in accordance with the law of cause and effect, within a series of conditions where nothing can be non-necessitated.²⁵ In *KpV* Kant also states that what in the area of theoretical–speculative use of reason can only be understood as a mere possibility, that is, only in a problematic way, is, on the contrary, assertorically stated, although without a corresponding widening of knowledge, where we are dealing with the practical use of reason. From a strictly practical perspective, the reality of free cause is documented, as such, through what Kant calls the *Faktum* of reason, which involves agent’s immediate consciousness of his subjection to the demands of moral law.²⁶ And later, in the crucial section on the ‘Typic of the Pure Practical Judgment’, Kant attempts to explain the specific way in which, through the functions of the faculty of judgement in practical use (*praktische Urteilskraft*), nature can provide the *type* (*Typus*) of morality, although without the intervention of pure intuition and, therefore, also without the intervention of ‘schemes’ which allow for mediation between the element of intellectual origin and that of empirical origin. In short, Kant here deals with the conditions which allow individual actions, through the corresponding maxims, to be seen as cases of fulfilment of the corresponding moral prescriptions. And this means, in turn, that the sensible nature itself can be also seen as the stage for the effective fulfilment and expression of the purposes of the human agents.

²⁵ See *KrV* A532–558 / B560–586.

²⁶ See *KpV* 5:5 ff., 31.

This peculiar perspective on nature is what is documented in the only apparently paradoxical idea of an ‘intelligible nature’ (*intelligible Natur*), for which the nature of the sensible world (*Natur der Sinnenwelt*) provides the corresponding type: sensible nature itself exhibits in concreto the same genre of legality that, in its own way, moral law also prescribes for the freely acting agent.²⁷ The frequently misunderstood expression ‘intelligible nature’ does not refer, then, to a sort of parallel or phantasmal world, outside that which our sense offer, but, on the contrary, does refer to that same unique world of our sensible and shared experience. But now the perspective is that of the practical use of reason. That is to say: the same world is now seen as a stage for the possible fulfilment and expression of our intentions and aims, and also seen, at the same time, as a typological representation of that legality which reason, used practically, demands as the form of a wish which can be morally legitimate.²⁸ In the treatment of

²⁷ Also in *Grundlegung*, where the official doctrine presented in the ‘Typic of the Pure Practical Judgment’ of *KpV* is not yet present, Kant stresses that ‘kingdom of ends’ will only be possible, as such, following an analogy (*Analogie*) with the kingdom of nature (*Reich der Natur*) (see 4:438).

²⁸ This way of considering nature is clearly documented in the CI version that Kant uses as a rule for the faculty of judgement which operates following laws of practical reason, in the section dedicated to the ‘Typic of the Pure Practical Judgment’ of *KpV*. In fact, this rule establishes that, on thinking of carrying out any action, the agent must ask himself if said action should also occur in the case where its occurrence would be the result of the validity of a law of an hypothetical natural order of which the agent himself would be part (see 5:69; see also *GMS* 4:421). Kant emphasises the fact that the procedure for application based on use of sensible nature as a ‘type’ of moral law (law of freedom) underlies even the most usual moral judgements of common sense. This ‘rationalism of the faculty of judgement’ (*Rationalismus der Urteilskraft*), which is expressed in the procedure of the typic, constitutes, according to Kant, the only possible path between two extremes, both erroneous, q.v.: firstly, that of an untenable ‘empiricism of practical reason’ (*Empirismus der praktischen Vernunft*), which reduces the concepts of good and evil, simply, to the plane of mere empirical consequences (happiness); second, that of an also incorrect

KpV, the aspect linked to the fulfilment and expression of freedom in actions – which,

‘mysticism of practical reason’ (*Mystizismus der praktischen Vernunft*), which maintains the purity and sublimity of morality, but at the expense of projecting them towards a suprasensible world, a sort of ‘invisible kingdom of God’ (*eines unsichtbaren Reichs Gottes*), thus wanting to change into a scheme (*Schema*), by appealing to a supposed intellectual intuition, what can only be used as a symbol (*Symbol*) (see *KpV* 5:70 ff.). But for Kant what is usually called the ‘kingdom of God’ cannot be found, in principle, in an inaccessible otherworld. On the contrary, paraphrasing the Bible itself in a not strictly theological sense, we could say that, in a certain sense, this kingdom is already amongst us, in as much as, through our free action, we bring to fulfilment the demands of morality and we aim to shape a world which will correspond to the demands of a ‘kingdom of ends’. Friedrich Kaulbach in *Das Prinzip Handlung in der Philosophie Kants* (Berlin, 1978), ch. III–IV already insisted, correctly, on the fact that in the Kantian conception practical access through action is accompanied by a particular projective sketch of the world, whose specificity cannot be reduced to any other, not even to that which belongs to the purely theoretical–constative access (see esp. p. 151 ff.; 193 ff.). Kaulbach also emphasises that by means of the conception of the agent as a free cause Kant represents the original unity of thinking (*Denken*) and effective fulfilment (*Verwirklichung*), of thinking and being (*Sein*), and in such a way that he manages to avoid the frequent reproach of dualism directed against his insistence on the need to clearly separate the intelligible and sensible aspects in the individual agent (see p. 300 ff.). It is not accidental that Kaulbach’s decidedly unitarist approach, with its emphasis on the identity of freedom and phenomenological reality, leads him to stress the importance of what he himself, in an expression which cannot be taken literally, calls ‘practical schematism’ (see p. 316 ff.), and thus also stresses the important similarities the Kantian concept of practical action has, from the perspective of the (communitary) configuration of practical action, with the views of Aristotle and Hegel (see p. 323 ff.). Kaulbach thus underlines a connection which authors attached to formalist and contractualist (mis)interpretations of Kant’s ethical thinking tend to completely ignore: e.g., Gary Pendlebury, *Action and Ethics in Aristotle and Hegel. Escaping the Malign Influence of Kant* (Aldershot, Hampshire and Burlington, VT, 2005). In fact, Kaulbach defends the same line of interpretation in his reconstruction of the Kantian conception of aesthetic experience, which he typifies in terms of a particular kind of access by the subject to himself and the world, See Kaulbach, *Ästhetische Welterkenntnis bei Kant* (Würzburg, 1984).

in its materiality and effects, must be seen as phenomena of the sensible world – is considered mainly from the perspective of normative ethics, which aims to establish the conditions for the moral legitimacy of actions. But, as can be sufficiently seen in Kant's own examples and explications, in the case of incorrect moral action we must also consider the same twofold aspect, that is: on the one hand, causality by freedom; on the other, its expression and fulfilment in the phenomenal plane. Expressed in *MdS* terminology, this means that this same twofold aspect is to be seen, at least, in the peculiar mode which corresponds to its essentially privative character (see note 2 above). Thus, it is to be seen also in the case of a free decision by which one would opt for something which goes against the laws of morality.

If we consider the fact that demands of morality refer to a universal community of persons, on the one hand, and the aspect that refers to the indispensable exteriorization that accompanies the effective fulfilment of freedom through action, on the other, the reasons why the objective of the Universal law of Right is precisely the possible *coexistence* of freedoms, in accordance with a universal law, become immediately evident. By its fulfilment and exterior expression, through actions that have consequences in the phenomenal world, the freedom of each individual becomes part of the realm of materiality within which, for the first time, we find the possibility of conflict between different freedoms, because of their different effects. In fact, not only is it true that, in its fulfilment and exterior expression, freedom itself is surrendered to a network of causes which lead to the action that it expresses, through its consequences, along paths that are often outside the voluntary control of the agent himself, and may, and frequently do, result in the unexpected which cannot be foreseen by the agent. Moreover, we must add the even most basic fact that every act of fulfilment and expression of freedom of an agent, even when it does not produce unforeseen

consequences, may, simultaneously, due to its effects, produce an objective impediment to the fulfilment and exterior expression of another agent. Insofar as it is fulfilled and expressed in an external realm of materiality, freedom must belong to the causal network of sensible nature, of which persons, considered in their phenomenal existence, also are an essential part. What is shown in such a network, for the access of merely theoretical use of reason, is simply a coexistence of objects, with their respective states (substance–accidents), in a dynamic system shaped by natural laws, that is, by the dynamic principles of causality and community (reciprocal action), whose constitutive role in experience Kant thematizes in his ‘Analytic of Principles’ of *KrV*, to be exact, in the ‘Second’ and ‘Third’ of the ‘Analogies of Experience’.²⁹ When causality by freedom joins this dynamic system through the actions of the agents, what appears, from a strictly external perspective, is a new set of effects within the same dynamic system. But, from the internal perspective which corresponds to causality by freedom, these same effects express, in one way or another, the intentions of the agents who produce them, and may also affect, indirectly at least, the intentions of other agents, as exterior impediments to the fulfilment and expression of their choice.³⁰

From a practical, and more specifically, juridical perspective, the key question for Kant is how we get from this mere coexistence of objects and people according to natural laws, where the fulfilment and expression of freedom for some can, and frequently does, impede the fulfilment of freedom for others, to an order of coexistence in which the fulfilment and expression of freedom does not include this possible and effectively auto–suppressive character. And the answer Kant gives to this question, as

²⁹ See *KrV* A189–211 / B232–256 and A211–218 / B256–265, respectively.

³⁰ On this matter, see Kant’s explication and examples in the introduction to the 1784 lesson on natural law (see *Naturrecht Feyerabend* 27:1319 ff.).

we have seen, refers to the mediating role which must be played by the form of universality, proper to genuine legality, in order to make genuine coexistence of freedoms possible. As normally occurs, where nature acts as the ‘type’ for categories of freedom, in the case of the Universal Law of Right also, the dynamic system following natural laws constituted by the objects of the phenomenal world (i.e. sensible nature) provides not only the stage where this must be carried out, but, simultaneously, at least in shape, also provides the typological pattern on which the ideal normative representation of an order of coexistence of freedoms, in accordance with a universal law of freedom itself, must be modelled. It is not surprising, then, that, when Kant explains and construes the fundamental principle of all private right, that is the so-called ‘intelligible possession’ (*intelligibler Besitz, possessio noumenon*), as opposed to mere ‘physical possession’ (*physischer Besitz, possessio phaenomenon*), he specifically uses the categories of relation (i.e. substance, causality and community), which, now taken as categories of freedom in the precise meaning of the doctrine of *KpV*³¹, are what provides the conceptual pattern by which a dynamic system of the coexistence of freedoms can be represented. Such a dynamic system expresses the type of order demanded by a universal law of freedom.³²

³¹ See *KpV* 5:65 ff.

³² See *Rechtslehre* 6:247 ff. By means of the concept of intelligible possession (*Besitz, possessio*) Kant makes explicit the *a priori* fundament of all possible effective property (*Eigentum, dominium*). But effective property requires also the corresponding deeds of law, which already imply certain juridical acts. As the deduction of what Kant calls ‘what is exteriorly mine and yours’ (*das äußere Mein und Dein*), which leads to the idea of the ‘merely legal possession of an exterior object’, in opposition to the physical possession of the object, the possibility of all intelligible possession is based on a judicial postulate (*rechtliches Postulat*) of practical reason, according to which: 1) it is possible for any subject (*lex permissiva*) to have as his own any possible object of his choice (see *Rechtslehre* 6:249), and, for the

IV. Right, natural right and positive right

A state of coexistence of freedoms merely according to natural laws, where the fulfilment and exterior expression of freedom is not only potentially but often also effectively self-suppressive, generally corresponds with what in the traditional juridical and political thinking of the Modern Age, which Kant follows on this point, is known as the ‘natural state’ (*Naturzustand, status naturalis*), in opposition to the ‘state of right’

same reason, 2) there is a juridical obligation (*Rechtspflicht*) to behave to others in such a way that the external objects (*das Äußere*) which are fit for use (*das Brauchbare*) may also become the property (*das Seine*) of one of them (6:252), which, in contrast, implies, 3) the character contrary to the law (*rechtswidrig*) of all maxims which mean the consideration of an object (*Gegenstand*) in itself (*an sich*) and objectively (*objektiv*) as ‘belonging to no-one’ (*herrenlos, res nullius*) (see 6:249). On this basis, Kant considers that the application of this principle, based on the *a priori* concept of intelligible possession, to the objects of experience, explains why the mere empirical representation of the possession of an object (*Inhabung, detentio*) is not enough to explain the character of genuine juridical possession, and also how the juridical possession of an object, which implies that the object is ‘in my power’ (*in meiner Gewalt, in potestate mea*), is compatible with conditions that, transitorily or permanently, make their physical possession impossible, such as, for example, separation in space (*e.g.* an object in a faraway place) and in time (*e.g.* the case of taking possession of something, based on the promise made by a previous owner) or the dimensions of the object (*e.g.* a territory) (see 6:252 ff.). A good commentary on the account and deduction of ‘what is exteriorly mine and yours’ can be found in Hans-Friedrich Fulda, ‘Erkenntnis der Art, etwas Äußere als das Seine zu haben (Erster Teil. Erstes Hauptstück)’, in Otfried Höffe, *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre* (Berlin, 1999), pp. 87–115. See also Kenneth R. Westphal, ‘A Kantian Justification of Possession’, in Mark Timmons (ed.), *Kant’s ‘Metaphysics of Morals’*. *Interpretative Essays* (Oxford, 2002), pp. 89–109.

(*rechtlicher Zustand*) or the ‘civil state’ (*bürgerlicher Zustand, status civilis*).³³ This is a situation where, as Kant himself frames it at times, freedom itself is reduced to the statute of a ‘natural freedom’ (*natürliche Freiheit*)³⁴ or, in other words, a ‘freedom without law’ (*gesetzlose Freiheit*).³⁵ The existence of states of merely ‘natural freedom’ shows, precisely, that natural laws in themselves are not enough to guarantee the genuine coexistence of freedoms as demanded by the Universal Law of Right.³⁶ The

³³ For the opposition between ‘natural state’ (*Naturzustand*), on the one hand, and the ‘state of right’ (*rechtlicher Zustand*) and the ‘civil state’ (*bürgerlicher Zustand*), on the other, in the context of *Rechtslehre*, see esp. 6:306, 343 ff., 349 ff.

³⁴ See *Rechtslehre* 6:343.

³⁵ See *Rechtslehre* 6:343; see also 6:307, 316.

³⁶ This is one of the elementary reasons why Kant believes that the laws of nature can only provide the *type* for laws of morality, when attention is paid to their mere form, with the corresponding features of necessity and universality, and not, on the contrary, when they are considered from the perspective of their specific material content, whether this be empirical or *a priori*. Thus, for example, the necessary connection between cause and effect, as it appears in fact in nature, explains, from the exterior perspective corresponding to its fulfilment on the phenomenal plane, both morally and juridically licit actions and also those which are contrary to the principles of morality and law, with their corresponding effects. Kant’s insistence that the specific application of moral law to the objects of the senses excludes the mediation of schemes, in spite of the fact that it is itself based on the mediation of understanding (*Verstand*) (see *KpV* 5:68 ff.), aims to stress that the type of aspiration to validity that moral law includes cannot be based on the specific matter to which the law must be applied in each case, and for the same reason, cannot be founded on any natural law. This is not a hindrance, however, indeed it allows, in its precise application, for moral law itself to be typologically represented as a law of nature (*Naturgesetz*), although only because of its form. (see 5:69). In his introduction to the 1784 lesson, Kant also explains that the will of the human being cannot be restricted by nature, as that would imply the suppression of the statute of ends which in itself belongs to the rational and free being (see *Naturrecht Feyerabend* 27:1319). To allow the coexistence of freedoms, freedom must be restricted, but this can never be done by means of

step from the state of ‘natural freedom’ to a state which guarantees the possibility of genuine coexistence of freedoms, whose fulfilment and expression will not be arbitrarily auto-suppressive, can therefore only become possible by reference to the universal law of freedom, as it is expressed in the specifically juridical version of the CI. Furthermore, Kant asserts the existence of a so-called ‘Postulate of Public Right’ (*Postulat des öffentlichen Rechts*), which demands a shift from the state of nature, which constitutes a state of juridical insecurity³⁷ and injustice,³⁸ to the civil state,³⁹ where a civil constitution (*bürgerliche Verfassung*) guarantees the rights of individuals.⁴⁰ Individual freedom can only be guaranteed effectively in the context of citizenship, within the juridical order of the State (*Staat, civitas*).⁴¹

natural laws (*durch Naturgesetze*), as this would imply the suppression of freedom: the restriction of freedom on which law is founded, has, of necessity, the character of self-restriction by the rational, free being (see 27:1321).

³⁷ See *Rechtslehre* 6:311.

³⁸ See *Rechtslehre* 6:307.

³⁹ See *Rechtslehre* 6: 307.

⁴⁰ See *Rechtslehre* 6: 311.

⁴¹ Something similar is maintained by Kant on the plane which corresponds to the relationships between different states, as is seen in his treatment of the concepts of ‘international right’ (*Völkerrecht*) and ‘cosmopolitan right’ (*Weltbürgerrecht*) (see *Rechtslehre* 6:343 ff. and 6:352 ff., respectively): here also he insists that the possible coexistence of sovereign states means, of necessity, entering into a juridical state where the relations between different states are regulated following to the principle of coexistence of freedoms in accordance with a universal law (see 6:350). Contrary to what is understood by incorrect contractualist interpretations of his position, in no case, neither on the plane of individual relations nor that of relations between states, does Kant intend to base the need to enter into the state of law referring to the beneficial consequences that would result. Indeed, the strategy of fundamentation that Kant uses here is, basically, the same as that which he adopts when dealing with the principle of morality, with appeal to

From a systematic perspective, the juridical obligation of entering into the civil state, which includes the necessary foundation of the State, marks the transition from the sphere of private right (*Privatrecht*) to public right (*öffentliches Recht*). However, from Kant's perspective, this transition simultaneously includes two complementary directions for consideration, as, on the one hand, the ultimate foundation for public right must be found in the principles of private right, and finally, in the Universal Law of Right. But, on the contrary, the demands posed by those juridical obligations that belong to the area of private right can only be properly guaranteed, in their effective reality, by the institutionality of the State, which is shaped by the principles of public right. On this subject, Kant considers that, for example, the right to private property has, as we have seen, an aprioristic foundation, which, as such, is given before any state institutionality. But at the same time he believes that in the natural state possession can only be provisional, and so true legal possession is only strictly possible where a public power with judicial faculties is already constituted, that is, in a civil state.⁴² Finally, Kant believes that the *whole* system of right, in its ultimate aprioristic foundation,

the corresponding test of universalisation, and therefore has the precise inverse form. That is: Kant shows that those maxims (of individuals or groups) which imply using one's own freedom at the expense of suppression of the possible use of freedom by others (individuals or groups) are not in agreement with the demands of universalisation, as, when universalised, they lead, finally, to their self-suppression. For the same reason, they do not satisfy the requirements of the Universal Law of Right. For the Kantian conception of the link between freedom and citizenship in the context of *Rechtslehre*, see the discussion in Terry Pinkard, 'Kant, Citizenship, and Freedom (§§ 41–52)', in Otfried Höffe (ed.), *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre*, pp. 155–172.

⁴² See *Rechtslehre* 6:255 ff. For the Kantian conception on the character of property under the conditions that are proper to the state of nature, see Richard Saage, 'Naturzustand und Eigentum', in Zwi Batscha, *Materialien zu Kant's Rechtsphilosophie* (Frankfurt a. M., 1976), pp. 206–233.

comes from the unique (*einziges*) *native right* (*angeborenes Recht*) of all human individuals, by virtue of their very humanity (*kraft seiner Menschheit*). This simply is freedom itself, in the sense of independence from the constraint of the choice of others.⁴³

The reference to freedom as the only native right marks the start point of the Kantian reception of the idea of natural right. In the systematic division of rights Kant differentiates between natural right, based exclusively on *a priori* principles, and positive right (*positives Recht*) or statutory right (*statutarisches Recht*), which proceeds from the will of the legislator.⁴⁴ Then he continues to explain the idea of natural right in terms of its *native* (*angeboren*), and not acquired (*erworben*), character of the right to freedom. As a native right, freedom belongs to everyone ‘by nature’ (*von Natur*), independently of any possible juridical act, while all other rights are based on the corresponding juridical acts.⁴⁵ It is clear that here the concept of what is ‘natural’ refers to the precise significance of the nature of the rational being as such, and not to the broader meaning of the order of nature as a whole, although this latter meaning is usually dominant in classical thinking such as that of the Stoics, for example, which give the conception of natural law a decidedly cosmological framework. It is quite clear that Kant could not proceed in this way, given his absolute rejection of the possibility of finding the ultimate foundations of morality and right in the laws of nature. However, and here his position is also different from the classical perspectives as found in Aristotelian tradition, Kant additionally rejects the possibility of finding guidance in the notion of human nature. Indeed, he believes that this starting point would not do justice

⁴³ See *Rechtslehre* 6:237 ff.

⁴⁴ See *Rechtslehre* 6:237.

⁴⁵ See *Rechtslehre* 6:237.

to the strict necessity and universality of moral laws, insofar as the notion of human nature must involve reference to empirical elements in the constitution of human beings. Ethics cannot, then, be based on anthropology, which, at most, provides knowledge of certain special conditions for the strict application of moral principles.⁴⁶ These are valid, as such, for all rational beings, and not exclusively for humans.⁴⁷ And something similar holds for the case of right. Certainly, this does not mean the elimination of all naturalistic elements in the Kantian model for the foundation of ethics and right, as Kant himself, as we have seen, resorts to the idea of rational nature, and uses it to account for the absolute value of persons, in that they are ends in themselves. But the decisive difference with the foundation models Kant rejects is because he believes that the basis of morality does not need an instance which is unrelated to reason: through moral law, reason is remitted to anything other than itself. From this perspective, it also becomes clear why Kant sees an essential link between the ideas of morality and autonomy: it is simply reason which makes the law for itself.⁴⁸

This same aspect appears, most clearly, in how Kant deals with the idea of ‘natural law’ (*natürliches Gesetz*), in its specifically practical–moral meaning, as the opposite of the idea of ‘positive law’ (*positives Gesetz*). Binding or obligatory laws (*verbindende Gesetze*), for which there may be external legislation (*äußere Gesetzgebung*), as in the case of juridical laws, in contrast with moral ones, are called ‘external laws’ (*äußere Gesetze*).⁴⁹ But, as Kant explains, among them there are some whose obligatory quality (*Verbindlichkeit*) can be recognised (*erkennen*) *a priori* by

⁴⁶ See *GMS* 4:389, 442.

⁴⁷ See e. g. *KpV* 5:19, 25, 32.

⁴⁸ See *KpV* 5:33.

⁴⁹ See *Rechtslehre* 6:224.

means of reason, even when there is no external legislation. These are external laws, but they must be simultaneously considered as ‘natural laws’ (*natürliche Gesetze*). On the contrary, those external laws that do not bind without actual external legislation are mere ‘positive laws’ (*positive Gesetze*).⁵⁰ The precise fact that the obligatory nature of almost all laws belonging to the positive juridical system depends on the existence of external legislation shows, at least indirectly, that this kind of regulation is clearly not self-sustainable. Indeed, we could imagine an external legislation made up of positive laws only, but even in such a situation, to explain the obligatory quality of these laws, we would have to presuppose a natural law (*ein natürliches Gesetz*), which would give authority (*Autorität*) to the legislator, that is, empower him to oblige others (*Befähigung andere zu verbinden*) by his mere choice (*durch seine bloße Willkür*).⁵¹ However, from the perspective of the origin of their binding character (*Verbindlichkeit*), the idea of law, in its specifically practical-moral meaning, Kant explains, always remits to an author (*Urheber, autor*), that is, the legislator (*Gesetzgeber, legislator*). The same is not true, however, when referring to the content of the law, as its origin is not always the responsibility of a specific author.⁵² Where a law owes its origin to the will of a legislator, then that law has a positive character, that is, it is contingent (*zufällig*) and, for the same reason, arbitrary (*willkürlich*). On the other hand, a law which obliges us, aprioristically and unconditionally, based on reason, is a law whose content cannot be presented as the mere will of a legislator, not even of a supreme legislator. Nevertheless, this does not rule out the idea that such laws can be *expressed* (*ausgedrückt*) as proceeding from the divine will, taken that God is a moral being whose will is law for

⁵⁰ See *Rechtslehre* 6:224.

⁵¹ See *Rechtslehre* 6:224.

⁵² See *Rechtslehre* 6:227.

us all.⁵³ In other words, in his position as supreme legislator, God may and must be represented as the origin of the universally binding or obligatory character of such laws, which does not mean that their content may be reduced to the statute of a mere sanction of His decision, precisely because the special characteristic of this type of law lies in the fact that their universally obligatory character must be recognized, immediately, by reason.⁵⁴ Clearly, when considering the relationship between natural law, on the one hand, and will, more specifically, divine will, on the other, Kant is not prepared willing to relativize the essential link between morality and rationality, and this is the defining feature of his conception of autonomy.⁵⁵

⁵³ See *Rechtslehre* 6:227.

⁵⁴ The way Kant here envisages the relationship between natural right and the will of God corresponds, in essence, to how he also considers the relationship between moral laws and the divine will. In fact, in this case also, Kant denies that the content of moral laws can be seen as the object of mere arbitrary sanction of the will of another, not even of divine will. But he maintains, at the same time, that through the concept of highest good (*das höchste Gut*), as an object (*Objekt*) and ultimate end (*Endzweck*) of pure practical reason, moral law, as such, leads to religion, taken in its merely rational sense, as the recognition (*Erkenntnis*) of all duties as divine commandments (*göttliche Gebote*) (see *KpV* 5:129; for God as moral legislator, see also *Religion* 6:181 ff.).

⁵⁵ For the same reason, and contrary to what is still maintained with some frequency, it is almost impossible to align the Kantian view on this key, decisive point with the most representative postures of traditional voluntarism, as it was begun in the Late Medieval period. On the contrary, in the strictly ethical and juridical area, Kant must be seen, rather, as continuing with the fundamental intuitions of rationalism, although he certainly continues in his own markedly original way. In fact, Kant himself presents the fundamental objective of his critical philosophy, insofar as it concerns the practical use of reason, as an attempt to impede the illegitimate autocratic pretension (*Alleinherrschaft*) of the ‘empirically conditioned reason’, which illegitimately attempts to limit the practical use of reason, which is in itself necessarily transcendent; whereas, in the case of the theoretical use of reason, the objective of

So, if we begin at the connection between the ideas of natural right and autonomy, and pay attention to the external, not self-supporting character of all juridical systems, we will better understand the specific function that Kant assigns to natural right as such. There are two points to be considered.

Firstly, from the systematic–doctrinal perspective, the idea of natural right demarcates the area corresponding to that pure part of the doctrine of right that includes the system of rights which originate from the native right of a person to freedom, given the conditions laid down by the principle of coexistence of freedoms in the Universal Law of Rights. This then is the subject area of juridical science (*Rechtswissenschaft, iurisscientia*), the object of which is none other than the systematic knowledge of the ‘doctrine of natural right’ (*natürliche Rechtslehre, Ius naturae*).⁵⁶

On the other hand, from the external perspective of its relationship with positive right and the juridical systems which actually exist, for Kant the idea of natural right is also of decisive importance, in that it has an indispensable critical and regulatory function. Although, for Kant, there is, as we have seen, a juridical obligation, recognised by reason, to pass from the state of nature to the state of law, and therefore, to the civil state, positive right itself cannot be completely derived merely from the principles of pure right. In its effective existence and multiple forms, positive right always contains, and indeed must contain, much more than can be established

the criticism was, on the contrary, to limit the unjustified pretension of reason itself to gain knowledge by itself, beyond the area of which the formal conditions of possible experience mark the limits (see *KpV* 5:16). On this subject, Kant also maintains that the concept of freedom, intrinsically linked to the pure object of reason in its practical use, is the ‘stone of scandal’ (*Stein des Anstoßes*) for all empiricists (see 5:7).

⁵⁶ See *Rechtslehre* 6:229.

exclusively using the principles that reason produces from itself.⁵⁷ However, the greater range of positive right and the real diversity of its institutionalized forms do not hinder the unrestricted validity of the principles of natural right. On the contrary, as we have seen, Kant believes that the demands which stem from these principles can only be effectively carried out and guaranteed within the framework of a positive juridical order, which means that the state of law and also the existence of state organization are valid. Simultaneously, it is also true that state organization and juridical order may become a serious threat to the possible fulfilment of these demands, when the State and the positive juridical order only answer, in their origin, structure and effective functioning, to arbitrary–contingent stipulations and factic powers. Here we find a basic problem, which concerns the structural tension between the regulatory demands of practical reason, on the one hand, and the requirements of its practical fulfilment, particularly in the institutional area, on the other. In order to fulfil its own demands, practical reason depends on the existence of institutions, which, later, may, and in fact often do, limit its possible fulfilment.⁵⁸ Nonetheless, Kant admits that the final criterion of legitimacy for any positive juridical order is definitively based on the principle which states that natural right cannot be affected, as such, by statutory laws: the principle which declares that injury by a third party to what should, in fact, be mine must be saved also at the level corresponding to citizen relationships, considered individually or collectively, with the power of the state, at least in the sense that refers to the equality of

⁵⁷ See e.g. ‘Vorarbeiten zur *Metaphysik der Sitten*, Erster Teil: *Metaphysische Anfangsgründe der Rechtslehre*’ 13:282 ff.

⁵⁸ This is the difficulty that has been diagnosed and thematized as ‘institutional aporia’ (*Institutionsaporie*) of practical reason. See Wolfgang Wieland, *Aporien der praktischen Vernunft* (Frankfurt a. M., 1989), pp. 33–46.

everyone as passive members of the citizen community.⁵⁹ The civil constitution (*bürgerliche Verfassung*) is simply the state of law which ensures (*gesichert wird*) to every one his own (*das Seine*), but in itself it does not provide the means of discovering (*ausgemacht wird*) and determining (*bestimmt wird*) in origin what belongs to whom, as all guarantees presuppose the possession or property which they aim to ensure.⁶⁰

Resorting to the principle, which establishes the priority of natural right over all positive juridical order, does not, alone, prevent the effective existence of unjust statutory and juridical regimes, nor of illegal injuries to the freedom of individuals, which, in certain circumstances, may be the result of the actions of state institutions and powers. And on this point, Kant was realistic enough to admit that there was no concrete juridical mechanism either, which could, in practice, avoid abuse, even serious abuse, of state power. Nor would juridical recognition of a supposed ‘right to resistance’ – which Kant considers impossible, as such, for simple reasons of form –⁶¹ allow for such a guarantee of the rights of individuals.⁶² However, the principle of the priority of natural right over all positive juridical order is of decisive systematic importance, insofar as it grants natural right the function of indispensable guidelines for judgement, either for the creation of new institutions or also for the evaluation and criticism of existing juridical ordering, from a strictly normative perspective, which is not merely interested in their efficiency, but also, more importantly, in the validity of their normative pretensions. In this critical–evaluative application, the principles of natural

⁵⁹ See *Rechtslehre* 6: 256, 315.

⁶⁰ See *Rechtslehre* 6: 256.

⁶¹ See *Rechtslehre* 6:320 ff.

⁶² Problems such as the so-called ‘right to resistance’ (*Widerstandsrecht*) from a systematic perspective fit into the area of institutional aporia. See Wieland, *Aporien der praktischen Vernunft*, p. 41 ff.

right thus provide elementary reference points for the corresponding reflexive processes, which will establish if, and how far, what already exists, or is suggested as part of a positive juridical order may legitimately be taken as an example of effective fulfilment of the demands which are based on the very concept of right.

So we see that, even going beyond its systematic function that as a basic concept in the area corresponding to the pure doctrine of right, for Kant the idea of natural right also fulfils a fundamental critical–reflexive function, where the question is the judgment of all possible order of positive right from a normative perspective. Incidentally, no positive juridical order, present or future, yet follows from the mere principles of natural right, as the creation of any ordering of this kind must necessarily imply a whole group of empirical considerations with reference to individuals, circumstances and the territory which said ordering deals with. However, from the strictly normative perspective, all positive juridical order must be subject to possible judgement in the light of the demands of the very concept of right. This is because in these very demands we must find the ultimate foundation for the legitimacy of any given juridical ordering. From this same perspective, we can also understand why in the context of *Rechtslehre* the treatment of the idea of natural right is, in fact, always associated with the discussion of the conditions in which, in each case, the *transit* from the (pure) point of view of natural right to the (empirical) point of view of positive right will be possible. As it has recently been correctly emphasised, this is a specific case of a broader systematic problem concerning what Kant calls the ‘transition’ (*Übergang*) from the pure to the empirical part of a certain science.⁶³ And, in fact, the specific treatment of

⁶³ See Peter König, ‘§§ 18–31, Episodischer Abschnitt §§ 32–40’, in Otfried Höffe (ed.), *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre*, p. 147 ff., who underlines the systematic function of what König calls the ‘science of transition’ (*Übergangslehre*) that Kant develops for the case of the

the idea of natural right is reserved in *Rechtslehre* for the passage contained in the §§ 32–40, which constitutes an ‘episodic section’ (*episodischer Abschnitt*), that, in some way, fulfils the function of deliberately marking the point of transition between natural right and positive or statutory right.⁶⁴ But we must add the equally important fact that, in his specific treatment of the most important chapters of the doctrine of right such as that of public right, Kant pays special attention to the question of how the pure juridical principle relevant to the case is (or is not) fulfilled and expressed in certain acts or situations, which are (or are not) the origin of the corresponding deeds of law, within positive juridical ordering.⁶⁵ In every case, fundamentally, he specifies the particular details of what conditions are needed for the fulfilment and external expression of the

metaphysical principles of the science of nature in *Metaphysische Anfangsgründe der Naturwissenschaft* (see esp. Kant’s explanations on 4:469 ff.).

⁶⁴ See König, ‘§§ 18–31, Episodischer Abschnitt §§ 32–40’, p. 147. König establishes an analogy with the function which fulfills the episodic section of the §§ 16–18 of *Tugendlehre*, dedicated to the ‘Amphibology of the Moral Concepts of Reflection’, which marks the transition point from the duties of right to the duties of virtue. However, this case does not deal, comparably, with the transition between the pure part and the empirical part of a doctrine of duties.

⁶⁵ Thus, for example, in dealing with the figure of acquisition by permanent possession and use (*Erwerbung durch Ersitzung, usucapio*) Kant strives, particularly, to establish the conditions by which the prescription of the original property belongs to natural right (see *Rechtslehre* 6:292 ff., 364 ff.; see also the treatment of the conditions of property in the law of inheritance, 6:365 ff.) In the case of matrimonial law, from a comparable perspective where natural right provides the final norm for judgement, he considers situations such as polygamy, concubinage, or unions that do not fully satisfy the requirements of legal equality of the contracting parties (see 6:280 ff.). Finally, in the case of treatment of acquisition by judicial decisions, Kant maintains that the sentence of distributive justice, where this is in agreement with its aprioristic law, must be considered as belonging to natural right, in the same way as that which corresponds to commutative justice (see 6:296 ff.).

principles of pure right, in the same way as these, in turn, come from the native right to freedom, under those restrictions which lay down the principle of coexistence of freedoms contained in the Universal Law of Right.

V. In conclusion

The reception of the idea of natural right, which Kant carries out in his doctrine of right, is incomprehensible in its basic direction and true range, if the special systematic context it belongs to is not considered properly from the beginning. Given the most general premises of his critical philosophy, and, especially, given the basic starting-points of the particular model of ethical foundation which he develops in *Grundelung* and *KpV*, Kant is prevented *a priori* from attempting to follow the paths used most frequently by the iusnaturalist conceptions developed by earlier philosophical tradition. Indeed, neither the reference to nature as a whole, nor the reference to human nature as such, can provide a starting-point for the Kantian conception, in as far as it attempts to reach an aprioristic foundation, which will not depend on the validity of factual verifications that refer to the objects of sensible experience. It is also true, however, that Kant's own conception cannot forgo all kinds of factual starting-point either. And it is common knowledge that, on this matter, Kant refers to a certain *factum* of reason, irremediably linked to the consciousness (*Bewußtsein*) of freedom of will, by which reason effectively exhibits its practical character in us.⁶⁶ In this way, Kant points out an original dimension of familiarity of the human agent with its own rational nature. This provides a starting-point for all possible experience of morality, that its ultimate nucleus can only be a particular form of self-experience, and, later, for all possible philosophical investigation into the structure and assumptions of said (self-) experience.

The appeal to the idea of rational nature is, as we have seen, essential within Kant's model of foundation, when he explains the origin and legitimacy of the claims for validity which, in both the moral and juridical areas, are posited by reason in its practical use. But it would definitely be a serious error of judgement on the true scope of the Kantian position if we were to take this appeal as a mere axiomatic starting-point, within a supposedly deductive model. Over and above what may be suggested by the superficial appearance of how Kant explains his position in works such as *KpV* and *Rechtslehre*, the truth is that, in the starting-point of his critical-transcendental reconstruction of the foundations of morality and right, there are not mere statements, but rather a particular self-experience of the rational agent, thanks to which the latter can recognise his own autonomy, precisely, as a rational being. As we can see in the above discussion, the critical-transcendental discourse, in itself, shows that it is rational nature where, finally, we will find not only the original source of the unconditional demands of morality and right, but also the true target to whom these demands are directed. This discourse takes the shape of an explicit turning back of reason on itself, by means of which the central position of reason within the order that Kant calls the 'kingdom of ends' finally becomes clear. And this explicit turning back of reason on itself simply reproduces, in turn, as philosophical elucidation, the implicit appeal that reason makes to itself, when, at the level of pre-philosophical experience, it specifically attempts to do justice to the demands of morality and right.

Bibliography

Allison, Henry E., *Kant's Theory of Freedom* (Cambridge: Cambridge University Press, 1990).

⁶⁶ See *KpV* 5:42.

- Batscha, Zwi, *Materialien zu Kant's Rechtsphilosophie* (Frankfurt a. M.: Suhrkamp, 1976).
- Fulda, Hans–Friedrich, ‘Erkenntnis der Art, etwas Äußere als das Seine zu haben (Erster Teil. Erstes Hauptstück)’, in Otfried Höffe, *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie Verlag, 1999), pp. 87–115.
- Höffe, Otfried (ed.), *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie Verlag, 1999).
- Kainz, Howard P., *Natural Law. An Introduction and Re–examination* (Chicago: Open Court, 2004).
- Kant, Immanuel, *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–).
- , *Kritik der reinen Vernunft*, ed. Jens Timmerman (Hamburg: Felix Meiner, 1998).
- , *Metaphysische Anfangsgründe der Naturwissenschaft* (1786), in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. IV, ed. Alois Höfler (Berlin, 1911), pp. 465–565.
- , *Naturrecht Feyerabend* (1784), in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. XXVII/2,2, ed. Gerhard Lehmann (Berlin, 1979), pp. 1317–1394.
- , *Metaphysische Anfangsgründe der Rechtslehre* (1797), *Metaphysik der Sitten, Erster Teil*, ed. Bernd Ludwig, 2nd rev. edn (Hamburg: Felix Meiner, 1998).
- , ‘Vorarbeiten zur *Metaphysik der Sitten*, Erster Teil: *Metaphysische Anfangsgründe der Rechtslehre*’, in *Kant's gesammelte Schriften*, ed. Akademie der Wissenschaften (24 vols, Berlin, 1902–), vol. XIII, ed. Gerhard Lehmann (Berlin, 1955), pp. 207–370.

- Kaulbach, Friedrich, *Das Prinzip Handlung in der Philosophie Kants* (Berlin: Walter de Gruyter, 1978).
- , *Ästhetische Welterkenntnis bei Kant* (Würzburg: Königshausen & Neumann, 1984).
- König, Peter, '§§ 18–31, Episodischer Abschnitt §§ 32–40', in Otfried Höffe (ed.), *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie Verlag, 1999), pp. 133–153.
- Pendlebury, Gary, *Action and Ethics in Aristotle and Hegel. Escaping the Malign Influence of Kant* (Aldershot, Hampshire and Burlington, VT: Ashgate, 2005).
- Pinkard, Terry, 'Kant, Citizenship, and Freedom (§§ 41–52)', in Otfried Höffe (ed.), *Immanuel Kant, Metaphysische Anfangsgründe der Rechtslehre* (Berlin: Akademie Verlag, 1999), pp. 155–172.
- Reath, Andrews, *Agency and Autonomy in Kant's Moral Theory* (Oxford: Oxford University Press, 2006).
- Saage, Richard, 'Naturzustand und Eigentum', in Zwi Batscha, *Materialien zu Kant's Rechtsphilosophie* (Frankfurt a. M.: Suhrkamp, 1976), pp. 206–233.
- Timmons, Mark (ed.), *Kant's 'Metaphysics of Morals'. Interpretative Essays* (Oxford: Oxford University Press, 2002).
- Westphal, Kenneth R., 'A Kantian Justification of Possession', in Mark Timmons (ed.), *Kant's 'Metaphysics of Morals'. Interpretative Essays* (Oxford: Oxford University Press, 2002), pp. 89–109.
- Wieland, Wolfgang, *Aporien der praktischen Vernunft* (Frankfurt a. M.: Vittorio Klostermann, 1989).
- , 'Kants Rechtsphilosophie der Urteilskraft', *Zeitschrift für philosophische Forschung*, 52 (1998): 1–22.

CHAPTER 8

The Right to Freedom versus Nature in Hegel's Philosophy of Right

Montserrat Herrero

Why is nature of interest to politics? What is the crucial aspect that continues to make 'natural right' an important philosophical issue nowadays? The suspicion has always existed as to whether there is nature and we are able to know what it is, since then not everything is allowed. If there is no nature, then everything will be allowed. The question regarding nature becomes a political issue to the extent that we recognise it as a legitimizing authority or not of practices that are demanded in the political community.

An underlying notion in political thought is that those who attempt to ensure a regulatory political stance must appropriate the concept of nature. This competition for the definition of such concept is possible precisely because recognition of *what* is natural has always been a controversial issue. The fact this continues to be the case is revealed in normative conflicts which sporadically arise in political life; thus, both homosexual unions and marriage justify their legal-political aspirations by resorting to the concept of nature, for, is not biological orientation a matter of nature?

It would seem that the other argumentative possibility for those who do not wish to resort to the 'ghost' of nature, is to accept any norm as an occasional preference of freedom. And, in so doing, they are admitting that *only* occasional or circumstantial normativity is possible. This situation would without doubt be the most suitable for those who found political action on mere convenience.

That all political action is normative goes without saying, due to the simple fact that all power demands immediate obedience, and this implies an obligation for those

who obey: what varies in each political community is the type, consistency and legitimacy of that normativity.

The path of investigation thus appears crystal-clear: we must obtain a suitable formulation of what nature means in order to find out to what extent and in what sense normativity may be deduced from it. This is what the best part of political-philosophical tradition has been doing for centuries. However, conducting an investigation on the basis of normativity along these lines is pointless, since the establishment of modern natural right. Nature, as interpreted by modern philosophy, does not provide a sufficient criterion for the establishment of political normativity. The emancipation from nature has, for many decades of political thought, been the standard for freedom. Only in certain cases – the most optimistic ones – will it be rescued as a limiting criterion of power, albeit not a fully normative one.

One of the political philosophers who have been most ‘suspicious’ of nature without, however, following the emancipatory path is G. W. F. Hegel. With the intention of obtaining greater clarity regarding the matter mentioned above, I will analyse the reasoning of an apparently at least, opponent of nature as an authority for political legitimization.

I. The critique of modern natural right

In 1802, Hegel devotes one of his first works to a critique of modern natural right: ‘Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie, und sein Verhältnis zu den positiven Rechtswissenschaften’, in which he expresses his criticism of Kant and Fichte in particular, but also Hobbes and Rousseau.

On the one hand, he criticizes the ‘empirical’ theories of the State and the Right, which are merely inductive and generalizing, because, ultimately, they leave everything to chance. He does not mention those theorists of the Modern State ranging from Bodin to Rousseau. Hegel does not share their stance, but views them with affection.

Another criticism is his attitude regarding ‘formalist’ theories, which he attacks essentially in the person of Kant. In not attempting to take the content into account, Kant loses touch with reality and gives rise to tautological thought. The same categorical imperative is an example of this: he demands that a particular will becomes a universal will and vice-versa, leaving aside the content of each. For Hegel, purely formal ethics is ‘impolitic,’ and results in a separation between morality and legality. Religious and moral conviction emigrates towards the inside and relationships between citizens become mechanical.

What Hegel is criticizing both in one case and in the other is an ateleological conception of nature which leaves the ethical–political world without truth: that world is understood as being the realm of freedom, but there is no science in it. Modernity therefore proclaims ‘the atheism of the ethical world’ in one of the apt expressions in the prologue to the *Philosophy of Right*.

The onset of the problem is well observed in the following text of the above–mentioned prologue:

As far as nature is concerned, it is readily admitted that philosophy must recognise it *as it is*, (...) that nature is *rational within itself*, and that it is this actual reason present within it which knowledge must investigate and grasp conceptually – not the shapes and contingencies which are visible on the surface, but nature’s eternal harmony, conceived, however, as the law and essence *immanent* within it. The ethical world, on the other hand, the state, or reason as it actualises itself in the element of self–consciousness, is not supposed to be happy in the knowledge that it is reason itself which has in fact gained power and authority (*Gewalt*) within this element, and which asserts itself there and remains inherent within it. The spiritual universe is supposed rather to be at the mercy of contingency

and arbitrariness, to be *god-forsaken*, so that, according to this atheism of the ethical world, truth lies *outside* it, and, at the same time, since reason is nevertheless also supposed to be present in it, truth is nothing but a problem¹.

In the postscript by H. G. Hotho to the lecture given during the 1822–23 winter semester, the need for reason is suggested to explain the encounter of man with right in a different way from how it does so in nature, given that the laws of right are laws which originate from man. The latter laws find the measure of what right is. Things are not valuable because ‘that is the way they are,’ but rather because each one demands that what should be corresponds to their own criterion. Hegel will very often say that an attempt is made with the whole area of spirit to redirect from reflection of nature to reflection of right. However, this potential opposition between what right is in its own self, and what is as a right here and now, provides us with the model for seeking out the true path of legal and political rationality. True thought is not an opinion about the thing, but a concept. Even so, one cannot consider legal matters as though they were ‘natural’ in an ordinary way.

At the beginning of Hegel’s *Philosophy of Right*, the problem of political legitimization is already transferred from the issue of nature to the issue of the truth regarding the ethical world. The key to legitimization is truth, but not the truth of nature, but rather that of the ethical world. Yet this is precisely the problem: what can that truth consist of, as the modern world has removed the aspiration of truth of the objective world that is the result of human action. Action knows no limits. However, it grants an absolute aspiration of truth to the world of nature, because it is itself a necessary

¹ *Grundlinien der Philosophie des Rechts* (Hamburg, 1995), Vorwort, IX. p. 7. For English quotes from this work by Hegel, we have used the translation by H. B. Nisbet for Cambridge University Press, 1991. Stress by Hegel himself.

measure. Action, however, cannot be simply redirected to nature. At the starting point, Hegel is completely modern.

His philosophical aspiration, however, inaugurates a new path in accordance in the spirit of the time. The only path that makes sense after the French Revolution², as it is not possible to go backwards in the path of the spirit: ‘philosophy expresses its own time in concepts’ is another of the well-known formulations of the aforementioned prologue.

All normative legitimization can only be achieved through freedom; and nature, at his time, has no freedom³. Hegel *Philosophy of Right* attempts to show how freedom is rationally constructed; it takes us from the immediate existence of freedom to the truth of freedom without the need to resort to nature as a normative authority. The normative authority *par excellence* in Hegel is reason. The problem with the normativity of a teleological-type nature, as understood by the ancient and medieval world, is re-defined in Hegel in new terms: a teleological concept of reason, in other words, the spirit.

‘The human being, in his immediate existence (*Existenz*) in himself, is a natural entity, external to his concept; it is only through the development (*Ausbildung*) of his own body and spirit, essentially by means of *his self-consciousness comprehending itself as free*, that he takes possession of himself and becomes his own property as distinct from that of others’, he says in § 57; and in the remarks he specifies: ‘the free spirit consists precisely in (...), overcoming (*Aufheben*) (...) its immediate natural existence and in giving itself an existence which is purely its own and free’⁴.

² See Joachim Ritter, *Hegel und die französische Revolution* (Frankfurt a. M., 1965), p. 27 and 30.

³ *Grundlinien*, § 49.

⁴ *Grundlinien*, § 57.

Hegel's political interest seeks to understand the rationality of freedom. Without doubt, nature plays its role there, as we will see, but this can be at neither the starting point nor the arrival. The science of right must move away from the false starting point, the immediate nature of man, so as to explore the rationality of the free will⁵. According to Ottmann, what Hegel attempts in the *Philosophy of Right*, assuming a critical standpoint, is to unravel the conditions of possibility of modern freedom⁶, and immediate nature is not in that situation⁷.

II. The *Rechtsphilosophie*, a defence of classical natural right?

Not in vain, however, does the work need the subheading: 'Naturrecht und Staatswissenschaft im Grundrisse'⁸ (Compendium of natural right and science of the state). The question, therefore, is in what sense is the *Rechtsphilosophie* natural right?⁹

⁵ *Grundlinien*, § 57: 'Der Standpunkt des freien Willens, womit das Recht und die Rechtswissenschaft anfängt, ist über den unwahren Standpunkt, auf welchem der Mensch als Naturwesen und nur als an sich seiender Begriff, der Sklaverei daher fähig ist, schon hinaus'.

⁶ See Henning Ottmann, 'Das Recht der Natur in Hegels Philosophie des Rechts', *Der Staat*, 23 (1984): 1–15. For Ottmann, this is the basic structure of the Philosophy of Right. What Hegel attempts to show, in his opinion, is that with a pre-political starting point, neither right nor moral can be definitively founded. Hegel proves in that way that the conditions of possibility of freedom cannot be either in a state of pre-political nature (abstract right) or in a pre-political freedom of individuals (morality), but rather in *Sittlichkeit*. Ottmann thinks that if these first two spheres are again recovered in *Sittlichkeit* as a private and moral right, this is to show what the true foundation of freedom is.

⁷ See Ottmann, 'Das Recht der Natur in Hegels Philosophie des Rechts': 5: 'Von Natur aus ist der Mensch in Rücksicht auf seine Bedürfnisse nicht frei, da Freiheit die durch Arbeit und Bildung zu leistende Emanzipation von der Natur vorausgesetzt', these words referring to §§ 194 A and 187 A.

⁸ As Manfred Riedel comments in 'Freiheitgesetz und Herrschaft der Natur: Dichotomien der Rechtsphilosophie', in Riedel, *System und Geschichte. Studien zum historischen Standort von Hegels*

Some, such as N. Bobbio, have seen in Hegel's *Philosophy of Right* the dissolution and end of natural right. Hegel thinks natural right through the end, because his own philosophy cannot be understood without this tradition; after that, however, one cannot speak of natural right: he executes its end and dissolution.¹⁰

Others, like M. Riedel, see in his proposal a continuation of modern natural right. Hegel, much to his regret, explores the rift Kant between nature and freedom opened by Hobbes and steadily delved into by Rousseau.¹¹ Of course, that is not Hegel's intention

Philosophie (Frankfurt a. M., 1973), p. 113, on the lessons gathered together by Homeyer, Hegel himself comments as to how the book should have been entitled *Philosophische Rechtslehre*.

⁹ The affirmation by Hegel in *Enzyklopädie* (1917) § 415 is very interesting regarding this point. When Hegel speaks of nature or natural right, he refers to immediate nature or modern natural right. Therefore, if his work is natural right, this has something to do with the idea of nature as 'Natur der Sache d. i. den Begriff' from that distance (nature of the thing – that is, concept). See *Enzyklopädie* (1930), § 502 A. Also *Grundlinien*, § 57 A.

¹⁰ See Bobbio, N., 'Hegel und die Naturrechtslehre', in Manfred Riedel (ed.), *Materialien zu Hegels Rechtsphilosophie* (2 vols, Frankfurt a. M., 1975), vol. 2, p. 81. In his opinion, Hegel criticizes the three creations of modern natural right: the state of nature, the social contract and the distinction between positive right and natural right. Criticism of the first two might enable him to be situated in a classical stance but, in the opinion of Bobbio, not in the case of the latter, because it leads Hegel to make the affirmation which is the opposite of the classical medieval affirmation that a law which is not just, is not a law. In that sense, Hegel fails to overcome the 'scientific results' of the modern natural right. Rather, he annuls it. Bobbio says that the basic principles of our natural right fall with Hegelian construction: the theory of human rights as prior to society and the ideal of a universal Republic outside the State. Both things mean not recognising the limits of the State both from outside and from within.

¹¹ From this point of view, the 'second nature', about which Hegel speaks, has nothing to do with the Aristotelian one in Riedel's opinion, which comes from *nomos* and customs. Hegel's law has more to do with that of Hobbes, is purely positive. In his opinion, the Hegelian stance represents the sophistic alternative between *nomos* and *physis*. See Riedel, 'Freiheitgesetz und Herrschaft der Natur', p. 99. In his

when he already distances himself, as we have said, from modern natural right, in his writings from 1802/03.

If following that initial distancing, one of his last works bears that subheading, one might assume Hegel's intention of renewing classical natural right. Indeed, some commentators have stated that the logic behind *Rechtsphilosophie* implies his intention of renewing the Aristotelian doctrine that the person may only actualise their nature in political institutions. It makes no sense to speak of a hypothetical actualisation as considered by modern natural right, but rather, by using an expression coined by Ottmann: what makes sense is to speak of a 'realer Naturzustand'¹² (real state of nature) – that is to say, of being concrete and real in terms of the actualisation of nature, namely of the family, of civil society and of the state. Hegelian theoretical intention, however, is not possible without a certain split from the ancient world and without a certain

opinion, the other point in which Hegel stands firm regarding modern natural right is the idea of the free will as the will of an individual. Not in vain does the Philosophy of Right start by appealing to individuals in their relationship with things, although he himself accepts that said individual is not the immediately natural one. See *Ibid.* p. 109. Riedel points out the same fact in this article, that nature reappears suddenly, bursting onto the field of the right until the end of philosophy, and leads us towards another interpretation, which I hope is justified on these pages. Hegel never definitively leaves nature 'behind' as a condition. And when he speaks of a 'second nature,' he does so in a very similar sense to how the actualisation of Aristotelian nature is understood.

¹² See Ottmann, 'Hegelsche Logik und Rechtsphilosophie. Unzulängliche Bemerkungen zu einem ungelösten Problem', in Dieter Henrich Dieter and Rolf-Peter Horstmann, *Hegel Philosophie des Rechts. Die Theorie der Rechtsformen und ihre Logik* (Stuttgart, 1982), p. 385.

acceptance of the modern world.¹³ That is why one cannot speak of a simple renewal of the Aristotelian spirit in Hegel on this particular point, as J. Ritter claims.

Ottmann says that, for Hegel, nature and freedom join together in concrete spheres of reality, and not in the field of ideal fiction. This constitutes the basis for operations from which modern natural right may make its abstractions. In this sense, Hegel says¹⁴ that man has never been in a state of nature in which he only had natural needs, or, in other words, the abstract human nature in itself has never had a historical existence.

Actualisation of nature takes the form of the system of right. Within it, natural determinations find the form of rationality. The free will is rational as it decides – that is to say, as it generates determinations from itself. ‘Purification of inclinations’ occurs on the path to freedom, which simply means that inclinations are freed from immediate determination and from subjective and chance content¹⁵, not that they cease to exist. In Hegel, the connection between inclinations and freedom does not disappear, nor is there destruction of the former¹⁶.

¹³ This is the thesis of Ottmann, in contrast with those of both J. Ritter and M. Riedel. Ritter sees in Hegelian *Rechtsphilosophie* an echo of Aristotelian natural right. Riedel’s is rather more an echo of Hobbesianism. See Ottmann, ‘Das Recht der Natur in Hegels Philosophie des Rechts’: 3–4; Ottmann, ‘Herr und Knecht bei Hegel. Bemerkungen zu einer missverstandenen Dialektik’, *Zeitschrift für philosophische Forschung*, 35 (1981): 372. Ludwig Siep also already states this intention to renew classical practical philosophy in writing about Hegel’s natural right, see: *Anerkennung als Prinzip der praktischen Philosophie* (Freiburg and München, 1979), p. 159.

¹⁴ *Grundlinien*, § 194.

¹⁵ *Grundlinien*, § 19.

¹⁶ This is also the thesis of Robert Pippin, see: ‘Hegel, Freedom, The Will’, in Ludwig Siep (ed.), *Grundlinien der Philosophie des Rechts* (München, 2005) p. 50.

Right, in each of its spheres, is like a ‘second nature’¹⁷. The spirit which is the basis of right and its starting point, which is rational will, are second nature to man. So he says in § 19:

Underlying the demand for the purification of the drives is the general idea (*Vorstellung*) that they should be freed from the form of their immediate natural determinacy and from the subjectivity and contingency of their content, and restored to their substantial essence. The truth behind this indeterminate demand is that the drives should become the rational system of the will’s determination; to grasp them thus in terms of the concept is the content of the science of right.

At each moment when the idea of the ‘free will, in and for its own self’ is developed, namely abstract right, morality and ethicity (*Sittlichkeit*), the natural inclination is present as a starting point for reflection. In the field of abstract right, the will is ‘naturally’ an external thing, a property; in the field of morality, it is ‘natural’ inclination, and in the field of ethicity it is ‘natural’ family (*Gattung*). Therefore, the right of freedom as an abstract right as the ‘objectivization of external nature’ (*Versachlichung der äusseren Natur*), morality is the ‘ethnicization of internal nature’ (*Ethisierung der inneren Natur*), and ethicity is that substantial reality which rationally expresses the ‘system of needs.’ Immediate nature is overcome by the rationality of the spirit in each field of legal–political life.

The spirit is not outside nature. The path of the spirit also appears in the *Philosophy of Right* as the truth of nature in its different aspects. In this sense, R. Pippin provides a continuist interpretation: ‘The spirit is the truth of nature, but not something different from it’¹⁸. Hegel deals with the problem of the spirit as that of an explanation of the activities of beings on which reason cannot be given according to their own

¹⁷ *Grundlinien*, § 4, § 151.

¹⁸ Pippin, ‘Hegel, Freedom, The Will’, p. 40. He points out three places in *Enzyklopädie*: § 381, § 388 and § 468.

natural properties. Self-determinable beings and not simply self-conservative ones act in a normative way, in other words, in accordance with ends. The central theme for their action is therefore rational representation, there is no other way. In any case, Pippin separates the Hegelian concept of the intellectualist that is Socrates or Spinoza¹⁹.

Throughout the *Philosophy of Right*, there is continuity between motivations or impulses of nature, freedom and rationality. Each of the forms of right is a response to rational formalization of the immediately natural. In this sense, Hegel's theory of freedom is a theory of the spirit and its fulfilment, that is, it is a theory of the progressive determination of freedom.

That progression is the work of reflection and cannot be interpreted as merely causal²⁰. As Spaemann explains in his regard of Hegel's teleology, making oneself aware of freedom, for Hegel, means the process of liberation. The conscience of freedom cannot be constructed in a 'zweckrational' way. Rather, the rational end must be considered as what we already have for it to be reached at any particular moment. This is what the German philosopher says in interpreting Hegel, that only those who are already free can achieve liberation. The process of the spirit is not, therefore, an emancipation of a natural state, because the end was already present at the beginning of the process: 'all action due to ends [*Zweckhandeln*] is essentially just a conscious achievement of what we already truly are'²¹. As Spaemann recognises, there exists in Hegel a precedence of the real over the possible in his way of understanding teleology.

¹⁹ Pippin, 'Hegel, Freedom, The Will', p. 47.

²⁰ Robert Spaemann's argument in *Natürliche Ziele* (Stuttgart, 2005), p. 14 refers to the explanation of teleology in logic as 'the truth of the mechanism'.

²¹ Spaemann, *Natürliche Ziele*, p. 148. [Unless otherwise stated, all translations of secondary literature to English are mine]

Without anticipation, dialectics is not possible²². And in my view this is a central point for understanding Hegel's *Rechtsphilosophie*.

The immediacy and particularity of the natural is overcome in reflection, he says in § 21. The activity of thought consists of 'overcoming' (*Aufheben*) and 'raising' (*Erheben*). Only in this way can the will be shown as 'thought fulfilling itself in will' (*das im Willen sich durchsetzende Denken*): Hegel says 'this self-conscience which comprehends itself as essence through thought and thereby divests itself of the contingent and the untrue constitutes the principle of right, of morality, and of all ethics'²³.

Considering the above, we can find that in Hegel *Sittlichkeit* plays the role of natural right. Thus, it turns out that what should be measured by natural right – namely, ethicicity, is what now 'measures' or lays the foundations of freedom. In this sense, Ottmann attributes functions to the *Sittlichkeit* in Hegel's philosophy: the recognition of rights of modern subjectivity, the criticism of their deficient fulfilment and the condition of possibility of freedom itself²⁴.

If we take into account that *Sittlichkeit* culminates in the State, this precisely means cancellation of what is now understood by natural right, namely, an unavailable pre-political and absolutely definable sphere, as a field of legitimization for political action.

I now find myself in a difficult situation. But at least Hegel tells me that I cannot get out of it through the back door, which is understanding nature or a state of nature as a condition of possibility of the legitimization of freedom. The right of freedom is not

²² Spaemann, *Natürliche Ziele*, p. 144.

²³ *Grundlinien*, §21.

²⁴ Ottmann, 'Das Recht der Natur in Hegels Philosophie des Rechts': 8.

found in nature, even though we speak of free nature in the case of man, for ‘nature is not free and is therefore neither just nor unjust’²⁵.

If this is the case, what can Hegel mean when he says that only freedom has right and not nature?

III. Only freedom, not nature, has right.

After the Jena era, in Hegel the absolute spirit starts to differ more clearly from the objective spirit and, consequently, the right of nature in the spirit starts to become the right of the spirit in nature. The spirit does not obtain the ‘measure’ of reflection from nature. The observation made in § 194 of *Rechtsphilosophie* is illuminating regarding this point: ‘whereas freedom consists solely in the reflection of the spiritual into itself, its distinction from the natural, and its reflection upon the latter.’

What does this mean exactly? To what type of reflection is Hegel referring? In the *Propädeutik*, he explains it simply, the only way of doing so in a book written for students. Animals act by instinct; their action is geared towards ends, in other words, Hegel says, *vernünftig*. Yet precisely because it is an unconscious way of acting, one cannot strictly speak of action in them. They have inclinations and tendencies, but not a *vernünftige Wille*. Tendency has movement in itself, but its content is limited: the tendency does not go beyond its own end and that is why it is said to be blind. From the point of view of its satisfaction, it is dependent on external circumstances. Man as a purely natural being behaves in a necessary way and is not a free being²⁶. Only man may reflect on his instincts. Reflection means, above all, ‘an abbreviation of the

²⁵ *Grundlinien*, § 49: ‘die Natur ist nicht frei, und darum weder gerecht noch ungerecht’.

²⁶ *Philosophische Propädeutik I*, § 10 *Erläuterungen zur Einleitung*.

immediate.’ The spirit *has* reflection, Hegel says²⁷. It is not subject to the immediate, but rather always goes beyond it. The ends of tendencies are limited, but enable the essential end to be fulfilled. This reflection is, however, only relative, because it ends in something finite. Infinite (or absolute) reflection consists of the fact that I no longer relate to another, but rather only to myself – or that I am an object (*Gegenstand*) for myself. The pure I is the purely indeterminate. Yet it can make the transit from indetermination to determination via its reflection. ‘Deciding’ is the figure involved in this transit, over which reflection takes precedence²⁸.

The essential end is beyond tendencies and cannot be indicated by them, but rather by the spirit in its reflection, in other words, in the dialectic system of notions²⁹. The essential end becomes an objective spirit in the decision of the free I.

What Hegel is indicating with the right of the spirit is precisely the essential end of the free will or the concrete path of the teleology of the human spirit. Using a non-Hegelian expression, it could be said that this indicates the substantial goods of the human being as a political being. This is, to my mind, what Hegel means in

²⁷ *Philosophische Propädeutik* I, § 11 *Erläuterungen zur Einleitung*.

²⁸ *Philosophische Propädeutik* I, § 13 *Erläuterungen zur Einleitung*.

²⁹ The most profound law of the spirit is that which, through experience, albeit *a priori* by evidence, leads one to devise the dialectic system of notions. However, this is strictly parallel to the dialectic system of reality. In *a priori* knowledge of things, the spirit is in its right mind: when the spirit contemplates the insoluble universal dialectic process in its own self and in things and agrees, it generates what is real that it finds before it. In this sense, it actively coincides in full clarity and to full satisfaction with the law of everything, which is also its own law. Furthermore, in the spirit, the law of everything actively becomes aware of itself. See Franz Gregoire, *Études hégéliennes. Les points capitaux du système* (Louvain, 1958), p. 13. See also Spaemann, *Natürliche Ziele*, p. 139: ‘Es ist für Hegel charakteristisch, dass die logischen Bestimmungen auf alle Bereiche der Wirklichkeit angewandt werden können, überall, ‘ihr Recht haben’.’

Rechtsphilosophie when he says that the spirit has its own right in each sphere of development of the free will³⁰.

Faithful to his assumption that the world is structured subject–objectually and in agreement with his dialectic method³¹, Hegel indicates that the true idea of freedom cannot be more than in a speculative way. Therefore, the right of freedom extends to each moment of its idea: the right of freedom as immediate existence, abstract right; the right of freedom as a reflection of the self–conscience, morality; the right of freedom as true freedom or substantial reality, ethicity.

From each of these moments of the idea come the rational forms of freedom. The ‘person’³² has the right of freedom in the abstract sphere and is basically determined in a negative way: legal determination in this point is only permission or authorisation³³ about things³⁴. The will is found with a natural determination that is the inclination for property³⁵. The right of freedom in this sphere is that I possess a property authorised by a contract. Hegel says in § 71 that it is rationally necessary (*ist durch die Vernunft notwendig*) that individuals enter into contractual relationships. *It is not necessary for nature, but is so for rational living.* And, what is the reason given? Firstly, the fact that

³⁰ *Grundlinien*, § 30: ‘Each degree of development of the idea of freedom has its own right, because it is the existence of freedom in its own determination.’

³¹ If a subject does not exist, there is no possibility of denying, yet because the subject is not the object and vice–versa, they are codetermined, and there exists *Entzweiung*. In it there is only unilaterality. Every true idea can be no more than a *Versöhnung*, but if it does not wish to be unilateral, it must include its negative moments.

³² *Grundlinien*, § 35.

³³ *Grundlinien*, § 38.

³⁴ *Grundlinien*, § 43.

³⁵ *Grundlinien*, § 39 and § 43.

the thing which I possess is something outside me makes it vulnerable to contingency, which does not enable it to be used, because other wills exist which are not mine. What strictly constitutes the sphere of the contract is the mediation of property, not only of a thing with my subjective will, but rather a thing with my subjective will and other wills³⁶. The institution of property as substantial *good* requires the legal figure of the contract. The contract goes beyond the natural inclination for possession. The spirit is free in its immediate existence in ‘contracted’ property. The contract is not, however, a definite field of political rationality. The rationality of consensus it reaches cannot be judged within the same sphere of the own consensus³⁷. It is not, therefore, a definite field of political legitimacy³⁸.

From this form of right are excluded, firstly, all modalisation as to when, how much and how property should be, given that this is a purely negative sphere. That is to say, the need to contract does not imply how property is to be contracted. We will not find rational arguments to discover this in this sphere of abstract right³⁹. Secondly, the relationship of my subjectivity with ‘non–expropriable’⁴⁰ goods is not included in this

³⁶ *Grundlinien*, § 71.

³⁷ ‘Weder der Willkürwille des Einzelnen noch das Übereinkommen der Vielen sind ein Garant dafür, dass der so erreichte Konsens auch ein venünftiger genannt werden kann’. Ottmann, ‘Das Recht der Natur in Hegels Philosophie des Rechts’: 1–15.

³⁸ See Karl–Heinz Iltig, ‘Die Struktur der Hegelschen Rechtsphilosophie’, in Manfred Riedel (ed.), *Materialien zu Hegels Rechtsphilosophie* (2 vols, Frankfurt a. M.: Suhrkamp, 1975), vol. 2, p. 68. In his opinion, Hegel rejects the theory of the contract as the place from where political legitimacy is based. He thinks that, in its place, Hegel enters the historical tradition. However, in our opinion, the contract plays a central role in *Rechtsphilosophie*.

³⁹ *Grundlinien*, § 49: ‘What and how much a person possesses is the indeterminable right for this sphere.’

⁴⁰ *Grundlinien*, § 66.

type of right of freedom. Non-expropriable goods in the sphere of the contract are those that constitute the essence of my self-conscience. The right of freedom with regard to them does not take the form of a contract. Those goods are referred to by Hegel as substantial determinations and among them are: life; work, partially; the family and the State, as well as religion and, logically, freedom itself.

What is surprising in this first sphere of fulfilment of freedom is how small the objects are: property. The abstract individual, considered separately, that is, by denying its concrete political reality, can only possess things. Said individual cannot even guarantee them. This, as Ilting points out⁴¹, constitutes an important attitude regarding the limits of applicability of the modern rational right. The family cannot be constructed on an individual natural right. In the same way, the State cannot fall under those principles nor, therefore, be considered as a contract between individuals.

According to Hegel, the mistake made by much political philosophy, in particular by Kant, is the fact of its having considered the contract as the form *par excellence* of the right of freedom, thus making the different social realities indistinguishable⁴². How is it possible to reduce the entire field of freedom to the immediate aspect of freedom, to its mere 'negative' existence? It is not that Hegel criticizes Kant, but rather that he considers Kant outrageous.

Secondly, the subject has the right of freedom as a reflection of the self-conscience. The right of the subject constitutes the sphere of morality. In this sphere, the right of freedom is *good*,⁴³ which, considered from the perspective of abstract indeterminate subjectivity, is understood as being a duty; and from the point of view of

⁴¹ See Karl-Heinz Ilting, 'Die Struktur der Hegelschen Rechtsphilosophie', p. 57.

⁴² *Grundlinien*, § 75.

⁴³ *Grundlinien*, § 132.

abstract determinate universal subjectivity, as the conscience. Its particular moment is happiness. *Good* is the essence of the will in its substantiality and universality, the will in its truth; that is why it is in thought and through thought. Of course, Hegel takes the objectivity of an action into account to the extent that it exists in the external world and should respect the laws of that world.

The right of freedom has a hierarchy in different orders. Thus, Hegel says: ‘*Good* has an absolute right as distinct from the abstract right of property and the particular ends of welfare. In so far as either of the latter moments is distinguished from *good*, it has validity only in so far as it is in conformity with and subordinate to it’⁴⁴.

At the same time, the ultimate determination of the *good* is not in the sphere of morality, but rather in that of *Sittlichkeit*. Only in the latter is it definitively determined and therefore definitively rational⁴⁵. The objective system of duties, and the union of subjective knowledge with this system, are present only when the perspective of the ethic has been reached⁴⁶. In this sense, the State has an absolute right over subjective freedom, and that is why to a certain extent the State is unable to respect the subjective conscience as being merely particular. It is not that Hegel has little regard for the conscience. Rather, he considers it as something sacred, ‘welches anzutasten Frävel wäre’⁴⁷ (which it would be a crime to violate), as a unit of subjective knowledge and of what it is in itself. However, whether the individual’s conscience is this or not, one can only know by the content of what he considers as *good* and not by the mere formality as

⁴⁴ *Grundlinien*, § 130.

⁴⁵ Cf. *Grundlinien*, § 133. The good, in this still abstract, albeit subjective, sphere, appears as a duty. One will have to wait for *Sittlichkeit* to see the good properly fulfilled.

⁴⁶ *Grundlinien*, § 137.

⁴⁷ *Grundlinien*, § 137.

a duty. Conscience therefore can be judged as true or false. That is why the State is unable to recognise conscience in its purely subjective form. The legitimization of *Sittlichkeit* is objective rationale and has nothing immediate to do with acceptance of individual consciences; however, mediately, it is, to the extent that all conscience is a ‘power of judgement’ (*urteilende Macht*). Thus, if the right of subjective freedom were not taken into account, then *Sittlichkeit* would be something purely external, would not in itself contain the moment of subjective reflection, and would not bind the conscience. However, my conscience does not need to be conditioned by the law, although the latter must have the capacity to bind it.

In § 138, there is an interesting argument about the circularity existing between right, ethicicity and morality on this point. Conscience is not definitively conditioned by ethicicity life, even though this sphere is the only one where conscience can find its substantial end and full rationality. Subjectivity as abstract self-determination and pure certainty only of itself, as a power of judgment, escapes all determination of right, of duty and of existence which are not its own. It has this capacity to take an ‘internal path’ and Hegel quotes the case of Socrates as an example. Indeed, Hegel says that at times when institutions and customs are incompatible with morality flourish, then the conscience takes the ‘internal path’. However, he stresses that the validity of what may be found in it must be measured by reason.

Finally, in the field of *Sittlichkeit*, the unit of the concrete *good* and of the subjective will arises. In other words, it is the objective system of duties and the union of the conscience with them. The right of true freedom is the very existence of those living goods that are non-expropriatable from human freedom. The right of freedom in its true form is the family, civil society and the State. Civil society appears here as a presence in the sphere of the abstract right in its ethical actualisation. The right of

freedom in the family is marriage and the education of children; in civil society, it is positive law; in the State, the absolute right of the spirit.

IV. Political regulation and arguments on legitimization in *Rechtsphilosophie*

Freedom, not nature, has right.⁴⁸ Rationality in each of the spheres is not measured absolutely by nature. If it is not absolutely from nature, where does regulation of freedom in each of these spheres of right come from? In other words, what type of legitimacy does the State have at its disposal?

There are two arguments regarding rational legitimization which appear in *Rechtsphilosophie*: recognition, a type of imperfect legitimacy which operates on different levels, namely: the contract and relations between States, and the substantial legitimacy which operates in the field of *Sittlichkeit*.

Despite all the Marxist interpretation which has essentially echoed the dialectic of the master and the slave and, therefore, of the logic of recognition as a legitimist argument, it must be acknowledged that this is not the basic model of legitimization for the State in the *Philosophy of Right*⁴⁹.

Habermas is one of those who have interpreted Hegelian philosophy from the point of view of reciprocity. The basic thesis which he expounded in his interpretation of the 'Philosophie des Geistes' by Jena, 'Arbeit und Interaktion,' is described by

⁴⁸ Ottmann, 'Das Recht der Natur in Hegels Philosophie des Rechts': 6: 'Substantielles Prinzip oder Legitimationsgrund ist in der Moderne nur jene Freiheit, die in der langen Arbeit der Weltgeschichte aus der Natur hervorgebracht wurde'.

⁴⁹ See Ottmann 'Herr und Knecht bei Hegel': 368.

himself as follows⁵⁰: what determines the concept of spirit is not the absolute movement of the reflection in itself, which is apparent in language, work and political relation, but rather the opposite; it is the dialectic framework of linguistic symbolization, work and interaction. The spirit is not the basis, but rather the means by which the *I* communicates with other *I*'s, in which both are reciprocally shaped as subjects. For Habermas, the experience of the Hegelian dialectic essentially originates from the practical field, not from the theoretical one⁵¹. Habermas thus describes the standpoint of the young Hegel, which is, to a certain extent, clarified in the philosophy of identity of the later writings.

From this point of view, interaction constitutes the same spirit. Of the two forms of possible interpretative genesis of the Hegelian spirit, the genesis of the spirit in work, language and reciprocity; and the genesis in monological self-reflection, the Marxist interpretation chose to lend more weight or all the weight to the former. Habermas says that the spirit is the *logos* of the world rather than the reflection of a solitary self-conscience⁵². Cassirer, Lukács and Litt are but some of those who took up the Hegelian dialectics which is stressed by Habermas.

Given that the struggle for recognition does not appear for the last time in Jena's Period, but rather occupies its place in the *Philosophy of Right*, an attempt will have to

⁵⁰ See Habermas 'Arbeit und Interaktion. Bemerkungen zu Hegels Jenenser Philosophie des Geistes', in Jürgen Habermas, *Technik und Wissenschaft als Ideologie* (Frankfurt a. M., 1981), p. 10.

⁵¹ See Habermas, 'Arbeit und Interaktion': 20.

⁵² See Habermas, J., 'Arbeit und Interaktion', p. 25.

be made to see what articulation exists between it and the rational logic of the concepts⁵³.

In the *Philosophy of Right*, the struggle for recognition is only one moment in the constitution of the political community; it is true that it is a necessary moment and one that, as such, is preserved. That is why that moment is repeated on different levels in the constitution of freedom: the contract and relations between states.

A ‘remains of state of nature’ is still found in this first argument regarding political legitimization, because it is an ‘initial’ moment in the constitution of the objective spirit⁵⁴. Yet in that initial moment of the presence of another in the dialectic struggle for recognition, freedom acquires its concrete existence⁵⁵.

With that argument, as Ottmann recognises⁵⁶, Hegel is referring to a concrete moment in history that is the birth of the State, where the slave is truly, not metaphorically, a slave. The result of the struggle is achieving recognition. Although the state may come into being through violence, it is not made of this. Recognition is the first form in which man ‘distances himself’ from the concrete state of nature of dominion of one man over another and begins the fulfilment of the spirit or the right to

⁵³ A way of considering it is the question posed by Ottmann in ‘Die Weltgeschichte ist das Weltgericht’, in *Hegel-Jahrbuch 1995* (Berlin, 1996), pp. 204–209, namely, whether recognition of people contains a recognition of history at the same time.

⁵⁴ *Enzyklopädie* (1917) § 355.

⁵⁵ *Grundlinien*, § 71: ‘Diese Beziehung von Willen auf Willen ist der eigentümliche und wahrhaften Boden, in welchem die Freiheit Dasein hat (...) da er (der Vertrag) ein Verhältnis des objektiven Geistes ist, so ist das Moment der Anerkennung schon in ihm enthalten und vorausgesetzt’. And there it redirects to § 57 in which the argument of the master and the slave appears.

⁵⁶ Cf. Ottmann, ‘Herr und Knechte bei Hegel’.

freedom. *Anerkennung* is not a basic principle of legitimization, but rather a moment in the progress towards becoming aware of freedom.

Obligation derives initially from recognition. In other words, there is no political rationality, that is to say, objective spirit, which can be generated without it. That is why all those arguments regarding legitimacy in the aforementioned fields – contract, civil society and inter–state relations – take that form. Nature does not provide us with arguments regarding legitimacy in those spheres of freedom outside recognition.

Yet that is not the only argument that appears in *Rechtsphilosophie*. And it is important that this does not go unnoticed, because no argument regarding the legitimacy of one sphere is valid for another, even though it may be the same *good* which is defended in both⁵⁷. Non–expropriatable goods of the type we referred to earlier are not legitimized by arguments regarding reciprocity.

Nor does the good of the conscience in the sphere of morality refer to one sphere of recognition; for this reason, a field of political normativity cannot emerge from it other than if it is linked to *Sittlichkeit*. Recognition is only obtained in the presence of another human will. That is why moral duties cannot be, for instance, the object of positive right⁵⁸, and that is why the good of individuals cannot be a sufficient argument for legitimization for the good of the family or of the State⁵⁹.

A substantial legitimacy occurs in the sphere of ethicity, because there is total identity between the universal and the particular. Its force lies in the unit of the ultimate universal end and in the particular interests of individuals, given that the latter have rights and duties regarding the state. Duty is the conduct regarding something which is

⁵⁷ Cf. *Grundlinien*, § 337.

⁵⁸ Cf. *Grundlinien*, § 213.

⁵⁹ Cf. *Grundlinien*, § 337.

of substantial value to me, that is, something which is in, and for itself, universal; right, on the other hand, is the existence of that substantial: the family and the State, as ethicity, as a union of the substantial and the particular, imply that my obligation regarding the substantial is at the same time the existence of my particular freedom – in other words, duty and right are joined in one and the same relationship in the State and the family.

What Hegel calls concrete freedom consists of the fact that personal individuality and its particular interests undergo their full development in the family and the State and in their negative dialectic moment, which is civil society. Yet, at the same time, these become of general interest in such a way that neither the universal is of any value and is carried out without interest, knowledge or particular will, nor do individuals live as private people without in turn desiring the universal and having an activity which is aware of that end⁶⁰.

⁶⁰ See Iltting, 'Die Struktur der Hegelschen Rechtsphilosophie'. He expresses this by referring to two normative spheres in the Hegelian approach: morality, which refers to the individual isolated from other social relations and first instance of responsibility, and *Sittlichkeit*, the inclusion of the individual in the community with everything that that entails. With the structuring of the philosophy of right, Hegel makes it clear – and Iltting thinks that this is his implicit criticism of the contemporary rational right – that the whole system of norms can only be developed if the responsible individual is taken into account. Both normative systems belong to the structure of the Modern State. The State must include the moral individual among its ends in terms of rights. The common good fulfilled in the sphere of *Sittlichkeit* is referred to by Hegel as 'bewegenden Zweck' (the moving end) or, to use an expression from Aristotelian teleology, 'absolut unbewegten Selbstzweck' (absolutely immovable ultimate end). For him, Hegel is included in the liberal tradition to the extent that he recognises subjective freedom as a principle of the rational right and of morality, and as a point of inflection between the ancient world and the modern one. That is to say that, in his terms, liberalism and republicanism are related in the form of a *complexio*

Obligation is generated because ethical–political goods are substantial determinations. What does this mean? That the individual’s existence has no meaning outside them because they are non–expropriatable goods and that, as a result, they cannot cease to exist in their own rationality. Without doubt, the rationality of the different ethical radicals is capable of generating consensus, but is not needed of it. As Ottmann points out⁶¹, Hegel has granted subjectivity a right which is not, however, founded on consensus, but on rational objectivity. Hegel is committed to reason: the right of freedom in its ultimate basis is independent of consensus.

The legitimacy of the State is its rational existence. The greatest end of individuals is to lead a life in common⁶². However – and this is the following step to be taken in order for substantial legitimacy to be definitively founded in Hegel – the form of rationality of ethical radicals shall be judged from a historical rationality. A right, not of nature, but of History, would seem to be the ultimate basis for all legal–political reality⁶³. History is awaiting a *Weltgericht*: a judgement. And this judgement is the founder of political legitimacy.

Certainly, as Ottmann says, it is unknown to the very structure of the *Philosophy of Right* that relations between States should resemble a ‘state of nature’ and that it

oppositorum, but not in an integrated way – which is more my own interpretation. Renato Cristi interprets *complexio oppositorum* like this in *Hegel on Freedom and Authority* (Cardiff, 2005).

⁶¹ See Ottmann, ‘Das Recht der Natur in Hegels Philosophie des Rechts’: 11: ‘in ihnen ist eine geschichtliche Vernunft geronnen, die dem Recht des Menschens auf Freiheit eine gegen die Verfügung der Subjekte gesicherte Geltung verschafft’.

⁶² See *Grundlinien*, § 258.

⁶³ See Ottmann, ‘Die Weltgeschichte’, in Ludwig Siep (ed.), *Grundlinien der Philosophie des Rechts*, p. 267.

should not anticipate a power over them which encompasses the entire approach⁶⁴. In the end, the definitive right of freedom goes beyond the fact of being recognised by other States, awaiting a balance upon a Universal Judgement. There exists no an obligation's field for the State itself, other than a superior sphere, although judgement of it at the same time which is always present as a norm is postponed from the effective point of view. Hegel political building for its effective legitimization awaits the end of history, of the final judgement. The absolute spirit is in history or has history, but it is not history. The universal judgement is not identical to the automatic justification of every historical–actual event.

That is why Spaemann may interpret Hegel by saying that, for him, he who truly lives in *Sittlichkeit* and acts according to his conscience, irrespective of what occurs in History, is already in the end. In other words, that the essential end of History can and must be thought of as having already been reached at each moment in history⁶⁵. And that is why the political actor in Hegel ethically opposes events from history, precisely in order to fulfil its essential end. History cannot legitimize by itself certain ways of acting. The manifestation of the absolute spirit is fulfilled in History, but only through individual subjects that act teleologically.

Legitimacy of the political sphere is beyond *Sittlichkeit* and for that reason, in the interests of correctness, Hegel should speak of the right of the absolute spirit rather than

⁶⁴ See Ottmann, 'Hegelsche Logik und Rechtsphilosophie': 390. Ottmann sees this as an inconsistency of all the logic of Rechtsphilosophie: 'Wenn es für den Privat-Bürger vernünftig ist, den 'Rest des Naturzustandes' zu verlassen, denn ist es für den Menschen als Menschen wie für den Staatsbürger auch. Und das ,exeundum e statu naturae', das für den bourgeois vernünftig ist, ist es für den homme und den citoyen nicht weniger'. p. 392. Also: 'Zwar mag es so scheinen, als ob die Dialektik der Weltgeschichte das Niveau der Sittlichkeit bereits erreicht habe, das Hegel im Staat feiern möchte'. p. 390.

natural right, in such a way that one must speak, rather than the ‘unavailability of nature’⁶⁶, of the ‘unavailability of the spirit’⁶⁷ – in an expression coined by Ottmann – which is, ultimately, the unavailability of historical judgement. It is the unavailable reason that is fulfilled in history, for which Hegel has not recognised any subject. We only know about his ‘listiger Einsatz’ (astuteness). There exists in Hegel a trans–political foundation of the right to freedom owing to the unavailability of the spirit and of its history⁶⁸.

This theological–political dimension is central in understanding what natural right means in Hegel. If it is *Sittlichkeit* which occupies the place occupied by nature in modern natural right, only with unavailable rational foundation – what we cannot have at our disposal is that of reason – can freedom and right be prevented from being legitimized by their own stance. However, according to Hegel, the fact ‘that reality has been and is going to be rational, is not due exclusively to humanity’⁶⁹.

⁶⁵ See Spaemann, *Natürliche Ziele*, p. 150.

⁶⁶ Hegel makes it clear that the ‘casual nature of power’ cannot be that on which the State is founded, see *Grundlinien*, § 258. In what sense does he say it is casual? Nature is originally the opening up of man to the world, but this is not executed automatically, but rather depends on the rationality of freedom. We do not know what a man is going to do with his nature. The State cannot have such a weak foundation. Rather, modernity has shown that human nature itself is at the expense of human freedom. That is to say, we observe today more than ever how nature is in fact as such to a great extent available. What is not available is its measure. The difference in value between the different possible developments of nature cannot be established by nature itself, but rather by reason.

⁶⁷ Ottmann, ‘Das Recht der Natur in Hegels Philosophie des Rechts’: 13.

⁶⁸ Ultimately, it must be recognised that the natural right was always founded on theology, even in the modern era. See Ottmann, ‘Eigenrechte der Natur’, in Karl G. Ballestrin (ed.), *Naturrecht und Politik* (Berlin, 1993), p.180.

⁶⁹ Ottmann, ‘Das Recht der Natur in Hegels Philosophie des Rechts’: 13.

Bibliography

- Bobbio, Norberto, 'Hegel und die Naturrechtslehre', in Manfred Riedel (ed.), *Materialen zu Hegels Rechtsphilosophie* (2 vols, Frankfurt a. M.: Suhrkamp, 1975), vol. 2, pp. 81–109.
- Cristi, Renato, *Hegel on Freedom and Authority* (Cardiff: University of Wales Press, 2005).
- Grégoire, Franz, *Études hégéliennes. Les points capitaux du système* (Louvain: Publications Universitaires de Louvain, 1958).
- Habermas, Jürgen, 'Arbeit und Interaktion. Bemerkungen zu Hegels Jenenser Philosophie des Geistes', in Habermas, *Technik und Wissenschaft als Ideologie* (Frankfurt a. M.: Suhrkamp, 1981), pp. 9–47.
- Iltting, Karl–Heinz, 'Die Struktur der Hegelschen Rechtsphilosophie', in Manfred Riedel (ed.), *Materialen zu Hegels Rechtsphilosophie* (2 vols, Frankfurt a. M.: Suhrkamp, 1975), vol. 2, pp. 52–78.
- Hegel, G. W. F., *Über die wissenschaftlichen Behandlungsarten des Naturrechts, seine Stelle in der praktischen Philosophie und sein Verhältnis zu den positiven Rechtswissenschaften*, Gesammelte Werke VII, (Leipzig: Meiner, 1923).
- Hegel, G. W. F., *Philosophische Propädeutik, Gymnasialreden und Gutachten über den Philosophie–Unterricht*, Sämtliche Werke III, (Stuttgart: Frommann–Holzboog, 1961).
- Hegel, G. W. F., *Enzyklopädie der philosophischen Wissenschaften im Grundrisse* (1830), Gesammelte Werke XX, (Hamburg: Meiner, 1992).

Hegel, G. W. F., *Grundlinien der Philosophie des Rechts*, (Hamburg: Meiner, 1995).

For English quotes from this work by Hegel, we have used the translation by H. B. Nisbet for Cambridge University Press, 1991.

Ottmann, Henning, 'Das Recht der Natur in Hegels Philosophie des Rechts', *Der Staat*, 23 (1984): 1–15.

——, 'Hegelsche Logik und Rechtsphilosophie. Unzulängliche Bemerkungen zu einem ungelösten Problem', in Dieter Henrich Dieter and Rolf–Peter Horstmann (eds), *Hegel Philosophie des Rechts. Die Theorie der Rechtsformen und ihre Logik* (Stuttgart: Klett–Cotta, 1982), pp. 382–392.

——, 'Herr und Knecht bei Hegel. Bemerkungen zu einer missverstandenen Dialektik', *Zeitschrift für philosophische Forschung*, 35 (1981): 365–384.

——, 'Eigenrechte der Natur', in Karl G. Ballestrem (ed.), *Naturrecht und Politik* (Berlin: Duncker & Humblot, 1993), pp. 179–185.

——, 'Die Weltgeschichte ist das Weltgericht', in *Hegel–Jahrbuch 1995* (Berlin: Akademie Verlag, 1996), pp. 204–209.

——, 'Die Weltgeschichte', in Ludwig Siep (ed.), *Grundlinien der Philosophie des Rechts* (Berlin: Akademie Verlag, 2005), pp. 267–287.

Pippin, Robert, 'Hegel, Freedom, The Will', in Ludwig Siep (ed.), *Grundlinien der Philosophie des Rechts* (Berlin: Akademie Verlag, 2005), pp. 31–55.

Riedel, Manfred, 'Freiheitgesetz und Herrschaft der Natur: Dichotomien der Rechtsphilosophie', in Manfred Riedel, *System und Geschichte. Studien zum historischen Standort von Hegels Philosophie* (Frankfurt a. M.: Suhrkamp, 1973), pp. 100–120.

Ritter, Joachim, *Hegel und die französische Revolution* (Frankfurt a. M.; Suhrkamp, 1965).

Siep, Ludwig, *Anerkennung als Prinzip der praktischen Philosophie* (Freiburg and München: Karl Alber, 1979).

Spaemann, Robert, *Natürliche Ziele* (Stuttgart: Klett–Cotta, 2005).

PART THREE
CONTROVERSIAL ISSUES ON NATURAL LAW

CHAPTER 9

Natural Law and Practical Philosophy. The Presence of a Theological Concept in Moral Knowledge

Alfredo Cruz Prados

In his *Nichomachean Ethics*, Aristotle declares that we do not study virtue merely to find out what it is, but in order to be virtuous, since otherwise there would be nothing to be gained from such study¹. Commenting on this Aristotelian passage, St. Thomas points out that the aim of moral philosophy is not simply the contemplation of truth, but action².

As regards the practical, what most matters is not pure knowledge, theory, knowing what it is; for the truth of the practical is variable truth, which only exists fully in the particular and the concrete. What is important about the practical is gain knowledge of how to act, and to act well, and this can only be attained through virtue. Hence moral philosophy, which is practical philosophy – the theory of the practical – makes sense and is useful if it provides something of value that is relevant to action, that is, if it helps us to acquire virtue. The value of knowledge on the practical is the practical value of such knowledge.

In view of this, it is natural to ask what the practical value of the doctrine of natural law is. Whether or not this doctrine may be considered pertinent to practical or moral philosophy will depend on the answer to this question. Does this doctrine provide

¹ *NE*, 1103 b 25–30.

² ‘Non enim in hac scientia scrutamur quid est virtus ad hoc solum ut sciamus huius rei veritatem; sed ad hoc, quod acquirentes virtutem, boni efficiamur’. *In II Ethic.*, n. 256.

us with any knowledge, information or guidance concerning the actions we ought to perform and by means of which we acquire virtue? Let us anticipate that the answer is no.

Rightly, it has been stressed that the idea of natural law is to be interpreted neither as a form of naturalism or physicism nor as a kind of innatism; nor is it a more or less reduced version of transcendental apriorism. Natural law – in its Thomistic version, at least – is not a law or order already existing in nature, taken as untouched by human reason, and this reason can but discover or interpret by purely receptive means³. It is not a norm of which we have innate knowledge either, since all human knowledge – including the practical or moral – derives from experience. It is not part of the internal structure of practical reason itself, as a law constitutive of its own operation, which that very reason may understand in an instant of perfect contemplation and self-transparency, thus converting the internal structure of its operation into the object or content of its own action, its act of command (*imperium*). Natural law is not practical reason laying down laws, making its own operative form a precept. If it were, the precepts of natural law could only be purely formal ones⁴.

According to St. Thomas, natural law – like all law – is neither reason as such, nor its habitual practice, nor the action or operation thereof: rather it is an effect of this act, something established by practical reason. It consists of a dictate or precept constituted by practical reason through its own act, namely the act of command⁵.

³ See Martin Rhonheimer, *Ley natural y razón práctica. Una visión tomista de la autonomía moral* (Pamplona, 2000), pp. 14–29.

⁴ *Ibid.*, pp. 531–534.

⁵ *ST*, I–II, q. 90, a. 1, ad 2; q. 94, a. 1, c.

Of all the precepts set up by practical reason, what kind of precept is natural law? Any precept pertains to natural law if practical reason finds such a precept obvious, recognizes it naturally, and formulates it, consequently, without discursive effort. These features are interpreted as a manifestation of a natural disposition of practical reason to formulate such a precept, a kind of *ad unum* determination of reason regarding such a precept as an object of its operation. Given that we are referring to practical reason, reason referred to what is operable *per se*, this natural disposition must rest on a natural impulse or inclination by virtue of which practical reason naturally understands as good the finality to which this inclination points, therefore one should persist in this direction and desist from its opposite: which means recognizing the former as a *faciendum* and its opposite as a *vitandum*⁶.

But natural law is not strictly the precept of practical reason in itself. No matter how self-evident or connatural, this precept taken in an absolute sense is nothing more than the dictate of the practical reason of a particular individual, and thus does not possess the character of a law. For St. Thomas, true self-legislation does not exist: ‘strictly speaking, nobody imposes a law on his own acts’⁷.

According to Aquinas, law essentially resides in the ruling subject, and exists in the ruled subject by virtue of participation⁸. Essentially law is what it is in the governing subject, and hence this, not the governed subject, appears clearly in the well-known Thomistic definition of law. This means that, in essence, law is an extrinsic principle of action, that is, a reason or measure of the behaviour of a subject different from the

⁶ *ST*, I-II, q. 94, a. 2, c.; q. 91, a. 3, c.

⁷ *ST*, I-II, q. 93, a. 5, c. See I-II, q. 90, a. 3, c.; q. 96, a. 5, ad 3.

⁸ *ST*, I-II, q. 90, a. 3, ad 1.

subject who conceives of and dictates that measure. In a strict sense, self-legislation is impossible.

In the governed party the law is present through participation, whereas by means of the law the governing party imbues the controlled party with an internal principle governing the latter's acts⁹. The governed party is characterized by the fact that his act is in a way passive: it is a behaviour to which, in a certain sense, the subject is impelled by somebody else, inasmuch as in the governed party the internal principle of his act is the effect of, or participation in, an external principle.

St. Thomas develops his doctrine of eternal law through analogy with human law. Just as the prince or governor lays down certain principles for his subjects' acts, God lays down the principles of their acts on His creatures, which corresponds roughly to the enactment of a human law¹⁰. Eternal law governs all creatures, that is, they participate in this law in as much as they are moved to their own acts by divine Providence through a natural inclination to such acts or aims, which has been impressed on the creature by virtue of said law¹¹.

Natural law is participation by a rational creature in eternal law. Natural law is thus the same precept of practical reason, considering this precept not as absolute, but in relation to a divine law with respect to which this precept may be understood to form part. Such an understanding is possible to the extent that the evidence for the precept, the spontaneity and naturalness with which practical reason formulates it, is explainable in terms of a natural inclination present in the practically reasoning subject. The natural impulse or disposition by virtue of which practical reason seems to constitute a self-

⁹ *ST*, I-II, q. 93, a. 5, c. & ad 1.

¹⁰ *Ibid.*

¹¹ *ST*, I-II, q. 91, a. 2, c.

evident precept allows us to understand this act of practical reason as an act to which the subject is led or moved by virtue of eternal law, that is, by virtue of the way God directs all creatures towards their own operations. In this way the precept or content of the act of practical reason may be considered cognitive participation in eternal law, in other words, comparable to the governing principle impressed on the subject's mind by the enactment of human law. The doctrine of natural law is a doctrine on the possibility of understanding the most basically generated human acts as action based on and induced by an extrinsic principle; in other words, it is the doctrine on the possibility of understanding human spontaneity as a kind of legality.

It is clear that this constitutes an *a posteriori* theoretical interpretation of a certain class of precepts of our practical reason in view of the necessary existence of a universal divine law. The doctrine of natural law is the product of theoretical reason which, reflecting upon the product of practical reason based on prior theoretical knowledge (the existence of God, Creator and Provider), conceives of the product of practical reason, its precept, as the manner in which the precept produced by the Reason of the divine controlling subject is present in man, that is to say, as participation by rational creatures in eternal law.

Participation in eternal law is a feature attributed by theoretical reasoning to the precept that practical reason considers as natural; it is a formality that corresponds to this precept as an object of theoretical reasoning; not, that is, as an object of practical reasoning itself, however connatural and self-evident the precept in question may seem to be.

The evidence concerns the possibility of understanding of what practical reason knows: practical good, what it is right; but it does not affect that which is understandable by practical reason. The fact that the precept is evident does not mean

that practical reason, upon knowing it, knows anything more than the fact that a given action is right; and it would know more than this if it knew that the said precept was part of eternal law, and that the action in question is not therefore simply right, but right by law: the object of a decree of divine Reason.

Strictly speaking, the more obvious and connatural a precept of practical reason is, the less legal character it appears to have *per se*. The less it seems to the reasoning party to represent a participation in or reflection of a law, the less this subject perceives himself as governed. The expression 'natural law' seems slightly paradoxical taken as the expression of a reality belonging strictly to the sphere of the practical. In this sphere, which is the sphere of action considered from the point of view of the agent, what is connatural is precisely that which is not governed by law. Insofar as we feel that the correctness of an action is self-evident, and right in a practical sense, we do not see the action as governed by a law, nor do we see ourselves as under an obligation and linked to this action by a mandate from our superior. Rather, we perceive such action as an object that fits in with our own inclination and our own character, as a completely intrinsic operative decision, based on an intrinsic principle, not on an extrinsic principle that has been imposed on us.

It is theoretical reasoning, the reason, so to speak, of the contemplative subject, not of the agent, that, in a reflexive act, interprets the evidence of the precept of practical reason as a sign of the legal character, as part of a law, of this precept; that is, as a sign that this precept represents an action-governing principle imposed on the inner agent by an extrinsic principle.

But understanding the connatural operations of our practical reason as participation in eternal law does not mean that, through this understanding, we attain any additional practical knowledge, any cognitive approximation to the actual object of

practical reason. Such understanding does not provide us with any guiding criterion for the exercise of our reason when what we want to do is to act.

Knowing that the precept of our practical reason is a participation in eternal law is not the same as knowing *what*, by this law, ought to be the precept of our practical reason. As St. Thomas observes, we do not know eternal law in itself, but only in its effects or consequences, namely the natural and obvious precepts of our practical reason¹². Our knowledge of eternal law consists of that practical knowledge which we can interpret theoretically as an effect of or participation in such a law.

Eternal law is not, in itself, a source of moral knowledge. The truth of our action cannot be known in eternal law, that is, in what is the essence, extrinsic principle or reason behind this action, but can only be known in the intrinsic principle of this action, in the actor's own precept from practical reason. And while, with regard to eternal law, such a precept can indeed only be understood as a law by participation when it is connatural to practical reason, it is no less true that, for this very reason, because it is connatural, the said precept is formulated with complete independence from its possible interpretation as participation in that law. A precept that can be considered natural law is precisely one which practical reason produces with complete independence of the doctrine of this or any other law.

St. Thomas holds that we know what God wants in the general sense that we know that everything that He wants, He wants because it is good (*sub ratione boni*), but that in most cases we do not know what He wants in particular; therefore, Aquinas concludes, we are not obliged to match our will to His materially, with respect to the

¹² *ST*, I-II, q. 93, a. 2 c.

thing wanted, but only formally, with respect to the motive or reason for wanting (*quantum ad rationem voliti*)¹³.

This implies, on the one hand, that what our practical reason governs, what it knows of its own accord as good, cannot be recognized immediately as what God wishes, participation in or fulfilment of His law-giving Will; while on the other hand, beyond whatever is determined by positive divine law, the idea of a divine Will to which we must mould our will does not answer the fundamental question, the truly moral question of what exactly, in practice, wanting *sub ratione boni* means: what particular wanting – wanting *what* in particular – this formal type of wanting is materialized and expressed as. To answer this question all we have is the resources of our practical reason, which, still according to St. Thomas, are basically three in number: common good, positive law, and virtue.

In short, the doctrine of natural law tells us nothing new about practical or moral knowledge and throws no new light on practical reasoning. As far as knowledge is concerned this doctrine lacks any practical value.

Yet we might still ask whether the doctrine of natural law does not perhaps possess practical value in a different sense from the cognitive, that is, where something may have practical value: in terms of motivation. Indeed, some would argue that this is the case. Many think that the doctrine of natural law adds an additional motive force to the dictates of our practical reason, permitting us to understand these dictates as participation in eternal law and the presence within us of a divine mandate. This understanding would add the character of an obligation – of action to which one is bound by a mandate from a superior – to what our practical reason apprehends as

¹³ *ST I-II*, q. 19, a. 10.

simply good in the sense of apt, fitting or convenient for our own happiness or natural fulfilment¹⁴.

For some, this further motivation is not only a supplementary or reinforcing motivation but also *the* specifically moral motivation, understood as that reason for acting which is an absolute, unlimited reason. Accordingly, to act morally is to perform for this reason or motive what our practical reason perceives as good. The goodness of the action in itself, its being in accordance with the *telos* of our nature, is not, in this view, sufficient moral reason; the only adequate moral reason is that the action be in accordance with the divine mandate. The precept of practical reason as such – what it is and what it says in itself – is not viewed as the true cause of the morality of our action; rather, this cause is said to be found in the understanding of that precept as participation in eternal law and in the subsequent perception of its content – a practical good deed – as the object of an obligation.

Thus the character or formal nature of a law must be added to the rational precept for the consequent action to have a moral character; therefore our act of practical reason and its rule is only moral rule to the extent that it is governed by a reason which is different and superior to our own.

In keeping with this view, law is seen as the cause of the morality of our acts, and thus provides the fundamental perspective from which both philosophical and theological moral science conceives of its object: the morality of human acts.

¹⁴ See Giuseppe Abbà, *Felicidad, vida buena y virtud. Ensayo de filosofía moral* (Barcelona, 1992), pp. 196–198.

Consequently moral philosophy must be a philosophy centred on the idea of natural law¹⁵.

Some believe that even though the specifically moral motive of our acts resides in their compulsory nature, this is already present in them by virtue of their being the objects of the precept of our practical reason. In this very act of reasoning, it is argued, is an immediate experience of obligation, and our moral knowledge consists of an immediate awareness of that obligation. The sense of obligation, then, is not added to the dictates of our reason by the doctrine of natural law, but rather the latter is just a rational, theoretical explanation of the origin and foundation of the obligatory nature immediately and spontaneously presented by the precept of our practical reason¹⁶.

Yet this argument merely begs the question. The experience of obligation necessarily entails awareness of a law and of a lawgiver. As we have seen, the precept of our practical reason *per se*, as the content of an act entirely our own, lacks the formal nature of a law: there is no such thing as self-legislation. Therefore we can only feel obliged by the precept of our reason to the extent that we consider it as a law by participation, implying the previous development of the doctrine of natural law.

So, if the specifically moral motivation to perform our acts lies in their obligatory and legal character, then our action is specifically moral due to the doctrine of natural law, that is to say, due to a theoretical consideration concerning the act of practical reasoning which allows us to interpret this act as something more than purely our own.

¹⁵ See Carlos Soria, 'Introducción al tratado de la ley', in Tomás de Aquino, *Suma Teológica*, VI, (Madrid, 1956), pp. 7–9.

¹⁶ See Octavio Nicolás Derisi, *Los fundamentos metafísicos del orden moral* (Buenos Aires, 1980), p. 407; Martin Rhonheimer, *La perspectiva de la moral*, (Madrid, 2000), pp. 327–329.

But if this were so, we would face a dilemma much the same as that faced by Kantian ethics. For if our acts were moral because they are motivated by something added by theoretical reflection to the act of practical reason in question, then either we are talking about action whose moralization would constitute a permanent impediment to its performance, given that the act of practical reasoning would have to be postponed until it received support from the act of reflection. The latter cannot occur as such without the prior occurrence of the former; otherwise we are looking at action whose moral reason always comes too late, when the act has already been performed, presumably for some other, spurious reason.

The attempt to explain the morality of our actions in terms of law and obligation as central categories of ethical reflection has a long tradition, part of which is allegedly Thomistic. It is logical that within this tradition the idea of natural law – to which St. Thomas only devotes a single Question in the *Summa* – should have become the keystone of moral philosophy.

MacIntyre dates the real start of this tradition from Duns Scotus, where we find the idea that moral action as such must be obligatory, that is, possess a special, and formally moral, practical necessity, based on something more than the mere practical goodness of such action or the fact of it being perfective for the actor. This can only be divine mandate, an irresistible and unappealable law. Human action is truly moral action by virtue of constituting obedience (or disobedience) to a divine law¹⁷. Yet this approach, as MacIntyre also points out, initiates a philosophical avenue that leads us to either Ockham or Kant.

¹⁷ See Alasdair MacIntyre, *Three rival versions of moral enquiry* (Notre Dame, IN: University of Notre Dame Press, 1990), pp. 154–156.

Even if moral action consists of the fulfilment of the divine mandate, it is still impossible to avoid asking why we should be bound to fulfil this mandate. If such a question is deemed illegitimate because it implies a pretentious justification of the validity of the divine mandate – its condition as the motive of our action – through a reason that, finally, is ours, there is no doubt but that the end will be some form of ‘divine voluntarism’.

Contrary to what has sometimes been argued, we cannot really avoid this voluntarism simply by stating that what divine mandate orders to be done or forbids being done is that which is intrinsically good or bad, because the key question here is not whether what we do or refrain from doing when we fulfil the divine mandate is or is not in itself good or bad, but whether the moral reason for doing it or not – the motive for calling either of these a *moral* action – is intrinsically good or evil, or whether, on the contrary, it is the divine mandate *per se* which adds the character of an obligation. If the latter, then voluntarism remains since the moral goodness of our doing or not doing what is in itself good or bad continues to be based exclusively on divine will.

If we accept as valid the question on why we should obey the divine mandate, there are two possible answers. The first is that we are bound to obey the divine mandate because what it orders is for our own good. But this answer does not really belong to an ethic of law and obligation, within, that is, the kind of moral philosophy in which this question is presented. The validity of this answer would imply the invalidity of that ethical approach.

Within this moral approach, there is only one other possible answer, and that is essentially the Kantian answer: the reason why we should obey divine mandate must itself be a moral reason, meaning in this philosophical context an obligation, and this

can only originate from some other mandate. But that other mandate can no longer be divine.

If, then, we say, as for instance Derisi does, that the duty to obey positive divine law is based on natural law, this is either a vicious circle or else the fundamental question is unanswered, since natural law, as Derisi fully acknowledges, is nothing but participation in eternal law, which is divine law.

To avoid the vicious circle the mandate upon which the moral obligation to obey divine mandate is based must not itself be a divine mandate; and so that this justification of one mandate by another does not become an infinite regression, a self-justified mandate must be found, a categorical imperative; that is, an imperative that is not justified by another imperative; but this cannot be justified merely by the goodness of the act it prescribes, its content as a good or possible object of desire. Such a justification would, as we have already seen, be incompatible with the legalistic conception of ethics, which is the premise where we started to tackle the issue of the moral justification of divine precepts.

However, the Kantian search for the categorical imperative comes up against the impossibility of rationally explaining how such an imperative can be possible: how it is possible to have a purely rational determination of will. Kant fails to explain how will can be determined by the pure formality of law, that is, by a law that does not refer will to something other than the legal condition of the law: to something that could be the object of appetite or inclination. In short, we cannot rationally conceive how reason, in itself, can be practical¹⁸.

The search for a categorical imperative as a reason for the morally obligatory nature of any other imperative results from formulating a real problem – the justification

of any mandate or obligation – in terms that are possible within a legal conception of ethics, which are precisely the terms of the problem. Once we have rejected good – the object of appetite – as a sufficient reason for the morality of our acts and set out to find an additional reason for it – obligation – the latter can no longer be justified rationally: it can only be postulated voluntaristically.

Finally, the flaw of the legal conception of ethics resides in situating what is absolute within the moral domain in that which can only be relative: obligation, and in looking for the basis of this domain in what can only be based on something else: law. To seek a categorical imperative is, in reality, to seek the impossible: every imperative is of necessity hypothetical.

In the domain of the practical, the only thing that has the character of a principle is good, ‘what everyone wants’ as Aristotle puts it: the object of appetite or inclination. And, as Aristotle also says, the principle is not self-evident; but the imperative and obligation, which are not principles, do need to be proven. In practice, good is the only thing that can be absolute: that good through which we desire and choose any other.

In her well-known article, *Modern Moral Philosophy*, Elizabeth Anscombe accused modern English moral philosophy of having suggested the possibility whether it could in some cases be ‘morally correct’ to perform an action the description of which was clearly unjust, despite the fact that this description could not be modified by any circumstantial consideration¹⁹. It is obvious that admitting this question entails an assumption that the question of the morality of an action, and the moral reason for

¹⁸ See Immanuel Kant, *GMS*, part III.

¹⁹ See G.E.M. Anscombe, ‘Modern Moral Philosophy’, in *The Collected Philosophical Papers of G.E.M. Anscombe* (3 vols, Oxford, 1981), vol. III: *Ethics, Religion and Politics*, pp. 39–40.

carrying it out or not, is a question about something other than the description of the action as just or unjust, good or bad.

However, Anscombe does not seem to have taken into account the fact that the possibility of this question was already present – at least implicitly – in what she calls ‘*a divine law theory of ethics*’, that is, a theory of ethics centred on and inspired by the existence of a divine law, inasmuch as what she herself says may be true: that in this theory the obligation not to do what is unjust – originating from divine law – does indeed add something to the description of an action as unjust²⁰.

If in English moral philosophy it appeared legitimate – thereby inaugurating the consequentialist theory – to ask whether it is morally acceptable to do something described as unjust – as if such a question were not already answered by the description in question – this was because it had already come to be seen as legitimate, indeed as necessary, to seek, for something described as just and good, an additional reason distinct from that description of a specifically moral reason for doing so: namely, an obligation originating from divine mandate. With the secularization of ethical theory centred on divine law, reference to the latter disappeared, but the mental habit typical of any legal conception of ethics persisted: that of thinking that the fact that an action is good, attractive and a source of happiness for the subject does not constitute an exhaustive explanation for the morality of the performance of such an act.

Thus the only way to solve the problems posed by a conception of ethics centred on law and obligation is to eliminate this conception completely. The obligation imposed by law is not what demonstrates the morality of our good deeds; rather, it is the fact that the law orders what is good for us that accounts for the law’s morality, its ability to oblige us, and the morality of obeying it even if what it orders is not perceived

by us as the spontaneous object of our inclination. This is the thesis espoused by St. Thomas.

To explain the fact that an act is sinful – he states in *Summa contra Gentes* – ‘it does not seem a good enough argument to respond that God is offended by such conduct, for the only way we offend God is by acting against our own good’²¹. In another place he says that he is free who belongs to himself, not to another, like a slave. Therefore we can say that he who acts spontaneously acts freely, but not he who receives the impulse to act from another. Thus, concludes Aquinas, someone who refrains from evil not because it is evil but because there is a divine mandate forbidding it is not free; he who is free refrains from doing evil because it is evil²².

Exchanging what is negative for what is positive, we can say that, according to St. Thomas, what God wants, what He seeks through His mandate, is that we should act according to our own good and, moreover, be moved thereto by this good itself, not by divine mandate as such. This mandate prescribes what is good for us, but that good is only fulfilled completely when it is brought about freely, that is, in full possession of the act, and that means performing the act because it is good, since doing it for this reason entails being moved to it by our own inclination: an impulse to act not received from another. As Aristotle maintains, one does not act virtuously simply when one does what is virtuous, but when one does this by choosing it for its own sake²³.

In essence, the notion that the goodness of what one does is the only absolute reason for doing it is contained in the first principle of practical reason presented by St.

²⁰ See Anscombe, ‘Modern Moral Philosophy’, p. 41.

²¹ *SCG*, III, 122.

²² *Super II Cor.*, III, lect. 3, n. 112.

²³ *EN* 1105 a 26–29.

Thomas: '*bonum est faciendum et prosequendum, et malum vitandum*'²⁴. If this principle is truly primary and underived, there cannot be a reason for acting that is more fundamental than the fact that what is done is good, 'good' meaning good or the aim of the agent. What this principle expresses is precisely the ultimate reason for our action, and acting for this reason – *sub ratione boni* – is exactly how our will can and should conform to divine will. Any obligation, law or precept is a reason for our action insofar as acting for that reason means acting for this fundamental reason.

This is just what is meant when we say, with St. Thomas, that this first principle is at the same time the first principle of natural law, the basis for all others. But if that is so, then the first precept of natural law – and with it, all the rest – simply order us to act for the one reason that is the absolute reason for our action, and hence the founding reason of everything that can also be presented as a reason for our action – a mandate, an obligation – which is in any case no more than a relative or hypothetical reason. In the last resort, the first precept of natural law – which sums up all the others – stipulates the reason for its own existence as a precept and the motive for its fulfilment.

We may say in conclusion that the doctrine of natural law does not add a further motivation for our conduct if by further we mean superior, definitive and truly moral vis-à-vis the motivation provided by the dictate of our own practical reason. Conceiving what our practical reason understands spontaneously as participation in eternal law does not lend to this practical knowledge any motivating force – any reasoned condition for acting – beyond that which it already possesses, since even under that conception what practical reason knows – practical good – only truly comes about if it is brought about because it is good: because, that is, it is what practical reason knows.

²⁴ *ST I-II*, q. 94, a. 2 c.

Therefore, the doctrine of natural law is void of practical value for either knowledge or motivation. This means that this doctrine does not strictly belong to the domain of practical or moral philosophy, given that it has no place in the objective of this philosophy: to help us to be good, that is in practice, to improve ourselves. And if it does not belong to moral philosophy, it does not belong to moral theology, since the difference is that the latter is based on the Revealed Truth, but not by having some rational resource that moral philosophy does not need.

This doctrine does not provide an answer to any truly practical matter, but rather, to solve a theoretical problem. This is the problem, which arises when our moral knowledge – our moral experience and our reflection on this experience – is placed in the framework of a creationist theology, whether natural or supernatural. It then becomes necessary to match up what we know about our free and rational acts with what this theology tells us: that God is the creator and lawgiver for all that exists. But satisfying this need does not solve any practical problem posed by our moral experience as such.

The doctrine of natural law is a means of understanding human conduct and that of God, which explains this divine action in human conduct, and allows us to understand human conduct, as a whole, as a response, correct or incorrect, to such divine action. This doctrine is the theoretical formula of reconciliation between human freedom and the universal rule of God applicable to all beings and their actions. At the heart of this doctrine, then, we mean human actions in as much as objects of divine action, that is, as objects of a subject who is not the subject of those actions, which means that the perspective is theoretical. Human actions interest us here inasmuch as they too achieve the value of the *ad extra* operation of God. This is the area of theodicy or dogmatic theology.

The question from which the doctrine of natural law springs, and which decides the form taken by the doctrine, is not a moral question – a question on action and character – but a theoretical one. How can there be divine legislation for all of creation, if a part of this creation – the rational being – acts freely, controlling, understanding and wanting this behaviour?

This is clear when St. Thomas addresses the issue of natural law in the *Summa Theologica*. By asking, ‘whether there is a law which is natural to us’, St. Thomas sets out three possible objections, of which the two truly relevant ones examine the freedom and rationality of human acts. (The other objection, his first, rests merely on the mistaken notion that the terms ‘natural law’ and ‘eternal law’ refer to two distinct laws.) The answers to these objections consist of showing what there is in human behaviour, that is, what we already know about our acts, and can be understood as participation of eternal law in us. These, as we know, are the self-evident precepts of practical reason²⁵.

A little further on, in question 94 of the same Part (the question on natural law), St. Thomas considers that the questions which one must ask are as follows: whether natural law is a habit; whether it contains many precepts or only one; whether it prescribes all the acts of virtue; whether it is one and the same for everyone; whether it can change; and whether it can be erased from the human heart. The fact that it is precisely these questions that are chosen and the exact explanation of subsequently answering each (which, logically, we cannot repeat here) clearly reflect the purpose of this whole investigation: to show how our moral knowledge, the knowledge we have of our free acts, is compatible with the idea of a natural law; compatible, that is, with the existence within us of participation in a law, which is a true law, a precept, and not a mere habit – which is one despite its many expressions, which is universal regarding its

content and those it addresses, which that is immutable and unrepealable; in short, a law with all the characteristics of a divine law. But proving that our moral knowledge is compatible with the existence of a natural law neither increases that knowledge nor gives it a higher motive force.

Thus the leading purpose of St. Thomas's inquiry is theoretical, not practical. John Finnis does not appear to have considered this when he claims that the doctrine of natural law, which discusses the existence of self-evident practical principles from which more specific and – according to Finnis – proper moral precepts are obtained, contributes little to our practical reasoning if, as is the case in St. Thomas, the doctrine does not sufficiently develop the question of how that knowledge is obtained. So Finnis proposes developing what he calls the 'natural law method', which by incorporating the 'basic requisites of practical reasonability' allows us to enunciate the *moral* precepts of natural law, based on its first principles²⁶.

It is true that St. Thomas does not develop the idea of how to go from the initial principles to specific and derived precepts, and the reader is left quite unsatisfied by the few examples given²⁷. But this is because his doctrine of natural law does not have a practical purpose. The intention is not, as Finnis thinks, to lay down principles and conditions for a correct practical mentality and provide the resources needed in order to know what particular decision is reasonable in practice²⁸. As Finnis himself observes, for this St. Thomas merely commends us to practice the virtue of prudence.

²⁵ *ST I-II*, q. 91, a. 2.

²⁶ See John Finnis, *Natural Law and Natural Rights* (Oxford, 1980), pp. 100–103.

²⁷ *ST I-II*, q. 94, a. 4, c.; q. 95, a. 2 c.

²⁸ See Finnis, *Natural Law and Natural Rights*, pp. 18 and 101.

In this doctrine, the connection between general and particular precepts is arranged in such a way as to demonstrate that all precepts can be reduced to a single basic one, thus showing that natural law is but one, although there are many precepts that may be considered part of natural law. In the framework of this doctrine, when we talk about ‘derivations’ or ‘conclusions’ it is not in the sense of indicating the practical possibility – not subsequently enunciated – of arriving at particular precepts based on other more common or imprecise ones, but in the sense of showing the theoretical possibility of conceiving of many precepts of our practical reason as part, in each case, of a single, eternal law.

The theory of natural law is not called upon to facilitate, so to speak, the ‘role’ of practical reasoning; it does not constitute a resource whereby this reasoning faculty is better equipped for its work, its act of command, which is the act through which it constitutes its precepts. Therefore, the lack of a precise method for deriving some precepts from others truly does not represent a flaw or deficiency in this doctrine.

If the doctrine of natural law is the theory of the possibility of reconciling our moral knowledge with the existence of a divine law that governs us, we must take care not to attribute to that knowledge the characteristics of divine law, for no matter how theoretically reconcilable with divine law our moral knowledge may be, the characteristics of the former do not become the characteristics of the latter. In other words, if this doctrine belongs to the area of theoretical knowledge rather than to practical philosophy, we need to be aware that the intellectual possibilities shown by this doctrine correspond to our theoretical, not our practical reason.

These possibilities are, firstly, that of imagining the existence of a universal, fixed, comprehensive measure or rule of human conduct; and secondly, that of considering the sum of our acts as a prolonged operative course which, starting out from

one cognitive moment, from an original and germinal understanding of that rule, which would be a natural guide for all subsequent practical knowledge, progresses towards the perfect fulfilment – or non-fulfilment – of that same universal measure.

These possibilities pertain to theoretical reason, not to practical reason, and so it is wrong to attempt to prove them on the basis of the resources of our moral experience and philosophy. Just as the absence of a method for deriving precepts from other precepts does not represent a real flaw in the Thomistic doctrine of natural law, nor does the omission of these possibilities in the practical domain constitute a deficiency of moral philosophy. This is the why we cannot state that the doctrine of natural law is equivalent to the doctrine of practical reason, if by this equivalence one proposes to transfer to practical reason expectations that are not founded on the intrinsic nature of its operation but on a second, theological consideration thereof, which will allow us to understand this as participation in a divine law: a universal, eternal, unfailing measure of human acts. Perhaps that is why the more a moral philosophy insists on justifying such expectations as part of practical reason, the more obscure and theoretical it becomes, and the less it informs us of anything truly practical.

The doctrine of natural law, as we have seen, is about the possibility of understanding, reflectively and theoretically, the totality of human action as legal action, as behaviour subject to a law; and this conception of human action arises from the consideration of this action in the light of something that is not an object of practical reason: a creationist conception of reality, and a divine law that regulates everything created. Therefore, the truth of this doctrine, the possibility of this conception of our action, does not signify that this action, taken as a whole and in itself, possesses the condition and form of legal action or of a conduct generated and shaped by the presence

of a law. This only is real – real *in practice* – when our action depends on the presence of positive law.

The opposite of this is precisely what one makes the doctrine of natural law mean when one attributes to practical reason, that is, to our reason when shaping our actions, the possibility of natural moral knowledge in the sense of a primary, generic understanding of a universal norm for our acts, for which our practical reason is assumed to be intrinsically capable, and which is the starting–point for all our acts and as a normative criterion for all further, more certain moral knowledge. Because, in reality, this shaping of our conduct only occurs in the presence of positive law. Only with this law, does our behaviour consist of action formed on the basis of previous knowledge of its own measure, which knowledge is in turn the moral knowledge for which we are, indeed, qualified without needing any special acquired disposition.

The supposition that human action possesses, intrinsically and by its constitution, the structure of legal conduct leads us to base moral philosophy on the possibilities which, supposedly, that structure would offer for practical reason. But the more this philosophy is centred on the moral guarantees which practical reason supposedly offers by its nature and constitution, the less it tells us about how to exercise this reason in matters that depend on us. The more insistently a moral philosophy claims that it is possible to base our reason on a perfect moral starting–point, and refers back completely to natural, universal principles in order to initiate the shape our acts, the less that philosophy says of our true moral problem: what virtue is, why it is necessary and how it is acquired.

Bibliography

- Abbà, Giuseppe, *Felicidad, vida buena y virtud: ensayo de filosofía moral* (Barcelona: Eiusa, 1992). [Original edition: *Felicità, vita buona e virtù. Saggio di filosofia morale* (Roma: LAS, 1989)].
- Anscombe, G.E.M., ‘Modern Moral Philosophy’, in *The Collected Philosophical Papers of G.E.M. Anscombe* (3 vols, Oxford: Basil Blackwell, 1981), vol. III: *Ethics, Religion and Politics*, pp. 26–42.
- Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.
- Aquinas, Thomas, *Summa contra gentiles* (Notre Dame: University of Notre Dame, 2001–2003). Translated by Pegis, Anton C., James F. Anderson, Vernon J. Bourke, and Charles J. O’Neil (*On the Truth of the Catholic Faith (Summa Contra Gentiles)*). 5 vols. New York: Doubleday, 1955–57).
- Aquinas, Thomas, *Super II Cor, Super Epistolas S. Pauli lectura, t. 1: Super secundam Epistolam ad Corinthios lectura*, 8th edn (Turin and Rome: Marietti, 1953).
- Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).
- Derisi, Octavio Nicolás, *Los fundamentos metafísicos del orden moral* (Buenos Aires: Universidad Católica Argentina, 1980).
- Finnis, John, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).
- Kant, Immanuel, *Grundlegung zur Metaphysik der Sitten* (Berlin: ed. Akademie der Wissenschaften, 1902 ff).
- MacIntyre, Alasdair, *Tres versiones rivales de la ética* (Madrid: Rialp, 1992). [Original edition: *Three Rival Versions of Moral Enquiry. Encyclopaedia, Genealogy, and Tradition* (London: Duckworth, 1990)].

Rhonheimer, Martin, *Ley natural y razón práctica. Una visión tomista de la autonomía moral* (Pamplona: Eunsa, 2000). [Original edition: *Natur als Grundlage der Moral. Die personale Struktur des Naturgesetzes bei Thomas von Aquin: Eine Auseinandersetzung mit autonomer und teleologischer Ethik* (Innsbruck and Wien: Tyrolia-Verlag, 1987). English translation: *Natural Law and Practical Reason: A Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000)].

Rhonheimer, Martin, *La perspectiva de la moral. Fundamentos de la ética filosófica* (Madrid: Rialp, 2000).

Soria, Carlos, 'Introducción al tratado de la ley', in *Suma Teológica* (spanish edition), vol. VI (Madrid: BAC, 1956).

CHAPTER 10

First Principles and Practical Philosophy

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The first principles are basic truths, insofar as they are distinguished from knowledge acquired by discursive reason. But this does not imply that they can be understood as ‘given’ beforehand or that they are not actively acquired. The first principles, in the areas both of theoretical and practical knowledge, are not innate. If they were considered as such, this would be incurring naturalism. I take ‘naturalism’ to be that perspective where intellectual knowledge and ethical qualities are inserted, to a certain degree, within the knowing and acting subject. Naturalism, thus understood, fails to understand that both wisdom and moral good are activities that always come after what is given: they are absolute gains. Naturalism destroys the very foundations of ethics, given that no moral qualification can be acquired in a vacuum, nor be transferred in a causal manner, but rather must be actively acquired. Neither absolutely natural ethical goods nor innate virtues exist.

The first principles are original and primitive truths, because they result from the use of theoretical and practical reason, in which this reason is identified with reality itself, and which reveals itself in the primordial differences and determinations corresponding to the most elemental pre-linguistic concepts: *one, other, same, different, being, not being, good and evil.*

These are truths which do not depend on any other truth, nor upon any prior knowledge and do not require any explanation, although they are subject to various interpretations and may even be the object of philosophical attacks (such as has

occurred with the principle of non-contradiction or with the first principle of the practical reason: *bonum est faciendum et malum vitandum*). Taken alone, they indicate a limit of the intelligence, beyond which one cannot go. Not all signs refer to another, nor is it possible to refer every proposition to a previous interpretation, because in that case there would be no genuine theoretical or practical knowledge.

Despite the fact that knowledge begins with experience, our knowledge of the first principles is direct, because these truths are understood without discursive reasoning or logic, in an immediate way, they are based on the knowledge provided by the senses, and due to the activity of the intellect, the understanding captures a proposition which is self-evident. It is possible to say that here we find a ‘second immediacy’, a quasi-intuition, which presupposes the ‘first immediacy’ – that is, the empirical – and is distinguished from it. The first immediacy is pre-conceptual and sensible. The second is the conceptual immediacy, keeping in mind that the concept cannot be identified with its representation. The concept, as opposed to the representation, is a mediation which does not distance from reality, but which rather approaches reality: a mediation which, so to speak, does not mediate. In the concept there is no possibility of error. And without it, there would be no truth or error. This original and radical knowledge expresses the very being of the human person, which cannot be reduced to a fragment of nature. In capturing the first differences and determinations, in their quasi-intuitive understanding, the human being stands out above everything natural. This is where we find the possibility and the necessity of both metaphysics and ethics¹. What we know as *natural law* is based on this non-naturalist opening to the nature of the human being and of the things of the world.

¹ See Patricia Moya, *El principio del conocimiento en Tomás de Aquino* (Pamplona, 1994), pp. 258–259.

See also Alejandro Llano, *Después del final de la metafísica* (Madrid, 2004), pp. 21–23.

Inductive abstraction or *epagogé* is the form of knowledge according to which the understanding penetrates reality and in that way knows those necessary truths to understand reality itself and explain it meaningfully. By means of this understanding, which unifies experience with the intellection of a principle, it is possible to base a principle, in a direct way, in reality itself. Obviously, this is not an explicative fundamentation, in the sense of modern foundationalism. What is at question is not certitude, but truth. Certitude has to do with consciousness and its representation; truth, on the other hand, has to do with reality itself and its conceptual comprehension. This is the key to metaphysical and ethical realism: it is not that we reach reality, but rather than we are in it.

From an approach such as that of Duns Scotus, who, on this point, is followed by the majority of rationalist thinkers, the link between the knowledge of principles and experience is sometimes misunderstood. For those thinkers such a link *demotes* the noetic value of the very initial understanding of first philosophy, because of the paradox that implies that the highest form of knowledge comes as the result of an inferior way of knowing. It seems as though the *scientia transcendens*² could not possibly arise from a terrain as precarious as that of sensible experience, because in this way metaphysics and ethics would never attain necessity in their formulations, nor reach the transcendence which they claim. But this supposed lowering of the mind must be understood as a penetration of understanding into reality, as a convergence of reason and nature, precisely because there is no discrepancy between them. Reason coincides, in a certain way, with natural reality, and is equivalent in that it captures those first truths which are also principles of reality and of our own activity. Inductive abstraction elevates that

² See Ludger Honnefelder, *Scientia transcendens: die formale Bestimmung der Seiendheit und Realität in der Metaphysik des Mittelalters und der Neuzeit (Duns Scotus, Wolff, Kant, Peirce)* (Hamburg, 1990).

which is sensible to an intelligible level that is only potentially present in nature. Abstraction, taken in this way, is not a simple copy or transposition of essences into the intellect, as proposed by the Scotist theory of the *distinctio formalis a parte rei*, according to which the difference of the forms in the reality would be actual. For Aristotelians, on the other hand, forms are grounds for a *distinctio rationis cum fundamento in re*, i.e. the differences would be potential. Thus abstraction must be a purely active operation of the understanding. This does not diminish, however, the validity of the classic saying, ‘*abstrahentium non est mendacium*’.

These are the noetic principles of the classical doctrine of the natural law, which could more appropriately be called ‘*ratio*–natural law’, since this theory is characterized by constant appeal to collaboration, without confusion, between reason and nature. The modern version, on the other hand, deserves the title of *rational law*. This is because only reason is in possession of itself, and precisely for that reason, is possessor of nature. Only that reason which possesses itself can possess nature. This implies that reason itself must choose the point of view, the perspective from which nature must be judged. Friedrich Kaulbach has located the essence of mature and enlightened modernity in this choice of approach, a rough, not fully developed, draft of which can be found in the critical philosophy of Immanuel Kant³, which in its literal explanation does not achieve the status of a transcendental theory of action.

What is problematic, and perhaps leading to a dead–end, is the possible recourse to nature in a moral and juridical conception which sees reason as the definitive ground for all normativity. But, before proceeding to deal with this question, we must ask whether it is worth the effort. This appeal to nature was maintained, in fact, in classical

³ See Friedrich Kaulbach, *Das Prinzip Handlung in der Philosophie Kants* (Berlin, 1978), pp. 141–143; *Studien zur späten Rechtsphilosophie Kants und ihrer transzendentalen Methode* (Würzburg, 1982).

ethics and legal theory. But it was accused of falling victim to the *naturalist fallacy*, which constitutes a much more serious reproach than that of *rationalist fallacy* which the modern version of natural law may well merit.

If a position such as Kant's could, despite all of its nuances, be labelled as rationalist, a classical theory such as that of Aquinas seems to fall victim to *Hume's Law*, according to which prescriptive propositions cannot be deduced from descriptive propositions. It turns out, however, that at the opposite extreme from rationalism one does not find classical ethics, but rather precisely the moral position of David Hume. According to Hume, reason is impotent in the face of nature: it is but a slave of the passions, and is always at the service of whatever compulsion happens to be strongest at the moment⁴. In other words, reason is in no way practical, it is not determinative of action, it is not active. And if Hume himself does not fall victim to the naturalist fallacy, but rather simply denounces it in the philosophies of others, it is precisely because for him there is no obligation which does or does not derive from nature: nature is everything. If this position were correct, it would be impossible to construct an ethic that went beyond what is usual, which would prescribe something superior to or different from that which is done by custom or as a matter of fact, and thus would be something more than a *science de moeurs*.

Considering the questioning the light of the historical development of thought, it was Kant who reacted to this posture and who situated himself, so to speak, at the other extreme: Reason is immediately practical. And if there must be an obligation, an ethic, it is only reason (considered as free will) which can be decisive. The only criterion, then, is the capacity to generalize rules, the legality of the maxims as product of the self-governance of reason.

The resulting drawback is the following: with this attitude one may justify all possible points of view, provided that they are freely chosen. This consequence, which in Kant remained still undeveloped, is clear in the Kaulbach's extension as regards to the Copernican Revolution. And the consequence is that practical reason can freely choose the perspective it uses to deal with moral questions. Certainly, Kant himself would have been alarmed by this conclusion. The frightful comparison of theoretical and practical reason within this approach must lead to the relativization of the world and of morals. There would be no absolute point of view. But it is not easy to see how, based on Kantian grounds, one could avoid these conclusions. It is necessary to keep in mind, as Fernando Inciarte has noted⁵, that Kant lived in an intellectual atmosphere which, conditioned by the late medieval speculation *de potentia Dei absoluta*, as well as by the Leibnizian idea of compossibility, allowed for the multiplication of possible worlds. Certainly, Kant wanted to put an end to the proliferation of worlds and perspectives, at least in the ethical realm. The in-depth meaning of the distinction between phenomenon and thing-in-itself points to the achievement of this objective. The notion of *Erscheinung* implies, ultimately, that the physical world only has meaning for us, as specially formed rational beings, given that the categories of our understanding are in fact what we know *a priori* and apply to phenomena. Nevertheless, these categories could have been different for rational beings made differently from us, or who would inhabit a different world⁶. The moral law, on the other hand, applies in general (*überhaupt*) to any rational being, and thus, not only in a relative way to the human race, but rather in an absolute way. And it is precisely this *überhaupt* of moral

⁴ David Hume, *A Treatise of Human Nature*, ed. Selby-Bigge, III, 1, 1, pp. 456–459.

⁵ See Fernando Inciarte, 'Verdad y objetividad histórica', *Anuario Filosófico*, XXV (1982): 89–102.

⁶ See Immanuel Kant, *Kritik der reinen Vernunft*, A 19–20, B 33–34.

validity, as Inciarte also notes, which is the only positive sense which the thing-in-itself acquires in Kantian thought⁷. This is without doubt one of the central theses of critical philosophy. The question remaining is whether this achievement can be attained from an approach which is based on reason conceived as opposed to nature. This is because a radicalization of the iterative manner of thinking which is characteristic of transcendental philosophy leads to the self-dissolution of its universal and fundamental intentions, with the result that the abandoning of the appeal to nature, in favour of reason alone, seems to have led to the ‘perspectivism’ which has become generalized two centuries after Kant.

The unconditioned fear of the ‘naturalist fallacy’ is not only unjustified by the suppression of obligation by Hume himself, but also because both before and after the Copernican Revolution the means of dealing with the two concepts of nature are completely different. Prior to the consolidation of the modern way of thinking, nature was seen as teleological, open, and as a conveyor of meaning. After this revolution of thought, nature became viewed in a mechanistic way, and primacy was given to the power of reason. As Kaulbach has indicated⁸, in the face of the classical theory of action as a teleologically constituted *praxis*, mature modernity has developed a theory of action as performance (*Handlung als Bewirken*). The agent is no longer seen as naturally integrated into the cosmic totality of the *physis* nor in the framework of the *polis*. The subject considers himself as independent of the physical and political world. And this independence is precisely the foundation of his freedom as autonomy. The subject provides himself with his own ends, which are achieved via the causal

⁷ See Inciarte, ‘Das Problem der Aussenwelt im transzendentales Idealismus’, *Philosophisches Jahrbuch*, 76 (1968): 123–140.

⁸ See Kaulbach, *Einführung in die Philosophie des Handelns* (Darmstadt, 1982).

knowledge he has of the physical world. And the world is, at the same time, the realm of those things which the subject can construct; the subject's freedom consists, on this level, of being able to use nature freely, liberating himself from its demands and immediate pressures. In order to liberate himself, the human being subjugates nature, which is no longer, as Kaulbach himself says, a teleologically free nature, but rather a 'nature in chains'.

Prescinding from abstruse teleological curiosities, which come from vulgar Stoicism, the classical conception of the natural law does not necessarily lead to something similar to the concept of *obligation*, as understood at present, since that which later would be called 'obligation' was seen to be situated in nature⁹. But this does mean that we are dealing with a naturalistic concept. Morality was not simply given over to nature, nor was it dissolved in nature, as Hume would later do.

The classical conception of natural law, '*ratio*-natural law', does lead to obligation from a basis in being, nor is it merely biologicistic, as is frequently misunderstood. To appreciate this, what it is that is meant by 'nature' within this theory, must be clarified. And, firstly the answer must be that nature is the 'pulsional' dimension of the human being, or what Kaulbach has well described as the 'inner cosmos' (*inneren Kosmos*). According to Aquinas, human reason views as good, and thus as that which must be pursued, all of those things towards which the human being has a natural inclination. Thus, the order of natural inclinations is the order of the precepts of natural law. Insofar as the human being is a living being, there is a tendency towards conserving one's own life; as a sensitive being, there is a tendency towards procreation and care for children; and as rational being, we show clear inclination

⁹ See Robert Spaemann, 'La naturaleza como instancia de apelación moral', in Rafael Alvira (ed.), *El hombre: immanencia y trascendencia* (2 vols, Pamplona, 1991), vol. I, pp. 49–67.

towards truth and peaceful coexistence with fellow beings¹⁰. One may certainly trace these ‘impulses’ back to the Stoic *hormai*, but beyond those lies nothing other than the Aristotelian *orexis*. Kant can be said to have challenged the *orexis*, the appetite, which does not play any positive part in his ethics.

Has this challenge been worth the effort? The difficulties which Kant encountered with the *principium executionis* are well known, and have much to do with this approach. But the marginalization of the dimension of the tendencies of the human being, in favour of a denaturalized will, which has become pure reason, not only becomes the principal issue in the second *Critique*: how reason, immediately, left alone, could become practical, but it is a hopeless challenge. The effects of the *principium dijudicationis* would have to be less grave¹¹. For pure reason lacks content, and thus runs the risk of being considered in itself as purely instrumental. But, for the self-activity of practical reason, the only alternative is not that of naturalist and instrumental kind, such as that of Hume. When, on the contrary, nature is recognized as a sensitive tendency (appetite) or rational tendency (will) as measure of morality, in the sense of the *principium dijudicationis*, this does not imply that reason has no other alternative than to give in to the strongest impulse and permit this impulse to decide. It is inevitable that careful consideration of good, which is the work of the reason, must also intervene, and that an emotivist unilateralism be rejected. For in this exercise the strongest impulse is frequently contained, and the weaker is preferred. Given this state of things, the ‘naturalist’ label becomes clearly insufficient, and the implied reproach loses its apparent force.

¹⁰ *ST*, I-II, q. 94, a. 2.

¹¹ See Immanuel Kant, *Grundlegung der Metaphysik der Sitten*, Ak., IV, 389; *Vorlesung zur Moralphilosophie*, ed. Werner Stark (New York and Berlin, 2004), pp. 84–85.

However, there are further problems. In the Aristotelian approach, which is clearer and more radical than is Kant, reason lacks content, because (even at the level of first principles), and categorically states that there is no place for cognitive nor volition innatism. *Tabula rasa* is reason, and not nature, which therefore cannot be considered merely as material for the fulfilment of obligation, as claimed by some of those whom Kant called his 'hypercritical friends'. Thus the function of establishing the limits for human conduct, that is, the function of establishing its goals or ends, does not belong to reason, but must belong to nature.

We thus come to the question of the ultimate grounds of morality, and with it, to the problem of the justification of absolute prohibitions. If the only determination proceeded from the *ratio*, in that case there would be no place for negative unconditional mandates. In such a case, the only objective foundation of ethics would derive from a comparative consideration of what is good, as indeed today many moralists and specialists in bioethics or business ethics will say. However, the result of considering the favourable and unfavourable consequences of actions can never be an absolute maxim. Thus, it is not a question of considering advantages and disadvantages, but rather of recognizing what is natural and what is unnatural. It is nevertheless objected that, from this anchoring of morality in what is in agreement with nature and what goes against it, one can only obtain empty formulas. However, it is strange that the postures of those who defend natural law, in the face of challenges from relativist positions such as consequentialism, are so vigorous that their concrete *dicta* are sometimes considered oppressive and frequently provoke a certain disquiet.

Among the wide spectrum of questions which are being debated in our time, let us focus for a moment on openness to that contingency or randomness which is part of human reproduction, and which has been the impetus for a growing rationalization of

sexuality, leading to attempts at complete planning and control. The possibility that the sexual act may result in a human life should not be artificially excluded, because engendering a person is not something which can be left to the absolute control of other persons, by means of perfected birth-control technologies, even when it involves the parents themselves. The choice of engaging in sexual activity should neither exclude the natural possibility of a new human being, nor bring it about with absolute necessity. Hence, the derivation of the moral prohibition of artificial insemination. A total dependence upon others in one's very origin contravenes the dignity of each new person, making them the creation of other persons and degrading them from their birth to being the property of beings other than themselves, whether they be the natural parents or not. The original contingency of every man or woman, their bilateral possibility of being or not being, should not be violated by the will and act of other persons.

This thesis is certainly arguable, and in fact is argued, to the point that it has become today 'politically incorrect.' It should not, however, be reproached as being an 'empty *formula*'. But what is important here is not the validity of the thesis itself, but rather what is made obvious by this and other similar examples, that is, that this method of proceeding brings results. What is shown in these cases is that nature contributes to the *principium dijudicationis* with a determination which is never an empty formula. The case of artificial insemination, in the same way as the opposite case of artificial birth control, belongs in this discussion. This is the source of the unease and controversy which the consideration of these topics provokes. But a general formulation such as the following should not be controversial: from the natural tendency to reproduction follows the prohibition of certain sexual practices, just as from the natural tendency to self-preservation follows the prohibitio of killing the innocent; and from the

desire to know the truth come the prohibition of lying and of the use of torture to force confessions.

Nevertheless, nature is not the only moral criterion. The label ‘*ratio*–natural law’ applies more to the classical conception of natural law than to the modern. Among other reasons, this is because in the classical approach, there exists what might be called a sharing of functions. Nature is the demarcation principle for those extreme cases which can be the object of unconditional prohibitions, where reason constitutes the principle for the consideration of what is good in cases which are less fundamental than where life and death are at stake. Regulation by reason is also maintained in classical natural law theory from another perspective. This is because natural tendencies only have moral relevance insofar as they have a connection with the faculty of making rational choices, that is, when the person has the ability to either accept or reject the tendencies. In this area, the Aristotelian axiom: ‘*natura ad unum, ratio ad opposita*’¹², whose importance and significance have been rigorously studied by Fernando Inciarte¹³, is correct. We cannot abstain from digesting, whereas we can abstain, or not, from eating (in accordance with a determination resulting from a consideration of what is good), and we can also eat more or less. Natural tendencies are all good, but in a pre–moral sense. Only reason brings us to the dimension of morality, as the difference between good and evil. Nor can the classical conception be labelled as ‘naturalist’ from this perspective.

¹² See Aristotle, *Metaph.*, IX, 2, 1046 b 4–7.

¹³ See Inciarte, *First Principles, Substance and Action. Studies in Aristotle and Aristotelianism*, ed. Lourdes Flamarique (Hildesheim, Zürich and New York, 2005), p. 386 ff.

Inciarte has pointed out as highly significant that Duns Scotus, in his commentary on the Aristotelian *dictum* ‘Natura ad unum, ratio ad opposita’¹⁴, performed a reinterpretation, of great consequence, of nature as exterior determination, and of the will (for Scotus, the only rational faculty) as independence. If this transformation of Aristotelianism can be considered the beginning of the modern way of thinking, Thomas Aquinas himself would not be distant from this change.

Cuando en la cuestión 51, artículo 1, de la I–IIae, se pregunta si algún hábito es natural, su respuesta aparece matizada por lo que se refiere a las facultades aprehensivas, mientras que en el caso de las potencias apetitivas niega que haya hábitos naturales (*in appetitivis autem potentiis non est aliquis habitus naturalis*)¹⁵.

When, in question 51, article 1, of the I–IIae, he wonders whether any habit is natural, his response is rather imprecise with regard to the apprehensive faculties, whereas in regard to the appetitive faculties he denies that there are natural habits (*in appetitivis autem potentiis non est aliquis habitus naturalis*)¹⁶.

In the juridical and political area, the modern conception also merits the label of *natural*, in addition to that of the attribute *rational*. But in this conception, what is natural only concerns the pre–social state of man. In addition to other important consequences, the modern approach also brings with it the primacy of subjective rights, which were only introduced at the beginning of modernity, pushing aside objective rights. Yet it is only in regards to these latter rights that obligations are indispensable,

¹⁴ See Inciarte, ‘Natura ad unum – ratio ad opposita. Zur Transformation des Aristotelismus bei Duns Scotus’, in Jan P. Beckmann, Ludger Honnefelder, Gangolf Schrimpf, Georg Wieland (eds), *Philosophie im Mittelalter. Entwicklungslinien und Paradigmen* (Hamburg, 1987), pp. 259–273.

¹⁵ *ST* I–II, q. 51, a. 1.

¹⁶ *ST* I–II, q. 51, a. 1.

precisely because, without exception, they cannot be substituted by obligations. This is precisely the context in which the voluntarism of Duns Scotus, and of his followers, becomes decisive. It is also plausible to think that, at least in its initial understanding, the doctrine of subjective rights has resulted in an undervaluing of human dignity: for example, they have brought about a rational justification of slavery and of absolutism. This shows the ambiguity of the idea of possession, which Kaulbach, and others, evaluate in a strictly positive light, insofar as it expresses a modern radicalization of freedom as independence: the human being, insofar as he is a possessor of himself and of nature. Thus there is a tendency to equate *jus* with *dominium*, law with dominion in the sense of property. As a consequence, children, insofar as they have no dominion or property rights, and especially insofar as they cannot do as they wish, do not have any rights.

The effects of the rationalist and voluntarist change were also felt this juridical and political ambit, by emphasising the unlimited self-determination which makes nature a *tabula rasa*. Even if we leave out the set of characteristics designed by the expression ‘possessive individualism,’ the danger became so great, that even freedom could become a possession that the human person may dispose of freely. It was not really Hobbes and Locke who were the first to justify absolutism and slavery. There are roots which lead directly to Scotism, which can be already be clearly detected, according to Richard Tuck, in authors such as Molina and Suárez, who separated from the Thomism of Francisco de Vitoria¹⁷. Reason and will, being autoreflexive, based only on themselves, cannot hold back the process which makes everything, even

¹⁷ See Richard Tuck, *Natural Rights Theories. Their Origin and Development* (Cambridge, 1979), pp. 52–57.

freedom itself, into property, which in turn belongs solely to the person, and thus can even be self-suppressed.

The conflict between nature and reason is closely linked to the duality which exists between praxis and technique, that is, between moral and political activity, on the one hand, and instrumental reason, on the other. This conflict has roots deep in the history of philosophy. The confrontation between Socrates and the Sophists was decisive in this regard, although, as Plato relates it, the part played by Socrates in the polemic varies dramatically from the *Protagoras* up through the *Thrasymachus*, a dialogue within a dialogue, contained in the first book of the *Republic*. In my opinion, the decisive theoretical contribution comes from Aristotle, who established a close connection between the concepts of *praxis* and *physis*, insofar as both immanent activity and nature imply self-direction¹⁸, as opposed to what happens with the instrumental or technical use of reason.

But the instrumental interpretation of ethical reason, which leads to pragmatism, would not come of age until the maturity of Modernism, where Kant still represents the last defence of non-utilitarian ethics¹⁹. What Kant rejected in utilitarianism was precisely the transfer of the means of evaluation to the results of the action: to that which in the Middle Ages was called *eventus sequens* and which was clearly distinguished from the *finis operis et operantis*. The consequences of the action, which frequently cannot be foreseen, or suggested or calculated, should not become the moral criterion. But there still remains in Kant the idea that, definitively, what counts is the

¹⁸ Aristotle, *Phys.*, II, 2, 193 b 11–17; *De An.*, II, 5, 416 b 6–7.

¹⁹ See Inciarte, ‘Grenzen des Utilitarismus in der Moral’, in Hans Vetter, Günther Pöltner and Peter Kampits (eds), *Verantwortung. Beiträge zur praktischen Philosophie* (Wien, Wiener Universitätsverlag, 1987), pp. 89–102.

intention as the main objective, as a goal proposed, as the ultimate end. That which is decisive is the position of the end (*Zwecksetzung*) which insofar as it is not free, is to that extent not artificial, or at least, not discretionary. It should not strike us as odd, therefore, that we are offered ethical frameworks nowadays, such as that proposed by Richard Hare, in which there is visible a combination of Kantianism and Utilitarianism.

The alternative to an ethic of establishment or positioning of the end is not a sociality which, just because it is conceived of as naturally given, would have to be considered as unconditionally unfree. If the end, a just social order, is not artificially imagined, nor even freely chosen, this does not necessarily mean that a loss of freedom is at hand. Because in the classical conception, the choosing of the means is the measure of freedom, and cannot be separated from the end, in contrast to what happens with any artificial or technical production. The fact that I, when I sing or dance, do not necessarily intend to do anything other than sing or dance, signifies two things: 1. such an activity does not require seeking something else beyond itself; 2. this activity does not in itself represent an end which is situated beyond the acts of which it is composed, or, rather, in which the activity itself consists. This overlapping of the means with the ends is what Aristotle, differentiating it from technique, called *praxis*, and is what confers upon this kind of activity its natural character. Similarly, nature has the initial and final terms of its action within itself, it does not seek, as technique on the other hand does, after ends which are outside itself: it realizes itself, so to speak, in circles; or, if one prefers, in spirals. We could speak here of a 'finality without end', in the sense of the absence of position or establishment of an end.

He who relies on reason only, will have to see purpose in everything. And this applies especially to the good life, to a life which is achieved, which is what practical philosophy is about. However, the authentically good life has no purpose. And this

applies also, therefore, to the life of reason. Knowledge is not fundamentally a search for the self, but, as the Aristotelian tradition maintains, a reception (though certainly not passive) of other forms insofar as they are other. Self-knowledge is always a derived phenomenon, an epiphenomenon. As the later Schelling would make clear, and Inciarte reminds us²⁰, there are insuperable difficulties which lie in wait for any philosophy based upon self-consciousness. Thus, a good life complies with the requirements of nature, without needing to know that it is so doing. Consequently, Schelling equates happiness (*Seligkeit*) with being free of oneself, with the forgetfulness of oneself, which should be confused with the self-dissolution of some Oriental form of mysticism. Thus the achieved life, or happiness, is instrumentalizable. Realise On the contrary, instrumentalization is a permanent danger for every interpretation of the good life as being founded solely on reason and on the establishment of the end or goal. If this, the ultimate purpose, the mode of life which I prescribe for myself, were to be consciously chosen, then it would have to be opposed to me as a goal separate from myself, which I would have to struggle to achieve. It could be objected here that Kant has already distinguished the rules of prudence from moral requirement. But we have already noted that for him, the intention always is united to the purpose. The unintended consequences (*eventus sequentes*) do not count here. Nevertheless, the supremacy of the rational concept of the end, which is set in opposition to the un-chosen teleology of nature, leaves a large opening for the entering of that utilitarianism which he so fought against.

But then a fear might surface that without self-choice (from the existentialist perspective) of the end which is to be sought, of one's behaviour, human life would suffer from an imposed monotony. It seems evident that an end which is prescribed beforehand to all persons would make our life uniform in an unbearable way. A later

²⁰ See Inciarte, *First Principles, Substance and Action*, pp. 219–244.

objection would note that the position of happiness as the ultimate natural end, as has been postulated in classical metaphysics since Plato and Aristotle, contradicts the facts. It is true that happiness is composed of different things for different people. And so the proposal of classical practical philosophy would not merely be intolerably uniform, but in addition, luckily, in this case, impossible to achieve. And this, in turn, would be in contradiction with the idea that happiness is a natural end from which one cannot turn away.

Objections of this kind must be answered firstly, by saying that fear of uniformity is only pertinent if one presupposes an instrumental relationship between means and end. Once the means are considered as constitutive parts of the end, and this is obligatory in morality: the ends do not justify the means, then the resulting forms of life are as diverse as are the means which are chosen in each case to achieve its end. Thus, there is no way of indicating from outside and beforehand where to find the end, happiness, for a person; while, on the contrary, there can be a plan for the machine which one proposes to build, which even comes with instructions that have to be followed as carefully as possible during the process of building it.

Secondly, one may understand happiness in a hedonistic and utilitarian manner. Then, one encounters in each case something different: each time when happiness is experienced, or is taken as such. But this is not the case with the classical conception of the natural law, in which happiness is rather the achievement (different in each case, there is nothing wrong with admitting it) of an objective order which does not need to be subjectively experienced or understood as such. It is only by means of activity, by means of good actions, that the capacity for experience and knowledge is developed. Here also one must admit the possibility of a certain imbalance between being and appearance, essence and phenomena, nature and exercise of reason.

Thirdly (and finally), the fact that happiness constitutes an end which is given by nature, from which the human being cannot separate himself, is something which can be interpreted in two manners: either in the sense that the end (happiness) cannot fail to be fulfilled, or else in the sense that one pursues this goal without ceasing. In the first sense, the proposition is scandalous (for being deterministic) and in addition unequivocally false (since it frequently does not reach the aim of happiness). But this position is never affirmed by representatives of the eudaemonist ethic. It is affirmed in the second sense, but in that case there is no cause for scandal. And in this second sense it has evident advantages over the opposing position, that is, the anti-eudaemonist position: the advantage of not having to apply a weak concept of happiness.

Francis I of France is believed to have said, in an allusion to the Holy Roman Emperor Charles V: 'My cousin Charles wants the same thing I do, namely Milan'. In the context of the rejection of the principles of classical natural law, it can be said, as in the presumably historical anecdote just mentioned, that what appears as consensus (i.e. all persons desire happiness) is in reality disagreement (each person wants, in reality, something distinct). There is no common nature from the fulfilment of which we could not (at least consciously) separate ourselves. In this way, we do not come to universal principles of praxis, to precepts which link all individuals, at all times and in any circumstances. Rather, we ourselves must establish those precepts consciously and freely, with the result that what is general or universal is only the act of self-choosing.

Must each of us choose our attitude in life to avoid uniformity? The classical doctrine of natural law would respond negatively to this question, as we know. It would reject the thesis that the affirmative response would imply, because it would consider it to be an expression of voluntarism, which (to followers of the classical doctrine) has always

reeked of arbitrariness. For the classical theory, choice resides originally in reason: *radix libertatis in intellectu constituta est*. This original freedom does not derive from will, but from understanding. This implies that understanding is not a natural faculty, is not a fragment of nature. The classical theory of natural law still upholds the original sense of the axiom *natura ad unum, ratio ad opposita*. ‘*Ad unum*’, in this tradition, does not yet mean the exterior determination which ‘nature’ would come to signify later. And similarly, ‘*ad opposita*’ does not yet refer to the self-determination of will. In other words, the first, the *ad unum*, does not mean that the fundamental indetermination or contingency of nature must be overcome by an exterior power, even if this were the power of nature itself. Neither is it the case that the second, the *ad opposita*, signifies that indecision can be overcome by the will’s own power of determination.

Today, it is indispensable to reconsider the connection between reason and nature so that a fruitful up-to-date renewal of practical philosophy may be firmly linked to the first principles of praxis, and will not be wasted by changing into what Franco Volpi called, ‘the ideology of comfortably moderate conservative cultural relativism’²¹.

Bibliography

Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.

Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).

²¹ Franco Volpi, ‘Rehabilitación de la filosofía práctica y neo-aristotelismo’, *Anuario Filosófico*, XXXII (1999): 341. [My translation]

- Honnefelder, Ludger, *Scientia transcendens: die formale Bestimmung der Seiendheit und Realität in der Metaphysik des Mittelalters und der Neuzeit (Duns Scotus, Wolff, Kant, Peirce)* (Hamburg: Felix Meiner, 1990).
- Hume, David, *A Treatise of Human Nature*, 2nd revised edn by P. H. Nidditch (Oxford: ed. Selby–Bigge, 1888–1978).
- Inciarte, Fernando, ‘Das Problem der Aussenwelt im transzendentalen Idealismus’, *Philosophisches Jahrbuch*, 76 (1968): 123–140.
- Inciarte, Fernando, ‘Verdad y objetividad histórica’, *Anuario Filosófico*, XXV (1982): 89–102.
- Inciarte, Fernando, ‘Natura ad unum – ratio ad opposita. Zur Transformation des Aristotelismus bei Duns Scotus’, in Jan P. Beckmann, Ludger Honnefelder, Gangolf Schrimpf and Georg Wieland (eds), *Philosophie im Mittelalter. Entwicklungslinien und Paradigmen* (Hamburg: Felix Meiner, 1987), pp. 259–273.
- Inciarte, Fernando, ‘Grenzen des Utilitarismus in der Moral’, in Hans Vetter, Günther Pöltner and Peter Kampits (eds), *Verantwortung. Beiträge zur praktischen Philosophie* (Wien: Wiener Universitätsverlag, 1987), pp. 89–102.
- Inciarte, Fernando, *First principles, substance and action: studies in Aristotle and Aristotelianism*, ed. L. Flamarique (Hildesheim, Zürich and New York: Georg Olms, 2005).
- Kant, Immanuel, *Kritik der reinen Vernunft*, ed. Jens Timmerman (Hamburg: Felix Meiner, 1998).
- Kant, Immanuel, *Grundlegung zur Metaphysik der Sitten* (Berlin: ed. Akademie der Wissenschaften, 1902 ff).

- Kant, Immanuel, *Vorlesung zur Moralphilosophie*, ed. W. Stark, (Berlin and New York: Walter de Gruyter 2004).
- Kaulbach, Friedrich, *Das Prinzip Handlung in der Philosophie Kants* (Berlin: Walter de Gruyter, 1978).
- , *Einführung in die Philosophie des Handelns* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1982).
- , *Studien zur späten Rechtsphilosophie Kants und ihrer transzendentalen Methode* (Würzburg: Königshausen & Neumann, 1982).
- Llano, Alejandro, *Después del final de la metafísica* (Madrid: Publicaciones de la Facultad de Teología San Dámaso, 2004).
- Moya, Patricia, *El principio del conocimiento en Tomás de Aquino* (Pamplona: Eunsa, 1994).
- Spaemann, Robert, ‘La naturaleza como instancia de apelación moral’, in Rafael Alvira (ed.), *El hombre: inmanencia y trascendencia* (2 vols, Pamplona: Servicio de Publicaciones de la Universidad de Navarra, 1991), vol. I, pp. 49–67.
- Tuck, Richard, *Natural Rights Theories. Their Origin and Development* (Cambridge: Cambridge University Press, 1979).
- Volpi, Franco, ‘Rehabilitación de la filosofía práctica y neo–aristotelismo’, *Anuario Filosófico*, XXXII (1999): 315–342.

CHAPTER 11

The Relativity of Goodness: a Prolegomenon to a Rapprochement between Virtue
Ethics and Natural Law Theory¹*Christopher Martin*

The title of this paper is given partly *pour épater*: I imagine that most of those interested in natural law will see ‘moral relativism’ as a great enemy to be overcome. But once the shock has been achieved, let me say at once that I am not writing in favour of what is usually called moral relativism. On the contrary, I think that my thesis – which is, roughly speaking, that of recognizing a certain degree of relativity at the beginning of our thought about good and bad – will save us from a good deal of relativism in the end.

What is meant by ‘moral relativism’, I take it, is any kind of ethical view that relates what is good and bad to their immediate or long term consequences, or to their circumstances, or still more to subjective attitudes or to a particular culture. This paper will not, I hope, do anything to support such views, but will instead do something to undermine two academic sources of moral relativism, and to give some support to valuable alternatives.

Let me say at once that while I may seem to be falling into what may be an objectionable relativism, I shall argue that recognising a little relativity at the beginning

¹ A version of this paper was given at the conference ‘La Ley Natural’ in the University of Navarre in March 2006, and another at the Thomas More Institute in May 2006. A transcript of the latter version can be found at <http://www.thomasmoreinstitute.org.uk/martin.html> (as of 13th September 2006). I have to thank all those who contributed to discussion of the paper in both places, particularly Dr Mary Geach, whose comments can be found in the Thomas More Institute transcript.

of our ethical discussions will save us from a lot of relativism at the end. And let me say that I remain committed to the objective truth of judgements on good and bad. Good and bad, in short, are objective, but that does not make them absolute, but trying to make them absolute seems to work against objectivity. However I think that there is a claim to be made for recognising an acceptable degree of relativity in our understanding of good and bad. Let me say at once that while I may seem to be falling into what may be an objectionable relativism, I shall argue that recognising a little relativity at the beginning of our ethical discussions will save us from a lot of relativism at the end. And let me say that I remain committed to the objective truth of judgements on good and bad. Good and bad, in short, are objective, but that does not make them absolute, but trying to make them absolute seems to work against objectivity.

With so much by way of preamble, I want to state the three these I want to maintain in this paper. The first is to claim that goodness is a relative notion and that it should not be understood as something absolute.

The second claim is that the two main errors, as I see them, in contemporary ethical thinking involve trying to see goodness as an absolute notion. These two major errors are first: consequentialism, the notion that an action is good or bad according to whether its actual or intended consequences are good or bad². The other error is that of

² Dr Mary Geach reminded me that the term 'consequentialism', as introduced by her mother, Prof. Anscombe, did not have the sense I attribute to it. I use it in the sense that has become most common these days, as outlined above. Broadly speaking, in this sense, consequentialism is the genus to which utilitarianism belongs. Dr Mary Geach rightly pointed out that a strict rule-utilitarian, for example, who upholds and follows strict ethical rules which he has reached on utilitarian grounds, need not be a consequentialist in Professor Anscombe's sense, though he would be in mine. This, of course, is correct. I doubt, however, whether such a strict rule-utilitarian is very likely to exist. Anyone who accepts utilitarian principles will be far more likely to act against the rules in a hard case, particularly when the is

observing or claiming that there is a strong distinction between factual judgements and moral judgements. Both, I will claim, involve an erroneous belief that goodness is an absolute notion.

The third part of the paper will glance at two current theories in ethical thinking which I regard as being each to some extent true: one being *virtue ethics* and the other being *natural law theory*. Virtue ethics says that the place where we should first look for moral goodness and badness is the qualities of human beings. Natural law theory needs no introduction in this context, but it is perhaps worth mentioning that there are two contemporary varieties of natural law theory, called for short ‘new natural law theory’ and ‘classical natural law theory’. It seems to a relative outsider like myself that the degree to which these two varieties seem to be opposed in the minds of their proponents is exaggerated, but this may just be a trick of perspective. In any case I shall treat them together here, in general, only occasionally referring to their differences, to the extent that I understand them. These two good kinds of ethical thinking, virtue ethics and natural law theory, both are correct in regarding goodness as a relative notion. They differ, I think, in observing different relativities in the notion of goodness: that is, they make goodness a notion that is relative to different realities. I hope to suggest a route we might follow in trying to accommodate these two different relativities within a single theory.

The relativity of goodness

It should be obvious, surely, that a good number of important propositions about goodness are relative. Aristotle draws attention to this: he tells us that ‘good’ is said in

a clash of rules. Prof. Anscombe herself seems to point this out: see her *Collected Philosophical Papers of G.E.M. Anscombe* (3 vols, Oxford, 1981), vol. III, *Ethics, Religion and Politics*, pp. 27–28 and 33.

all the categories. As a result, we find a word like ‘opportunity’ which means ‘good as according to time’ and ‘lodging’ or perhaps ‘accommodation’ which means ‘good as regards place’. In quantity, ‘good’ means ‘the moderate’³.

At another level, Aristotle tells us that as regards human beings there are three kinds of goodness: there is the noble, the useful and the pleasant⁴. That the useful is a relative notion should be obvious: what is useful is always useful for someone, for some purpose. Otherwise it does not make sense to say that it is useful.

However, the pleasant is also a relative notion: pleasant means pleasant *for someone* (i.e. *for some human being*), or more generally *for some animal of some kind*. Clearly what is pleasant, like what is useful, may be different for different kinds of animal. Heraclitus, long before Aristotle, pointed out that salt water is good for fish, but bad, indeed fatal, to human beings⁵. Aristotle goes on to make the point that ‘pleasant’ means ‘pleasant for a *healthy* animal of some kind’⁶. We do not call something pleasant just because it is pleasant to a diseased palate.

This, however, goes no further than to show that there are contexts in which ‘good’ is used in a relative sense: it does not show that good is always used in a relative sense, albeit disguisedly, which is the claim I intend to make. All I have shown so far, it might be objected, is that the notion of goodness can be restricted to a context: but the same would be true of any notion, even one which I would want to regard as absolute,, unlike that of goodness. Take, for example, the notion of truth, which I would certainly

³ NE I, 6: 1096a24 – 27.

⁴ NE II, 3: 1104b32.

⁵ Heraclitus, Fragment 52 (Hippolytus, *Refutation of All Heresies* 9.9.4), in Heraclitus, *Fragments. A Text and Translation with a Commentary* by T. M. Robinson (Toronto, Buffalo and London, 1987).

⁶ NE III, 4: 1113a26 – 29.

wish to regard as absolute. Though it is absolute, it seems as if the notion of truth can easily be restricted to a context. To use a Texan example, I might say: ‘Nearly everyone supports the right to bear arms’. Someone may deny that this is true, and I can defend myself by saying ‘Well, it is true in Texas’ (which it probably is). It is the case, then, that even an absolute notion can be restricted to a certain context. However, I would say that what a proposition like ‘That nearly everyone supports the right to bear arms is true in Texas’ would be more appositely put by saying that some proposition such as ‘In Texas, everyone supports the right to bear arms’ is true in an absolute and unrestricted sense.

In any case, I want to make a stronger claim with regard to goodness. Goodness is not merely an absolute notion which can be restricted to a context, as might be done (I think clumsily and misleadingly) with truth. Goodness is a relative notion from the ground up, as it were, just as fatherhood is a relative notion. That is, a father is not first a father in an absolute sense, whose fatherhood then gets attached to or restricted to the context of some offspring, being relativised by being the father of this or that child. In order to be a father, a man has to be father of this or that child first, and then he can be said to be a father. Calling a man a father in a supposed absolute sense is to use what P.T. Geach calls a derelativisation⁷.

A more complicated case which I think bears a closer analogy to the notion of goodness; would be that of bigness and smallness. Obviously bigness and smallness belong in the same box, and are contraries on the same level. Nevertheless the biggest mouse is smaller than the tiniest elephant. There is, I want to say, no such thing as a

⁷ Peter Geach makes use of the notion of derelativisation in a logical or even metaphysical context in *Reference and Generality*, but something close to it, including the parallel of size, is used in his paper ‘Good and Evil’, *Analysis*, 17 (1956): 33–42.

notion of absolute bigness. Nothing could be said to be big without qualification, except perhaps the Universe. Even then, it is arguable that the Universe is only big relative to its parts, or perhaps to the size it used to be (since they tell us that it is expanding), or compared to other imaginable universes. Equally well, at the same time, it can be said to be small compared to other imaginable universes or to the size it is going to be after further expansion.

So again here, it is not the case that the elephant is small and then gets its smallness qualified or restricted to a context by being said to be small for an elephant. If the elephant is not small for an elephant, then it is not small at all. There is of course the complication that we have no hesitation in saying that mice are small and elephants are big without making any qualification. But this is because 'small' and 'big' in this context are understood to mean 'small' or 'big' compared to a human being: and this, again, is a relative notion. Even if we what we say is that the elephant is big, without making any qualification, what we mean is that the elephant is big compared to us.

Before I try to explore the ways in which 'good' is said in a relative way, I want to deal with a couple of objections to the idea that is must always be so said. Some, perhaps especially Thomists, may want to ask, what about God? Isn't it the case that God is good without qualification, not in any relative sense, but in an absolute sense? I think we are entitled to be rather agnostic about possible answers to that question. If I refuse to dissent from the proposition that God is good, I may still wonder exactly what the proposition means. I think I understand and can assent to the proposition that God does not have any of the defects found in creatures, and that God's goodness must be without any of the limiting factors found in the goodness of creatures. Explanations of this kind do give us some understanding of the suggestion that God is good in an

absolute sense. But we actually reached that notion by working from a comparison with creatures, since this is where our knowledge starts.

Some Thomists might tell me that if I properly understood the metaphysics of being in St. Thomas, I would understand perfectly well that since God is perfect being therefore God is perfect goodness as well – to which I have to reply that if this is indeed the proper interpretation of St. Thomas, I simply have to admit that I do not understand his thesis terribly well. But even within the sphere of the interpretation of St. Thomas, a possible and I think legitimate answer is as follows: even Thomas does not regard the notion of goodness and the notion of being as being synonymous. They are if you like, as he says, interchangeable in appropriate contexts, but that does not mean that they are synonymous: thus, not interchangeable in all contexts. Thomas actually says explicitly that what the notion of good adds over and above the notion of being is a relation to some end and to some appetite or tendency⁸ – which I think is enough to entitle me to say that even the supposed absolute goodness of God does not invalidate my claim that goodness is always a relative notion.

Dr Geach, in discussing my presentation of an earlier version of this paper at the Thomas More Institute in London, made a pertinent objection, which did not depend on a superior understanding of a metaphysics that I have not achieved. She pointed out that we can perfectly well understand, and may well be inclined to assent to, the idea that over and above the notion of a person's being a good person or a dog's being a good dog, a human being is better than a dog, or a dog than a kangaroo, or a kangaroo than an amoeba⁹. There is more to being a human being than there is to being a dog, more to

⁸ At, for example, *De veritate*, q. 21 a. 1 c. and a. 2 c.

⁹ Of course I do not wish to understand the idea of a good dog or a good kangaroo in an anthropocentric sense. I have a fairly good idea of what would make a dog a good dog independently of the way that a

being a dog than there is to being a kangaroo, more to being a kangaroo than there is an amoeba. We find it quite acceptable to think of these differences in terms of greater perfection or goodness.

This objection is obviously powerful. If it stands up, then it seems that we do have an absolute, non–relative notion of goodness. But I wonder whether it does stand up. In the first place, it is possible that there is a disguised comparison (and thus relativity) hidden here. The amoeba is less good than the kangaroo is, and so on: all these goodnesses would be attributed relative to the most complex (and therefore, in this sense, good) being we are directly aware of, that is the human being. This would be similar to the way in which we said that everything smaller than the Universe could be said to be small, relative to it. A problem arises for the goodness of God, of course, but I think that a problem arises for our understanding of the goodness of God, no matter what account we give of it. God is much better – infinitely fuller, more complete, fuller of reality – than anything we are familiar with, and all we can say is that God is transcendentally or supereminently good compared with Creation. What ‘transcendentally’ and ‘supereminently’ mean here, I am not sure that I know, unless I am allowed to interpret them negatively: that there is no limit to God’s superiority.

Even with the notion of bigness there are two different relativities to be observed. A big elephant can be big as compared to other elephants (a property which is shared by only a definite subclass of the class of elephants, at most slightly under half of them). Alternatively, it may be, as I mentioned earlier, that the elephant is bigger compared to

dog can share in the life of a human family, and an ethologist would have a better idea. My idea of what constitutes being a good kangaroo is necessarily vaguer, but I know at least that ‘goodness’ for any living thing includes health, so that a healthy animal is *pro tanto* a good animal and an unhealthy one *pro tanto* bad.

us (a property shared by a much larger subclass of elephants, perhaps all elephants above the age of, say, a year old). In a similar way, and with some kind of analogy, a thing can be relatively good in at least two ways. This is the key to my thesis here: a good thing can be *a good F* (where 'F' is a predicable expression signifying some nature or function or role) or it can be *a good thing for someone*, as a stroke of luck might be a good thing for someone. Thus, something which we want to call 'good' could be a good F, e.g. a good father, good husband or a good academic. On the other hand we can find some event which you could call a good thing for someone, as, for example, when being short of money one finds two hundred pounds in the street. (To the objection that one ought to hand the money in to the police, I may reply by shifting the example to having the police return to you, as finder, a sum of money which one has previously diligently handed in to the authorities.) I will be arguing at a later stage that the two interesting varieties of contemporary moral thought; virtue ethics and natural law theory (and perhaps particularly the new natural law theory) to some extent take their rise in these two different relative notions of goodness.

I will put in a caveat here: it is also true that when we take these two relative notions of goodness, it is possible to fill in the blanks in a mistaken way and so reach all kinds of errors. If we fill in the blank in 'a good F' without appropriate restrictions in what is to count as a valid substitution of 'F', 'a good F' might force us to speak of 'a good Nazi' or 'a good member of the Ku Klux Klan' or so on. Thus we would bump up against Kant's problem with the intrepidity of the thief – is that really courage? – or the more brutal example which Aristotle gives when he says 'adulterers dare many things'. Both Kant and Aristotle have difficulty establishing the limits of courage here. But the problem derives from the problem of what kinds of thing we can use to fill in the blank in 'a good F'.

Similarly, if we concentrate on what is good for someone without any restrictions on who that thing is supposed to be good for, on what grounds and in what way, it might lead us to hedonism (where ‘good for someone’ is considered simply as what is pleasurable), to other forms of subjectivism (good for someone as an individual subject), to other kinds of individualism, to social Darwinism, class war, tribalism or nationalism.

Dr Geach’s objection, mentioned above, may also be pertinent here. She pointed out that we are inclined to say that we understand and indeed to assent to certain propositions about one kind of thing’s being better than another. If these propositions are indeed understandable and true, my claim that the notion of goodness should first be understood in a relative sense, as a mere verbal derelativisation of (typically) being a good F, for some reading of F, falls to the ground. My reply would be that there are other propositions involving goodness which we also think we understand, and which we also feel inclined to assent to. One of them is the principle that *corruptio optimi pessima*, corruption of the best is the worst, or the worst is the corruption of the best. A bad human being, we want to be able to say, is worse than the worst dog. As I think Wittgenstein pointed out, my dog doesn’t cheat at cards, but that’s not because he’s too honest. Certain kinds of evil are beyond the reach of certain things.

It may well be that this thesis is also inconsistent with my claim that a thing’s being good should be understood first as its being a good F. But it is certainly inconsistent with Dr Geach’s claim that things are of their very nature arranged on a scale of being or goodness. I would say: we think that we can understand, and are inclined to assent to, both these inconsistent beliefs. But they cannot both be true. I am tempted to think that they do not both make sense – indeed, that it is possible that neither really makes sense, although they both seem to.

Consequentialism and the fact–value distinction involve taking goodness to be an absolute notion

I move on, then to drawing attention to the difficulties that have, I think, definitely arisen at least in part from taking goodness to be an absolute notion. The two main errors in recent moral thinking are the making of a strong fact–value distinction and consequentialism. These two errors involve taking goodness to be an absolute notion.

The word ‘consequentialism’, in the sense in which I am using it, means the claim that the goodness and badness of an action are to be judged principally in terms of its actual or intended consequences. Any strong form of the fact–value distinction insists that value judgements are different from factual judgements in some important ways. This, in popular thought, works out pretty much as a claim that ethical judgements are subjective. (Most English–speaking philosophers who uphold the fact–value distinction spend a very great deal of time defending themselves against the charge of subjectivism, although some, like Mackie, have accepted it quite openly.) It is worth noticing that the good forms of moral thinking which I am going to discuss (with approbation), virtue ethics and natural law theory, agree in opposing these two tendencies.

I think it is quite clear that consequentialism depends on having an absolute notion of goodness. A consequentialist has to hold that all goodnesses can be judged on a single scale. The early utilitarians typically had a single scale, a scale of pleasure: what gave more pleasure was better and what gave less pleasure was worse. If there were any complications, they arose chiefly from discussions of whether more pleasure is equal to less pain, and vice–versa.

However, for the consequentialist (even for the many consequentialists who are more subtle than those early utilitarians), there always has to be a single scale of

goodness: different good results have to be valuable and calculable (they often speak of a calculus) on a single scale. This presumes that there is a kind of uniformity of goodness, that all kinds of goodness can be reduced to a single kind. I would claim that if goodness is thought of as uniform, it is presupposed that it should also be thought of as absolute. It is impossible to be a consequentialist if one wants to take seriously the different relativities of goodness. A single form of goodness must be used as a measure for all goods.

Consequentialism then demands that we should be able to reach a sum total of good or bad which is achieved or might be achieved by alternative courses of action, and that we could compare the different sum totals of different alternative courses of action. This, as I say, means that goodness must be uniform and it presupposes that it should be absolute. There should be a single form of good which would be used to measure all others. This of course is not true, because there are different goods that are arguably not reducible one to another. The qualities that make a good F to be a good F may be quite different from the qualities that make a good G to be a good G.

A perhaps foolish example involves a doughnut and a mole wrench. The properties that make a doughnut a good doughnut are, perhaps, to be freshly baked, soft, spongy and lightly covered with icing sugar or icing – qualities which would make a mole wrench a pretty bad mole wrench. Equally well the rigidity and light lubrication with mineral oil of the moving parts which make a mole wrench a good mole wrench, one would not recommend as a guide for making or even choosing doughnuts¹⁰.

Somebody might want to put in here that I have not really proved that there is anything really wrong with considering goodness as an absolute notion here – that I am just drawing attention to the fact that it should not be considered as uniform. This is, I

agree, a weak point. I maintain that uniformity implies absoluteness, but it might be possible to regard goodness as absolute without regarding it as uniform. However, I can certainly challenge an objector to show how goodness can be single and uniform without also being absolute. Goodness (or any other notion) which is seriously regarded as relative, cannot be uniform.

It might be though that the example of bigness and smallness could be made to tell against me. Bigness and smallness are relative, I have claimed, but we find no difficulty in reducing them to a single scale. I am not sure that this is true. What we measure by a uniform scale of size is not bigness or smallness, but precisely size: a much more abstract and complex notion, which we artificially reduce to a single and somewhat arbitrary scale. There is no doubt that consequentialists can, if they wish, do as the early utilitarians did and reduce all kinds of goodness to a single scale: but this is at best arbitrary and seems in the end to have nothing to do with goodness itself. It is also perhaps worth pointing out that in order to reduce bigness and smallness to uniformity we in fact have to use a number of different scales: linear measurement, weight, and so on.

Consequentialism, I would say, attempts to make a sort of sum of all the different kinds of goods as they relate to all the different kinds of subjects. But this will not do – what is good for you may not be good for me. As, for example, when short of cash I have two hundred pounds returned to me by the police, as finder, when they have failed to trace the owner, that is a good thing for me, but it is not so good for the person who lost it. Such clashes of advantage may be irreducible, just as the differences of good-making qualities may be irreducible. It is said that the slogan of General Motors was ‘What is good for General Motors is good for America, and what is good for America is

¹⁰ Geach makes this point in ‘Good and Evil’, *Analysis* 17 (1956): 33–42.

good for the world'. This might have been true: but if it was, it could only be so by pure luck or by some complicated and perhaps unexplained causal mechanism. Life does not always offer such fortunate coincidences or causal mechanisms, or indeed not very often.

I seem to remember Mrs Foot, in a paper I attended in the early 1980's, casting around for an example of something that was good for everyone. After some effort she came up with the eradication of smallpox. But we have since come to fear that the inoculation programmes which brought about the eradication of smallpox, when carried out in remote and poor surroundings, where effective sterilization was difficult, may have contributed to the early spread of AIDS in Africa. Suddenly we find that something that we thought was definitely good for everyone turns out to not be so good for everyone after all.

In practice, consequentialists tend just to extend or contract the range of subjects to whom they are willing to consider as being subjects of goodness for the purposes of their calculus, in order to suit the conclusion they wish to draw. They frequently restrict the range by ruling out unborn human beings, for example. Others will extend the range to reach all sentient beings often inconsistently. There are those who are consistent on this point and say that since what is important is being sentient, if it can be shown that the child in the womb feels pain, it should be anaesthetised before being destroyed – which at least is consistent and so disgusting that if it were not being said it would be necessary to invent it.

Consequentialism, then, can certainly be related to an absolutist view of the goodness. How the fact–value distinction relates to an absolutist view of the good, however, may not be so clear. The fact–value distinction seems in the end to inspire a deep scepticism about morals, or at best to subject morals to a cultural relativism which

in the end is opposed to any notion of objective rational truth about the good and the bad. What I want to suggest is that where those who believe in the fact–value distinction go wrong is that they are looking for an absolute and objective good, and when they do not find it – because good is not absolute – they reject the notion of objective good.

What we need to do, instead, is to reject the notion of an absolute good and find a relative, objective good. It should be clear from the beginning that there are relative truths that are objective: who is the father of whom is an objective matter, though proverbially it is not always all that easy to find out. Those truths are certainly relative. But they are also objective, not subjective.

One of the principal arguments for the fact–value distinction is what is called by Mackie (who upholds the fact–value distinction), the argument from queerness. This is the suggestion that goodness and other ethical concepts must be very queer, very odd, very unusual indeed, quite unlike all other concepts. He is quite explicit about this, saying that if objective values existed, they would have to be unlike all other concepts, both metaphysically and epistemologically. I have written on this subject fairly recently¹¹. The next five paragraphs in part reproduce some of the arguments I give there.

Very often when people say that goodness and badness are metaphysically queer, they are simply making a statement of materialist faith. That is, they start with a metaphysical presupposition that only material things, or only material qualities, truly exist. Thus, since goodness and badness are not material qualities and are not located in time and space, they are unlike all other qualities which do exist, which by definition

¹¹ In ‘The Fact–Value Distinction’ in David S. Oderberg and Timothy Chappell (eds), *Human Values: New Essays on Ethics and Natural Law* (Houndmills: Palgrave Macmillan, 2004).

are all material. This is, I think, just childish – to stamp one's foot and say 'I'm not playing this game'. But clearly this doesn't get anyone any nearer the truth.

Does this mean that the materialist is so unsure of his principles that he is unwilling to discuss them or hear them challenged? If he will discuss, he may find it hard to maintain seriously that only what exists in space and time can exist at all. For example, does space exist? This surely ought to be a question the materialist should face up to. But if space exists at all, it does not exist in space. Likewise time does not exist in time. For the matter of that, necessity and possibility, the past and the future, certainly aren't material things and don't exist in space and time. But surely even a materialist ought not to rule out in advance the existence of these things. I myself think that the future doesn't exist in the same way that the past exists, but it would be foolish for me to refuse to enter into a discussion about it.

I have called the profession of a materialist faith in this context 'childish'. Is this too strong? It is true that goodness is not located in space and time, but good people are. We could even draw a parallel and say that even such an apparently material property as weighing thirteen stone three pounds is not located in any single space or time: nevertheless individual people who weigh thirteen stone three pounds do exist, and they exist in an individual space and time. (Mention of weight reminds me of something that is perhaps worth adding, that even such an apparently absolute property as weight is, like goodness, in fact a relative property. Weight (if I recall boyhood lessons in physics) is a relation between the mass of an object and the mass of other nearby objects. This is why if one is far enough from the Earth, you are to all intents and purposes weightless, and why on the surface of the Moon things weigh only a sixth (is it?) of what they weigh here.)

The only sensible meaning that can be attached to the claim that goodness is metaphysically queer is precisely the point that has already been: that different good things are good in different and sometimes inconsistent ways. This is something I have already admitted and indeed proclaimed as part of my thesis. It does not make the notion of goodness queer – it just makes it a relative notion. It is not at all surprising that a doughnut should be good in virtue of certain properties which would make a mechanical wrench a pretty bad mechanical wrench, any more than it is surprising that an elephant should be small in virtue of dimensions which would make a mouse an enormous monster. It is only if we begin – as upholders of the fact–value distinction did in the early 20th century – by looking for an absolute notion of goodness, that we find ourselves saying that it must be ‘queer’ or ‘non–natural’, as Moore did, and that it is not related in any comprehensible way to other properties. Admitting the relativity of goodness at the beginning, in fact, saves us from falling into the relativism engendered by the fact–value distinction at the end.

Equally childish, and still less justified, I think, is the claim that goodness and the like must be epistemologically queer, queer as regards the way we get to know them. This claim is again a profession of faith, this time of empiricist faith, a faith that we cannot get to know anything except pretty directly through the five senses. The only reply to this is that it is not necessary to be an empiricist, that there are other epistemological theories. In any case pure empiricism of the brand of Hume is a part of the modern project of distinguishing the given from the constructed. More than half a century after Wittgenstein’s *Philosophical Investigations*, and Quine’s ‘Two Dogmas of Empiricism’, surely it is time to stop treating empiricism as being obviously true – or even as making sense. Empiricism cannot account for very many of the things that we do in fact know. The property of being an American is not directly accessible to any of

the five senses or to all of them together, but there is no difficulty about knowing who is American and who is not, for the most part. There is certainly no theoretical difficulty about it, even if we find it difficult to make up our minds in an individual case.

Natural law theory and virtue ethics recognise two different forms of relativity of goodness

Consequentialism and the fact–value distinction, then, are two bad theories that involve thinking of goodness as absolute. There are two valuable contemporary ethical theories, I want to suggest, which differ in thinking of good as being a relative notion in different ways. These theories are *virtue ethics* and *natural law theory*. These should be reconcilable: Thomas Aquinas certainly seems to think they are. In the First part of the Second part of the *Summa Theologiae* we find key texts for classical natural law theory¹², and also material similar to the list of basic goods which are so central to the theories of the new natural law theorists¹³. This occupies at most eight questions. But in the Second part of the Second part Thomas articulates the major part of his ethical thought in terms of Aristotle’s virtue ethics, thus using an Aristotelian structure for a hundred and eighty–nine questions¹⁴. Thus Thomas at least thought that some form of

¹² *ST* I–II, qq. 91, 93–94.

¹³ *ST* I–II, q. 92 c. Though the similarity is disputed. Finnis, in *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980) says Aquinas ‘sets a questionable example’ and suggest we set it aside as ‘an irrelevant schematization’. Classical natural law theorists are less likely to object to Aquinas’s schematization, but they do not perhaps give so much importance to the list of goods. Nevertheless, some list of things good for a human being seems to be necessarily in any form of natural law theory,

¹⁴ I have often wondered why St. Thomas is thought of as *the* natural law theorist *par excellence*, when in fact natural law occupies such a small place in his moral theory as a whole. My colleague, Dr Thomas

natural law theory is compatible with some form of virtue ethics. The possibility that contemporary forms can be reconciled should not be ruled out. There is also a polemical reason for thinking that they are reconcilable: both are radically opposed to consequentialism and the fact–value distinction. Perhaps the new natural law theory is more direct in its rejection of consequentialism while virtue theory is more direct in its rejection of the fact–value distinction. I do not think that this matters very much. The difference between the two kinds of theory arises, I would claim, from the fact that the two different kinds of ethical theory do indeed approach goodness as a relative notion, but give special attention to the two different kinds of relativity I have already mentioned, that is, to goodness as a good thing relative to someone, and as relative to a kind – a good F.

It is arguable that natural law theories have at their basis what is good for someone: they involve a list of things that are good for a human being. Some such list is given by Thomas, as we have seen, and another list, with a different rationale, is given by the new natural law theorists. The differences between the list as given and justified by Thomas, and the list given and justified by Finnis and other new natural law theorists, are not relevant to my claim here. Nor are the differences between the new natural law theorists and the classical natural law theorists, which have become, in direct dispute, perhaps sharper than the differences between either party and Thomas himself. It is enough that both give importance, and perhaps prime importance, to a list of human goods, however reached and however justified: that is, in my terms, they are both looking at what is good for someone.

Osborne, has recently pointed out to me that Aquinas's account of natural law (*ST* I–II q. 94) occupies only a very small part even of his discussion of law (*ST* I–II qq. 90 – 97).

When we say ‘good for someone’, however, we must restrict the relativisation of the good which we find in natural law theories to what is good for someone in so far as she or he is a human being, not in so far as he or she is a member of a smaller group, say, with deviant aims. Both kinds of natural law theorists give justifications for this. What is good for a human being, both ‘new’ and ‘classical’ natural law theorists would agree, are the constituents of a good human life: for example, the goods of life, family, practical reasonableness, and the like. At this point and from this point of view the differences between the two kinds of natural law theories, important though they may be in other contexts, become relatively insignificant.

This is because what is important to my discussion is the difference between these two theories, on the one hand, focussing as they do on what is good for someone, and virtue ethics on the other, which focuses on the notion of the qualities that make a person into a good person or a good human being. Stating the relativisation in this way – the ‘good F’ which we are looking at is a good human being – also enables us to avoid what I mentioned earlier as false relativisations – the relativisation of being a good member of the Ku–Klux Klan, and the like, as we avoided undesirable relativisations in the case of ‘good for someone’.

Can the two relativisation be connected?

Virtues, then, are the qualities (in a loose sense) which constitute a human being as a good human being. Is there some way of tying the two relativisations together? Can we connect the ‘good for a human being’ of natural law theory with the ‘good human being’ of virtue ethics? Some approaches can be made. What is ultimately good for a human being is a good human life, however we come to characterise the elements that make up a good human life, and whatever may be the ways in which these elements

relate and combine. (The two schools of natural law theorists seem to differ on this). Meanwhile, from the virtue ethics point of view, a good human person leads a good human life and a good human life can only be led by a good human being. So the things that are good for a human being can only be achieved by a human being who is good. As such, we see a connection between those goods which are pursued and the qualities that are required for the pursuit and achievement of these goods.

That may look at first sight like a bit of verbal juggling, and indeed so far what we have said may be no more than that. It is true that one can juggle with any serious ethical theory, no matter how erroneous, and use it to re-express any other serious ethical theory, in its own terms. To take an example which is beloved of consequentialists and people who find it necessary to dispute with consequentialists: that of the fat pot-holer. The pot-holing team (ten people) have unwisely allowed the fat man to lead the team as they are leaving the cave, and almost inevitably, he gets stuck in the mouth of the cave. Floodwaters are rising in the cave behind. Fortunately or unfortunately (depending on your point of view) the team have a number of blasting charges with them. Should they or shouldn't they use the blasting charges to blow the fat pot-holer to smithereens so that the rest of them can escape from drowning?

The situation is set up so that there shall be an apparent choice between nine lives, the lives of the rest of the party, against one, that of the fat man. The consequentialist, as we know, would say 'Yes, blow him to pieces'. And the non-consequentialist, of whatever sort, would usually say 'Do not blow him to pieces'. At this point in the discussion there occurs what I have characterised as 'juggling': re-phrasing your opponent's position in terms of your own theory. The consequentialist can say to the non-consequentialist 'Whatever your theory, whether it is a Kantian theory or an Aristotelian theory or a Divine command theory *what you are really saying* is that the

consequence of the nine men drowning and the one man not being blown to pieces, together with the consequence (say) that God's command is observed, is a better consequence than the consequence of one man being blown to pieces and nine men not drowning, together with the consequence that God's command is not observed.' This move is often made.

What is not often noticed is the most naïve of Divine Command theorists can make exactly the same move – perform the same juggling act – as the consequentialist. He can say to the consequentialist: 'I know you do not believe in God, but if you did believe in God, *what you are really saying* is if there were a God and God cared about human activities, God would command you to blow the fat pot-holer to pieces and let the other men escape'. The decisions reached by one ethical theory can always be re-expressed, and even justified, in terms of another theory. The fact that the consequentialist can re-express the view of the naïve Divine Command theorist in his own terms, and that the naïve Divine Law theorist can re-express the view of the consequentialist in his own terms, is not really very important. All it shows, I think, is that both are serious moral positions which serious people can genuinely take up.

I think however that when I said 'So the things that are good for a human being can only be achieved by a human being who is good. As such, we see a connection between those goods which are pursued and the qualities that are required for the pursuit and achievement of these goods', I was doing more than mere juggling. I am not just rewriting the conclusions of one theory in terms of another. I think that there is a genuine connecting link and we should look for it in the context of human need. Human beings need the goods which natural law theory draws our attention to. We need them if we are to lead good lives and if we are to show the good qualities that virtue ethics speaks of. But we also need the virtues if we are to be good human beings: that is, it is a

human need to lead good lives, if we are to attain the goods that natural law theory draws our attention to.

So, if we concentrate on need, I think that we can reconcile our two different relativisations. Natural law theory concentrate on what is good for a human being, virtue ethics concentrates on what makes a human being a good human being. Both these relativisations can themselves be seen to be good in relation to human need. Human need would thus provide an ultimate point of relation or reference for these two kinds of theory, which need not be rivals, and which ought to be capable of being related into some kind of consistent whole, as they were by Aquinas.

Bibliography

- Anscombe, G.E.M., *Collected Philosophical Papers of G.E.M. Anscombe* (3 vols, Oxford: Oxford University Press, 1981), vol. III, *Ethics, Religion and Politics*.
- Aquinas, Thomas, *Quaestiones disputatae de veritate. Opera omnia*, vol. 22 (Rome: Leonine Commission/Editori di San Tommaso, 1970–1975).
- Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.
- Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).
- Finnis, John, *Natural Law and Natural Rights* (Oxford, Clarendon Press: 1980).
- Geach, Peter, *Reference and Generality: An examination of some medieval and modern theories* (Ithaca: Cornell University Press, 1980).
- Geach, Peter, 'Good and Evil', *Analysis*, 17 (1956): 33–42.

Heraclitus, Fragment 52 (Hippolytus, *Refutation of All Heresies* 9.9.4), in Heraclitus, *Fragments. A Text and Translation with a Commentary by T. M. Robinson* (Toronto, Buffalo and London: University of Toronto Press, 1987).

Martin, Christopher, 'The Fact–Value Distinction', in David S. Oderberg and Timothy Chappell (eds), *Human Values: New Essays on Ethics and Natural Law* (Houndmills: Palgrave Macmillan, 2004), pp. 52–69 .

Polo, Leonardo, *Antropología trascendental II. La esencia de la persona humana* (Pamplona: Eunsa, 2003).

CHAPTER 12

Does the naturalistic fallacy reach natural law?

Urbano Ferrer Santos

What G.E. Moore in his *Principia Ethica* (1903) reproached of naturalist fallacy is not only the conclusions of value based on natural descriptive premises, following the usual interpretation of a well-known passage of Hume's *Treatise of Human Nature*, but also those fallacies of evaluative judgement that stem from pronouncements that contain ontological concepts. This is expressed in the following passage: 'To hold that from any proposition asserting 'Reality is of this nature' we can infer, or obtain confirmation for, any proposition asserting 'This is good in itself' is to commit the naturalistic fallacy'¹. In this way it excludes both the operative sense of nature together with its essential sense as a possible foundation for normative predicates, and thus the passage underlines the gap between facts and values which analytic philosophy would subsequently try to solder together with more or less success, either with institutional facts (J. Searle), by redefining attitudes interpreted as psychological facts (S. Toulmin), or by logical-pragmatic arguments (P.H. Nowell-Smith). All these attempts accept as a fact that both a syllogistic inference of duty from the nature that explains our way of knowing (reasoning *secundum naturam*) and an ontological derivation that is founded in human nature (reasoning *a natura*), would simply mislead the objective of justifying the validity of normative ethical principles.

This has certainly proved a fruitful objection, in the sense that it has meant that a good number of the proponents of the ethical notion of natural law (e.g. J. Finnis, G.

Grisez, R. McInnery, H. Veatch, E. Schockenhoff and M. Rhonheimer), leaning heavily on the systematic treatment carried out by Thomas Aquinas, as a result of this criticism, introduce various important precisions, without which the notion of moral law would remain flawed as a result of losing its most differentiating aspects. We can also say that the criticisms brought about by the naturalistic fallacy have been one of the main factors in unmasking manualistic standards of natural law throughout the centuries. In this, natural law appeared as a corpus of abstract norms derived from universal human nature, which would later to be applied in a casuistry way following the judicial system. Thirdly, the ethical doctrine of natural law has benefited from the previously mentioned objections in that it highlights by its counter-argumentation any questions traditionally ignored, such as the decisive role of the habit of 'Synderesis' or the contemporary rehabilitation of practical reason in the discovery and application of its precepts or similarly in its culmination in moral virtues.

In the following I will carry out an adjustment in the form of replies and counter-replies in the confrontation between both positions, considered from four points of view, with the aim of emphasising those underlying motives behind the ethical notion of natural law that require reformulating or particular emphasis.

How to infer the natural law

The first reply focuses on the mode of inference. An enunciation on duty cannot be deduced from enunciated, unless that duty or any equivalent value term is already surreptitiously introduced. According to the this objection, the prescriptivism of R.M. Hare sets out the beginning of a moral prescription in a decision in the imperative mode and in the first person in favour of the judgement of value, under the condition that the

¹ George E. Moore, *Principia Ethica* (Cambridge, 1976), p. 114.

prescriptivity itself is universalizable and includes the subject of the formulation, who is also affected by the prescription, and the imperative must exclude all reference to natural descriptive concepts such as happiness, prosperity, desires or interests, as they always have a vague psychological profile. In any case inclinations and logical-formal principles come after the decision from which the normativity proceeds, and they should have a mere confirmatory or corrective role after his choice.

But neither does ethical descriptivism, in spite of being the antithesis of prescriptivism, alter the previous inferential deductive mode in the reasoning, although descriptivism applies to the derivation of prescriptivist judgements based on descriptivist institutional facts such as promises or private propriety, where the judgements with 'duty' are implicitly contained in definitions and semantic rules. So, in relation to prescriptivism, the frontier between facts and values has been moved by including de facto institutions among the latter, as they accept premises of value; but between these and the bare facts, either psychological or linguistic, which are included in the evaluative institutions, remains the hiatus, the suppression of which would cause a vicious circle of naturalistic fallacy.

In answer to this methodological objection on coming to conclusions which are judgements of value we could say that while deductive reasoning is declared using impersonal arguments, practical reason, on the contrary, proceeds from the tendential ends which are part of human nature, and must later be defined in a certain fulfilment. The making these ends objective in the form of duties and their eventual insertion in inferences, occurs later at a secondary or reflexive level with regard to their presentation as tendential ends and is grounded on the anthropological experience in the first person. Therefore, normativity does not come from reasoning, as is clearly stressed in the criticism of fallacy in the syllogistic derivation of norms, but it is not an underivable

primary factum either, as Kant understood it, which should be appropriated by decision, or at least conventionally instituted by the subjects, following proposals of prescriptivism and descriptivism respectively.

But if the principle of natural law is not a natural description nor a normative judgement on the tendential ends of human nature, it is equally incorrect to search for a supposedly minor premise which would express the inclinations with reference to these ends. In fact the ‘mere natural inclinations’ are not lived as such, but such a consideration comes from an abstract form of making inclinations objective, which detaches them from the personal live context where they belong. Strictly speaking, natural inclinations are conscious as they stem from an *I-will* and so are directed towards an end. So their incorporation into the *I-will* is not posterior to their being held as inclinations, since this would mean the disassociation between the conscious *I* and the natural way they are recognised with regard to themselves and other subjects.

In this way, inclination can act as a bridging concept between what is naturally given in descriptive mode and duty, terms that the naturalist fallacy argument sets in opposition. This is because the tendential reference to a conscious end avoids their being confused with a noticeable state and points to future fulfilment, as also occurs with duty; but simultaneously their ‘initial *being-given*’² detaches them from mere prescription, which decisional universalisation turns into a duty. Something similar occurs with institutionalised social uses and validity, where we could say they intersect with the natural social condition of man and a conventional configuration that is not naturally demanded in this decisive mode.

² By ‘initial *being-given*’ it is meant what it is initially given in a descriptive mode in inclination [Editor’s note]

Now if the question is more carefully considered, the normative character of what is natural both in inclinations and customs proceeds from the person. For the former, because he interprets them, in relation to his specific ends and in turn, linking the distinct immediate tendential ends teleologically from a more comprehensive end, just as Husserl pointed out; and in the case of institutionalised customs, because it is the person who uses them to give an action a duration and stability that the preceding deliberation cannot offer, as the A. Gehlen's Anthropology has stressed.

Thus the dependence of inclinations considering the *I-will* underlines of the indispensable role of the habit of synderesis in the requirements of natural law, in as much as synderesis has connotations of the personal *I*, and good has those of what the will transcendently orders. For Thomas Aquinas the practical principles are given in the three basic natural inclinations of man, that is, as substance, as living and as rational, but simultaneously receiving from the synderesis their character of human goods and the finalist direction towards them. So in the next section I will, therefore, examine the links between synderesis and the commands of natural law on the use of practical reason, and also faced the objection from the naturalistic fallacy.

Connection between synderesis and practical reason

As, in discussion, the naturalistic fallacy identifies synderesis with a normative indeterminate enunciation or disregards it as a practically irrelevant tautology, it is important to stress the indisputable role in all enunciation that synderesis plays in access to normative judgements, on the basis of the first part of its wording: 'bonum est prosequendum et faciendum'.

Both the commands of natural law and the natural ends from which such commands derive, are accompanied by the *I-will*, which is unavoidable for the ends to

be consciously presented as wanted goods. The *I-will* of synderesis does not, then designate one tendency among others, not even a generic or all-encompassing tendency, but the voluntary character of the acts as illuminated in their truth as acts of the will. Rather than the specific term for these acts, what is voluntary means the act constituted by the *I* by wanting, without this act good certainly could not appear as *prosequendum et faciendum* for the will. But since the willed goods are plural, their pursuance by the will is accompanied by the intervention of practical reason, which avoids their dispersion. Thus the will may be considered in two ways: *ut natura* and *ut ratio*, as can be seen in its initial awakening to transcendental good or its pursuance dependent on imperfect means that reason itself connects for its own reasons.

The antithesis of connection between synderesis and practical reason is sometimes presented in following way: ‘The first principle of practical reason is a command: *Do good and avoid evil*. Man discovers this imperative in his conscience; it is like an inscription written there by the hand of God. Having become aware of his basic commandment, man consults his nature to see what is good and what is evil. He examines an action in comparison with his essence to see whether the action fits human nature or does not fit it. If the action fits, it is seen to be good; if it does not fit, it is seen to be bad’.³

In this interpretation, synderesis would consist either of a theoretical proposition over the action as possible object or an imperative that engenders obligation. In the first case, synderesis cannot take over the direction of the action; in the second case, the imperative is added as an act of will to a fact, but then lacks internal justification. Classical interpretations of synderesis that seem to deserve this criticism are often

³ Germain. Grisez, ‘The First Principle of Practical Reason’, in Anthony Kenny (ed.), *Aquinas. A Collection of Critical Essays* (London, 1969), p. 340.

found. So for O. Lottin it is theoretical proposition, ‘good is desirable’; for A.G. Sertillanges it means, ‘good is what should be done’, and for J. Maritain, ‘what should be done, must be good’. The latter refers to an immediately evident truth *secundo modo*, in which the truth of the predicate *faciendum* includes the concept of the subject *bonum*. Good, to which practical reason is directed, already appears in a theoretical enunciation, and only within the correspondent frame could the practical direction of reason unfold.

Now, after the previous considerations, neither synderesis nor practical reason can be translated into the deductive paradigm of the quoted text. The first practical principle is speculatively interpreted when it is taken as a theoretical principle stated with evidence, ignoring the fact that its function is to begin the action. But although the good as *prosequendum* is not yet the moral good of action, neither is it merely the good that fits with human nature at a purely enunciative level. Therefore, practical reason is required in order to determine the moral good of an action. Even in false practical judgements the first principle holds its guiding influence, since conduct cannot be rationally directed if it is not *sub ratione boni*, although not yet sanctioned as morally suitable, for which more concretion would be required. As Thomas Aquinas states in this sense: ‘Omne iudicium rationis practicae procedit ex quibusdam principiis naturaliter cognitis’.⁴

Strictly speaking, synderesis continues in practical reason, as there is no enunciate of logical–deductive reason that can be inferred from the former, but the truth of good can and must be determined in new elective acts, which reason integrates in practice as means. The conversion of good, which appears as the first act of will, in good actions is accompanied by a new act of reason of determinate character and directed precisely towards such voluntary acts which do not necessarily come from prior knowledge.

Thomas Aquinas takes it into account by using the *via determinationis* as a means of specifying the abstract principles of the natural law.

In my view, the inseparability of synderesis and basic natural inclinations that gives content to the natural law is the same inseparability found between the conscious personal *I*, instantaneously present, and the nature which is lastingly owned by that personal *I*, without which there would only be an *I* that can renovate itself discontinuously. From a formal perspective, all *I*'s would be identical, as R. Spaemann remarks; only in as much as each *I* possesses a differentiating human nature, which also coincides with the others, can it self-referentially distinguish itself as singular in what *already is*. The singular is not obviously nature, but its being in an individual; and as human nature does not exist in general, with it there must be an essentially co-principle which interacts with the act of being of the person. Neither are natural tendencies conscious for the *I*, unless they enter into the habit of synderesis, which sheds light on their natural direction towards good. It is in this way that natural ends, towards which action naturally guides them, are complemented by the *ratio boni*, which the initial *I*-will finds in them.

This mediation of the *I* by a nature taken as understanding itself whenever the self becomes conscious of an organic or psychological state, such as fatigue or hunger, since the experience of being tired or hungry or any other such experience belong simultaneously to an *I* and to a nature with organic and psychological affections, which cannot be disconnected, although the natural affections and the explicit consciousness of the *I* as their subject do not coincide either in time or essence: when I experience tiredness for instance, I have already experience it organically. Hence the co-incidence between the *I* of personal experience and its nature becomes an index of the same

⁴ *ST* I-II, q. 100, a. 1 c.

facticity as we have found earlier on the issue of the derivate precepts are not derived from natural law not deriving through a deductive process. In this way a proper place for practical reason is opened, and only habits or virtues can bring about contact between the freedom of the individual and human nature, actualising themselves in the exercise of practical reason.

What is distinctive in practical reason

Practical reason clarifies the difference between means and end, so the hiatus appears now between particular goods that are goods presented to inferior faculties and good in itself, to which the will is directed from the beginning. Whereas the particular goods are presented as means by the practical reason, the good in itself is plurally presented in a second moment as an end, relatively intentioned to means. Practical reason does not, then, deal with the implicit ends of natural tendencies, which synderesis explains as primary or substantive goods, as Grisez calls them, but with the ends proposed as intentions or objectives at a distance that means have to supply. Likewise we must distinguish between voluntary intentions and the absolute end, the prosequendum of the synderesis, which is not given by practical reason either, as this latter operates with the acts of willing as means, although they are held as ends relative to the ulterior means.

The means in their turn include both the medial acts and the pragmatic connections or plexus between instrumental means, where the acts fork and are placed, so to speak, at a horizontal level, as none of them appears alone. As L. Polo states: ‘Any voluntary act a means. If we accept the *will–will–more*, this point is absolutely clear. Any voluntary act is tendentious and therefore is subordinate to another higher one’.⁵

⁵ Leonardo Polo, *Antropología trascendental II. La esencia de la persona humana* (Pamplona, 2003), p. 112, note 26. [My translation]

The absolute end is what gives sense to every particularised proposal of fulfilable ends and is correlative to the unitary finalization of human nature, refracted in a multitude of tendencies. Good as an absolute end is, then, different from proposed particular ends because it cannot be converted to an end to be fulfilled by means, but is present as what is unconditional behind those proposed ends. The absolute good can only be understood as the subject matter of *amor benevolentiae* or obliquely as the absolute term for whatever determined ends are wanted, as, for example, the primary tendency for self-preservation.

At this point, the thesis of the naturalistic fallacy claims that the connection between end and means is simply descriptive, stated in analytical judgements, according to the Kantian hypothetical imperative scheme, which states that whoever wants an end, must also want the means that lead to the end and are implicitly contained in its concept. However, in the end, this would be a mere technical interpretation of practical reason, which would ignore, firstly, that means are acts of will, that they derive from other acts of will because of the curvature of the will or intensification of the first act of will in following acts, and secondly, it omits the fact that good to which the will directs itself before the proposal as an end, is a 'personal transcendental'. Such good cannot be resolved in concepts of lesser connotation, as does occur with instinctive ends, which immediately encourage the medial behaviour for their attainment into the biological context.

Then the characteristic of practical reason is to command or prescribe, as can be seen in the gerund form, which is not immediately imperative, of its enunciations. This gerund is, in turn, explains the comprehension of the ends given in the tendencies, insofar as they are taken as fact in the proposed ends. In accordance with this idea, good appears in practical reason as prescriptive for the action, without the necessity of

relating it to a *should-be* or with the imperative of one's own or another's will. The originality of practical knowledge is, then, that it bridges the gap between being and duty, which is at the bottom of the criticism made in the name of naturalistic fallacy.

But the prescriptive form is also the first sign of freedom in the fulfilment of natural law. Freedom stems from the person, in as much as it is claimed by the end to be fulfilled, and it is the individual who includes it in good, to which he is open through the will. Likewise, the growth of wanting is an indication of the individual, which does not remain in the voluntary tendential act. In this sense natural law is not fulfilled naturally, but is directed and governed by individual. But freedom comes into contact with nature by means of habits or moral virtues, which thus extend natural law on the same plane, by stating its final specification.

So in virtues we have an ethical synthesis between human nature and the individual, whose innate habit of synderesis extends to elective acts through virtues. From nature, indeed, stems the concept of *nothing in excess*, which for Aristotle defines each virtue; it is a qualitative and defined central position opposed to undefined extremes of defect and excess, and it prefigures in the Homeric 'meden agan', in opposition to hybris or insolence. And from the individual stems the constituted and unlimited increase in habit toward the good as seen by synderesis. From this perspective vice is the blocking or stagnation of the will, which does not continue its curvature as a personal *I-will* in new acts. This same habit of synderesis that sheds light on the universal commands of natural law and accompanies the discursive acts of *voluntas ut ratio* begun in the *intentio*, is also responsible for the dynamism acquired by the will due to its perfective habits.

However the permanence of synderesis during acts of will appears in different modes depending on whether it is concerned with practical reason, which deals with the

means, or the intention of another, in which the ratio of alterity increases progressively and so constitutes the curvature of will. The virtue of means is prudence, and the virtues of personal good (in reference to others) are justice and friendship, the later enhances justice and is presided over by benevolence, transforming the restoration of good in the other, which justice demands, in voluntary acts directed towards his person as an *alter ego*. Given that means are dependent on the end, and, that, on the other hand, the hyperteleological personal good of another, converted into an attempted end, brings about the appearance of the means, there is a reciprocal implication of prudence on one side, and justice and friendship on the other. Aquinas refers to this pursuance of synderesis in virtues through practical reason in the following way: ‘Virtutibus moralibus praestituit finem ratio naturalis, quae dicitur synderesis’.⁶ As for fortitude and temperance, they refer more to facing internal and external obstacles than to the direct fulfilment of good.

But if the first voluntary act is not yet finalistic and it underlies the natural law, our critique of naturalistic fallacy must also take account the preceding implication of natural law, as what is suggested by the virtues with the intention of another.

The intention of another in will

The increase of the intentionality of another in want uses a different logic to that of perceived ends, although together they give an answer to the nature of will. In other words, the curvature of the will in wanting, before elongating in medial acts is different from the finalistic curvature of nature, shown as practical reason in action. Whereas the first curve is progressively opened by its intensification, so that its term appears in course as more another, the second closes the circle by turning naturally back on itself

⁶ *ST* II–II, q. 47, a. 6 ad 1.

in the fulfilment of what is representatively anticipated: it is the *natura curvata in se ipsa*.

Nonetheless, wanting a *concrete* good and ratifying it in successive acts as, in the distance, ‘being other’ which the willing itself increases, is only possible if it is supported by the other person, both in the sense that this good must have been wanted before by some other before directing myself to it, as from the perspective that the personal want would be self-cancelled without the correspondence of the other will, as it could not surmount the negativity of the wanted in relation to the want. Insofar as the willing is not of itself a power having the first initiative, the correspondence is not limited to the reciprocity with the will of other person, but nonetheless requires the *pre-dilectio* of a prior willing, which has the initiative and is able to justify as *dilectio* the willing of one’s own person.

But then the question raised by the naturalistic fallacy is as follows: is there not perhaps *petitio principii* in the passage from natural wanting to its link with the other prior and basic wanting? In other words: are we not, by appealing to a prior wanting, looking at a merely practical and circular postulate, whereby duty in Kantian terms is already supposed in the first act of want?

In this respect it is important, firstly, to distinguish the wanting as an act constituted by the *I* and the meta-linguistic descriptive expression of wanting, since only the second one could appear as an argumentative premise. Secondly, by focusing on the former, what is desirable for want is not only the factual object of desire, as what is visible for seeing, but also implies an internal *raison d’être*, so that what is desirable is worthy of the desire and so returns to whoever can found it as a personal good. Without destination in the person it is not possible to acknowledge the wanting in reciprocity, and without this confirmation from outside the act itself, it lacks

justification or is self-cancelled. Consequently duty does not need derivation of premises, since the acknowledgement of the other in the wanting is not logically derived, but is already immediately ethical, in that it requires its endorsement in the respect shown to it.

As for the supposed circular postulation of duty to the other from one's own want, this would occur if the want is understood in a Kantian way as pure autonomy or spontaneity of will. But the want, with which I confirm the acknowledgement of the other person as respect, is not *a priori*, purified of all fulfilment in an external environment, rather it is the want of a subject that is given externally to oneself with the same corporal exteriority as I am given to the perception of the other in any form of reciprocity.

At this point it is confirmed that the narrow view of the naturalistic fallacy can be found in the fact that it ignores the bridging concepts between the enunciation and the prescriptive, between description and normativity, and imagines the staggered sequence of one unique concept as a logical step. This is where clearly personalist categories are to be found, particularly that of human dignity. If 'what one is' and 'what one should be' are considered as heterogeneous ideas, in the same way as natural operations and artificial ends posited by man are differentiated, it implies resigning oneself to not understanding the ethical-anthropological ambivalence of dignity and action.

The individual is not given dignity through a merely objective view. To be more precise, dignity is arrived at through the moral actions, insofar as the individual is dignifiable, and inversely, the original dignity of man is inseparable from his involuntary expressions and his self-determination. When the planes of what one is naturally, and what is due to the individual are dissociated, the gap cannot be bridged, as the accusation of naturalistic fallacy has remarked. This is what happens when the

dualism between the evaluative human *intentio* and exterior measurable physical effects are established, without considering the action as unity in its corporal–intentional duality. But if the plus of the morality over and above the naturally given is associated with the plus of the act of the personal being over its natural characteristics, then the principal excision between what is constituted naturally and the law concerning to the individual in his essence turns out to be artificial.

Therefore, in my view, the term ‘natural law’ is only adequate at the ethical level if the descriptivist connotations of what is natural, and the impersonal legalism of absolutized duty, are removed and it is placed in relation with the acknowledgement which is due to the individual in essence, either one’s own or that of another, insofar as it can be extended in nature. In other words, given that the individual reveals himself in his nature, this cannot be presented as a set of descriptive enunciations, exempt from the ethical acknowledgement of personal dignity.

Bibliography

Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.

Finnis, John, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1988).

George, Robert P., *Natural Law Theory* (Oxford: Clarendon Press, 1994).

Grisez, Germain, ‘The First Principle of Practical Reason’, in Anthony Kenny (ed.), *Aquinas: A Collection of Critical Essays* (London: Macmillan, 1969), pp. 340–382.

Grisez, Germain and Shaw, Russell, *Beyond the New Morality* (Notre Dame, IN: University of Notre Dame Press, 1988).

- Hittinger, Russell, *A Critique of the New Natural Law Theory* (Notre Dame, IN: University of Notre Dame Press, 1989).
- Molina, Enrique, *La Moral entre la convicción y la utilidad* (Pamplona: Eunate, 1996).
- Moore, George E., *Principia Ethica* (Cambridge: Cambridge University Press, 1976).
- Leonardo Polo, *Antropología trascendental II. La esencia de la persona humana* (Pamplona: Eunsa, 2003).
- Rhonheimer, Martin, *Ley natural y razón práctica. Una visión tomista de la autonomía moral* (Pamplona: Eunsa, 2000). [Original edition: *Natur als Grundlage der Moral. Die personale Struktur des Naturgesetzes bei Thomas von Aquin: Eine Auseinandersetzung mit autonomer und teleologischer Ethik* (Innsbruck and Wien: Tyrolia-Verlag, 1987). English translation: *Natural Law and Practical Reason: A Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000)].
- Spaemann, Robert, *Personen. Versuche über den Unterschied zwischen 'etwas' und 'jemand'* (Stuttgart: Klett-Cotta, 1998).

CHAPTER 13

Human universality and natural law¹

Carmelo Vigna

I. The universality of the human

§1. In this paper I will offer some reflections based on the basic tenets of the metaphysical tradition of Western civilization, which may be expressed as follows: humanity is an universal reality, in the sense that every human being is *formed* by *logos*,

that is, is *logos* in essence. Hereafter, on referring to *logos* I mean the ‘transcendental opening’, or complete opening of the conscience to the world. But a human being is a particular kind of *logos*: *logos* that is a ‘form of an organic body having a potential for life’ (Aristotle, *De Anima*, I. II). This means that a human being, considered as a living body, is intimately involved with what we generally refer to as nature. A human being is, in a certain sense, also nature, that is, not merely a relationship to nature but nature itself. Hence the human being is always in a fragile equilibrium between the universal (or transcendental) dimension and the empirical one. Let us examine this interpretation of the human being more closely to see how consistent it is.

§2. At this point I must clarify that I use the term *universal* as an equivalent to *transcendental* in the modern, basically *Kantian*, sense. Yet it should not be forgotten that man is also universal in the strictly Aristotelian sense of one of the animal species that inhabit the earth. However, I repeat that man can be described in his *form* as *logos*, that is to say he not only *has logos* (Aristotle), but, in a sense, he *is logos*. All this is well formulated in Boethius’ well-known definition of ‘person’ as *rationalis naturae individua substantia*, where *natura* refers to ‘essence’ and *rationalis* may be translated as ‘according to *logos*’ (understood as reason or understanding, but also as word or language). The explanation of *rationalis* (see below) is important because on it depends the fundamental sense of human universality/transcendentality, which, as I have said, is what I wish to discuss here. I shall consider natural law later.

§3. ‘Logos’ is thus the conscience’s ‘opening’ to the world as the self-manifestation of the totality of all possible things: the *prima evidentia* for analysis, of which it must be said in the first place that it constitutes an ‘archetypal truth’ that is absolutely unquestionable, since it is impossible to deny it without, at the same time,

¹ Translation from Italian by Paolo Bettineschi.

assuming it as *already* true. Indeed nothing can exist outside this ‘opening’, not even the negation that such ‘opening’ exists, otherwise it could not be treated as a semantic positive and thereby made known. Hence this brief corollary: this thesis, in its irrefutability, suffices to rule out that any particular philosophical perspective (such as all relativism) may be taken in absolute terms. It is not that our knowledge is not largely ‘perspectivistic’ with regard to its determination, but it is not possible for *all* forms of human knowledge. Such a statement would be indeed immediately self-contradictory; and, in any case, the knowledge that properly belongs to the sphere of the speculative is not so, that is, those things that belong to what could be called ‘the Whole of Meaning’, the totality of the semantic sphere. In other words, every attempt to move beyond the sphere of the essential ‘opening’, of which *logos* consists, is one of the speculative forms of (onto)logical impossibility. To immediately strive to overcome the boundaries of *logos* is, strictly speaking, to think of the unthinkable, a self-contradiction. Historically this self-contradictory figure has of course been embodied by the Kantian notion of the ‘thing *in se*’, which, as is well known, has been successfully refuted by idealism as well as by the return to the figure of intentionality in 20th century philosophy, as occurs in Edmund Husserl’s phenomenology (but also in the ‘actualism’ of the neo-idealist, Giovanni Gentile). In short, *logos* is a semantic horizon that cannot be formally transcended. This is the great acquisition of the most solid and genuine European philosophical tradition: *logos* as a horizon of world, or experience, that cannot be transcended.

§4. The numerous recent attempts to deconstruct the forms used to consider transcendental in the Western tradition, should, in my opinion, be seen as a considerable speculative *diminution*, despite the prestige of some of the people who have put forward this idea with insistence over recent decades. Space and time,

conceived of in such philosophies, as realities capable of *determining logos*, are in fact *internal* to it, and this is, of necessity, true. On this point the Kantian lesson remains valid, since it considers space and time as parts of the transcendental aesthetic, not the analytic, even though it is debatable whether they should be considered pure intuitions. I say this in spite of the arguments and suggestions first of Heidegger regarding time, and later of Derrida regarding space.

§5. In any case, *logos* as such is *only* an intentional relation – *second evidence*. That is to say, an intentional relation is how *logos* as such originally manifests itself to us. Indeed, no power of *logos* whatsoever appears upon that, with which (that is, all things) it is originally in relation. This means that there is no equation, or circle, between the capacity of transcendental conscience to manifest the Whole, and whatever ability of this very conscience to influence what it manifests, since things appear and disappear and we cannot cling to them. This is witnessed daily by our spontaneous joy at the wonder of births, and by our deep grief at the absurdity of death. That is, we lack any *causal* power either regarding the presence–for–us² of things, or even regarding our own presence³.

§6. This means that *logos*, even as the transcendental opening, is marked by its ontic *fragility* (P. Ricoeur's '*cogito brisé*' is here already *given*). We have said that it is purely a relationship, and consequently it can only exist in relation to something. Relation with nothing is indeed the same as no relation at all. Hence another brief corollary: it's impossible to invoke the help of *logos* in order to resolve the question of the sense of being, as has been done thematically by idealism (therefore marking the apex of modernity), as well as by a good number of representatives of post–idealism

² In the sense of the Italian '*esserci per noi*'. [Note of the Editor.]

³ In the sense of the Italian '*proprio esserci*'. [Note of the Editor.]

(that is, post-modernism), though, admittedly, without faltering at some of the speculative naïvety of idealism. It *should* be said that the basis of being necessarily lies ‘elsewhere’, in opposition to the unity of experience. This is what *logos* has to say, when asked about the foundations of being. But let us set aside for now this metaphysical aspect of our reflection; instead, we will turn to a different implication of the original form of *logos*: its *universal value* whereby it is able to yield a radical explanation of the universality of the human being.

§7. *Logos*’ claims to (uniquely) possess a universal/transcendental status have been treated with diffidence and sometimes have even been openly derided (by R. Rorty, for example). Yet this has been a constant conviction of the Western speculative tradition, at least since Aristotle declared that ‘the soul is, in a sense, everything’ (*De anima*, book III). Despite their recent proliferation, discrepancies in the name of ontological finiteness, which has also turned into epistemological finiteness, have on the whole been few in number and limited in scope. But what has traditionally been meant by the expression ‘universality/transcendentality of *logos*’? Simply that *logos* cannot stand in an exclusive, *necessary* relationship with specific contents of any kind, whether they come from the senses or belong to the sphere of intellect, because in that case *logos* would *always* be a determined entity. It is inevitable, that is, necessary, that *logos* must necessarily relate to some content. We have already seen this. If *logos* is the appearance of something (of every possible ‘something’), then it must be in relation to something. The opposite would be impossible, because in this case *logos* would be related to nothing, that is, it would be nothing itself. Yet no *determinate* content can claim to be a content, which *logos necessarily* manifests, since it is always possible to project the relation of *logos* with *another* content – it is always possible that *logos*, as the horizon where all the things are manifested, indeed manifests something else. The semantic

width of every meaning is indeed always overcome by the semantic width of *logos*. Only if the semantic width of a given manifested content were unable to be overcome (thus possessing the same semantic width of *logos*) would there be the necessity for its unconditioned relation to *logos*. But what cannot be surpassed is the Whole of Meaning, or a determination that refers deliberately⁴ to the Whole (yet also in this case the object is still the Whole). In fact, we have experience only of partial contents, multiple and transitory. That is, we always face a reality made of ‘this/here’ (Aristotle’s *tò dé ti*).

§8. The *logos* of which we are speaking is human *logos*, of course. For that reason, the most important relation of *logos* with the sphere of the determinate is naturally the relation with the body, whose form is *logos*. The body, *our* body, possesses total intimacy with *logos* because nothing comes between the two. The relationship between content and form is by definition *immediate in a certain necessary way*; hence it is analytic (form is by definition the form of a content, just as a content is by definition the content of a form). This is not a *material* but rather an *intentional* relationship: this was Aristotle’s great advancement over Plato. But if *logos* stands in an intentional relationship to the complete opening that it itself is, then *logos* always *overcomes* the horizon of determination. Thus *logos* stands in relation to the body, but it can also adopt the body as its content. However, *logos* does not allow itself to be invaded completely by the body. In other words, the relation of corporality to *logos* is a relation of necessity, whereas the relation of *logos* to body is only one of *conditional* necessity. What *logos* requires so that a relation might actually exist is *a* body to which to relate, while the body as such, as well as in its individual peculiarity, is a *particular* type of content. Hence the *necessity* for the form–content relationship. If the form is transcendental, it cannot be predicated of an *individuation* of a content, no matter how

⁴ In the sense of the Italian ‘*intenziona*’. [Note of the Editor.]

important. If it could, the transcendental would turn into the empirical, which is impossible (and, conversely, the empirical would thereby be raised to the status of the transcendental, which is equally impossible). Thomas Aquinas gave an ingenious explanation of this most important point of anthropology. Among the numerous parallel texts that can be found in his major works, I recommend the *De unitate intellectus contra averroistas*, since it shows the extreme importance he attributed to this issue from the early stages of his thought.

§9. Let us therefore consider the importance of the abovementioned affirmation. Indeed, it is only this speculative difference, expressing an ontological difference, which leaves a human universality (or transcendentality) potentially open to the Whole of Meaning, conceivable. To put it more formally: the condition of possibility of human universality/transcendentality, which must inevitably be taken for granted once a conscience has been accepted as the horizon of self–manifestation of the Whole, is the necessity of the relationship to corporality, albeit this necessity is only a conditioned one. On the other hand, the inevitable position of human universality/transcendentality must be founded on the impossibility of an immediate position of something that goes beyond the horizon of self–manifestation of the Whole, that is, on the immediate position of the impossibility of going beyond the horizon itself. The original self–manifestation of the Whole is immediately unsurpassable, i.e. it is intentionally infinite.

§10. To conclude the argument: the horizon of self–manifestation of the Whole (or *logos*) – and human beings *are* such horizon – is an untranscendable transcendentality, even though its content is historically (empirically) determinate. Thus, the horizon of appearance always overcomes that of the determinate. This is the position of the sense of Totality, and *with this we hold man's irreducibility to the empirical, that is his universality/transcendentality*. Our language, in its universality in

principle, amply confirms this fact. As Hegel rightly emphasises in his *Phenomenology of Spirit*, simply by saying ‘this’ one actually utters something universal (i.e. transcendental). Again, words such as being and nothing, whole and part, affirmation and negation, good and evil, beautiful and ugly, one and many, identical and different, that is, all the basic terms of a metaphysical ontology would be nonsense, if a human being hadn’t marked the essential form of the universality/transcendentality of *logos*. We may observe that these words also make up the fabric of every *ordinary* language of a human being, regardless of phonemical diversity. Thus philosophers have already found such words in human language from the dawn of history.

II. The principle of mutual recognition

§1. If the venerable notion of ‘natural law’ is to have any sense today, this may only have begun with human universality or transcendentality. The *first* sense, not of course the only one, of ‘nature’ in reference to a human being is precisely the universality or transcendentality of his essence: let us once more recall Boethius. As for the *second* sense, it must surely be sought in the fact that a human being is (also) a body. We have said that the universality/transcendentality of *logos* is a form of the body. So the body is determinate not just in the sense that it is *this* body, but also in the sense that it contains a whole world of desires. In other words, the body is above all the place where the life of desire is located (cf. Aristotle’s *orexis*, Thomas’s *appetitus*). Desire aspires to its own fulfilment in many ways. It aspires to its own saturation, which is also a human being’s ‘flourishing’, if this saturation corresponds to the *truth* of desire.

§2. ‘Natural law’, then, can only mean, first, what a human being is ‘destined’ to want of his own accord as his ‘flourishing’. The ‘nature’, which a human being is, is his ‘law’ in the sense that this ‘nature’ contains the instructions that are *good* for his own

structure and, hence, also those that are *not*. The former are clearly to be cultivated, while the latter are to be avoided, not through an ‘external’ order (heteronomy) but through an ‘internal’ one (autonomy). To put it differently: if this structure, or form, of nature is destined to fully realize in itself the forms of life, for which it is meant, it should obey the proper instructions. This is a sort of practical tautology, because if it does not happen, this nature is contradicted and thus, eventually, it disintegrates. Therefore the *next basis* for the validity, in the manner of a ‘law’, of the instructions that come from human nature is nothing more than the preservation of that nature, which acts as something undeniable from a practical point of view, given that in practice the negation thereof is only admissible if it is presupposed. Therefore we must strictly speak here of a practical ‘basis’ or ‘foundation’. Hence, natural law should ultimately be understood, *contra* Kant, in the form of a *hypothetical* imperative, which roughly says: if you want your human nature to endure and flourish, then follow the instructions that it indicates to you as its own goal.

§3. Yet, *what kind* of instructions? As it is well known, classical traditions, such as the Aristotelian and Thomist ones, refer to the notion of ‘*inclinationes*’⁵. ‘Natural law’, then, consists of the set of ‘inclinations’ that permit to individuals to live, multiply and remain in communities, while being permanently open to the pursuit of truth and good. The former are obviously ‘inclinations’ more closely linked to the corporeal nature of a human being, and the latter are more closely linked to his universal/transcendental nature. These ‘instructions’ are virtually common sense, yet they have long been the object of many doubts. It might be said that they are often grossly misunderstood, especially when they are accused of ‘naturalism’ or ‘dogmatism’. In order to be may be better understood, as well as defended in their

essence, I would like, at this point, to propose a certain ‘reformulation’. To be more explicit: it would suffice, in my opinion, to invert their order to suddenly feel that we are in the more familiar surroundings of what contemporary philosophy says about *relations that bring about recognition* (Ch. Taylor, P. Ricoeur, A. Honneth, etc.). Provisionally we might propose the following basic sequence. A human being wants to live and multiply: can this be denied? And he wants to do this for the sake of his own flourishing. But we may ask: when does the flourishing of a human being come about? For the time being, one could answer: when his desire is ‘saturated’. But we could ask why ‘saturate’ a human being’s desire? A different, less generic answer is also the one that is the most common today, although it requires further argumentation: what saturates a human being’s desire is to be recognized *as such*, that is in his (individual) universality/transcendentality. Now let us attempt to explain this *second* aspect of our quest.

§4. Let me begin with a general caveat: since human desire is a rather complex issue, no attempt will be made to cover the subject exhaustively. Suffice, for our theoretical purpose, to observe that human desire is firstly an *unconditioned* tension towards something in general, towards anything, towards everything. That is, human desire is profoundly and formally inhabited by *logos*. Indeed it is commonplace to say that we are never satisfied when in our day-to-day life we come into possession of something that we have deeply longed for. Our happiness is always temporary so that, after a while, we again want ‘something else’. We find it tedious, for example, to have to repeat the same dish of food, we get bored if we remain for long in a single situation, and so forth. So, is desire doomed to be always ‘unhappy’? So it seems, when we consider that everything in our historical experience is always linked to finiteness. All

⁵ I am referring of course to *ST I*, q. 94 and to art. 2 in particular.

comes-to-be and passes away. Everything is limited by something else. One colour is rivalled by many others. And yet we are somehow aware that it is not always so. Our desire sometimes encounters something different along the way, something that apparently possesses some especially high power of saturation. This generally happens when we find *others like ourselves*, that is, other subjectivities. Only then does our desire undergo a possible experience of ‘enchantment’, and stays placated for a long time. I am referring of course to loving relationships, and not only to falling in love in the strict sense.

§5. It must be immediately emphasised that our desire stops when confronted with the desire of another subjectivity, only because in a mysterious way it is aware that what can really and completely satisfy it is only another subjectivity, as the only possible experience of an ‘object’ that also possesses universality/transcendentality. Thus the other desiring subjectivity is the only object in *equation* with the whole (transcendental) horizon that makes up our subjectivity. We must keep in mind how *strategic* this observation is. From now on, I propose that the meaning of the ‘natural law’ could be properly calibrated, in its basic meaning, at the level of inter-personal or inter-subjective relations. In this manner it might perhaps more easily avoid the numerous and frequent accusations of ‘naturalism’ it usually suffers. Of course in this world of inter-subjective relations we must not thereby forget about *objective* relations with the world of things (the ‘surrounding world’), which are indeed relevant, even in the field of ‘natural law’, but are ultimately strictly conditioned by the quality of our inter-personal relations.

§6. How, then, do two (or more) desiring subjectivities relate to each other? This question arises from the observation that inter-subjective relations are not by any means perceived to be immediately self-regulating entities. Intuitively, it seems that there must

be some 'law' governing them, but experience also tells us that this law is also frequently violated; and 'natural law' ought to be formulated in such a manner that one can distinguish between compliance and transgression. But how? Greatly simplifying, and following also some wise intuitions present in the life of all human communities, the relationship between two subjectivities may be basically reduced to two 'models' (which allow an infinite number of analytical variants) that are familiar to everyone, albeit through their 'impure' day-to-day application: the relationship between two subjectivities may either be a relationship of mutual availability, or one of mutual threat⁶. From the point of view of this study, it is important to emphasise that the relation of mutual threat or defiance, which, sadly, is the one that is more commonly practised, clearly leads to the destruction of the world of desiring subjectivities, that is, it leads to the (tendential) destruction of the subjectivities in question. In the challenge posed by a threat, generally one subjectivity desires to defeat the other, or at least to eliminate it as a subjectivity by reducing it to a subordinate role, that is to an object that can be manipulated according to one's will. Yet one subjectivity cannot survive without being in relation to (at least) one other subjectivity, since it needs it as the place from which it derives its sustenance.

§7. Mutual availability is where this need is fulfilled. This means that the reciprocal availability of subjectivities is the mutual recognition of the

⁶ In everyday life we actually relate to each other through a mixture of two basic types acting as opposites, like black and white. We know that between black and white there is an indefinite variety of nuances of grey. In any case it is worth noting that one important instance of mixture is that in which two humans are in such a relationship that one of the two mainly experiences one of the types of relation while the other experiences its opposite: one presents himself in terms of availability, and the other in

universal/transcendental) status of each subjectivity in itself. The mutual–recognition relationship would seem to be *the only practical intersubjective relation in which two (or more) subjectivities are able to coexist in all the magnificence of their universality/transcendentality*. Each subjectivity needs to be recognised as an unsurpassable horizon of meaning, that is as intentionally unconditioned (and this is so on account of the universality/ transcendentality present in it). In fact it is not easy to comprehend how two (or more) subjectivities can coexist in their universality/transcendentality. At first glance it seems impossible, for each would seem to eradicate this characteristic from the other(s): hence the tendency towards conflict and, potentially, mutual annihilation. But if each subjectivity, rather than *demanding* recognition of its universality/transcendentality, were to *offer* recognition of the Other's unconditionality, despite the risk that is fatally present in such an offer; and if the Other, once recognized, recognized in turn the unconditionality of the former subjectivity, the aforementioned impossibility would vanish because, in such a case, universality/transcendentality would not simply be attained (by one of the two subjectivities) but rather offered, and *each* of these subjectivities would find itself respected by the Other precisely in the form of (its own) universality/transcendentality.

§8. Should not natural law be so formulated? If it were, the *worst transgression* of natural law would consist in relating to other human beings in the form of a threat (which may take many aspects in everyday life: contempt, conspicuous indifference, envy, false charity, mockery, etc.), while the *best way* to comply with natural law would be to cultivate the desire for another desire, that is for another subjectivity. In this way all the *inclinationes* might be gathered into one.

terms of threat. This is a kind of relationship that naturally tends towards a resolution at one extreme or the other.

III. The Golden Rule

§1. If we strongly maintain the above conclusion, that is, if we wish to free ourselves from the ‘naturalistic’ declination of natural law, we should think about the fact that the traditional *inclinaciones* must be *internal* to a broader horizon, the horizon of mutual recognition, then we shall be able to proceed safely to the last stage of this brief tour. It consists of observing that, already in olden times, the reciprocity of mutual recognition was actually given, in its essential *dynamics*, a codification known as the ‘Golden Rule’, and that this codification is shared by all the major spiritual traditions. It’s a ‘rule’, that is to say a ‘law’; but in what sense can we understand it as a ‘natural’ law? To answer this question, we must try to somehow verify the meaning of the Golden Rule as it is manifested in its various formulations or variants⁷.

§2. At this point it is just as important to point out that the Golden Rule, while clearly referring to the relationship in which two subjectivities reciprocally recognize themselves, cannot however be simply identified with it. For instance, it is easy to see that doing good to another person already implies a certain kind of prior recognition of the Other, oriented towards his/her presence, his/her *being there*. It is on the basis of this previous recognition, then, that the notion of doing unto others as we would have them do unto us starts working. To put it in Aristotelian terms, we might say that recognition plays, so to speak, the part of the formal cause of the intersubjective relationship; the

⁷ The most known formulation is the negative one: ‘Do not do unto others as you would not have them do unto you’. However, it is worth noting the positive formulation: ‘Do unto others as you would have them do unto you’. I have recently published, together with Susy Zanardo, a study of the Golden Rule entitled *La Regola d’oro come etica universale* (Milan, 2005). Here I have used some passages from my introductory essay to this study.

Golden Rule would then be its efficient engine since it sets going the dynamics that bring about the principle of recognition by driving towards its fulfilment. Furthermore, if an attitude of recognition affects the *being there* of the other subjectivity as a whole, this attitude refers to a certain ecstatic condition, similar to that experienced by someone in love, or when he's admired by somebody, or viewed with gratitude for a gift received. So understood, the attitude of recognition is assumed not only to be *already* a way of doing to the Other the good that we wish to be done to us, but also the *maximum* expression of our acting for the sake of the Other's good. The relationship based on recognition could then be doubly understood as both the *condition* and the *fulfilment* of a good relationship with the Other: therefore it follows that it might be considered both the *beginning* as well as the *end* of the Golden Rule, while the Golden Rule, for its part, could be treated as the means to connect the beginning to the end.

§3. But let us return to the problem of the meaning of the Rule in order to find out whether we can really view it as *one* (though not the *only*) formulation of 'natural law'; we will now start with the analysis of its structure. In the usual formulation (see above), the Rule apparently possesses two basic features: a) the prescription of a relational reciprocity; b) the chiasmic disposition of this reciprocity. As for the relational reciprocity, it can be easily seen that this basically seems to be an application to the intersubjective relation of the ancient and well-known principle of moral life: Do good and avoid evil (Aquinas's most fundamental 'natural law'). To do good – to others; cf. also the ancient *unicuique suum tribuere* – here translated as doing that particular good which is good for someone, because it is the good of the human being with whom I am relating, and hence the good that I ought to do for him. On the other hand, the injunction not to do evil – to others; cf. *neminem laedere* – tells us that we should let the Other exist in his positivity. Let us now consider the second basic feature of the Rule, that is,

the rather strange and complicated relationship between good intentions towards the Other and a formulation of the content of the Rule in terms of *my own* desire. To my inevitable question, 'If I am to do good to the Other, how am I to determine *what* good I am to do?' The answer is: 'You must do that good which you would wish for yourself'. But what is the good that we wish for ourselves? In fact, the correct answer would seem to be simply an indefinite referral to other cases, where the question of what is good for me also remains unanswered. Yet this referral also contains the key to the solution of the problem. The matter can be somewhat clarified if we accept the *combination* between what we wish for ourselves and the form of the command, because the latter concerns the others (hence a chiasmus). Indeed, were we only to think of the desire of the ego in its singularity, we could easily arrive at the hypothesis of the possible *amorality* of the content of this command, since an ego might also have desires of a pathological sort. If, however, we refer the content of the desire of the ego to obey this command, to act *for the sake of the other*, then the pathology can, to a certain extent, be kept under control. Indeed the command to act for the sake of others is, in a way, a means of control of a possible pathological derive of the ego, inasmuch a pathological desire generally exists only as a captivating representation for the ego itself. But if the content is directed towards the others in the form of a command, first it is no longer so captivating, since it is not something 'for me' anymore, and, secondly, it implies a certain number of procedures that, seen from the perspective of the Other, are 'out of place', or at least appear in a 'reversed order'. Let me use here the common example of the masochist (or the sadist, since in this case it makes little difference). Were the masochist to act so that he did to others what he wished were done to himself, he ought in the first place to assume that the Other is a masochist and should then act sadistically towards him, since only in this way could he address himself to the Other's desire as if

it were his own. But can such a conversion be imagined? The ‘transfer’ of the object of my desire to others, according to what we have just said, immediately looks like a key point for an actual understanding of the Rule as something linked to the ‘normality’ of the inter-subjective relationship. Indeed, to look at someone who looks at me is a powerful way to better understand what it is that helps a human being and what hurts him. To make such an assessment is far less easy to do when we are the ones in difficulty, which is why, on such occasions, we seek the advice of others. Since we are usually aware that passions affect judgment, we ask a friend for a counsel, because a friend not directly involved in the passions that affect us in that given moment is in a better position to cast an ‘objective’ eye on the matter, or he’s simply in a better position anyway. This is a first explanation of our position; but there is also a second reason to be considered. If the object of my desire is not for the sake of me, but of others, I will surely be inclined to avoid any kind of excess in using my strengths, since the strengths are mine whereas the object is for others, but not for me. In short, a certain wise economy in the energy I put into my efforts is definitely to be expected. I will tell myself that it is right to do what is right for the others’ sake. It makes no sense to chase some excessive desires of mine for the others’ sake. Chasing excessive desires is hard work. I would have to shake the tree in order for another to gather its fruits, and nobody is likely to do this *to satisfy their pathological needs*. A third reason is that, when we do something for the others’ sake, we generally do so in response to a more or less explicit request. But this request always comes with, and looks like, a burden, a limitation on our freedom of movement; we quickly perceive the excess contained in the requests coming from the others, and we feel deprived of our freedom to decide correctly on the appropriate response. We do want to do something for the others, but at the same time we make an effort to understand what they *really* need, precisely so as not to live that

constriction as violence brought to bear upon ourselves. This is why, when acting for the benefit of others, we naturally tend to follow a reasonable consideration of their needs, which we never abandon. So it is that we arrive, almost physiologically, at a measure of 'normality' contained in the Rule both as an objective and a result. The Rule does not dictate in a detailed way what you must do for the Other's sake, but instead decrees that you must adopt the perspective of the Other as somebody who is *for you* (that is, as someone who is for others), because it is this very 'rotation' that subsequently turns into the 'form' that is then able to find the right content in the question, 'What must be done for (this or that) Other?' Obviously this cannot occur 'mechanically', because putting yourself in the perspective of another is something that can be done only gradually, precisely because it is a rule. The regulative *view* is, therefore, something that is built up progressively *of its own accord* through a training process. The fulfilled rule is thus transformed into a source of a custom of fulfilling the Rule. To enact the Rule in every action, then, means to position ourselves in such a way that allows us to perceive the world, and especially the relationships with others, as it should be perceived by a human being in order to be adequate to the task that relational life assigns to him. The Rule says: Accustom yourself to this 'view' of the world, and you will, spontaneously and naturally, understand what is worth doing. You will understand how, in your relation with others, you can make sense of your true 'self', which I instruct you to do as the content of an order. Through me, you will learn to be a 'normal' person, not in the sense of a 'common', let alone that of a 'mediocre', individual, but in the sense of a person who follows the 'norm'. I will educate you so that you may find in yourself, in your true self, the 'right' way to look at yourself as well as the others, because both yourself and the others are, above all, interior sides of *you*. Until you are not able to see yourself as you see the Other, and to see the Other as

you see yourself, you will not be in a position to claim that you have a good relationship with the others, nor with yourself. Identity and alterity are really nowhere but *within* you. You are the transcendental place where everything regarding your sense of being ever happens.

§4. Let us look at the subject from another point of view. To command a human being to do to others what he would wish to be done to him, means to take one's own wish for a relation with an appropriate subject as the content of the command itself, but in an active, not a passive manner. Hence I should present myself to the Other in such a way that I become for him what I would like him to be for me. But what would I like him to be for me? I would like him to be *available* to me, that is to say, to be someone of whom I can, so to speak, 'take whatever advantage I like'. The Other should exist for me unconditionally, because only thus could he somehow fulfil my desire. Indeed my desire is a transcendental horizon, and consequently only someone of the same nature can fulfil it: and that is precisely what the Other represents. Thus when someone is available to us we say that he is 'at our service'. In other words, he is like a 'servant' to me in a way, and I am his 'master'. Therefore a free offering of the Other to myself is what I deeply wish for me from him. But all this that I want from him, I must also offer to him: that is what the Rule commands. Strictly speaking, what is commanded here is not the wish of the other as immediate possession/enjoyment, but an unconditional offering of oneself. The possession/enjoyment of the other, the pervasiveness of my desire, gives the command its content. Thus the command is guided by the desire, which is unconditional in its width, whereas that the desire is reined in is ensured by the fact that the command is *for* the Other, which mitigates the rapacious ruthlessness of desire, which may be seen when the desire is just mine. Were this desire that comes in the form of the command of the Rule wholly mine, it would be too 'costly' for me to carry out.

From this it follows that I do not command the other to my advantage, but rather it is the ‘law’ that commands me to the Other’s advantage: therefore he may freely come to me in compliance with the law that exists *for him*, and not because he obeys my command according to my desire, which can be only *for me*. In synthesis: he comes to me in such a way that I have no power over him. And this must be presented in a universal form, hence in reciprocity.

§5. The prevalence of reciprocity seems to point to the fact that the Rule sees the intersubjective (interpersonal) relationship as the appropriate place for ethics, that is, as the true ‘natural law’ for a human being. Yet we are all aware of the opposite possibility. The modern tradition, and Kant in particular, has accustomed us to the idea that the true form of ethics should be strictly intra-subjective (intrapersonal). Hegel may be therefore be considered the first author to criticize this view, since for him an intra-subjective ethics is an ‘abstraction’ which should be referred, and ultimately *subordinated*, to the inter-subjective ethics (cf. the common distinction between ‘morality’ and ‘ethics’). Is Hegel right? He would clearly be in good company, for he would have the support of Plato and Aristotle. On the other hand, the Christian tradition has introduced an at least partly different view by situating the relationship with God, rather than with others, at the centre of the process of salvation or loss of individuals. The Kantian tradition, which, in general, has later evolved into the liberal tradition, has subsequently carried this further emphasizing the practical aspect of autonomy to such an extent, that it is nowadays pertinent to pose the old question again: Does an inter-subjective ethics precede or follow an intra-subjective one? The question is of no little importance for the Golden Rule. It seems to me that an answer to this question should necessarily depend on the nature of the archetypal human intentionality, or human relationship. If this is of an inter-subjective kind, then priority should be given to inter-

subjective ethics. Yet ethics is inter-subjective by its very nature. Having already shown this elsewhere⁸, here I will limit myself to the conclusions I drew on that occasion. First of all, let me say that even the Kantian tradition sees, *de facto*, the structure of practical reason as rooted in inter-subjectivity, not just because it conceives the ethical command from a perspective in which man is seen as an end in himself, hence my end is the relationship with others or with myself as Another, but also because it postulates the practical necessity of a relationship with God in order to locate, as one should do in practice, virtue and happiness in that relationship. We may add that all the religions of the Book support this view, as basically do the great spiritual traditions of old (Latin, Greek, Confucian etc.). Everywhere the relationship with others appears as the decisive element in ethics. The domination of intra-subjective morality is, in fact, basically a modern development (cf. Montaigne, Hume, Kant, etc.). Modern solipsism centres its attention on the relationship between reason and passion *in the ego*, sometimes letting the former prevail, as in the Enlightenment, and sometimes the latter, as in Romanticism. But then it is forced somehow to think of politics (the fullest form of the ‘for-the-others’) as a sort of separate sphere, going as far as the paradox of private vices seen as public virtues (Mandeville). However, intra-subjective ethics does not represent an error of perspective: it should rather be considered an important part of ethics, just *one part* of it, anyway. Moreover, intersubjective ethics is also an *archetype*, of sort, despite the fact that it does not achieve Totality. Because of this quasi-archetypal nature, it can be said that it even transcends its partiality, in some way reaching the sphere of Totality. The archetypality of intra-subjective ethics follows from the fact that the horizon of subjectivity is transcendental, and, as such, not

⁸ See ‘Sul trascendentale come intersoggettività originaria’, in Armando Rigobello (ed.), *Le avventure del trascendentale* (Torino, 2001), pp. 11–34.

transcendable, which is why there is a sense of ethical action that cannot be avoided and refers *only* to individual subjectivity: it is linked to causality through freedom, which involves the strictly individual attribution of every action. At this stage we may even point to a certain unity of the two ethics; even more, to a virtuous circularity between them. From time immemorial, indeed, it is virtue and happiness, taken together, that unify ethics in a single complete philosophical ‘architecture’. An ethical theory that pursues both virtue and happiness is really intra– and inter–subjective. One cannot be virtuous and happy without good relations with others, yet good relations with others are not possible unless one is virtuous and, in some sense, happy.

§6. This is one of the most delicate theoretical aspects of the whole question, yet some conclusions can be rigorously drawn. To begin with, it must be stressed that, as we have already seen, the Golden Rule is present in contexts that are religious and sapiential. This of course might just be a clue, though a very significant one in my opinion, that suggests that the intuition that a true flourishing of life necessarily implies that good reciprocity has always been present in the human mind, in one way or another. No doubt this conclusion owed more to the (very widespread) catastrophic effects of human conflict than to the (sadly infrequent) liberating effects of reciprocal alliances. The Golden Rule, then, is simply a brief but essential definition of good reciprocity, and it sets a ‘general rule of human life’ that should be largely treated as an *internal* moment of religious revelation(s), as well as, simultaneously, a *universal* moment of such. In other words, the Golden Rule is less than a religious revelation because of its simplicity, yet it is more because of its *formal* universal radicality (very much as with the principle of non–contradiction, which in content says very little about the determination of any kind of truth, yet it constitutes, at the same time, the greatest rule of truth). This explains why the Golden Rule is truly considered as the highest

statement of inter-human or man-God relations in Judaism and Christianity (of course), as well as (most likely) in many other traditions too. Christianity is very explicit about this: the revelation received from Jesus of Nazareth refers to a Justice far beyond the letter of Law. Therefore the entire array of religious traditions that have appeared throughout history (including Christianity) are just historical individuations of archetypal or absolute justice, and not in any sense an overcoming of it. Hence it follows that the Golden Rule is not, in itself and by itself, a religious rule, but rather a ‘secular’ one⁹. Yet it cannot avoid being incorporated into any religion that favours humans, once the form of its command is properly taken into account¹⁰. And in any case, could a religion that is not for humans still be called a religion?

§7. Is the Rule strictly ethical in its nature, or is it useful also to govern political relations? If this is the case, it then brings to mind principles such as ‘*neminem laedere*’ or ‘*unicuique suum tribuere*’. But does it also differentiate itself from such principles? *Prima facie* it would seem that the aforementioned principles refer to commutative and distributive justice. Yet, at least in its positive version, the Golden Rule seems to cover not only justice, but also political friendship. Indeed, the Golden Rule goes beyond mere political justice. That may be why it largely shows up where the relationship is meta-political in nature, in the sense that it concerns either all the pre-political relationships, or all of the post-political ones. With regard to the former, we might recall the use of

⁹ The latter indeed may or may not include the relationships that are properly religious.

¹⁰ It may quickly be turned into a religious rule, if the hypothetical interlocutor is God Himself. A relationship with God based on the Golden Rule, however, would only make sense if it were authorised by God Himself, since a human being cannot of course demand true and strict reciprocity with the divine. This authorisation seems to me to be a feature of Christian revelation. In the incarnation of the Eternal

the Rule in Confucianism, which gives precedence to family relationships; while in the case of the latter we could mention the ‘religions of the Book’, which emphasize all the relations of a religious nature. It is important to notice that the proper political relation stands between the two, moving beyond the blood ties of the family or the tribe towards the universality of reason, yet without going so far as to make that type of inter-subjective relation, which involves the relationship to the divinity, the basis of one’s strategy for life. Is then the Golden Rule not fit for the sphere of politics? So it would seem; but a more profound analysis shows that such a restriction lies on shaky ground. The Platonic–Aristotelian tenet (later to be reinforced by the Christian–inspired political tradition), according to which politics includes friendship is, in my opinion, both useful and enlightening. Friendship, of course, is to be understood mainly (though not exclusively) in Aristotle’s third mode (also taught by Plato), that is, as a relation of reciprocity that seeks good as its aim. Understood in this way, friendship is necessary in political life as a natural *fulfilment* of justice (this doctrine is, again, well placed in Western tradition). Friendship can also be understood as ‘interior’ to justice, although it is usually understood as ‘exterior’, that above it and beyond it. The question can be resolved by determining the meaning of justice, which is in fact double: justice may mean the attribution of what is due, because this is required by the commutative and distributive equality of assets, but justice may also mean the attribution of what is due to each human being *in an absolute sense*. And what is due to the others in an *absolute sense*? (And what, indeed, is due in an absolute sense to God?) As we have repeatedly observed, what is due to the others in an absolute sense is the total fulfilment, the ‘flourishing’ of their being. (In this sense, what is due to God is our own fulfilment: this

Son, the reciprocity of dedication is offered to human beings in an unconditional and universal form, and as something that has always been God’s wish.

is indeed what only He can wish for us, as the One who has placed us, ontologically, in the world.) Taken in this second sense, justice includes friendship at its highest level, that is friendship as the exchange of will to do good unto the others, regardless whether this exchange may happen between two or many. We actually do justice to each other, then, when we encourage our mutual fulfilment. But this is precisely the Golden Rule in its positive version. In its negative formulation, when it blocks the spreading of reciprocal evil, the Golden Rule seems to agree with the dynamic of justice as the equal distribution of assets. Thus, given that it is in a community (political, in the last resort) that men live in order to attain the flourishing of their lives, the double version of the Golden Rule may be considered as what governs not just the two forms of political *justice* but also the universal form of political *friendship*.

§8. At the end of this brief review, we can draw the following conclusion: if ethics is, in a final analysis (as indeed we *should* say that it is), an *inter-subjective* horizon, then it is part of the Golden Rule, just as the lines of an inverted cone spread from its vertex, on which the boundaries and the main structures of the entire territory of ethics depend. The Rule can then be justly considered the formulation of the ‘natural law’ for human beings. In any case, an inter-subjective horizon does *not* mean a *political* horizon, as believed by the Greeks; but not only them: post-metaphysical thinking since Nietzsche has returned to this way of thinking. Inter-subjectivity is a broader notion than that of the political, as well as that of the private. It includes both of them, *provided* it is extended, as it should, to everything that implies *at least* an intentional infinity. Suffice indeed for ethics, in order to achieve this, that the terms of the relational forms it possesses are transcendental, and thus can’t be overcome (defining as not subject to be overcome whatever contains in itself *at least* an intentional infinite-ness, since infinity, even if only intentional, knows no boundaries). Thus it cannot be delimited, and must be

treated as an end in itself. Only a means is delimited by boundaries; or, to put it the other way round, something is just a means if it can be delimited, as objects and animals are, but not human beings. Of course a man can also be delimited, but only with regard to his corporality: he can never be delimited with regard to his transcendental. In this sense every human being is always an end, and cannot ever be treated as merely a means (Kant). Indeed, we all guard this truth with the greatest zeal as our most invaluable treasure, and we invariably resort to it whenever we feel so endangered as to entrench ourselves behind our freedom to protect our dignity, to the extent that we are ready to risk our own lives in order to protect it. But everybody should always recognize the same right to every other subjectivity, with whom he interacts in a relationship. This is what the Golden Rule commands when it is understood in its proper depth and in its incomparable transcendental. What is essential in human relations would be guaranteed thereby. The rest would then simply follow as a series of symbolic individuations, or inevitable corollaries, of the Rule; and this 'rest' is everything that was included in the *inclinationes* of the 'natural law', as it was traditionally understood.

Bibliography

Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.

Kass, Leon, *Toward a More Natural Science* (New York: The Free Press, 1985).

Vigna, Carmelo and Zanardo, Susy, *La Regola d'oro come etica universale* (Milan: Vita e Pensiero, 2005).

Vigna, Carmelo, 'Sul trascendentale come intersoggettività originaria', in Armando Rigobello (ed.), *Le avventure del trascendentale* (Turin: Rosenberg & Sellier, 2001), pp. 11–34.

PART FOUR
NATURAL LAW AND SCIENCE

CHAPTER 14

Difficulties for Natural Law Based on Modern Conceptions of Nature

*Richard F. Hassing***Introduction**

The expansion of human power to change the forms of things, both natural forms and social, political, and cultural forms, is a hallmark of modernity. This power brings benefits to humanity that no one should minimize. But there is a problem. As Leon Kass puts it, '[e]verything is in principle open to intervention; because all is alterable, nothing is deemed either respectably natural or unwelcomely unnatural.'¹

I focus here on the role of natural philosophy and modern natural science in the expansion of human power over nature. Accordingly, in reading Kass's statement, we must be sensitive to the question, does the problem he describes arise because of the way nature really is? Or does it arise because of our own misperception and misjudgment of the way nature is? Both are partly true: nature is less Aristotelian and more malleable than Aristotle and Aquinas thought; but there is also misperception resulting from an immoderate disposition toward science, nature, and human nature. Therefore, we have a two-fold philosophical mission: first, deciding what natural science truly says about nature; second, correcting exaggerated and false interpretations of natural science. In the following remarks, I attempt to do both.

Early Modern Philosophy: Francis Bacon and Laws of Nature

¹ Leon Kass, *Toward a More Natural Science* (New York, 1985), p. 11.

Francis Bacon is a famous and seminal thinker for the modern project of mastery of nature. His *New Organon* of 1620 contains a remarkably prescient account of laws of nature. The idea of laws of nature in early modern philosophy is aimed at removing from science Aristotelian natural forms and ends:

When man contemplates nature working freely, he meets with different species of things, of animals, of plants, of minerals; whence he readily passes into the opinion that there are in nature certain primary forms [Aristotle's formal causes] which nature endeavors to educe [Aristotle indeed says: form . . . is the end of generation; *Meta.* 1015a12]²

[But] in nature nothing really exists besides individual bodies [true particles, II.8; thus no forms], performing pure individual acts [thus no potentiality] according to law [e.g., Newton's law of gravitational force, Lorentz's law of electromagnetic force]³

[And so] forms are figments of the human mind, unless you call those laws of action forms⁴.

[T]he philosophy which is now in vogue [Scholastic philosophy] embraces and cherishes certain tenets . . . as with respect to the doctrine that the heat of the sun and of fire differ in kind [because celestial bodies and terrestrial bodies are essentially distinct; *Phys.* 198a30–32] . . . Which things, if they be noted accurately, tend wholly to the unfair circumscription of human power . . . Whereas it is most unskillful to investigate the nature of anything in the thing itself, seeing that the same nature which appears in some things to be latent and hidden is in others manifest and palpable . . .⁵

What is Bacon trying to say? He is trying to say that if we study, e.g., gravitation, only in the bodies that are obviously heavy, like a stone, we will never discover, as Newton did, that gravitation applies to both heavy bodies down on earth and celestial bodies up in the heavens. In fact gravitational attraction applies to all bodies of any species or kind: celestial, terrestrial, living, non-living, natural, artificial. This radical

² *New Organon*, I. 66.

³ *New Organon*, II. 2.

⁴ *New Organon*, I. 51.

⁵ *New Organon*, I. 88.

universality of gravitational attraction expresses a new type of relation between sensible effects and their intelligible causes.

The relation between the sensible and the intelligible is a standard topic in philosophy. What sort of intelligible causes best explain the sensible effects, the phenomena, that we see with our eyes and point at with our fingers, like a stone falling, a squirrel running, men arguing about politics, the sun shining and supporting all life on earth? In the history of philosophy and natural science, we find different answers to this question. For example, in Plato, the intelligible Forms or Ideas are notoriously separate from sensible particulars, such that there is no Platonic science of nature (*epistêmê phusikê*), thus no Platonic biology, in sharp contrast to Aristotle. In Aristotle, the intelligible forms – formal causes – are not separate from matter, but rather are in natural substances in a special, intimate way.⁶ In fact, Aristotelian forms can exist and be at work only in their correlative matter. In the following, I focus on the Aristotelian and Thomistic account in comparison to early modern philosophy and natural science, where we find yet a third, and new type of relation between the sensible and the intelligible. Following Richard Kennington, I call this new type of relation neutral in relation to species, or species–neutral. (I apologize for this clumsy terminology but it fits.) It is typified by Newton’s universal law of gravitation. The Darwinian principles of random variation and natural selection are also species–neutral.

In general, different accounts of the relation between sensible and intelligible convey different implications concerning what is within our power. Our beliefs about what is within our power in turn affect our choices, and the pattern of our choices shapes our ethical disposition, and thus our perception of the world.⁷ Therefore, it is

⁶ Plato, *Republic*, 509d–511c, *Timaeus*, 49e. Compare Aristotle, *Phys.*, 2.1, 192b21–23, 193b5.

⁷ Aristotle, *EN*, 1113a20–b2, 1114b23–25, 1115b21, 1144a33–36, 1176b27.

very important to assess correctly what science really says about nature and human nature, and to correct exaggerated and unwarranted claims about nature and human nature based on incorrect interpretations of natural science. Failure to do this leads to an incoherence in our own self-understanding: we end up believing that we are no different from other animals, that we are just monkeys, and at the very same time that we are masters of the universe! How can monkeys be masters of the universe? Well, I return to my main story.

In the natural science of Aristotle and Aquinas, the relation between sensible and intelligible is, as we shall see, specified to the species, or species-specific. This means that what differentiates one species or natural kind from another is more important than what the two different species or natural kinds have in common. In the sciences of Bacon, Descartes, Newton, classical physics, and Darwinian biology, the relation between sensible and intelligible is species-neutral. This means that what different species have in common is more important than what specifically distinguishes them. Modern scientific examples of what different species have in common are mass, which is common to all bodies, random variation and natural selection, and the universal genetic code, which are common to all living bodies. Aristotle and Aquinas did not know about species-neutral causes of motion in nature.⁸ Species-neutrality – even more

⁸ This is overstated in order to make a point. More precisely: Aristotle and Aquinas did not know about (1) species-neutral *active* causes of motion in nature that (2) are not given in ordinary, prescientific experience. The obvious distinction between male and female is common to all animals and many plants, and is thus species-neutral. The famous Aristotelian principle, ‘all that is moved is moved by something [that is distinct from the moved],’ (*hapan to kinoumenon hypo tinos anagkê kineisthai*, *Phys.* 7.1, 241b34; *omne quod movetur necesse est ab aliquo moveri*), is true of every kind of body, and is thus species-neutral. But it is a statement about what can *not* be a cause of self-motion in any mobile, namely, the common *ratio* of body, i.e., divisibility and *per se* mobility; see Aquinas, *In phys.*, n. 889, and Richard F.

than materialist reductionism – is the characteristic of those modern conceptions of nature that pose problems for Thomistic natural law.

Let us continue with Bacon and complete the essential idea: The species–neutral universality of laws of nature, e.g., Newton’s law of gravitation, brings with it new possibilities for prediction and control of natural processes, and for the alteration or transformation of one kind of body into another kind. Scientific laws of nature provide us with surprising new powers. For example, we exploit the law of gravitation in humanly controlled space flight; we transform, as it were, a terrestrial body into a celestial body. Terrestrial bodies and celestial bodies, despite their strikingly different visible patterns of motion, are not made of different materials, corruptible and incorruptible, as Aristotle and Aquinas mistakenly thought. Thus, Bacon says,

If a man be acquainted with the cause of any nature . . . in certain subjects only, his knowledge is imperfect. . . . But whosoever is acquainted with [laws of nature] embraces the unity of nature in materials the most unlike [e.g., a magnet and living flesh], and is able therefore to detect and bring to light things never yet done [e.g., nuclear magnetic resonance imaging in medical diagnostics]⁹

We are told . . . that there are three kinds of heat: the heat of heavenly bodies, the heat of animals, and the heat of fire; and that these heats . . . are in their very essence and species – that is to say, in their specific nature – distinct and heterogeneous. . . . [But] the [Baconian] understanding [rejects] the notion of essential heterogeneity¹⁰.

Bacon rejects the heterogeneity of Aristotelian natural forms in favor of the homogeneity of laws of nature. The heterogeneity of natural kinds – cats and dogs and

Hassing, ‘Thomas Aquinas on *Phys.* VII.1 and the Aristotelian Science of the Physical Continuum’, in Daniel O. Dahlstrom (ed.), *Nature and Scientific Method* (Washington DC, 1991), pp. 109–156, also available in pdf on my website, <http://philosophy.cua.edu/faculty/rfh>.

⁹ *New Organon*, II. 3.

¹⁰ *New Organon*, II. 35.

people – is strikingly apparent to sense perception and ordinary experience. The homogeneity of laws of nature becomes intelligible not through ordinary sense perception but only through Method, a major theme of early modern philosophy (Bacon, Hobbes, Descartes, Spinoza). Finally, then, says Bacon,

On a given body to generate and superinduce a new nature or new natures is the work and aim of human power. . . .¹¹

I note that, in Bacon, the term ‘nature’ means quality. Bacon audaciously teaches that an Aristotelian ‘nature’ or species is really just an accidental, not essential, effect of Baconian laws and particles.

A contemporary example of generating and superinducing a new Baconian nature is the production of tobacco plants and pigs that glow in the dark (their snouts glow in the dark). Genetic scientists have superinduced bioluminescence (of fireflies and jellyfish) into plants (tobacco) and animals (pigs) that were never bioluminescent before. This is possible because there is one genetic code for all species¹²; it is not the case that there is one genetic code for pigs, and another for jellyfish, another for fireflies, another for tobacco. The genetic code is species–neutral, not species–specific. This means that the Aristotelian doctrine of the special dependence of natural form on its own correlative matter is partly wrong, because in some way the form of a firefly – the principle of its characteristic activities – does not depend exclusively on firefly–matter. On grounds of Aristotelian species–specific principles, pigs and tobacco that glow in the dark should not be possible. Of course the prospect of applying such bizarre methods of genetic modification to human beings – specifically to human embryos –

¹¹ *New Organon*, II. 1.

¹² I am told, by Richard Sternberg (private communication), that, in fact, there are exceptions to this.

lies far in the future. But it has already been described and favorably considered by the well known molecular biologist, Lee Silver. According to Silver,

One way to identify types of human enhancements that lie in the realm of possibility – no matter how outlandish they may seem today – is through their existence in other living creatures. . . . Relatively simple animal attributes that fall into this category include the ability to see into the ultraviolet . . . or the infrared range – which would greatly enhance a person’s night vision¹³.

With this abiding Baconian intention or disposition, and its partial truths about nature in the background, let us look further at modern doctrines and discoveries about nature that pose difficulties for natural law. These arise especially in physics and biology. For convenience, let us stay with the three familiar examples that I have already introduced.

Newton, Darwin, DNA

In physics, Newton’s *Principia* culminates the 17th century development of mechanism and inspires the mechanical conception of the world in terms of particles and forces. In biology, Darwin’s *Origin of Species* of 1859 initiates a revolution in our understanding of living nature. After Darwin, living nature consists of temporal flux, not fixed forms or species. A century later, in 1953, Watson and Crick discover DNA, the molecular basis of heredity, mutation, and selection. Listen to some emblematic statements by these founders.

Newton:

I deduce [by gravitational forces] the motions of the planets, the comets, the moon, and the sea. I wish we could derive the rest of the phenomena of Nature by the same kind of reasoning from mechanical principles, for I am induced by many reasons to suspect that they may all [!] depend upon certain

¹³ Lee M. Silver, *Remaking Eden* (New York, 1997), p. 237.

forces by which the particles of bodies [attract and repel each other]. . . . These forces being unknown, philosophers have hitherto attempted the search of Nature in vain¹⁴.

Again, Newton:

Every body can be transformed into another, of whatever kind¹⁵.

That sounds utterly fantastic, and it is, but it follows very logically from Newton's model of the universe in terms of particles and forces. This universal model or world conception is a vast but logically simple generalization of Newton's successful gravitational theory of the solar system. The Newtonian forces-and-particles model defines the first reductionist program in natural science: future research will be conducted on the fundamental assumption that all complex wholes are merely sums of tiny, simple parts or particles. Aristotelian forms or souls are thereby assumed either not to exist, or not to be important for our science of nature. And so a cat or a dog is assumed, for purposes of future research, to be merely a cloud of particles. This first modern doctrine of universal reductionism is based on an unwarranted generalization of Newton's warranted physics (his gravitational physics). But it captured the imagination of scientists for nearly two centuries, being finally refuted by quantum physics. I would argue (and have argued¹⁶) that in fact there has never been, even in the time of Newton and regardless of quantum physics, a sound science-based argument for universal reductionism. Yet, to this day, natural science, specifically biology, remains closed to the idea of soul as a principle of organic beings. Question: Can natural law do without a

¹⁴ *Principia*, 1686. Preface.

¹⁵ *Principia*, 1686 (Latin), Hypothesis III.

¹⁶ Hassing, 'Wholes, Parts, and Laws of Motion', *Nature and System*, 6 (1984): 195–215, and 'Animals versus the Laws of Inertia', *Review of Metaphysics*, 46 (1992): 29–61. Both are available in pdf on my website, <http://philosophy.cua.edu/faculty/rfh>.

notion of form or soul as a biological principle, a source of appetite, apprehension, and activity in organic beings? Even a single-cell organism has preferences regarding the nutriment it metabolizes.¹⁷ Perhaps natural law can do without a concept of soul as a general biological principle. But, I wonder: is it not the case that many of our judgments about what is ‘respectably natural or unwelcomely unnatural’ begin with the phenomena of health and well-working in living things? This is my comment on the historical significance of Newtonian physics and its unwarranted generalization for the disappearance of formal cause or soul from the modern science of nature. Roughly speaking, after Newton, nature loses humanly meaningful content. This prepares the transition to Kant and German Idealism.

Next, Darwin:

We shall have to treat species [as] merely artificial combinations made for convenience [of language]. This may not be a cheering prospect; but we shall at least be free from the vain search for the undiscovered and undiscoverable essence of the term species¹⁸.

Note that for both Newton and Darwin, the idea of species, or formal causes in nature, e.g., cat-form, dog-form is ‘vain.’

Finally, Francis Crick on the DNA sequence hypothesis or central dogma of molecular biology:

[T]he specificity of a piece of nucleic acid is expressed solely by the sequence of its bases, and that this sequence is a (simple) code for the amino acid sequence of a particular protein¹⁹.

¹⁷ See, for example, Kass, *The Hungry Soul: Eating and the Perfecting of Our Nature* (Chicago, 1999), Chapter 1.

¹⁸ *The Origin of Species*, p. 447.

¹⁹ Francis Crick, ‘On protein synthesis’, *Symp. Soc. Exp. Biol.*, 12 (1957): 138–163, p. 2.

As colloquially paraphrased, ‘DNA makes RNA, RNA makes proteins, and proteins make us.’²⁰ Crick’s statement obviously foreshadows genetic engineering.

What do these statements by Newton, Darwin and Crick convey? Clearly, not the whole or comprehensive truth about nature (they are not even mutually consistent); they convey partial truths about nature, truths about restricted or particular classes of phenomena and kinds of being (gravitational systems, organisms, and molecules). Quantum physics and recent developments in the molecular biology of gene expression,²¹ show that these statements cannot be the whole truth about nature. But the parts or aspects of nature that are correctly described were indeed not known to Aristotle, and not known to Aquinas, the main source of natural law. Therefore, nature is more Aristotelian than modern science thinks, but, as noted, nature is also less Aristotelian than Aristotle and Aquinas thought. And this is a source of difficulty for Thomistic natural law. When our powers were fewer, our purposes were clearer.²²

I now have two tasks: First, I must try to explain more clearly the new aspect of nature discovered by modern natural science, namely, species–neutrality. Second, I (and we all) must ask, what does the term ‘natural’ in Thomistic natural law mean? There are several senses of ‘nature’ as used by Aquinas in his account of natural law. They are: generic (we are all animals); specific (we are social–political and rational animals); paradigmatic (we admire excellent or virtuous human performance).²³ With which of these Thomistic meanings of nature do the modern scientific problems lie and what

²⁰ Evelyn Fox Keller, *The Century of the Gene* (Cambridge, MA, 2000), p. 54.

²¹ See, for example, Keller, *The Century of the Gene*, pp. 54–55, 66–67, 70–71, 99–101, 136, 141–143.

²² See Kass, *Toward a More Natural Science*, p. 158.

²³ See *ST*, I–II, q. 94, a. 2 c., a. 3 c.

could be done to defend what is best in natural law today? Let me be practical, and jump ahead to my conclusion, and answer this two–part question right now.

Conclusion in Advance

The modern scientific problems concern mainly²⁴ the generic and the specific meanings of nature; that is, the problems concern our natural inclinations toward self–preservation, health, freedom from pain, and our natural inclinations toward mating, and having and raising children.²⁵ These inclinations are biologically rooted but specifically human, specifically human in many ways but especially because of all that is involved in the development and education of human children; much more than in the offspring of any other species of animal.

Further examples of what Aquinas did not know about are the genetic science of aging, which aims to extend healthy human life many decades, and psychopharmacology, which aims at freeing us from emotional pain, like painful memories. Many types of reproductive technology contribute to the artificial separation of sex, reproduction, and parenting. These are three things that Aquinas surely assumed were by nature connected. Obviously, the project for the transformation of natural forms merges with the project for the transformation of social and cultural forms, especially, marriage and the family. In general, the modern doctrines of nature as malleable go hand in hand with the radicalization of human freedom. Thus, it is widely taught today that human beings have no ends prior to choice; rather all ‘ends’ are created by autonomous choice.

²⁴ Performance–enhancing drugs impact the paradigmatic level of human nature. This problem lies outside the range of my brief presentation.

²⁵ See *ST I–II*, q. 94, a. 2 c.

What can be done? I think of two things: empirical social science, and, as I have already noted, philosophical interpretation of natural science. Many researchers have studied the empirical social–science data on the conditions in which children develop and function well in human society, and the conditions in which they do not. I cite my colleague in economics at Catholic University, Sophia Aguirre.²⁶ In addition to social–science research, philosophical interpretation of science, nature and human nature are needed. Leon Kass has already done much in this area. I would also highly recommend the work of my teachers and colleagues in philosophy at Catholic University, the phenomenologist Robert Sokolowski, and the historian and philosopher of science, William A. Wallace. Needless to say, Robert Spaemann is justly regarded as among the very best contemporary moral and political thinkers.

I wonder, however, whether the fruits of aging science – the extension by decades of healthy human life – and also of psychopharmacology, will not be very tempting and create serious problems for human life. You recall that the third level of the natural law according to Aquinas, after self–preservation and species–preservation, concerned our lives together in society, beginning with the requirement that we avoid giving offense to those among whom we live. Would living to 150 years be offensive to other, younger people? I think it would be very offensive, because it blocks renewal and regeneration. And so this would be a challenge to contemporary natural law: how to say ‘no’ voluntarily to new powers of life–extension? In general, how should we think about the problems of ageless bodies and artificially happy minds? I return now to my remaining technical task: explaining the species neutrality of modern scientific accounts of nature.

Species–Neutrality, Continued

²⁶ See <http://faculty.cua.edu/aguirre>.

This topic is complex and requires more discussion than is possible in a short presentation.²⁷ The following remarks are unavoidably fragmentary, and may generate more darkness than light, for which I apologize. I begin with the Aristotelian, species-specific account of form and matter. This is the necessary background against which to examine modern, species-neutral doctrines and discoveries.

Aristotle:

Nature is a principle and cause of being moved or of rest in the thing to which it belongs primarily and essentially, and not accidentally²⁸.

The form is nature to a higher degree than the matter²⁹.

[A] different form requires different matter³⁰.

[A]ll things that change have matter, but there is distinct matter in distinct things³¹.

For each motion it is the subject capable of that motion which has that motion³².

Aquinas summarizes succinctly:

[T]he soul and other natural forms are not per se subject to motion . . . they are, moreover, the perfections of mutable things³³.

²⁷ See Richard F. Hassing, 'Introduction' and 'Modern Natural Science and the Intelligibility of Human Experience', in Hassing (ed.), *Final Causality in Nature and Human Affairs* (Washington DC, 1997), pp. 1–51 and 211–256. Also my exchange with Larry Arnhart, 'Darwinian Natural Right?', *Interpretation*, 27/2 (1999–2000): 129–160, 'Defending Darwinian Natural Right?', *Interpretation*, 27/3 (2000): 263–277; 'Reply to Arnhart', *Interpretation* 28/1 (2000): 35–43. The exchange with Arnhart is available in pdf at <http://philosophy.cua.edu/faculty/rfh>.

²⁸ *Phys.* 192b21–23.

²⁹ *Phys.* 193b7.

³⁰ *Phys.* 194b9.

³¹ *Metaph.*, 1069b25.

³² *Phys.* 251a14.

I interpret these statements in the following way: Form is the principle and cause of the pattern of change and stability characteristic of a natural kind as given in ordinary sense perception, e.g., an eagle, a dog. Different visible patterns of behavior (flying, running) require correspondingly different forms and matters, because things that move in very different ways should have correspondingly different causes of motion. This is just common sense. Dog–matter cannot receive eagle–form; dogs cannot fly, because they do not have wings. Form can be at work only in its correlative matter. Form is a holistic principle: it is in the informed natural substance as a whole, not in virtue of the material parts; this is the meaning of the term ‘primarily’ (prôtôs, primo) in Aristotle’s definition of nature.³⁴ If the dog or the eagle is separated into parts, dismembered, the animal is killed, the form is destroyed.

In the tradition of Aristotelian natural science, there is an essential, not accidental connection between the way a thing moves, its material structure, and the active causes of its motion. As Maimonides says, ‘[if] the form of the motion of the [celestial] spheres would not be indicative of their matter [incorruptible], this would be the ruin of all principles.’³⁵ Thus, things that move in essentially different ways as manifested to our senses possess essentially different kinds of matter and sources of motion. They have different natures.

Therefore, celestial bodies are essentially different from terrestrial bodies (this is the great error of medieval physics), and among terrestrial bodies, living things are essentially different from non–living things. And among animals, the kind that thinks,

³³ *In Trin.*, q. 5, a. 2, ad 6.

³⁴ *In phys.*, n. 145.

³⁵ Maimonides, *Guide of the Perplexed*, trans. S. Pines (Chicago, 1963), II.22, 49b, p. 319.

speaks, and acts in order to be what it is – the human animal – is essentially different from any other kind. There are natural kinds of things, and they are essentially, not accidentally, heterogeneous. The stable differences in the way things appear to ordinary sense perception are effects that proceed per se, not per accidens, from intelligible causes and principles. This means that what the different natural kinds have in common, e.g., corporeality (they are all bodies), is not as fundamental as what differentiates and specifies them. How could it be otherwise? If what the different natural kinds have in common is more important than what distinguishes them, then what we human beings have in common with the other animals is more important than what distinguishes us, and so the human should be understood in terms of the non-human – understood in terms, say, of random variation and natural selection. But how could the human ever be adequately understood in terms of the non-human? The human cannot be understood in terms of the non-human. This truth is the most fundamental reason why Aristotle's science of nature is species-specific.

Against this Aristotelian (and Socratic, Platonic, Thomistic) background, the species-neutral theories and discoveries of modern natural science stand out in sharp relief. I have said enough about genetic engineering and the Baconian feats made possible by the universal genetic code. What about Darwin? The Darwinian principles of random variation and natural selection are currently understood to apply univocally to all living species. As Stephen Jay Gould said, '[t]he only thing that's happening in nature is that individual organisms are striving for personal reproductive success.'³⁶ This means that the natural living kinds or species are only accidentally, not essentially, heterogeneous. The apparently stable differences in the way things (merely) appear to

³⁶ Stephen Jay Gould, 'Darwin's Revolution in Thought', in *Into the Classroom Video Teaching Guide* (1996).

ordinary sense perception are effects that proceed per accidens, not per se, from their intelligible causes, namely, from variation and selection. And among animals, the human kind – despite all appearances to the contrary – is not essentially different from any other kind. We animals, we the living species, have evolved specifically different means to one and the same species-neutral end: reproductive fitness. Therefore, in this current interpretation of the results of Darwinian science, the human powers of thought and action are just survival tools. I would argue (and have argued³⁷) that this is an unwarranted and exaggerated interpretation, like the universal reductionism mistakenly based on Newtonian physics. But just as Newton was right, and Aristotle and Aquinas wrong on the question of terrestrial and celestial matter, so Darwin was right about the mutability of living species, and Aristotle and Aquinas wrong in their belief that ‘the soul and other natural forms are not per se subject to motion.’³⁸ How to give each side, Darwinian and Aristotelian, its due? I think it can be argued that, even though living species came into being from common ancestors over a long period of time, they presently possess natures that are normative and worthy of respect. In other words the term ‘survival’ should be taken in its species-specific and not its species-neutral sense. But this is a topic for a longer discussion.

Lastly, I discuss briefly how Newton’s law of gravitation is a paradigm for species-neutral principles of motion in nature. The law says that any two bodies attract each other with a force that is proportional to the product of their masses and inversely proportional to the square of the distance between them. Think of mass: it is common to all bodies and parts of bodies, from electrons to galaxies. As such it cannot distinguish

³⁷ See my exchange with Larry Arnhart, cited in note 16, above.

³⁸ William A. Wallace, ‘Is Finality Included in Aristotle’s Definition of Nature?’, in Hassing (ed.), *Final Causality in Nature and Human Affairs*, pp. 52–70; see p. 70 on formal causality and evolution.

one species of body from another.³⁹ Therefore, the gravitational force of attraction does not depend on the kind, size, shape, internal structure or function of the two bodies in question. For this reason, in celestial mechanics, wherein the bodies under study do not bump into each other, extended, divisible bodies can be taken as unextended, indivisible points, mass–points! We are now used to this way of thinking about nature, but Newton’s law of gravitation is really very paradoxical and surprising. Ordinarily, the way two bodies interact is strongly dependent on what kind they are. Just think of a mouse and a cat: the mouse is repelled the cat attracted. Think of a cat and a dog: the dog is attracted up to a critical distance at which the cat scratches its nose, and then the dog is repelled. It’s a complicated and very species–specific interaction. Thus Newton’s development of the idea of central forces as principles of motion in nature that are indifferent to the visible species of bodies was remarkable. The notion that such principles could give rise (via subsensible particles) to the visible species of bodies was the source of Newton’s astonishing claim that, ‘[e]very body can be transformed into another, of whatever kind.’

In sum: Universal claims like this are exaggerated and unwarranted by the particular scientific results on which they are based. Thus, extreme claims for the power of genetic engineering are not warranted by the particular results of genetic science on which they are based. And Stephen Jay Gould’s claim that universal reproductive fitness is the only natural end of any living species is not warranted by the particular

³⁹ Spinoza, *Ethics* II.37 and 38, provides a perfectly succinct formulation of the meaning of species–neutrality in early modern philosophy and science: ‘That which is common to all [bodies] . . . and which is equally in a part and in the whole [e.g., Cartesian extension, Newtonian mass], does not constitute the essence [the Aristotelian species; *Metaph.*, 1030a12] of any particular thing. . . . Those things which are common to all . . . cannot be conceived except adequately.’

results of neo–Darwinian biology. Nevertheless, in each case, partial truth about nature underlies the immoderate claims. This requires some new thinking, philosophical and social–scientific, about the meaning of nature and human being.

Bibliography

Aquinas, Thomas, *Super Boetium De Trinitate. Opera omnia*, vol. 50 (Rome and Paris:

Leonine Commission and Les Éditions du Cerf, 1992), pp. 1–230.

Aquinas, Thomas, *Commentary on Aristotle's Physics*, Translated by Blackwell,

Richard J., Richard J. Spath, and W. Edmund Thirlkel; Rare Masterpieces of Philosophy and Science. (New Haven: Yale University Press, 1963), reprint, Aristotelian Commentary Series. (Notre Dame, IN: Dumb Ox Books, 1999)

Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.

Aquinas, Thomas, *Summa contra gentiles* (Notre Dame: University of Notre Dame, 2001–2003). Translated by Pegis, Anton C., James F. Anderson, Vernon J. Bourke, and Charles J. O'Neil (*On the Truth of the Catholic Faith (Summa Contra Gentiles)*). 5 vols. New York: Doubleday, 1955–57).

Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).

Bacon, Francis, *New Organon*, ed. Lisa Jardine and Michael Silverthorne (New York: Cambridge University Press, 2000).

Crick, Francis, 'On protein synthesis', *Symp. Soc. Exp. Biol.*, 12 (1957): 138–163.

Darwin, *The Origin of Species* (London: Pickering and Chatto, 1988).

Hassing, Richard F., 'Wholes, Parts, and Laws of Motion', *Nature and System*, 6 (1984): 195–215.

- Hassing, Richard F., 'Thomas Aquinas on *Phys.* VII.1 and the Aristotelian Science of the Physical Continuum', in Daniel O. Dahlstrom (ed.), *Nature and Scientific Method* (Washington DC: Catholic University of America Press, 1991): 109–156.
- Hassing, Richard F., 'Animals versus the Laws of Inertia', *Review of Metaphysics*, 46 (1992): 29–61.
- Hassing, Richard F. (ed.), *Final Causality in Nature and Human Affairs* (Washington DC: Catholic University Press, 1997).
- Hassing, Richard F., 'Introduction' and 'Modern Natural Science and the Intelligibility of Human Experience', in Richard F. Hassing (ed.), *Final Causality in Nature and Human Affairs* (Washington DC: Catholic University Press, 1997): 1–51, 211–256.
- Hassing, Richard F., 'Darwinian Natural Right?', *Interpretation*, 27/2 (1999–2000): 129–160.
- Hassing, Richard F., 'Defending Darwinian Natural Right?', *Interpretation*, 27/3 (2000): 263–277.
- Hassing, Richard F., 'Reply to Arnhart', *Interpretation* 28/1 (2000): 35–43.
- Kass, Leon, *Toward a More Natural Science* (New York: The Free Press, 1985).
- Kass, Leon, *The Hungry Soul: Eating and the Perfecting of Our Nature* (Chicago: University of Chicago Press, 1999).
- Keller, Evelyn Fox, *The Century of the Gene* (Cambridge, Massachusetts and London: Harvard University Press, 2000).
- Maimonides, *Guide of the Perplexed*, translated by S. Pines (Chicago: University of Chicago Press, 1963).
- Newton, Isaac, *The Principia Mathematical of Natural Philosophy* (California: University of California Press, 1999).

Plato, *Complete Works*, edited with introduction and notes, by John Cooper (Indianapolis, IN: Hackett Pub., 1997).

Silver, Lee M., *Remaking Eden* (New York: Avon Books, 1997).

Spinoza, Benedictus de, *Ethics* (Whitefish, MT: Kessinger Publishing, 2001).

William A. Wallace, 'Is Finality Included in Aristotle's Definition of Nature?', in Richard F. Hasking (ed.), *Final Causality in Nature and Human Affairs* (Washington DC: Catholic University Press, 1997), pp. 52–70.

CHAPTER 15

Evolution, Semiosis, and Ethics: Rethinking the Context of Natural Law

John Deely

‘Natural law is nature for man’

This declaration from Messner’s work of 1965¹ may need some updating on the ‘political’ side, replacing ‘man’ with ‘human being’. But the substance of the remark has the ring of eternal truth: whenever and wherever human beings exist, then and there is a law ‘inscribed in their hearts’ which has as its tap-root the imperative that ‘good is to be done’, or, to put the root maxim of all human action into the words of St. Thomas, *bonum faciendum est*.

The question is, to what extent can the human good be distinguished from or separated within the good of nature as a whole. ‘Nature for man’, after all, is still nature, and we have to ask ourselves what this nature is which, inasmuch as human beings are involved within it as the ground of their possibility and ongoing being, becomes, in some sense, ‘for man’.

Nature before and after the 17th century

In his own time, St. Thomas distinguished himself by putting some distance between his own philosophical thought and the then–generally accepted view of the heavens as the unchanging ‘causa regitiva’ ruling the comings and goings of substances on earth, and ensuring in particular that the role of chance in affecting the course of these generations

¹ Johannes Messner, *Social Ethics: Natural Law in the Western World* (St. Louis, 1965), p. 44.

and corruptions would be strictly limited in time and space. Not species but only individuals come and go on earth.

Though he himself generally accepted this common view, and incorporated the unchanging heavens into his work in many places,² when it came down to it, in his *Commentary* on Aristotle's books *On the Heavens*, St. Thomas went to some trouble to point out that the distance of heavenly bodies and the limitations of our senses leave room for the prospect that the view commonly accepted, according to which generations and corruptions on earth are controlled by an unchanging surrounding environment causally influencing substantial change on earth and keeping its patterns intact, may in fact be false, and destined to be replaced in time by quite other theories not yet envisioned.³

Displacement and replacement is pretty much what happened to the traditional teaching, beginning notably in the 17th century with the Galileo affair, when human sense–perception began systematically to be supplemented by optical instruments which eventually made it clear that not only are the heavenly bodies not at all of a different material nature than the earth itself, but that the nature of matter throughout the universe exhibits exactly the character that Aristotle verified of earthly substances, to wit, being subject to generation and corruption, substantial change. In other words, primary matter, the potentiality in every material substance to become a substance of another kind

² Aquinas c.1268/72. *In duodecim libros metaphysicorum Aristotelis expositio* (in Busa ed. vol. 4), III, lectio 11, n. 487; VII, lectio 6, n. 1403; etc. Discussion in Deely, 'The Philosophical Dimensions of the Origin of Species. Part II', *The Thomist*, XXXIII (1969): 252ff., and 252 n154, etc.

³ Aquinas c.1272/3: *In libros de coelo et mundo*, II, lect. 17, n. 451 (in Busa 4, p. 36). See discussion in John Deely, *Four Ages of Understanding. The first postmodern history of philosophy from ancient times to the turn of the 21st century* (Toronto, Canada, 2001), pp. 265–66.

entirely, is not restricted to earth, but permeates matter throughout the physical universe.

By the mid-19th the view that only individuals, not natural kinds as such, come and go over time, had similarly been undermined by the collection of data that the institutionalization of ideoscopic knowledge⁴ made possible. Wherever we looked in the universe, with the supplementation by instruments of the natural limitations of human sense-perception, we were forced to recognize that the doctrine of substantial change which Aristotle had limited to individuals on earth applied throughout the universe, and not only to individuals but to the establishment and transformation of the very natural kinds – the species of substance, both organic and inorganic – wherever they are to be found in the universe.⁵

⁴ I.e., the sort of knowledge that can be gained only by systematic use of instrument-based experimentation, such as the discovery that all bodies fall *ceteris paribus* at the same rate, that pressure on an enclosed fluid transmits equally in all directions, that light travels at a constant of 186,000mph, and the like; in contrast to cœnosopic knowledge which derives from observations available to a mature human organism at any time without reliance on instruments.

⁵ In the context of 20th century Thomistic thought, the best philosophical studies of the scientific implications of evolutionary thought remain, in my judgment: Mortimer J. Adler, *Problems for Thomists. The Problem of Species* (New York, 1940), Adler, 'Solution of the Problem of Species', *The Thomist*, III (1941): 279–379, Adler, 'The Hierarchy of Essences', *The Review of Metaphysics*, VI (1952): 3–30, Adler, 'The Philosophers Give All the Answers and Establish None', in Adler, *The Difference of Man and the Difference It Makes* (New York, 1967), pp. 52–65; Benedict Ashley, 'Change and Process', in John N. Deely and Raymond J. Nogar (eds), *The Problem of Evolution* (Indianapolis, IN, 1973), pp. 265–294; Deely, 'Evolution: Concept and Content. Part I', *Listening*, 0 (1965): 27–50, 'Evolution: Concept and Content. Part II', *Listening*, 1 (1966): 35–66, 'The Emergence of Man: An Inquiry into the Operation of Natural Selection in the Making of Man', *The New Scholasticism*, XL (1966): 141–176, Deely, 'The Philosophical Dimensions of the Origin of Species. Part I', *The Thomist*, XXXIII (1969): 75–149, Deely,

The impasse over chance, and the role of signs in nature and knowledge

The Conimbricenses⁶ were the first to state in so many words that all thought is in signs. The first thinker to suggest that the role of signs is no less fundamental in nature as a whole than for human thought was Charles Sanders Peirce in the early 20th century.⁷ St. Thomas in the 13th century had already pointed out that a limited role for chance events in natural generations and corruptions depended upon the view of the heavens as unchanging, and Charles Darwin⁸ in the 19th century had been quick to seize upon chance turned loose, as it were, to account for the gradual emergence over time of entirely new species of plants and animals on planet earth, a view extending to human origins no less than to the origins of every other life form.

From that time to this, evolutionary theory has remained at a kind of an impasse. On the one hand, scientific research has made it unmistakable that we live in a universe that is not now the way that it always was: the universe has progressed or developed

‘The Philosophical Dimensions of the Origin of Species. Part II’: 251–342; Deely and Raymond J. Nogar, *The Problem of Evolution: Philosophical Repercussions of Evolutionary Science* (New York, 1973); Nogar, ‘Evolution: Scientific and Philosophical Dimensions,’ in V. E. Smith (ed.), *Philosophy of Biology* (New York, 1962), pp. 23–66, Nogar, *The Wisdom of Evolution* (New York, 1963).

⁶ See Conimbricenses, 1606/7. ‘De Signis’, in *Commentarii Collegii Conimbricensis et Societatis Jesu. In Universam Dialecticam Aristotelis Stagiritae. Secunda Pars* (Lyons: Sumptibus Horatii Cardon, 1607): 4–67.

⁷ For a complete survey of philosophy’s history from the standpoint of semiotic consciousness as a postmodern development, see Deely, *Four Ages of Understanding*.

⁸ See Darwin, Charles, *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life* (London, 1859).

from a nonliving state to one which supports, certainly on earth, probably elsewhere,⁹ living things. And on earth the living things here now are not the same in kind as their ancestors. So how did the development from simple to complex, from nonliving to living, and eventually to human life, come about? That chance events, with their consequences embodied in the succeeding generations of substances, particularly living substances, are a sufficient explanation of this over-all progression we have come to call ‘evolution’ has been from Darwin’s time, and continues to be today, a doctrine that divides the intellectual community.

Now science, like good philosophy, looks to nature itself for explanations of what occurs in nature. So the question of the development from lower to higher known to occur over the passage of time’s arrow: does it admit of an accounting in natural terms, or is it simply itself a random by-product of the play of chance in natural generations and corruptions?

This is where the doctrine of signs, a doctrine deeply rooted in Thomas’s own thought,¹⁰ and first systematized in its proper possibilities by one of the Latin thinkers who devoted themselves to the development of Thomas’s thought, John Poincot,¹¹ comes into play. For the doctrine of signs, as it has developed systematically over the course of the 20th century, through a kind of cross-fertilization of Peirce’s ‘grand vision’¹² of an action of signs permeating nature with Poincot’s Thomistically derived

⁹ E.g., see <http://www.msnbc.msn.com/id/11427824/>.

¹⁰ See my analysis in Deely, J., ‘The Role of Thomas Aquinas in the Development of Semiotic Consciousness’, *Semiotica*, 152 (2004): 75–139. Also Deely, *Four Ages of Understanding*, chapter 7.

¹¹ Writing his *Tractatus de Signis* of 1632 under his religious name, *Joannes a Sancto Thoma*.

¹² See ‘The Grand Vision’, in John Deely, *New Beginnings. Early Modern Philosophy and Postmodern Thought* (Toronto, Canada, 1994), pp. 183–200.

doctrine of the role of sign-vehicles in bringing about sign-relations in the worlds of nature and culture alike (indifferently, even), suggests, for the first time since the 1859 publication of Darwin's revolutionary work, a mechanism in nature, namely, semiosis or the action peculiar to signs, that would explain an over-all directionality in the transformation of material substances such as would naturally result in the development within the universe of conditions capable of sustaining human life.

Semiosis

When Peirce observed, in 1868¹³, that 'the existence of thought now depends on what is to be hereafter; so that it has only a potential existence, dependent on the future thought of the community', he was thinking of the species-specifically human semiosis of human discourse. But the observation applies to the semiosis itself, not only to what is species-specifically human about it. For it is true of everything that exists now that its significance depends upon what is to be hereafter. Oil lay in the ground for millennia; but once the internal combustion engine came into existence, that 'meaningless' oil acquired an importance – a 'significance' – undreamed of over those earlier millennia.

The whole difference between the dyadic interactions of Secondness and the triadic relations constituting Thirdness lies in the fact that dyadicity concerns only the immediately existing interactants, whereas semiosis concerns the future – what will or could be – *along with* what is. What exists now may have no meaning at all, but under changed future conditions will have a profound importance unforeseeable apart from those conditions. When Darwin formulated his theory of natural selection, he also conceived of the role of chance entirely in the perspective of the consequences, so to speak, of brute interactions, and it is in this fashion that those who fancy themselves the

defenders of his conceptions, such as Dawkins¹⁴ or Dennett¹⁵, continue to envision the process by which the universe has advanced from nonliving to living, and from living through the plethora of plants and animals to ourselves as ‘rational’ (or, as we now further say, ‘semiotic’) animals.

But once the reality of semiosis has come explicitly to be taken account of by human understanding, all of this – the landscape of developmental processes in nature – changes rather radically. For ‘chance’ (‘tyche’) is no longer a matter of the byproducts of pure Secondness (physical interactions as such of material substances), or of what enters into Secondness ‘from below’, as it were. Chance itself becomes assimilated in its outcomes to the various processes of semiosis whereby the meaning of what exists now is influenced by what the ‘now’ has made possible that was not possible in earlier ‘nows’. That influence of the future which determines the present relevance of whatever is ‘past’, according to an ever-changing boundary between ‘real’ and ‘unreal’ (exactly as in human politics, for instance, but much less constant and clear) is the essence of semiosis, the distinguishing feature which separates Thirdness as an action of signs from Firstness as ‘pure possibility’ and Secondness as possibility concretely determined by physical interactions here and now.

Physical interactions ‘here and now’ set up conditions whose fulfillment depends not merely on what is now, but finally on what is yet to come: and when that future arrangement arrives through a later Secondness, what was earlier merely *possible* becomes now, under the new conditions, fully *actual*. It is as if one set of dyadic interactions brings about a state of affairs which ‘lies in wait’ to flare into life as new

¹³ See Charles Sanders Peirce, CP (*Collected Papers*), 5.316.

¹⁴ See Richard Dawkins, *The Selfish Gene*, 1st edn (Oxford, 1976) and 3rd edn, rev. (Oxford, 2006).

¹⁵ See Daniel Dennet, *Darwin’s Dangerous Idea: Evolution and the Meanings of Life* (New York, 1995).

circumstances (not yet existent or in any way, perhaps, envisaged, but nonetheless latent) make possible the realization of a given significance. The present state of affairs as a prospective semiosis requires an interpretant: that interpretant is not a relation but some thing or aspect thereof, just as a sign–vehicle is not a relation but some thing or aspect thereof. But given the co–existence of sign–vehicle and interpretant, the significate respecting which the sign–vehicle stands in for the interpretant will also come to be, prospectively and virtually, or actually (objectively, even, once awareness becomes involved¹⁶), as the circumstances allow.

Thus the weakness of traditional Darwinism in relying on chance lies not in seeing the present as product of past interactions, but rather in not seeing that the present product of past interactions has a significance which is *further determined* by what is yet to be, what is yet to come.¹⁷ It is not the influence of the past, however, that determines the significance of the present: it is the future that determines the significance of the present. What is now depends *both* on what has been (the original emphasis of Darwinism) *and* on what is to be hereafter: the former from the standpoint of physical interactions as a manifestation of ‘brute secondness’; the latter from the standpoint of the manner in which intersubjective relations of Secondness provide the

¹⁶ On the systematic use of object distinguished from thing by the involvement of apprehensive relations, see the analysis of Deely, *Purely Objective Reality* (Toronto, Canada, 2007) [in preparation].

¹⁷ It is worth noting in this regard that Aquinas had already pointed out the reasons why, in the absence of an unchanging environment for earthly generations (such as the celestial spheres were commonly thought to provide in Aquinas’ day), those generations would *inevitably and necessarily* tend in the direction of bringing about semiotic animals: see Aquinas 1259/65: *SCG*, l. 3, cap. 22; general discussion in Deely, ‘The Philosophical Dimensions of the Origin of Species, Part I’ and ‘The Philosophical Dimensions of the Origin of Species, Part II’. See further the Appendix ‘Thomistic Teaching concerning the Rational Soul’ with the present essay.

support for and are incorporated into *further* relations of Thirdness which, through the present, reshape the importance or ‘meaning’ of the past according to new possibilities existent *now* but not *then*. Thus an orientation to the future is always at issue wherever an action of signs, a semiosis, supervenes upon and inevitably elevates the relations and processes of secondness, by giving them a dimension of directionality toward more complex organizations which result inevitably, when circumstances permit here or there, in the emergence of semiotic animals.

So the universe moves from an inorganic multiplicity in which life is not even possible to an inorganic multiplicity *capable* of sustaining life, if only life existed; to an inorganic multiplicity where living organisms make their appearance *and are sustained*, but which, in being sustained, also bring about further conditions *which would not otherwise have been brought about*, conditions which require yet further changes in the conditions of life rendering possible yet further lifeforms, yes, but ones which come into being often enough at the expense of the original forms which made the later forms possible in the first place.

And so we see the universe develop from relatively simple and inorganic forms to relatively complex organic forms, ‘higher’ by any measure, but dependent upon circumstances always changing *not only* as a consequence of physical interactions but also *and especially* by the significance the effects of such interactions acquire as Thirdness intervenes through prospective and virtual sign-vehicles being made into actual sign-vehicles as new physical realities emerge not simply as ‘chance’ occurrences but as interpretants respecting other physical realities which now signify outcomes yet to be, yet outcomes which reshape the relevance of past to present according to their own prospective possibilities.

Just as a mental representation gives rise to a significante to or for the one whose concept it is, so some characteristic or quality of a physical individual can acquire a relation of Thirdness respecting some other physical individual as interpretant thereof.¹⁸ The difference is that a mental representation cannot exist *except* as giving rise to a relation to a signified, regardless of any further status of the signified than the objective one of *being signified*, whereas a physical quality cannot provenate such a relation *except when* the signified exists physically, and this whether or not, as significate (as ‘being signified’), it also exists in some measure objectively (which it cannot actually – absent some apprehension – even though it does so exist virtually prior to some apprehension).

Whence the proper effect of semiosis, Thirdness, appears in the universe prior to life, but only intermittently, as it were, ‘flaring up’ momentarily here and there; and the inorganic universe passes, through these flare-ups, from one state to another – for example, from the state wherein life neither exists nor could exist to a state wherein life could exist but does not exist; to a state wherein life both could exist and does exist, but not human life; to a state where human life could exist (has become virtual, we might say) but does not exist; to a state where human life is not only imminently possible but actual; and so on. Like a match, or rather a series of matches, struck to light a fire which goes out before the fire catches on, so physiosemosis proceeds through a series of momentary Thirdnesses which relapse into Secondness, yet which do so by changing the conditions of Firstness as they actually prevail, making possible in turn new conditions which the next flaring of Thirdness will turn to future advantage, in a long

¹⁸ This is a point as subtle as it is important. See Peirce’s treatment in his *Tractatus de Signis* 1632: Book I, Question 3, 123/13–25, 126/23–127/6, 128/9–19.

series of changes which will move the universe ever closer to life and thence to human life.

From this point of view, physiosemosis presents itself as the most fundamental but in itself occasional and intermittent form of the action by which signs perfuse the physical universe. It is the match struck to light a fire, but which itself goes out more than once before the lighting, so to say, succeeds in establishing semiosis as a *permanent* process actually occurring, as seems, according to Sebeok's well-known arguments,¹⁹ wherever there is life in the universe. By the time semiosis has brought about the successive levels required to introduce and sustain anthroposemosis and 'turns back on itself' in the metasemosis we call *semiotics*, the whole of reality reveals itself as perfused with signs both in order to have become as it is and to be known for what it is.

When does semiosis pass from an intermittent occurrence in a realm dominated by Secondness to become a veritable conflagration, consuming all in its spreading flames? Well, the highest point no doubt occurs when semiosis becomes capable of knowing itself, which presupposes the advent of human beings as the only animals which, as Maritain was the first to point out,²⁰ not only make use of signs (as do necessarily all

¹⁹ Encapsulated in Thomas A Sebeok, *Global Semiotics* (Bloomington, IN, 2001), but extending over the whole of his work from 1963 onwards.

²⁰ 'Language and the Theory of Sign', in John Deely, Brooke Williams and Felicia E. Kruse (eds), *Frontiers in Semiotics* (Bloomington: Indiana University Press, 1986), p. 53: 'Animals make use of signs without perceiving the relation of signification'. Maritain's thesis that the human being is the only animal which knows that there are signs has been embodied more recently in the proposal of *semiotic animal* as the properly postmodern definition of human being to supersede the modern notion of *res cogitans*: Deely, 'The semiotic animal' (humanist version), in <http://e-aquinas.net/pdf/deely.pdf>, Deely, 'Defining the Semiotic Animal: A postmodern definition of human being superseding the modern definition 'Res

animals), but are also capable of *knowing that there are signs* in the strict sense, that is to say, triadic relations.²¹ There is still Secondness, of course, in the human world as throughout the universe. And the same holds true for Firstness, no more separable from the physical interactions of things than is the ‘primary matter’ of Aristotle separable from the forms of the substances capable of becoming other than what they are at any given time.²²

But the flames of semiosis no doubt begin to ‘go global’ with the advent of life, flames which become more intense and dominant in each succeeding wave of evolution transformative of the biosphere, from generically living to the life of animals, and thence by a further semiotic evolution to the life of specifically semiotic animals – when

Cogitans’, *American Catholic Philosophical Quarterly*, 79 (2005): 461–481; Deely, John, Petrilli, Susan and Ponzio, Augusto (eds), *The Semiotic Animal* (Ottawa, Canada, 2005). Just as the modern notion of human being separated the human being from the rest of nature and even from our own bodies, so this postmodern notion restores the animality of the rational animal and does so precisely in the context of nature as a developmental whole.

²¹ Here the distinction common to Poinsett and Peirce (see under ‘sign’ in the index to Deely, *Four Ages of Understanding*, p. 993, the subentry ‘strict sense ...’) between sign in the strict sense as ontological relation triadic in character and sign in the common or loose sense of sign–vehicle (or ‘representamen’) is crucial. For expanded treatment, see Deely, ‘A Sign is What?’, *Sign Systems Studies*, 29 (2002): 705–743.

²² See Aquinas 1256/59: *De ver.*, q. 5, a. 3 ad 3; 1266: *ST I*, q. 7, a. 2, ad 3; 1268/69: *In Phys.*, liber 1, lectio 15; 1268/72: *In VIII Metaph.*, lect. 1. These texts reveal the superfluosity of Peirce’s view in *Reasoning and the Logic of Things. The Cambridge Conferences Lectures of 1898*, ed. Kenneth Laine Ketner (Cambridge, MA, 1992), (CP 6.201): ‘that whatever is First is *ipso facto* sentient’ (which would explain his occasional desperate recourse to panpsychism in order to assert Thirdness in nature at large: discussion in Deely, ‘The Grand Vision’, pp. 183–200, and also in Vincent Colapietro and Thomas Olszewsky (eds), *Peirce’s Doctrine of Signs* (Berlin, 1996), pp. 45–67).

the question of *responsibility* or *semioethics* arises, with demands that cannot be evaded if the species is to survive.

Ethics today as semioethics

If semiotics is simply the name for the knowledge that we develop by studying the action distinctive of signs, or semiosis, and semiosis turns out to be a key to the understanding not simply of the directionality the physical universe exhibits in the process of evolution over–all but also of the place of the human being within the natural world, then the extension of our speculative understanding of nature in practical terms could well be termed – as Petrilli²³ and Petrilli and Ponzio²⁴ originally suggested – ‘semioethics’.

Aquinas well noted that practical thought, to be effective, depends upon and must take its measure from speculative understanding; whence, as speculative understanding grows, *so does the province of practical thought* as able to extend a human impact upon the surrounding environment of physical being. He did not envision global warming, but he did envision the reason that human beings can in principle do something about it. In this Aquinas anticipated Francis Bacon’s idea for a *Novum Organum*, such as science has placed in our hands. But Aquinas differed not a whit from Aristotle in conceiving this distinction between speculative and practical in primarily objective terms. The discovery that objects presuppose signs still lay three–hundred–fifty years ahead, in the

²³ See Petrilli, Susan, ‘Responsibility of Power and the Power of Responsibility: From the ‘Semiotic’ to the ‘Semioethic’ Animal’, in Gloria Withalm and Josef Wallmannsberger (eds), *Macht der Zeichen, Zeichen der Macht/Signs of Power, Power of Signs* (Festschrift für Jeff Bernard; =Trans–Studien zur Veraenderung der Welt 3) (Wien, 2004), pp. 103–119.

²⁴ See Susan Petrilli and Augusto Ponzio, *Semioetica* (Rome, 2003).

Tractatus de Signis of John Poinset; and, still another three–hundred–fifty or so years later, the further discovery that *physis* involves *semiosis* is only beginning to dawn.

It remains that the recognition of a distinctive sphere of practical thought, that is to say, the realm of what human beings by their beliefs and actions can do something about – can make otherwise than they found it initially – was the original province and meaning of ‘ethics’ and ‘ethical knowledge’ within the sphere of ‘practical philosophy’. Yet no less important remains the recognition that practical knowledge is derivative from and dependent for its effective exercise upon speculative knowledge of the way things are according to their intrinsic physical constitution as interacting individuals. ‘The speculative understanding or intellect’, as Aquinas put it,²⁵ ‘becomes practical by extension.’ Animals other than humans know only objects and objects which are sign–vehicles, and care not a whit for any difference between objects and things, because they have no way of making such a difference into a factor of awareness in their dealings with the world. Human animals become aware of a difference between objects which are and are not in any given context sign–vehicles.

This uniquely human awareness of the way things are, combined with the way the substances of nature form ecosystems that are interdependent, creates a unique responsibility for human beings as semiotic animals, a responsibility respecting which all other animals, unable to know that there are signs even while necessarily using signs, remain blithely free.²⁶

²⁵ Aquinas 1266: *ST* I, q. 79, a. 11 *sed contra*: ‘... intellectus speculativus per extensionem fit practicus. una autem potentia non mutatur in aliam. ergo intellectus speculativus et practicus non sunt diversae potentiae.’

²⁶ With human beings, at the apex of the evolution of material substance, a new kind of animal is born, the semiotic animal, as the human animals become aware not only of the difference between objects and

Other animals seek their well-being without an awareness of being as such, and hence without the possibility of conceiving a concern for the fate of the environmental elements which feed into their desires. But semiotic animals eventually come to realize that if the surroundings are made use of without taking into consideration the nature of the things used, the whole ecosystem can come into danger, and even be brought to ruin. ‘Global warming’ has become today a kind of code-expression for this dawning realization of the responsibility of human animals to turn their awareness of being to a responsible stewardship of natural resources, both organic and inorganic, in dealings with the environment. For not only the human good but the good of Gaia as a whole depends upon the assumption of such stewardship before it is too late for all of us.

The natural realism of animals concerns exclusively the world in relation to the animal. Semiotic realism, by contrast (kin to the realism of ancient Greek and medieval

things, but more profoundly of the difference between sign-vehicles and signs in their proper being as triadic relations presupposed to the world of objects and essential to the well-being of animals within a physical environment which, at any given time (and for any given species of animal), is only partially and aspectually objectified, even in essential matters bearing on the continuance in being of the species. As the rational animal assumed its burden of practical awareness in terms of recognizing the need for that body of thought traditionally called ‘ethics’, so the rational animal toward the end of modern times woke up to the need to become more *reasonable* in contrast to abstract ‘rationality’ (Petrilli, ‘Responsibility of Power and the Power of Responsibility’, pp. 103–119, Petrilli, ‘From the Semiotic Animal to the Semioethic Animal. The Humanism of Otherness and Responsibility’, in John Deely, Susan Petrilli and Augusto Ponzio (eds), *The Semiotic Animal* (Ottawa, Canada, 2005), pp. 67–86. The way was thus prepared for the semiotic animal, and for semioethics as naming the extension of semiotic awareness to that unfixed boundary of intersection between nature and culture where the semiotic animal can, by taking account of the reasons of things, make a difference for the better, a difference upon which, it becomes increasingly clear, not only the semiotic animal as one among the biological lifeforms but the biosphere itself and the whole of Gaia may ultimately depend for continuance.

Latin philosophy, but with a heightened awareness of the role of social construction in the everyday experience of ‘reality’) begins with the realization that the world is more than its relation to an animal, even the human animal. And ethical responsibility cannot arise except as subordinate to the realization of being and of the ‘many ways in which being can be said’,²⁷ with the consequent *further* realization that animal life necessarily socially modifies nature – more and more extensively, in the case of society as human culture. But how this modification should be handled cannot even be a question before we *first* realize that things have their own intrinsic constitutions and interdependencies, constitutions and interdependencies which science must come to know before and as part of the question of how to manage the ecosystem, whether as a whole or in any of its parts. Whereas ethics in the past could rest almost exclusively with cœnoscopic considerations,²⁸ the context of nature and its laws as understood today requires the would-be ethician to scan a broader horizon, to bring into the account implications for human life that the ideoscopic investigations of science have brought to the fore.

Thus the ‘semioethic animal’ is derivative from, not a substitute for, the ‘semiotic animal’, and based precisely on our understanding today of ‘nature for man’, as Messner put it. For only by knowing signs in their different paths, leading here into the depths of nature, there into the depths of culture, and revealing the interdependency of both, does an awareness of responsibility dawn. So we see that ‘nature for man’ today, however profoundly different is our understanding of an evolutionary in contrast with a

²⁷ Referring to Aristotle c.348/7BC: *Metaphysics*, Book 4, Chap. 2, and c.330BC: *Metaphysics*, Book 7, Chap. 4.

²⁸ See the explanation of the cœnoscopic/ideoscopic distinction in note 4 above.

cyclical and unchanging universe,²⁹ remains profoundly aligned with the thesis of Thomas Aquinas³⁰ ‘that divine law orders humankind according to reason with respect to corporeal and sensible things’, with the consequence that³¹ ‘we do not offend God except by acting counter to the human good’.³²

Appendix:

THOMISTIC TEACHING CONCERNING THE RATIONAL SOUL

Everything in understanding the position of the human species in the world of nature as modern science has revealed it to us turns on the point that the intellectual (the human) soul is *still a soul*, that is to say, the form *of a body*, which is what St. Thomas taught. The human soul is not just a substantial form correlate with matter as the potentiality for yet other substantial forms, but the substantial form correlate with a *living* body or, rather, the substantial form which makes a human body *be* a living body (insofar as ‘forma dat esse’). According to Thomas, the human soul does not come from the potentiality of matter, as presumably do all other souls; yet neither does it come to be apart from matter, even though at bodily death it will continue to be apart from the matter in correlation with which it begins to be. The singularity of this teaching has led

²⁹ Precisely what a philosophy of an earth governed by unchanging spheres ruled out, semiotics provides (Petrilli, ‘Responsibility of Power and the Power of Responsibility’, p. 9): ‘the critical distancing necessary for an interpretation of contemporaneity that is not imprisoned within the limits of contemporaneity itself.’

³⁰ Aquinas 1259/65: *Summa Contra Gentiles*, ch. 121.

³¹ Aquinas 1259/65: *Summa Contra Gentiles*, ch. 122 n. 2.

³² ‘Non enim Deus a nobis offenditur nisi ex eo, quod contra nostrum bonum agimus, ut dictum est’—scil., in caput 121).

to considerable misunderstandings, and even dualistic interpretations, which the philosophy of St. Thomas does not warrant.

The doctrine is that the intellectual soul as such cannot be *educed* from the potentiality of matter, because it exhibits an actuality in intellection which does not reduce to the bodily organs by which life is corporeally maintained. The human soul must be immediately created by God. *But this means no more than that its existence depends directly only on God, which is true of all existence.* As a soul, as the form of a living body, the human soul will not receive existence *until and unless* the body of which it is the form will be brought about in the material universe *by the standard play of efficient causes upon material by which any body is brought into being.*

Here is involved nothing of the supernatural. God ‘infuses and creates the rational soul at the moment the matter is disposed’, Poinset notes; yet this happens, albeit extrinsically, ‘according to the natural capacity and requirements in the particular circumstances’ of the matter. For, as Poinset had explained earlier: ‘Something can be due to some nature even though it does not arise from the proper principles of that nature, but from without; and there would occur a violence to the nature in question were it to be denied such a form or concurrence: if it is true indeed that there can be violence even with respect to a passive principle, as we have explained in our discussion of Physics. And a rational soul is due to a body organized and disposed, *to such an extent that a miracle would be required for a rational soul not to be infused in that body*; and nevertheless such a soul does not arise from the body’s proper material principles, but comes from without’. Whence ‘even though the soul is created by God

alone and infused into the animal body, yet that creation is nevertheless not at all supernatural.³³

Yet there is this singularity to the case, according to Thomistic thought: once called into being by those material circumstances of nature, this form, the intellectual soul, in contrast to every other substantial form of a body, inorganic or organic (such as vegetative and sensitive souls), will post-exist the material circumstances of its creation. *Forma dat esse* ('form determines existence'): so when the *esse* is more than the *esse* simply proportioned to that of a living body, the *forma* through which that *esse* comes will continue to hold and exercise its *esse* when the body to which it gave life can no longer sustain that life.

It is not a question of a twofold act, one drawn from the potency of matter and a second attached to that first actuality as the captain of the ship. No. A soul abstractly is the form of *a* living body. But concretely, a soul is the form of *this* living body, this one and no other, this particular one, this individual one. No soul, therefore, pre-exists or could pre-exist the body of which it is the form. The soul comes into existence as the form of *this* body, and, if it be an intellectual soul, when that body is destroyed or 'corrupted', it *continues* to exist not simply in its own right independent of that body but

³³ Deus 'infundit et creat animam rationalem quando materia est disposita', Poinset notes ('Tractatus de Angelis' (1643): disp. 41, art. 3, 596 §57), yet this happens 'juxta naturalem capacitatem' materiae 'et exigentiam ejus', albeit extrinsically. For, as he had explained earlier (ibid., 583 §14, italics added): 'Itaque potest esse aliquid debitum alicui naturae, et tamen non oriri ex principiis propriis, sed ab extra; fietque illi violentia, si negetur talis forma vel concursus: si quidem etiam respectu passivi principii potest violentia dari, ut diximus in Physica [quaest. 9, art. 4, 191–4]. Et anima rationalis debetur corpori organizato et disposito, *ita ut esset miraculum illi non infundi*; et tamen non oritur ex propriis principiis, sed ab extra venit.' Whence (ibid. 600 §71): 'etiam anima creatur a solo Deo et infunditur corpori, nec tamen supernaturalis est ejus creatio.'

incompletely as a *part* of what was once a whole, namely, the living organism of which it was the principle of life, and continues to be incompletely after having lost its body to yet other actualities which its corporeal potentiality contained as defining its mortality. Poinso³⁴ explains this clearly: ‘A form ordered to matter pertains to the genus of substance as an *incomplete* substance. And although substance is said to be a ‘being in itself’, yet an incomplete and partial substance is not purely a ‘being in itself’ completely and determinatively, in the way that a complete substance is said to be ‘in itself’; a form incomplete as a substance, even though it is a substantial part, bespeaks an order both to matter as another incomplete part and to the whole comprising the matter–form union constituting a complete substance. Whence the human or rational soul, which is an incomplete substance, by its own substantial nature is not entirely a being in itself, but a being co–adapted to and co–ordinated with another, *not as a categorial relation, but as a [subjective] part of a whole subject of existence*: and therefore such a soul can be individuated through the order to the individual body of which it is the substantial form; as a result when the matter is multiplied so also is the rational soul, insofar as the soul is the form of that matter: the whole of which does not apply to the case of the Angel.’³⁵

³⁴ Poinso: ‘Tractatus de Angelis’ (1643): disp. 39, art. 3, 475 §39.

³⁵ ‘Ordo formae ad materiam non est relatio praedicamentalis, sed transcendentalis, pertinetque ad ipsum genus substantiae incompletae; et licet substantia dicatur ad se, tamen substantia incompleta et partialis non est pure ad se, complete et determinative, sicut substantia completa, sed dicit ordinem ad aliam partem et ad totum, etiamsi substantialis pars sit. Unde anima, quae est substantia incompleta, ipsa sua natura substantiali non est omnino ad se, sed ad alterum cui coaptatur et coordinatur, *non ut relatio praedicamentalis, sed ut pars*: et ideo potest individuari per ordinem ad corpus, cuius est forma substantialis; et consequenter multiplicata materia multiplicabitur etiam anima, in quantum forma illius est: quod totum non currit in Angelo.’ ‘The order of form to matter is not a predicamental relation but a

The deceased human being was an intellectual (or ‘rational’) animal, *but still an animal*, that is to say, a living body aware of something of its surroundings and capable of learning from that awareness, growing cognitively up to the moment of death, ‘corruption’, at which moment it lost not existence, like all other animals, but only the *capacity further to learn* through sensation. Dependent on the body for experience, dependent upon experience for developing ideas, the animal in question, the human animal, was not so much intellectual, capable of insight into being, as *rational*, dependent upon a sequence of experiences with other bodies to see what such insight contained, what the content of an initial insight implied.³⁶

Bibliography

- Adler, Mortimer J., *Problems for Thomists. The Problem of Species* (New York: Shhed & Ward, 1940).³⁷
- , ‘Solution of the Problem of Species’, *The Thomist*, III (1941): 279–379.
- , ‘The Hierarchy of Essences’, *The Review of Metaphysics*, VI (1952): 3–30.

transcendental relation’, a distinction Poinsot explains at length in the Second Preamble, Article 2, of his 1632 *Tractatus de Signis*, esp. 89/21–90/40 (predicamental or ‘categorical’ relation is the category of relation as a suprasubjective and intersubjective mode of being irreducible in its proper actuality to the subjectivity of substance with its inherent accidents; transcendental relation is the subjectivity itself of substance with inherent accidents so far as these bespeak a connection with their surroundings, whether past or present: as the bone of a dinosaur in its subjectivity is not a relation but a part of a substance that the dinosaur was, hence the bone is a substance bearing the traces which prove it once belonged to a dinosaur, whether anyone recognizes those traces or not).

³⁶See further Aquinas c.1266: *ST I*, q. 89, ‘De cognitione animae separatae’, in octo articulos divisa.

³⁷ Definitive revision of the articles of the same name that appeared in *The Thomist*, vol. 1, Nos. 1, 2, 3; vol. 2, Nos. 1 and 2.

- , ‘The Philosophers Give All the Answers and Establish None’, in Mortimer J. Adler, *The Difference of Man and the Difference It Makes* (New York: Holt, Rinehart and Winston, 1967), pp. 52–65.
- Aquinas, Thomas, i. 1252–1273. *S. Thomae Aquinatis Opera Omnia ut sunt in indice thomistico*, ed. Roberto Busa (Stuttgart–Bad Cannstatt: Frommann–Holzboog, 1980)³⁸.
- , c. 1256/59. *Quaestiones Disputatae de Veritate*, in Busa ed. vol. 3 *Quaestiones Disputatae, Quaestiones Quodlibetales, Opuscula*, 1–186.
- , i. 1259/65. *Summa Contra Gentiles*, in Busa ed. vol. 2 *Summa contra Gentiles, Autographi Deleta, Summa Theologiae*, 1–152.
- , c.1266/73. *Summa theologiae*, in Busa ed. vol. 2 *Summa contra Gentiles, Autographi Deleta, Summa Theologiae*, 184–926.
- , c.1268/72. *In duodecim libros metaphysicorum Aristotelis expositio*, in Busa ed. vol. 4 *Commentaria in Aristotelem et alios*, 390–507.
- , c.1268/69. *Sententia super Physicam*, in Busa ed. vol. 4 *Commentaria in Aristotelem et alios*, 59–143.
- , c.1272/3. *In libros de coelo et mundo*, in Busa ed. vol. 4 *Commentaria in Aristotelem et alios*, 1–49.
- Aristotle³⁹, c.348/7BC. *Metaphysics*, Books I–IV, V(?), XIII chs. 9–10, XIV (further under c.330BC).

³⁸ In septem volumina: 1. *In quattuor libros Sententiarum*; 2. *Summa contra Gentiles, Autographi Deleta, Summa Theologiae*; 3. *Quaestiones Disputatae, Quaestiones Quodlibetales, Opuscula*; 4. *Commentaria in Aristotelem et alios*; 5. *Commentaria in Scripturas*; 6. *Reportationes, Opuscula dubiae authenticitatis*; 7. *Aliorum Medii Aevi Auctorum Scripta* 61.

——, c.330BC. *Metaphysics*, Books VI–X, XI(?), XII, XIII chs. 1–9; Oxford vol. VIII, 980a1–1093b29 (trans. Ross; RM 681–926 complete).

Ashley, Benedict, ‘Change and Process’, in John N. Deely and Raymond J. Nogar (eds), *The Problem of Evolution* (Indianapolis, IN: Hackett, 1973), pp. 265–294.

Colapietro, Vincent and Olshewsky, Thomas (eds), *Peirce’s Doctrine of Signs* (Berlin: Mouton de Gruyter, 1996).

Conimbricenses, 1606/7. ‘De Signis’, in *Commentarii Collegii Conimbricensis et Societatis Jesu. In Universam Dialecticam Aristotelis Stagiritae. Secunda Pars* (Lyons: Sumptibus Horatii Cardon, 1607): 4–67.⁴⁰

Darwin, Charles, *On the Origin of Species by Means of Natural Selection, or the Preservation of Favoured Races in the Struggle for Life* (London: John Murray, Albemarle Street; Printed by W. Clowes and Sons, Stamford Street, and Charing Cross, 1859).

Dawkins, Richard, *The Selfish Gene*, 1st edn (Oxford: Oxford University Press, 1976).

——, *The Selfish Gene*, 3rd edn, rev. (Oxford: Oxford University Press, 2006).

Deely, John, ‘Evolution: Concept and Content. Part I’, *Listening*, 0 (1965): 27–50.

——, ‘Evolution: Concept and Content. Part II’, *Listening*, 1 (1966): 35–66.

³⁹ Citations are from the 12–volume Oxford edition prepared under W. D. Ross Ed. 1928–1952 (q.v.); for the convenience of the reader, after the abbreviation RM, we also give the pages where applicable to the more readily available one–volume edition of *The Basic Works of Aristotle* prepared by Richard McKeon using the Oxford translations (New York: Basic Books, 1941). Chronology for the works is based on Gauthier 1970.

⁴⁰ Being ‘De Signis’ chapter 1 of their commentary on Aristotle’s *De Interpretatione*. An earlier edition minus the Greek text of Aristotle was published at Coimbra itself in 1606. See John P. Doyle, trans. and ed., *The Conimbricenses. Some Questions on Signs* (Milwaukee, WI: Marquette University Press, 2001), for English translation in a critical edition.

- , ‘The Emergence of Man: An Inquiry into the Operation of Natural Selection in the Making of Man’, *The New Scholasticism*, XL (1966): 141–176
- , ‘The Philosophical Dimensions of the Origin of Species. Part I’, *The Thomist*, XXXIII (1969): 75–149.
- , ‘The Philosophical Dimensions of the Origin of Species. Part II’, *The Thomist*, XXXIII (1969): 251–342.
- , ‘The Grand Vision’, in John Deely, *New Beginnings. Early Modern Philosophy and Postmodern Thought* (Toronto, Canada: University of Toronto Press, 1994), pp. 183–200.⁴¹
- , *Four Ages of Understanding. The first postmodern history of philosophy from ancient times to the turn of the 21st century* (Toronto, Canada: University of Toronto Press, 2001).
- , ‘A Sign is What?’, *Sign Systems Studies*, 29 (2002): 705–743.⁴²
- , ‘The semiotic animal’ (humanist version), <http://e-aquinas.net/pdf/deely.pdf>.⁴³

⁴¹ Also in Colapietro, Vincent and Olshewsky, Thomas (eds), *Peirce’s Doctrine of Signs* (Berlin: Mouton de Gruyter, 1996), pp. 45–67, which is one of the several volumes of the Proceedings of the Harvard Peirce Congress. It was originally presented on September 8 at the September 5–10 1989, Charles Sanders Peirce Sesquicentennial International Congress at Harvard University. First published in the *Transactions of the Charles S. Peirce Society*, XXX (1994): 371–400, after the submission of corrected proofs the journal repaged the whole and introduced such extreme errors as to make the text unreadable at some points. This is the corrected version.

⁴² Presidential Address to the Semiotic Society of America’s 26th Annual Meeting held at Victoria College of the University of Toronto, Canada, October 19, 2001. Reprinted as ‘Dialogue between a ‘Semiotist’ and a ‘Realist’ in John Deely, *The Impact on Philosophy of Semiotics. The Quasi-Error of the External World, with a Dialogue between a ‘Semiotist’ and a ‘Realist’* (South Bend, IN: St. Augustine’s Press, 2003), pp. 157–208.

- , *The Impact on Philosophy of Semiotics. The Quasi–Error of the External World, with a Dialogue between a ‘Semiotist’ and a ‘Realist’* (South Bend, IN: St. Augustine’s Press, 2003).
- , ‘The Role of Thomas Aquinas in the Development of Semiotic Consciousness’, *Semiotica*, 152 (2004): 75–139.
- , ‘Why the Semiotic Animal Needs to Develop a Semioethics’, in John Deely, Susan Petrilli and Augusto Ponzio (eds), *The Semiotic Animal* (Ottawa, Canada: Legas Publishing, 2005), pp. 207–221.⁴⁴
- , ‘Defining the Semiotic Animal: A postmodern definition of human being superseding the modern definition ‘Res Cogitans’,’ *American Catholic Philosophical Quarterly*, 79 (2005): 461–481.
- , *Purely Objective Reality* (Toronto, Canada: University of Toronto Press, 2007) [in preparation].
- Deely, John N. and Nogar, Raymond J., *The Problem of Evolution: Philosophical Repercussions of Evolutionary Science* (New York: Appleton–Century–Crofts, 1973).
- Deely, John, Williams, Brooke and Kruse Felicia E. (eds), *Frontiers in Semiotics* (Bloomington: Indiana University Press, 1986).

⁴³ Presented in the Monday, 22 September, 2003 ‘Metaphysical Session’, of the International Congress ‘Christian Humanism in the Third Millennium’, Rome, 21–25 September 2003; web version posted on Congress site.

⁴⁴ Presented Sunday, July 11, as part of Round Table 008 ‘Issues in Socio–Semiotics’ of the 8th IASS Congress, Lyon, France, 7–12 July 2004, at Université Lumière Lyon 2, sponsored by the International Rossi–Landi Network (FRIN).

Deely, John, Petrilli, Susan and Ponzio, Augusto (eds), *The Semiotic Animal* (Ottawa, Canada: Legas Publishing, 2005).

Dennet, Daniel, *Darwin's Dangerous Idea: Evolution and the Meanings of Life* (New York: Simon & Schuster, 1995).

Doyle, John P., trans. and ed., *The Conimbricenses. Some Questions on Signs* (Milwaukee, WI: Marquette University Press, 2001).⁴⁵

Gauthier, René A., 'Introduction', in *L'Éthique à Nicomaque*, ed. René A. Gauthier and Jean Y. Jolif, 2nd edn (Paris: Béatrice–Nauwelaerts, 1970).⁴⁶

Maritain, Jacques, 'Sign and Symbol', trans. Mary Morris, *Journal of the Warburg Institute*, I/1–11 (1937–1938).

——, 'Signe et Symbole', *Revue Thomiste*, XLIV (1938): 299–330.

——, 'Sign and Symbol', trans. H. L. Binsse, in Jacques Maritain, *Redeeming the Time* (London: Geoffrey Bles, 1943),⁴⁷ pp. 191–224 [text] and 268–276 [Latin notes].

——, 'Le Langage et la Theorie du Signe', in Jacques Maritain, *Quatre Essais sur l'Esprit dans sa Condition Charnelle*, new rev. ed (Paris: Alsatia, 1956), pp. 113–124.⁴⁸

⁴⁵ Bilingual critical edition of *Conimbricenses* 1607, q.v.

⁴⁶ Being Tome I, vol. 1 ('Première Partie'), of *L'Éthique à Nicomaque*, traduction et commentaire par René Antoine Gauthier et Jean Yves Jolif (2nd edn avec une Introduction nouvelle par Gauthier; Paris: Béatrice–Nauwelaerts, 1970) [2 tomes in 4 volumes (Introduction, Traduction, Commentaire livres I–V, Commentaire livres VI–X)].

⁴⁷ English translation of Maritain, 'Signe et Symbole', *Revue Thomiste*, XLIV (1938): 299–330, q.v., but with footnotes separated from the text proper at the end of the volume.

⁴⁸ Annexe au Chapitre II. This Chapitre II is the text of Maritain, 'Signe et Symbole', *Revue Thomiste*, XLIV (1938): 299–330.

——, ‘Language and the Theory of Sign’, in John Deely, Brooke Williams and Felicia E. Kruse (eds), *Frontiers in Semiotics* (Bloomington: Indiana University Press, 1986): 49–60.⁴⁹

Messner, Johannes, *Social Ethics: Natural Law in the Western World*, trans. J. J. Doherty, rev. ed (St. Louis: Herder, 1965).

Nogar, Raymond J., ‘Evolution: Scientific and Philosophical Dimensions,’ in V. E. Smith (ed.), *Philosophy of Biology* (New York: St. John’s University Press, 1962), pp. 23–66.

——, *The Wisdom of Evolution* (New York: Doubleday, 1963).

Peirce, Charles Sanders, ‘Some Consequence of Four Incapacities’, *Journal of Speculative Philosophy*, 2 (1868): 140–157.⁵⁰

⁴⁹ Reprint of Maritain, ‘Language and the Theory of Sign’, in Ruth Nanda Anshen (ed.), *Language: An Enquiry into Its Meaning and Function* (New York: Harper and Brothers, 1957), pp. 86–101. Text of Maritain, ‘Le Langage et la Theorie du Signe’, in Jacques Maritain, *Quatre Essais sur l’Esprit dans sa Condition Charnelle* (Paris: Alsatia, nouvelle edition revue et augmentee, 1956), pp. 113–124, but with several paragraphs added near the beginning to make the essay self-contained when published apart from the 1938 main essay text. These added paragraphs summarize the section ‘The Theory of the Sign’ of ‘Sign and Symbol’, in Jacques Maritain, *Redeeming the Time* (London: Geoffrey Bles, 1943), pp. 191–195, to which the extensive Latin notes drawn from Poinso’s 1632 treatise on signs are appended. The 1957 English text is reprinted with the full references to John Poinso, *Tractatus de Signis* restored, and with some glosses added from the 1943 English trans. of Jacques Maritain, ‘Signe et Symbole’, *Revue Thomiste*, XLIV (1938): 299–330 in John Deely, Brooke Williams and Felicia E. Kruse (eds), *Frontiers in Semiotics* (Bloomington: Indiana University Press, 1986): 49–60. My citation of Maritain, ‘Language and the Theory of Sign’ has page references keyed to this 1986 reprint.

⁵⁰ Reprinted in CP (*Collected Papers*) 5.264–317.

——, *Reasoning and the Logic of Things. The Cambridge Conferences Lectures of 1898*, ed. Kenneth Laine Ketner (Cambridge, MA: Harvard University Press, 1992).⁵¹

Petrilli, Susan, 'Responsibility of Power and the Power of Responsibility: From the 'Semiotic' to the 'Semioethic' Animal', in Gloria Withalm and Josef Wallmannsberger (eds), *Macht der Zeichen, Zeichen der Macht/Signs of Power, Power of Signs* (Festschrift für Jeff Bernard; =Trans–Studien zur Veraenderung der Welt 3) (Wien: Lit. Verlag, 2004), pp. 103–119.⁵²

——, 'From the Semiotic Animal to the Semioethic Animal. The Humanism of Otherness and Responsibility', in John Deely, Susan Petrilli and Augusto Ponzio (eds), *The Semiotic Animal* (Ottawa, Canada: Legas Publishing, 2005), pp. 67–86.⁵³

Petrilli, Susan and Ponzio, Augusto, *Semioetica* (Rome: Meltemi, 2003).

——, 'Semioethics and the symptomatology of globalization. Global communication in the perspective of global semiotics', in John Deely, Susan Petrilli and Augusto

⁵¹ Lectures delivered in the series of Cambridge *Conferences*, February 10–March 7 1898; Selections found scattered in CP 5, 6 & 7 (see Burks 287–88 for details).

⁵² Presented in the Friday, 26 September 2003 section 'Ethik & Orientierung' / 'Ethics & Orientation' of the 'Macht der Zeichen, Zeichen der Macht / Signs of Power, Power of Signs' international interdisciplinary symposium held as a Festschrift in honor of Jeff Bernard under joint ISSS and IASS–AIS sponsorship in Vienna 26–28 September 2003.

⁵³ Rev. and expanded version of 'Responsibility of Power and the Power of Responsibility: From the 'Semiotic' to the 'Semioethic' Animal' (2003).

Ponzio (eds), *The Semiotic Animal* (Ottawa, Canada: Legas Publishing, 2005), pp. 80–110.⁵⁴

Poinsot, John, *Tractatus de signis. The Semiotic of John Poinsot*, Interpretive arrangement by John N. Deely in consultation with Ralph Austin Powell from the 1930 Reiser edition (emended second impression) of the *Ars Logica*, itself comprising the first two parts of the five part *Cursus Philosophicus* of 1631-1635, by the same author, First Published at Alcalà de Henares (Complutum), Iberia, 1632. In bilingual format (Berkeley, Los Angeles, London: University of California Press, 1985).⁵⁵

——, ‘Tractatus de Angelis’ (1643), in *Joannis a Sancto Thoma Cursus Theologicus Tomus IV*, Solesmes ed. (Paris: Desclée, 1946), pp. 441–835.

Sebeok, Thomas A., *Global Semiotics* (Bloomington, IN: Indiana University Press, 2001).

Withalm, Gloria and Wallmannsberger, Josef (eds), *Macht der Zeichen, Zeichen der Macht/Signs of Power, Power of Signs* (Festschrift für Jeff Bernard; =Trans-Studien zur Veraenderung der Welt 3) (Wien: Lit. Verlag, 2004).

⁵⁴ Presented Sunday, July 11, 2004 as part of Round Table 008 ‘Issues in Socio-Semiotics’ of the 8th IASS Congress, Lyon, France, 7–12 July 2004, at Université Lumière Lyon 2, sponsored by the International Rossi–Landi Network (FRIN).

⁵⁵ *Tractatus de Signis* (1632), disengaged from the *Artis Logicae Prima Pars* (Alcalá, Spain) and published in a bilingual critical edition subtitled *The Semiotic of John Poinsot*, arranged by John Deely in consultation with Ralph Austin Powell (Berkeley: University of California Press, 1985). Available in electronic form (Charlottesville, Virginia: Intelelex Corporation, 1992).

CHAPTER 16

Teleology: Inorganic and Organic

*David S. Oderberg***1. Introduction**

The banishment of teleology from the natural world during the early modern period is something from which philosophy has still not fully recovered. This period saw the almost wholesale rejection of Aristotelian metaphysics, and with it the ‘final causes’ that are a central part of that worldview. It is not merely that final causes were replaced by a mechanistic picture of nature bolstered by Newtonian physics and general corpuscularianism, but that final causes and the Aristotelian ‘baggage’ associated with them were shunned with an almost visceral distaste bordering, it seems to me, on the pathological.

One need only look at the hostility shown by Thomas Hobbes, at the end of *Leviathan*, to the ‘barbarisms’, ‘ignorance’, and ‘darkness’ of the ‘vain philosophy’ that allegedly permeated the schools, serving no other purpose than to maintain and enhance the power of the ‘Roman clergy’ and the Pope at the expense of the civil government.¹ No less hostility, though expressed in slightly more measured tones, is found in Locke, Hume, and Descartes. ‘Occult’ qualities and mysterious ‘substantial forms’ are out; law-governed mechanism is in.² The idea that all objects have a natural tendency to

¹ T. Hobbes, *Leviathan* (Cambridge: CUP, 1991, ed. R. Tuck; orig. pub. 1651): chap. 46, ‘Of Darknesse from Vain Philosophy, and Fabulous Traditions’.

² Hostility to substantial forms and other key concepts of Scholastic metaphysics goes back further than the early empiricists, of course, to the many of the late Scholastics themselves.

some kind of motion or behaviour characteristic of their essence is interpreted as illicit mentalism: material objects do not ‘endeavour’ to go to the centre of the earth when dropped, ‘as if stones and metals had a desire, or could discern the place they would be at, as man does’.³ That this was an egregious misreading of Aristotle did nothing to dampen the fire of animosity towards all things teleological.⁴

Contemporary philosophy has, one may note with justified relief, moved some way from the sort of blind antagonism, coupled with almost wilful misinterpretation of Aristotle and Aristotelianism, that characterized the heyday of mechanism. Teleology has never been wholly eradicated from biological explanation. Though the standard view is still that reference to final causes, purposes, ends, goals, and related notions, is unnecessary for evolutionary theory to explain what we need to know about the behaviour and development of living things,⁵ there is a respectable minority of philosophers who insist that such concepts are required.⁶

Moreover – and more interestingly – there are a few philosophers who are prepared to countenance at least the coherence, if not the plausibility, of some form of

³ *Leviathan*, chap. 46, pp.467–8.

⁴ No one reading, for instance, *Physics* or *On the Heavens (De Caelo)*, will find it easy to interpret Aristotle as holding that moving objects ‘seek’ the place to which their movement naturally tends. See, e.g., *Physics* II, 192b ff., and *On the Heavens* III.2, 300a ff. Nor does one find it in Aquinas’s *Commentary on Aristotle’s Physics*.

⁵ For a sample of the majority view, see C. Allen, M. Bekoff, and G. Lauder (eds) *Nature’s Purposes: Analyses of Function and Design in Biology* (Cambridge, MA: Bradford Books/MIT Press, 1998).

⁶ See Mark Bedau, ‘Where’s the Good in Teleology?’, *Philosophy and Phenomenological Research* 52 (1992): 781–806, and the citations he gives in note 1 (reprinted in Allen, Bekoff, and Lauder (eds) *Nature’s Purposes*: 261–91); also his ‘Can Biological Teleology Be Naturalized?’, *The Journal of Philosophy* 88 (1991): 647–55.

teleology in the *non-living* world as well – where by ‘non-living’ I exclude artefacts because of their necessary connection to living creatures. In his extended discussion of powers, George Molnar invokes what he calls ‘physical intentionality’ to explain the directedness of a thing’s powers towards their fulfilment, and he models it on intentionality as understood by Brentano.⁷ John Hawthorne and Daniel Nolan argue that teleological causation in the inorganic world is at least metaphysically possible, if interpreted in terms of what they call ‘end velocity laws’, where such laws are characterized as involving a notion of distance from a privileged end state, where distance need not be physical.⁸ Their outline is sketchy, but it seems to be inspired by a principle such as the Principle of Least Action, according to which all of the equations of motion can be derived from the assumption that moving objects minimize a certain quantity of action, such as the difference between kinetic and potential energy (the Lagrangian in classical mechanics), and its analogue in quantum mechanics (the Hamiltonian). Furthermore, the revival of essentialist thinking itself has helped to make teleology in general more respectable. For the very concept of an essence or nature, whether that of a living or a non-living thing, carries with it the idea of a characteristic tendency toward a certain kind of operation or behaviour, and resistance to other kinds of behaviour or causes contrary to the thing’s nature.

Teleology has, of course, never disappeared from moral philosophy, but the majority of ethicists still resist the idea that it can be found in human or other living creatures in a way that enables it to be characterized independently of human goals or purposes. Natural law theorists dissent from this view, insisting – at least when natural

⁷ G. Molnar, *Powers* (Oxford: OUP, 2003): chap. 3.

⁸ J. Hawthorne and D. Nolan, ‘What Would Teleological Causation Be?’, in Hawthorne, *Metaphysical Essays* (Oxford: Clarendon Press, 2006): chap. 15, pp.265–83.

law theory is formulated in its traditional form rather than the novel form advocated by John Finnis, Germain Grisez, and others⁹ – that without a robust conception of teleology in nature, ontologically independent of the purposes and valuations made by agents, morality has no secure footing.¹⁰ I have argued for this traditional position at length elsewhere.¹¹

In this paper I assume, rather than argue for, teleology in the organic world. I will briefly characterize it, but only for the main purpose of this discussion, which is to examine the extent to which teleology can also be found in the inorganic world. I think it can, though it is essential to mark the differences between organic and inorganic teleology so as to bring both into relief. It was the mistaken assumption (rooted in an erroneous interpretation of the tradition) that teleology as found in the organic world was transferable holus bolus to the world of the non-living, that played such a large part

⁹ See, as exemplars of the ‘new natural law’, such works as: J.M. Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980); G. Grisez, *The Way of the Lord Jesus, Volume I: Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983); G. Grisez, J. Boyle, and J. Finnis, ‘Practical Principles, Moral Truth, and Ultimate Ends’, *American Journal of Jurisprudence* 32 (1987): 99–151.

¹⁰ Here confusion must be avoided. Even on the traditional natural law theory, human teleology is not independent of human goals and purposes, since they enter into the analysis of human nature that makes moral theory possible. What the traditional theorist denies, by contrast, is that human nature, including all human activities connected with the formulation of goals, plans, projects, and so on, is revealed to us exclusively or even primarily by reflection on the structure of our practical reasoning as opposed to reflection informed by metaphysical anthropology. It is this that primarily separates traditional theorists from the Grisez–Finnis school of ‘new natural law’.

¹¹ See my ‘The Metaphysical Foundations of Natural Law’, forthcoming in Holger Zaborowski (ed.), *Natural Law and Contemporary Society* (Washington, DC: Catholic University of America Press). For a recent defence of natural teleology as the foundation of morality, see Philippa Foot, *Natural Goodness* (Oxford: Clarendon Press, 2001).

in sparking the anti–teleological revolt. The tradition was a little more nuanced than that. I propose that by examining some select phenomena of the inorganic world, one can find teleology there as well. It is no part of my argument that it is widespread. Maybe it is. But if we can find it in at least some places, we do more than uncover something of metaphysical interest in itself. We also add some stones to the foundation upon which organic teleology itself is built, and the ethical theory which reposes on that. For if some sort of teleology can be found in the world of the non–living, how much more likely is it that the teleology of the living world is no mere projection of human interests, but a real, mind–independent, objective phenomenon?

2. Organic teleology

Before going on to consider whether there is inorganic teleology, I want to give a brief characterization of organic teleology, having assumed its existence for the purpose of the discussion. Philosophers do not spend nearly enough time examining the nature of life from the metaphysical perspective, but it is one of the phenomena of which we must have a good metaphysical grasp if we are to understand the material universe. My general definition of life is that it is the natural capacity of an object for self–perfective *immanent* activity. Living things act *for* themselves in order to *perfect* themselves, where by perfection I mean that the entity acts so as to produce, conserve, and repair its proper functioning as the kind of thing it is – not to reach a state of absolute perfection, which is of course impossible for any finite being.

Speaking now in causal terms, living things, unlike non–living things, exercise *immanent* causation: this is a kind of causation that begins *with* the agent and terminates *in* the agent for the sake *of* the agent. *Transient* causation, on the other hand, is the

causation of one thing or event (or state, process, etc.) by another where the effect terminates in the former.¹²

All exercises of immanent causation involve transient causal relations as effects and/or instruments. When a person eats food (immanent), they use transient instrumental causes that are both conscious (placing the food in the mouth, maybe consciously tasting or chewing it, etc.) and unconscious (swallowing, secreting gastric acids, etc.). There are also transient causal results or effects of the immanent nutritive and eliminative process (expelling waste, perhaps emitting wind!). ‘Transient’ in this context does not mean ‘fleeting’ or ‘short lived’: a transient causal process can be long lasting. What makes it transient is that the process terminates in something other than the cause itself.¹³ All living things essentially engage in immanent activity for the sake

¹² A useful discussion of immanent and transient causation is in Roderick Chisholm, ‘Human Freedom and the Self’ (lecture given in 1964), in G. Watson (ed.) *Free Will* (Oxford: Oxford University Press, 1982): 24–35. Note that he emphasizes human agency as the paradigm of immanent causation without extending it explicitly to causation by other biological agents, and without underscoring the nature of the process as one beginning with and terminating in the agent. A good discussion of immanent causation in Aristotle’s natural teleology is John Cooper, ‘Aristotle on Natural Teleology’, in M. Schofield, M. and M.C. Nussbaum (eds) *Language and Logos: Studies in Ancient Greek Philosophy Presented to G.E.L. Owen* (Cambridge: Cambridge University Press, 1982): 197–222.

¹³ Of course there are complexities that would need spelling out in a longer treatment. When I throw a ball at a window I engage in both immanent and transient causation. Transiently, I break the window: the causal process begins with me and terminates in the window. Immanently, I exercise free will: I do something for some reason that belongs to me and so the transient process is an instrument to the fulfilling of my purpose, satisfaction of my desire, and so on. All of which, note, is not only compatible with altruistic behaviour but is presupposed by it. When I help a person in need because they are in need, I transiently do something for them, but immanently perfect my own nature by conforming to morality – even if I am not thinking about this at the time. Altruism does not even make sense if this basic self–

of their own natures, whether conscious of it or not. It's just the way they are constituted.

What about the parts of a living thing? Don't they carry out their operations merely transiently, since these operations are not for their own sake but for that of the living thing of which they are parts? It might be thought that this cannot be characterized as mere transient causation since the part – a heart, to use the paradigm example – acts for the *sake* of the organism whose heart it is, whereas I have defined transient causation without reference to such a sake, as it were.¹⁴ All I have said is that transient causation terminates in the distinct thing on which the cause operates. Now if we speak, as teleologists typically do, of 'final causes', we should say that the heart's operation is still teleological because although the effect terminates in the whole organism, the heart's operation is for the sake of the organism, i.e. what is really happening is that the organism's final cause of staying alive is what regulates the merely efficient cause involved in pumping blood.

Although I do not object to talk of 'final causes', and believe we can understand organic teleology in this way, I prefer to stick to the language of immanent causation. This is partly because of the inherent preferability of the latter. Immanent causation is a preferable way of talking about the phenomenon of life because final causation does not of itself import the notion of *self*-directedness. There can be a goal (or purpose, or final cause) of a thing without that goal being one whose satisfaction does anything *for* the object that acts to satisfy it. Artefacts have purposes that do nothing for them, only for the persons who impose the purposes upon them. Parts of organisms, such as the heart,

perfection is not presupposed in the action. When I act immorally, I still act immanently, though I do not perfect but rather damage myself as a moral agent by not conforming to the demands of morality.

¹⁴ So much for Quine's thought that 'sake' does not refer to anything.

have purposes whose satisfaction does something for the wholes of which they are parts rather than for themselves. Note that the heart also carries out self-repairing and self-maintaining activities, just as any living entity does things for itself. That is why, when the heart is separated from the organism and kept alive, say, by a machine, it continues to exercise immanent causation.

The point, however, is that the heart also has purposes that are not for its benefit but for that of the organism that has the heart. Moreover, its own self-directed purposes are wholly derivative from the purposes whose satisfaction does something for the organism of which it is a part. Thus I want to characterize the immanent causation involved in the heart's pumping blood for the sake of an organism in the following way. It is the *organism* that exercises immanent causation by *means* of the heart's pumping blood. Needless to say, this does not imply conscious activity, or any idea to the effect that the organism *tries* or *seeks* to keep itself alive by using the heart as a means. Nevertheless, it does use the heart as a means of keeping itself alive. So leaving aside the heart's own self-repairing and self-maintaining operations and the like, which are directed towards its own continued existence (again, for the sake of the continued existence of the organism) and hence are truly immanent, still this takes place within the context of immanent activity by the whole organism. Within that context the heart is a mere means to the continued existence of the organism, and as such it operates only transiently. It is thus no counterexample to the thesis that organic teleology is immanent in character.¹⁵

¹⁵ Mark Bedau, in his illuminating discussion of teleology, distinguishes between three grades ('Where's the Good in Teleology?'). Grade 1 teleology involves the performance of a function that happens to be good (for the thing performing it or for the whole to which the thing performing the function belongs). In grade 2 teleology, a thing performs a function *because* the function contributes to some result and the

My claim, then, is that whilst final causation is characteristic of the living world, it is not just any final causation, but the self-directed kind – a special kind of teleology. As a corollary, conceptual space is thus left open for another kind of teleology that is

result happens to be good. In grade 3 teleology, a thing performs a function *both* because the function contributes to a result that happens to be good *and* because that result is good (again, for the thing performing it for the whole to which it belongs). Bedau does not believe any biological teleology amounts to grade 3 teleology but is only ever at grade 2, since '[n]atural selection is blind to the goodness that supervenes on a biological creature's survival' (802). On my account, organisms *use* their parts to contribute to what is good for them (or at least in some cases to what they think is good for them, what they perceive as good for them, what appears to be good for them, and so on; the complications can be left to one side). Hence the heart does not merely beat because nature has selected such an organ and the organ contributes to something good for the organism (if natural selection is a true theory, which I assume for the purpose of argument). But it does not follow that nature has selected such an organ *because* it is good for the organism. Nevertheless, the *organism* uses the heart to contribute to its own survival *because* it makes such a contribution. The use is not conscious, there is no intention: it is just that the organism does things for itself because they are good for it, i.e. this is the *explanation* of why its heart beats, whatever the selection process. That is what immanent causation amounts to. One way of highlighting the implausibility of Bedau's account is by asking: why should we even say that the heart pumps blood *because* it contributes to the organism's survival if it doesn't do so because survival is good (which itself implies, in my view, that it is the *organism* which is using its heart *for* its own survival)? The appeal to natural selection will not help, since nature is supposed to work blindly – not only with no good end states in view, but with *nothing* in view, not even a contribution by anything to anything. Bedau's account, then, seems to threaten the collapse of grade 2 biological teleology into grade 1 teleology, which on his view is teleology in name only. On my view, whilst there is a genuine kind of teleology at the inorganic level, as I will argue, the fact that there are goods to be had at the organic level means they need to form part of the explanation of why organisms and organs do what they do. And this pushes teleology in biology to grade 3, which Bedau reserves only for 'teleology traceable to the mind' (802).

(I have learned, in correspondence, that Bedau now does not accept the position he once advocated, which I have outlined above, and that he concedes the force of my objection.)

not self-directed. Whether we use the term 'final causation' in such cases as well, or whether we restrict it to immanent causation only, depends on what we mean by final causation – about which more shortly. In any case, it is the burden of the present paper to establish whether this other kind of teleology exists.

3. Distinguishing inorganic from organic teleology

If there were such a thing as inorganic teleology, what differences would we expect to see between it and the organic case? They should be derived from our prior understanding of what is characteristic of the living and the non-living. In fact, this understanding is based on our grasp of the essence of life and its difference from the essence of non-life, but although I prefer to frame the issue in essentialist terms and have defended essentialism at length elsewhere,¹⁶ what I have to say will not depend on it. Given that, four principal differences should be noted.

First, we do not find any immanent causation in the inorganic world. Nothing inorganic does anything for itself. All inorganic causation is transient – and here I include efficient causation of course, but also the causation involved in material constitution and that which, for an Aristotelian essentialist, invokes the notion of form (these latter two traditionally called material and formal causation).

What about final causation? This brings me to the second difference. Since final causation is the kind around which the issue being examined here revolves, it would be question-begging simply to assert or deny the existence of final causes in the non-living world. Rather, the question of final causation needs, in my view, to be refined and disambiguated if we are to get a better grip on what is at stake. A large part of the present discussion is, explicitly or implicitly, about the status of final causes in the non-

living world, so the first refinement I want to make is to deny the existence of inorganic final causes *if* this means that there is anything non-living which is capable of flourishing. By this is meant that no inorganic entity has an intrinsic *telos*, a principle of natural fulfilment, such that it characteristically behaves in such a way as to achieve or seek to achieve that fulfilment. This is not because the notion of ‘seeking’ already implies conscious purpose: as already asserted, there need be no conscious purpose by which an organism seeks to fulfil its nature. Bacteria seek to flourish every bit as much as human beings. Rather, the point is one about the absence of purpose altogether, where purpose invokes the idea of natural fulfilment.

Now it might be tempting for an inorganic teleologist to argue that even non-living things seek to achieve purposes, the most basic one being simply to stay in existence. Material objects by nature resist certain destructive forces: once in existence, they persist unless and until they are overcome by forces that destroy them, for example by disintegration. Indeed the very term ‘persistence’, which philosophers (though not the so-called ‘folk’) apply indiscriminately to all things having diachronic identity, connotes just such an idea. But what should we say about very short-lived entities such as the ‘virtual particles’ of quantum theory, some of which (as in pair creation) are said to pop into existence only to annihilate each other almost immediately? Can we not at least imagine the existence of an entity that begins to decay or disintegrate within moments of coming into existence? It might be replied that such an object still persists, if only for a short time, and would continue in existence like any other entity but for the forces that destroy it. Yet there is nothing impossible in the idea of an object that by its very nature is so unstable and liable to destruction that to speak of its somehow seeking

¹⁶ See my *Real Essentialism* (London: Routledge, 2007), esp. chap. 8.

to remain in existence is an empty form of words. Whatever the refinements that could be made to this line of thought, I suggest it be left to one side for present purposes.

If we accept that there is no intrinsic *telos*, in the sense of a principle of natural fulfilment, existing in the inorganic world, then we are bound to say that when a non-living entity behaves, acts, or operates in a certain way, it does so only transiently. Yet this does not of itself rule out the possibility of some kind of *instrumental* causation in the inorganic world, as long as we do not interpret instrumental causation as necessarily involving an intrinsic purpose on the part of the entity toward which the instrumental causation is directed.

And this leads to the third difference. A further refinement to the notion of inorganic final causation is to deny not only the existence of an internal principle of natural fulfilment on the part of any non-living thing, i.e. the existence of an intrinsic *telos*, but also the existence of intrinsic purpose altogether. In the organic world, some things have purposes that are either directly or indirectly aimed at the flourishing of some other thing. When one animal feeds another, this is a case of acting with a purpose directly aimed at the second animal's flourishing. The beating of the heart is also directly aimed at the flourishing of the animal to which it belongs, but since, as I have noted, organs also carry out operations directed at their own self-maintenance and self-repair, the purposes involved in such operations are indirectly aimed at the animal's flourishing. The indirect purposes are wholly explained by, and subsumed under, the direct purposes. In the non-living world, we do not find any entity operating for the purpose of doing anything for some other, any more than we find one operating for its own purposes, i.e. immanently. Again, this only rules out instrumental causation to the extent that such causation is interpreted as involving an intrinsic purpose, this time on

the part of the object acting as instrumental cause rather than on that of the object toward which the instrumental cause is directed.

Fourthly, *if* there were inorganic instrumental causation, it might involve something organic as beneficiary of the instrument, though it need not. In other words, instrumental causation, if it exists in the non-living, could be directed either at the non-living or at the living. I will come to the former case shortly, but the latter case would be exemplified by the existence of inorganic objects as food for organisms (e.g. minerals as nutrition for plants). By contrast, it is hard (maybe not impossible, about which more later) to see how anything organic could be instrumental for anything inorganic, not simply because there are no intrinsic purposes in the inorganic world, but for reasons to do with my interpretation of inorganic teleology itself, which I will shortly sketch. My claim, then, is that inorganic entities, if they can be instrumental causes, are able to be such for both other inorganic entities and for organic entities. On the other hand living things are never, or at least hardly ever, instrumental causes for non-living things, only for each other.

4. Systems and cycles

Having established some significant presumptive differences between inorganic and organic teleology, one might wonder what is left that could even be called inorganic teleology. If there is in the inorganic world no immanent causation, no flourishing, no intrinsic purpose, and a distinction in the applicability of instrumental causation as between the living and the non-living (assuming there is any such causation at all in the case of the latter), hasn't any notion of inorganic teleology been evacuated of all meaningful content? Or at the very least, isn't it so thin and etiolated as to be of no metaphysical interest?

I think there is still something in the inorganic world that deserves the name of teleology even in a stripped-down form. It is present when there are inorganic entities that play what can alternatively be called a *part*, *role*, or *function* with respect to other entities and the processes in which they are involved. What I have in mind are the natural processes that are properly thought of as *systems* – more particularly a certain kind of system that is most sharply illustrated by those that are *cycles*.

Consider two such wholly inorganic cycles – the rock cycle and the water cycle.¹⁷ These are recognized as cycles by the scientists whose business it is to study them, and have a clearly delineated structure. Slimmed down to the essentials, the rock cycle involves the following two sub-cycles. First, exposure, sedimentation, and pressure cause igneous rock to form into sedimentary rock. Heat and pressure cause the sedimentary rock to form into metamorphic rock. Heat and pressure then cause the metamorphic rock to melt into magma. The magma then cools and hardens into igneous rock, and the sub-cycle recommences. In the second sub-cycle, heat and pressure cause igneous rock to change into metamorphic rock. Exposure, sedimentation, and pressure cause the metamorphic rock to change into sedimentary rock. Heat and pressure cause the sedimentary rock to melt into magma. The magma cools and hardens into igneous rock, and the sub-cycle recommences.

Again, with details omitted, the water cycle involves the following. In precipitation, condensation causes water vapour in the air to fall to the surface of the Earth. Surface water then evaporates into the air, where it condenses again and precipitation occurs. Included in this cycle are such sub-processes as: snowmelt,

¹⁷ On the rock cycle, see R.J. Foster, *General Geology*, 2nd ed. (Columbus, OH: Charles E. Merrill Pub. Co., 1973): 49–50. On the water cycle, see G.M. Hornberger, J.P. Raffensperger, P.L. Wiberg, and K.N. Eshleman, *Elements of Physical Hydrology* (Baltimore, MD: Johns Hopkins University Press, 1998): 5–6.

produced as one might guess by melting snow; surface runoff into streams, lakes, and oceans; infiltration by surface water into the ground, where it becomes soil moisture or groundwater; advection by water in all of its states through the atmosphere, without which the precipitation over land or ocean evaporation would be impossible; and canopy interception by plants of precipitation that does not make land but evaporates back into the atmosphere.

What is it about the rock cycle and the water cycle that might lead one to give a teleological interpretation, at least in a thin sense? One thought might be that the phenomenon of *order* is what could motivate teleological talk. Synchronically, for each of the rock cycle and the water cycle, that cycle is always in a state very similar to any of its other states; at a high enough level of generality, it is in the *same* state at any time at which one, as it were, takes a snapshot of the cycle. Diachronically, events and processes within each cycle happen in the same order: condensation is always followed by evaporation, which is always followed by precipitation, which is always followed by condensation. Exposure, sedimentation, and pressure on igneous rock is always followed by the production of sedimentary rock, on which heat and pressure always produce metamorphic rock, on which heat, pressure, and the subsequent cooling of magma always produce igneous rock; and so on.

There is something important in the appeal to order, but it is not order *per se* that necessarily motivates teleological talk, at least of the kind I will advocate. There is order in the solar system, but whilst there may be arguments for a teleological interpretation in this case, they do not appeal to phenomena that are quite the same as in the rock and water cycles. There is order in the perfect geometrical shapes one finds in, say, crystals or atomic structures (think of the cubic structure of gold); but again, if one wanted to argue for teleology here one would need to appeal to something different from what one

finds in the rock and water cycles. Further, nature can throw up all sorts of one-off patterns and ordered arrangements, but unless one wants to build teleology into the concept of the mere existence of patterns and ordered arrangements, one will not get very far in justifying teleological talk as far as order pure and simple goes.

Secondly, one might appeal to the existence of some kind of *complexity* as the basis for the attribution of teleology to the rock and water cycles. True, both cycles are complex, involving large numbers of interdependent variables, but that is not enough on its own for moving to a teleological vocabulary. We find all sorts of complexity in nature, but that does not of itself license teleological talk. Moreover, complexity is a concept covering a wide range of other concepts, and one would need to know a lot more about the type of complexity appealed to before knowing what, if any, metaphysical interpretation could be put on it. If there is genuine randomness in nature (which I doubt¹⁸), then there might be complex random processes, such as in radioactive decay; but doesn't randomness make teleological talk less warranted than where randomness is absent?

Thirdly, one might simply appeal to the fact that the water and rock cycles are systems. I think that systematicity has something to do with teleology, but not mere systematicity. A binary star system, in which each orbits around their common centre of mass due to the gravitational attraction of the stars on each other, plausibly should not evoke teleological thoughts. Nor should the system of plate tectonics or the earthquake fault system. In the case of binary stars, there is what one might call a lack of process: we just have two stars orbiting about their centre of mass. In the case of plate tectonics and fault systems, the processes are open-ended: continents come together and drift apart, followed by others coming together and drifting apart, plates grind against each

other and recede, yet there is what I would call a lack of convergence of the processes on any specific end–state.

Now I do not want to deny categorically that my approach to inorganic teleology could not work for the sorts of phenomena that I am using as foils. The physical details are, as always, complex and multi–faceted. But as long as it were metaphysically possible for there to be an inorganic system, phenomenon, series of events, and so on, that did not display enough characteristics to warrant a teleological description, that would be enough.

Finally, one might appeal to the regularity or periodicity of the rock and water cycles to ground teleological vocabulary. Again, like order and system, this phenomenon is relevant, though not decisive. But mere regularity or periodicity is still not enough to warrant teleological talk. Consider a ping pong ball sucked up by a tornado and then dropped some place. It hits the ground, and with system, order, and regularity, continues to bounce according to Newton’s laws until it comes to rest. There is no obvious reason for appealing to teleology in such a phenomenon.¹⁹ Or consider the well–known example, of which I will make substantial use, of the stick that floats downstream, is pinned against a rock, and creates a backwash that keeps the stick pinned to the rock.²⁰ There is order in the phenomenon: the stick creates a backwash, the backwash keeps the stick pinned, which causes it to maintain the backwash, which continues to keep it pinned. The order is repeating, whatever the general disorder in the

¹⁸ For a brief discussion, see ‘The Metaphysical Foundations of Natural Law’.

¹⁹ Whether an argument for teleology can be based on the existence of the laws themselves is another matter. See ‘The Metaphysical Foundations of Natural Law’.

²⁰ The example comes from Robert van Gulick, and is well discussed in Bedau, ‘Where’s the Good in Teleology?’: 786 et seq.

flow of the water. Is there a system? Perhaps it is stretching the notion to apply the term ‘system’ to such a scenario, but if we mean by ‘system’ the presence of a number of interrelated elements working together to produce a unified whole, and given that fluid mechanics analyzes systems of water flow, we could perhaps call the phenomenon a system. But even if we did, there would be no good reason to attribute any teleology to it.

5. Roles and functions

So what *does* give us licence to speak of teleology in respect of the rock cycle and the water cycle? I submit that the answer lies in the concept of a function. In the broadest sense, a function is any natural specific activity of a power or capacity of a thing. And when Aristotle begins his discussion of nature in *Physics* II – where so many anti-teleologists have found reason to object to what is in fact a caricature of Aristotle’s views concerning final causation in nature – he speaks in terms of a ‘natural principle’, and applies it not only to living things but to the ‘simple bodies’ of earth, air, fire, and water, out of which material bodies were thought to be composed. The same goes for *On the Heavens* III.2, when he discussed the natural movements of the sublunary bodies.²¹

My case does not, though, depend on any essentialist thesis about the behaviour of things. It does not require that any natural movement or behaviour of anything be essential to it – only that some things behave in a sufficiently regular and predictable way for their behaviour to be called functional. In particular, I am focusing on how

²¹ In *Physics* II.1, 192b14–15, he speaks of the ‘archē kinēseōs kai staseōs’, the principle of movement/change and rest, and in *On the Heavens* III.2, 301a21, he refers to the ‘phūsikē kinēsis’, the natural movement of things.

certain things behave in respect of other things to which they stand in a causal relationship. For when we think about the rock and water cycles, we can see that certain objects and processes within each *contribute to*, *play a role or function in*, the existence and occurrence of other objects and processes.²² What is the function of condensation in the water cycle? It is the function of causing precipitation. What is the role played by precipitation in the water cycle? It brings about later evaporation. What function do igneous rocks perform in the rock cycle? They become sedimentary rock with the aid of exposure, sedimentation, and pressure, and in addition through heat and pressure they become metamorphic rock. What role do heat and pressure play in the rock cycle? Together they contribute to the existence of magma, which then cools into igneous rock; and they also contribute together to the existence of metamorphic rock. And pressure without heat functions to bring about sedimentary rock.

This is just how a geologist or a hydrologist talks about the cycles that are the object of their study. ‘How does evaporation function in the water cycle?’ ‘It does such-and-such’. ‘What role does sedimentation play in the rock cycle?’ ‘It functions in such-and-such a way.’ The locutions are natural, plausible, and do not smack of illicit anthropomorphism or closet panpsychism. It just *looks* like certain inorganic processes have functional components. And if they have functional components, the components perform functions. Yet function talk is a kind of teleological talk. In this highly attenuated sense, then, we can find teleology in the inorganic realm. Moreover, this sort of stripped-down teleology only serves to bring into sharp relief the stronger teleology

²² I have come across a book whose title reflects just the sort of talk I am defending: *The Role of Snow and Ice in Hydrology: Proceedings of the Banff Symposia, Sept. 1972* (Geneva: World Meteorological Organization et al., 1973).

we find in the organic world, which then contrasts with what we might call the most extreme teleology as located in the world of conscious agents with conscious purposes.

So far so quick, of course. I need to say more about this concept of function applicable to the inorganic world. First, it is divorced from the idea of any intrinsic purpose, immanence, or principle of flourishing, as stated earlier. There is nothing good for a rock that happens during the rock cycle, and nothing good for water during the water cycle. It is useful here to mark a distinction between saying that something *performs* a function and that something *has* a function, a distinction noted by Bedau.²³ There is a way of hearing ‘X has the function of doing Y’ that makes it equivalent to saying either that X has a purpose for which it does Y, or that the thing in respect of which Y is done has a purpose for which X does Y in respect of it. If that is what one means by having a function, nothing in the rock and water cycles has a function. But one can also read ‘has a function’ as equivalent to ‘performs a function’, and this is what I mean when I say that condensation has a function in the water cycle: it performs the function of producing precipitation. Now Bedau, like virtually all teleologists, goes on to limit performing a function to doing something that has a good consequence, his example being a person who swims for pleasure, not for fitness, but who gets fit nonetheless. Such a person does not swim in order to get fit, but his swimming performs the function of making him fit. In the non-living case, however, there is no intrinsic good consequence for anything in the rock and water cycles following from anything that happens within them. There are good consequences (and bad ones) for living things such as us, of course, but that is beside the point. The question concerns whether there is teleology within the cycle.

²³ ‘Where’s the Good in Teleology?’: 788.

Secondly, the rock and water cycles can be distinguished from other inorganic events and processes in such a way as to heighten the plausibility of using functional talk in one case but not the other. Recall the example of the stick and the backwash. What function does the stick play in creating the backwash? What role does the backwash play in respect of the stick? It is plausible to say none. Again, there is a way of reading ‘X has the function of doing Y’ that takes it to be equivalent, not this time to talk of purposes or flourishing or goodness, but to simple causal talk. One billiard ball smacks into another. Someone asks, ‘What function did the white ball have?’ Interpreting charitably, the questioner has merely used high-flown function talk to ask, ‘What did the white ball do?’, to which the answer is, ‘It hit the red ball’. Similarly, asking what function the stick has can be taken to be no more than asking what the stick does when it is pinned against the rock: it creates a backwash which continues to pin it against the rock. This is all that Bedau means when, criticizing Larry Wright’s aetiological analysis of teleology, he says that ‘the stick creates the backwash because doing so *contributes* [my emphasis] to keeping it pinned on the rock’.²⁴ There is no

²⁴ ‘Where’s the Good in Teleology?’: 786. Wright’s aetiological approach is spelled out in his ‘Functions’, *The Philosophical Review* 82 (1973): 139–68, reprinted in Allen, Bekoff, and Lauder (eds) *Nature’s Purposes*: 51–78. The problem with Wright’s analysis, as Bedau rightly points out, is that it implies there is teleology in the case of the stick and the backwash. Because Wright’s account is in terms of causal history and purely causal explanation (how the function got there, what its causal role is), teleology ends up being present wherever such a history exists, which is far broader than even my account would tolerate. Moreover, his analysis gives no place to immanent causation as found in the organic realm, lacking any account of goodness or of what organisms do for themselves. Hence Wright’s approach neither identifies what is teleological about organic teleology, nor does it capture what – if the present theory is correct – is teleological about inorganic teleology. Bedau’s theory, on the other hand – as I have already indicated – is wrong in its account of organic teleology, and also – as my theory of

genuine role—playing here, no contribution of a function to anything, over and above a mere causal role.

But what is a genuine function? Note the following simple fact: whole books are written about the water and rock cycles. They are an established object of systematic scientific investigation. No one writes books about sticks pinned against rocks. To be sure, scientists study fluid mechanics, and the behaviour of a stick pinned against a rock in a stream might be one example used to instantiate general fluid—mechanical principles. But no one studies sticks pinned against rocks *per se*. Yet many people study the rock and water cycles *per se*. Is it because the latter are systems? I said earlier that one could perhaps stretch the concept of a system so as to treat the stick pinned against the rock as part of a system. If so, then there is something more to the rock and water cycles' being systems that makes them fit objects for independent investigation.

I contend it has something to do, not so much with their cyclicity pure and simple, but with what that cyclicity indicates. Aristotle believed that the world was eternal and all the processes within it, from the behaviour of the stars and planets to the processes occurring in the sublunary world, organic and inorganic. As John Cooper puts it, according to Aristotle 'our world is a self—maintaining system, with a built—in tendency to preserve fundamentally the same distribution of air, land and water and the same balance of animal and plant populations as it had in his own time', and Cooper refers for example to the 'annual cycle of warm and cold periods' and other recurring features of nature that impressed Aristotle, and that seemed to him to be 'permanent

inorganic teleology implies – because his insistence on the necessity of a value condition rules out inorganic teleology from the start.

structural facts – as it were, part of the given framework of the world, over and above that provided by the celestial movements.²⁵

Now it is not necessary to accept Aristotelian cosmology in order to grasp the kernel of what he is saying. In particular, one need not – nor, I think, should one – accept the eternity of the universe. Whatever the prior states of the universe, however chaotic might have been previous periods, the fact is that *now* we observe certain very stable processes, and the rock and water cycles are examples of them. Their cyclicity means the same processes and sub-processes happen again and again – they *very same* kinds of things take place, whatever the particulars on each occasion of recurrence. Aristotle thought that the eternal stability of the universe was not something thrown up by chance, and so required an explanation, moreover one in terms of final causes – in particular those of the living things which the inorganic world served. But even without the eternity of the universe, and even leaving aside any question of the final causes of living things to whose satisfaction the inorganic world contributes, I contend that the mere stability and recurrence of certain processes such as the rock and water cycles license teleological talk in terms of functions and roles going beyond mere causation.

‘Mere causation’ has to be interpreted carefully, however. I mean causation stripped of any reference either to final causation or to instrumental causation. Now instrumental causation might be thought to be just a type of efficient causation, and since I claim there to be instrumental causation in the inorganic world I am asserting the existence of a kind of efficient causation. But instrumental causation may be efficient – as when a rock is propped up by another rock – or it may be final, as when I use a toothbrush to clean my teeth. The kind of inorganic instrumental causation I am advocating, being functional, might appropriately be termed ‘final’, as properly

²⁵ Cooper, ‘Aristotle on Natural Teleology’: 202–203.

interpreted in accord with my earlier remarks. Or, if one restricts ‘final’ so as to exclude the inorganic case, then the instrumental causation will be a kind of efficient causation. Either way – and this is the main point – it is not like the mere causing of a backwash by a stick; it is a kind of causation in respect of which we are entitled to say that a function is being performed. We are not entitled to use functional talk unless what we are dealing with is relatively stable, in Cooper’s words a ‘permanent structural fact’ about the way the world works. The presence of cyclicity only brings this point into relief. Functional talk is inappropriate when dealing with transient phenomena, coincidences, random events (if there are any), or highly variable processes. Of course talk of relative stability, high variability, and so on, is vague, and the more we investigate inorganic processes with a teleological eye the more we should be able to sharpen our concepts. But this would require detailed investigation that I cannot engage in here.

One feature that can be noted, however – and this is the third point about function talk – is what might be called the *role-specific* nature of the entities and processes involved in the cycles I have been discussing. If water is to be precipitated, then condensation or something very like it has to take place. Evaporation of surface water is going to produce clouds or something very like them. If igneous rock is to produce sedimentary rock, then exposure, sedimentation, and pressure, or something very like them, have to occur. Heat and pressure applied to sedimentary rock is going to produce metamorphic rock or something very like it. And so on. If there is any essentialism lurking here, it will apply only to the cycles themselves, which is a pretty mild form of essentialism likely to prove palatable to even the most sceptical of metaphysical or scientific minds. It does not involve any claims about the essence of kinds of rock, the essence of water, or even the essence of processes such as condensation or sedimentation. All it involves is the thought that for something that is recognizably the

rock cycle or the water cycle on Earth to occur, certain kinds of thing have to play certain kinds of role, and certain kinds of processes have to take place. Perhaps even a Humean could accept that.

When it comes to the stick caught between a backwash and a hard place, though, things look different. Any old thing would serve as well as a stick to illustrate the idea that you can have causal relations without teleology. Any old liquid would do the job as well as water. And nothing is special about the rock against which the stick is pinned either. A different case would be that of a piece of paper being burned by fire. To reduce the paper to ashes, not any old event or source of ash production is possible: you need combustion. Doesn't combustion then play a special role – a function that is role-specific – in the burning of paper? But bits of paper are being burned all the time all over the world: there is nothing that could be called a single process, let alone a cycle, that is a proper object of scientific investigation and that calls out for an explanation in terms of functions and roles. What about the investigation of combustion in general? Again, while one can investigate the causal role played by, say, friction or oxygen in the process of combustion, there is no such thing as the combustion system, let alone the combustion cycle. Combustion happens everywhere, all the time, but there is no integration of parts into a well defined, stable, particular process that is the proper object of scientific investigation.

Where does this leave us as far as inorganic teleology is concerned? I have tried to eke out a notion of functional behaviour in the world of the non-living that sits in between phenomena that are not obviously teleological in character, and those that clearly are. If the notion is plausible, then it leaves us with the following definition of inorganic teleology:

x displays inorganic teleological behaviour with respect to $y =_{\text{def}} x$ performs an inorganic function with respect to y .

The concept of inorganic function is then defined as follows:

x performs an inorganic function with respect to $y =_{\text{def}} x$ is inorganic and y is inorganic and x contributes causally to some entity, event or process in y and y is a stable, systematic process.

To say that y is not merely a system but a systematic process is to exclude systems with no causal relations between the parts. Hence one might come across a naturally-occurring pattern, say an orderly arrangement of rocks, and these might even occur with great frequency, but that does not suffice to identify any function that one rock performs in respect of the arrangement. Moreover, the concept of a systematic process is also meant to exclude naturally-occurring patterns with causal relations between the parts, but where there is no ongoing series of transformations of entities and interactions between events such as one finds in genuine processes. Every individual material object, such as a single rock, is highly ordered internally at some level of organization, if only at the molecular or atomic level; and those highly ordered parts cause the object to remain as an integral whole throughout its existence. But there is no such thing as the individual rock-maintenance process. Geologists investigate what holds rocks together, but there is no individual rock-maintenance process that is the proper object of their study, unlike the rock cycle, which is also individual but a genuine process involving repeated kinds of interaction among specific kinds of entity. Finally, the reference to stability in the process rules out one-off events and coincidences that, although they might instantiate kinds of process, are not permanent, or relatively long-lived, structural features of the inorganic landscape.

6. Objections

This admittedly speculative examination of the idea of inorganic teleology is not going to convince many people who are committed to the existence of organic teleology alone, let alone those students of the natural world who are sceptical about the very existence of teleology anywhere within it. I now want to respond to some objections in the hope that by further clarifying my argument at least some concerns might be allayed.

First objection: Inorganic teleological talk really is just causal talk, despite the distinction I have tried to draw. Reply: if it were just causal talk, we would not be able to separate the relevant from the irrelevant causal relations. Suppose that, in some place, sedimentation blocks the water supply to a region. Or suppose, somewhat more fancifully, that the presence of magma causes some species of bird to migrate. Neither of these phenomena are part of the rock cycle. They might be of interest to scientists who study water supplies in a region or bird migration, but if you want to know about the rock cycle you do not need to know about the water supply or bird migration. Of course a phenomenon such as the blocking of the water supply in a region *might* be of relevance to a student of the rock cycle, insofar as it affected the production of rock at a particular time and place. If it were a regular occurrence all over the world then it might even be rightly thought of as part of the cycle itself. But that is a different point that the inorganic teleologist can accept. What he cannot accept is that any event causally related to the rock cycle or some process within it is either part of the rock cycle or a proper object of study for anyone investigating that cycle. Again, condensation in my vicinity might regularly cause arthritic pain in my big toe. But if you want to know about the water cycle, you do not need to know about the pain in my toe.

This shows that when a teleological process is under consideration, some causal relations are relevant and some are not. Now there are many causal relations involving

both relevant and irrelevant events. When billiard ball A strikes billiard ball B, A also (let us suppose) causes a flattening of the baize, but the flattening is not relevant to what happens to B. (There might be a minimal physical relevance, but we can usually abstract that away for mechanical purposes.) But my point is not that the pain in my big toe caused by condensation does not cause any further water-related events. The point is that the pain in my toe is not relevant to the study of the water cycle in the sense that it performs no function within that cycle and is no functional product of that cycle. Can we say that the flattening of the baize performs no function in the causation of B's movement by A, and is not a functional product of it? Not in any sense that involves more than a mere restatement of the fact that the flattening does not causally contribute to B's movement. But we know that, just as we know that the pain in my big toe does not cause any water-related events. Again, that is not the point.

Is there some sort of system or process to which we can say that the flattening is not functionally relevant? It is hard to see what it might be. Considering the movement of billiard balls on a table, from a purely causal point of view the flattening of the baize is as relevant an event as is the smacking of the balls into each other. *Unless*, of course, one relativizes relevance to such things as the game of billiards, or to the causal relations between the balls. But then relevance amounts to no more than *salience*, which is a feature of all causal relations. What is relevant is what one is interested in. But when it comes to the water cycle or the rock cycle, it is not merely a question of what one is interested in. True, the geologist is interested in the rock cycle, not the migration of birds: but that is because bird migration objectively, i.e. interest-independently, plays no functional role within the water cycle. Needless to say, if bird migration were found regularly both to cause and to be caused by rock-formation events (an improbably scenario, but we could conceive of more likely ones), then the geologist might be

correct to investigate bird migration when he studied the rock cycle – because bird migration would have been found to play a functional role.

Second objection: Talk of functions really does import an intrinsic *telos* into things that do not have it. The reply is that as long as I do not identify function with intrinsic purpose, no such importation can be found. At no point in describing the rock and water cycles have I spoken of anything's having an intrinsic purpose. Rocks do not flourish; there is nothing that is good for evaporation; sedimentation does not need anything that fulfils it because fulfilment does not apply to such a thing. Now to many, not importing such notions means by that very fact that function talk is inappropriate at worst, bizarre-sounding at best. I contend that the account I have given of the rock and water cycles does not sound bizarre, and talk of functional behaviour in their respect is not obviously inappropriate. There is at least a case to be answered.

As an additional point, however, note that although the concept of flourishing does not apply to anything inorganic, we can and do speak of such things as *efficient* and *smooth* functioning. The water cycle can function more or less smoothly and efficiently, where 'efficient' need not mean – and would only mean on pain of irrelevance – something like 'good at producing potable water for human beings and other animals'. Presumably, the colder the average global temperature, the less efficient the water cycle is, since more water remains solid for more of the time than at lower temperatures. But whether or not this particular hypothesis is true, something like it will be. To the extent that phase-state changes for water are impeded by other natural phenomena, the water cycle functions less smoothly and efficiently. *Mutatis mutandis* for the rock cycle. I take the concept of smooth and efficient functioning, and its variability within a process, as being analogously for inorganic teleology what the concept of acting well (suitably interpreted) is for organic teleology; just as functioning

itself, stripped of intrinsic purpose, is for inorganic teleology what functioning for an intrinsic purpose is in the organic case.

Third objection: Teleological talk in respect of inorganic processes is no more than a ‘stance’, just as intentional talk is no more than a ‘stance’ in respect of beings with a suitable complexity of inputs and outputs.²⁶ In reply, observe first that for those who believe that intentionality is about more than taking a stance, this objection will carry no weight. But it might be thought that the idea of taking a teleological stance can be usefully applied to inorganic phenomena all the same. The idea would be that teleological talk is a useful fiction for describing certain natural phenomena. Leave aside the important question of whether useful fictions have any place in philosophy or science. The question remains as to why a putative fiction might be useful. Intentional talk applied to inanimate objects (‘My computer is trying to reboot’) has a useful social function, in that it significantly eases communication when it comes to describing complex processes that are largely unknown to most people who use such talk; and even if they knew, spelling out the details would take so long as to make communication almost impossible. But whether such talk actually explains any other phenomena is highly questionable. When it comes to inorganic teleological talk, its usefulness in explaining phenomena is apparent. It explains why it is that geologists are not interested in bird migration and why hydrologists are not interested in the pain in my big toe. And this in turn is evidence that teleological talk is not really a fiction after all. Maybe the reason such teleological talk is both useful and common is that it represents something *true*.

²⁶ See further Daniel Dennett, *The Intentional Stance* (Cambridge, MA: Bradford Books/MIT Press, 1987).

Fourth objection: Inorganic teleological talk might not import the concept of intrinsic purpose, but it does import the concept of *extrinsic* purpose. Here the thought is that inorganic teleology is presented as a kind of stripped-down teleology shorn of some of the features of the organic case, but it is really full-fledged teleology masquerading as something else. For there is no function without purpose, and if the purpose is not intrinsic it must be imposed from outside, say by an omniscient and omnipotent being who endows the inorganic world with purposes directed either at itself or at animate beings on Earth, or both. The reply is that I have left it open whether functional talk applied to the inorganic realm entails, ontologically, any kind of extrinsically imposed purpose. Hence the rejection of inorganic purpose was restricted only to intrinsic purpose. Maybe inorganic function does metaphysically entail extrinsic purpose. That would require another argument altogether. My claim here, though, is that one does not have to *recognize* any such purpose in order to recognize the appropriateness of inorganic functional talk and hence of inorganic teleology. Many geologists and hydrologists who freely use such functional talk would be surprised to be told that they were really appealing to an extrinsic source of purpose and hence of function. They simply inspect the geological and hydrological phenomena, identify the cycles, and look at the way in which the parts functionally interact. That is enough to give functional talk a foothold without the further suggestion that such talk is only coherent when it is seen to imply an extrinsic source.

Fifth objection: Doesn't my earlier talk of instrumental causation in the inorganic world imply the existence of purpose after all? The reply, again, is that we have to use an attenuated version of the concept of instrumental causation. Evaporation serves for the formation of clouds, i.e. it serves that function. But that does not imply any purpose on the part of either the evaporation or the clouds. I said earlier that inorganic entities

and processes could be instrumental for other inorganic entities and processes as well as for organic ones; but the kind of instrumental causation involved in each case is different. In the organic case, as when an animal takes in water or minerals for nutrition (albeit in the latter case usually via an organic food source), the inorganic food serves a purpose the animal has, even if it is not a conscious one. Here, immanent causation is involved, as it is in the organic–organic case.²⁷

But when one inorganic thing or process serves another, no such purpose is involved and the causation is purely transient. Additionally, I said that organic entities do not instrumentally serve inorganic ones, at least not generally. This is because the organic and the inorganic are not usually parts of identifiable systems that are inorganic in character. Inorganic things are part of the food cycle, but that is an organic system serving living things. There are possible exceptions: some organic things respire, and respiration is part of the water cycle. So to that extent one could say that organic things and processes can instrumentally serve inorganic ones. Yet one should not expect this sort of phenomenon to be widespread, since living things maintain an independence of behaviour that raises them above the status of mere cogs in a large–scale machine of inorganic systems and processes.

Sixth objection: The existence of organic teleology has an evolutionary explanation, but there is no such explanation of inorganic teleology. In reply, note first that even if there is no evolutionary explanation of inorganic teleology, this does not mean there is no explanation whatsoever. It is at least coherent (modulo objections from other quarters) to hold that living things evolved whilst inorganic systems and processes

²⁷ Contrast this with unusual situations, as when one organic thing interacts with another through purely physical forces. Such cases – say, when one animal accidentally bumps into another – will almost always lack the character of instrumental causation, with the causation being only transient as well.

were created by an omnipotent, omniscient being. I mention this only to put it to one side. More to the point is the question of whether, if organic teleology has an evolutionary explanation (which I assume for the purpose of argument), an analogue can be found for the inorganic case.

The prospects look dim, but Graham Cairns–Smith’s well–known clay theory of the origin of life might hold out a brighter hope.²⁸ On his theory, clay crystals formed in the early oceans, and by a process of natural selection working on them, larger and more complex crystals evolved and replicated (through splitting), varying in kind (through irregularities in the crystal structures), and eventually reached a point of size and complexity sufficient for them to synthesize organic molecules, and eventually RNA and DNA, whose initial function was to enhance the structural integrity of the crystals. Eventually, the crystals were subject to a ‘genetic takeover’: having served as the ‘scaffold’ on which life formed, the carbon–based, living structures were better able to survive and replicate than the crystals on which they were assembled, which eventually dissolved.

In my view (and that of many scientists²⁹) the clay theory does not work as an account of the origin of life,³⁰ and not just because of the lack of a ‘standard of value’ such as can give rise to teleology, as Bedau holds.³¹ Crystal growth is nothing like the

²⁸ A.G. Cairns–Smith, *Seven Clues to the Origin of Life* (Cambridge: Cambridge University Press, 1990; orig. pub. 1985).

²⁹ See further Iris Fry, *The Emergence of Life on Earth: A Historical and Scientific Overview* (London: Free Association Books, 2000): 126–9.

³⁰ See *Real Essentialism*: chap. 8.

³¹ Bedau, ‘Can Biological Teleology Be Naturalized?’ Bedau actually speaks of ‘transcendent standards of value’ (655), but the ‘transcendent’ can be left aside as a rhetorical flourish. Value is immanent in the organic world, not transcendent.

growth that living things undergo, and could not possibly give rise to the latter. Even so, might not the clay theory give the inorganic teleologist a foothold into an explanation of inorganic teleology in general? Most inorganic systems and processes do not exhibit the specific sort of behaviour crystals do, which is one of the reasons the latter are so interesting. But if we had an account of the ‘evolution’ of inorganic systems and processes – at least the ones that support functional behaviour – we might have the needed explanation. Process philosophers – if there are any left – would find the search for such an explanation much to their liking. If the universe is not eternal, as I have been assuming, it should not be that hard to give a general account of how things like water and rock cycles, and other stable systems and processes, could have evolved from unstable inorganic behaviour.

Perhaps there are stripped-down versions of adaptation, variation, and heredity, as applied to crystals in the clay theory, that might be extended to other sorts of processes. If so, we would have a thin version of evolution by natural selection in respect of the inorganic world. I cannot examine any such explanation here; I only suggest that it is worth looking for. On the other hand, if there is no such viable general explanation, then we are faced with the possibility that inorganic teleology is a basic, underived feature of the universe, as I have argued elsewhere for organic teleology.³² Of course the water and rock cycles have not been around forever, but it may be that they developed from prior inorganic teleological systems, which themselves developed from earlier ones, perhaps going back to some primal, irreducible such system. If so, and we wanted to go further in search of an explanation, we would have to go outside the universe. Either way, the sixth objection is in my view hardly decisive.

7. Conclusion

I have tried to make space for a plausible account of teleology in the world of non-living things. It will strike many as too bizarre and counter-intuitive to be true, but I think the alternative is far more bizarre: that there should be full-blooded teleology in the organic world, while the rest of the universe was a blooming, buzzing realm of wholly non-functional events. Why should we not expect a kind of gradation in nature, from a thin, attenuated kind of functionality in the inorganic world to a full, rich kind of purposive behaviour such as we find in the living world? Just such a view is what we find in the Aristotelian tradition. One does not have to think – as Aristotle did not – that falling objects ‘seek’ the centre of the Earth, or ‘try’ to get there, in order to be a believer in a kind of teleology in non-living nature. Such thoughts are a fantasy of the post-Aristotelian age, as exemplified par excellence in the writings of Hobbes and the other revolutionaries against metaphysical tradition.

Yet to admit inorganic teleology is not to diminish one whit the special character of teleology in the living world, especially as it finds its optimal expression in human life and action. The contrast between the two is stark, yet the existence of both militates against a Cartesian-style dichotomizing of the universe. If there is even *inorganic* teleology, how much more is there teleology in those weird and wonderful entities we call living things? And how much more than that, in the human case, do the system of morality, the works of beauty, and the orderly arrangement of the affairs of mankind, take their place at the height of worldly life? Yet we are only one rung in a ladder of perfection, and we have no reason to suppose that our rung is at the summit. Still, by recognizing both the sameness and difference that connect us to the rest of creation, we can have our teleological cake and eat it too.

³² *Real Essentialism*: chap. 8.

Bibliography

- Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).
- Aquinas, Thomas, *Commentary on Aristotle's Physics*, Translated by Blackwell, Richard J., Richard J. Spath, and W. Edmund Thirlkel; Rare Masterpieces of Philosophy and Science. (New Haven: Yale University Press, 1963), reprint, Aristotelian Commentary Series. (Notre Dame, IN: Dumb Ox Books, 1999).
- Bedau, Mark, 'Can Biological Teleology Be Naturalized?', *The Journal of Philosophy* 88 (1991): 647–55.
- Bedau, Mark 'Where's the Good in Teleology?', in *Philosophy and Phenomenological Research* 52 (1992): 781–806.
- Cairns-Smith, A.G., *Seven Clues to the Origin of Life* (Cambridge: Cambridge University Press, 1990; orig. pub. 1985).
- Chisholm, Roderick M., 'Human Freedom and the Self' [Lecture given in 1964], in Gary Watson (ed.), *Free Will* (Oxford: Oxford University Press, 1982): 24–35.
- Cooper, John, 'Aristotle on Natural Teleology', in M. Schofield and M.C. Nussbaum (eds.), *Language and Logos: Studies in Ancient Greek Philosophy Presented to G.E.L. Owen* (Cambridge: Cambridge University Press, 1982): 197–222.
- Dennett, Daniel, *The Intentional Stance* (Cambridge, MA: Bradford Books/MIT Press, 1987).
- Finnis, John M., *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980).
- Foot, Philippa, *Natural Goodness* (Oxford: Clarendon Press, 2001).

- Foster, Robert J., *General Geology*, 2nd edn (Columbus, OH: Charles E. Merrill Pub. Co., 1973).
- Fry, Iris, *The Emergence of Life on Earth: A Historical and Scientific Overview* (London: Free Association Books, 2000).
- Grisez, Germain and Boyle, Joseph with Finnis, John M., 'Practical Principles, Moral Truth, and Ultimate Ends', *American Journal of Jurisprudence* 32 (1987): 99–151.
- Grisez, Germain, *The Way of the Lord Jesus, Volume I: Christian Moral Principles* (Chicago: Franciscan Herald Press, 1983).
- Hawthorne, John and Nolan, Daniel, 'What Would Teleological Causation Be?', in John Hawthorne, *Metaphysical Essays* (Oxford: Clarendon Press, 2006): 265–283.
- Hobbes, Thomas, *Leviathan* (Cambridge: CUP, 1991, ed. R. Tuck; orig. pub. 1651).
- Hornberger, G.M., Raffensperger, J.P., Wiberg, P.L., and Eshleman, K.N., *Elements of Physical Hydrology* (Baltimore, MD: Johns Hopkins University Press, 1998).
- Molnar, G., *Powers* (Oxford: OUP, 2003).
- Oderberg, David, 'The Metaphysical Foundations of Natural Law', forthcoming in Holger Zaborowski (ed.), *Natural Law and Contemporary Society* (Washington, DC: Catholic University of America Press, forthcoming).
- Oderberg, David, *Real Essentialism* (London: Routledge, 2007).
- The Role of Snow and Ice in Hydrology: Proceedings of the Banff Symposia, Sept. 1972* (Geneva: World Meteorological Organization et al., 1973).
- Wright, Larry, 'Functions', *The Philosophical Review* 82 (1973): 139–68, reprinted in C. Allen, M. Bekoff, and G. Lauder (eds.), *Nature's Purposes: Analyses of Function and Design in Biology* (Cambridge, MA: Bradford Books/MIT Press, 1998): 51–78.

CHAPTER 17

The Unrelinquishability of Teleology¹

Robert Spaemann

Modern science appeared under the sign of a suppression of teleology, which means that it appeared under the sign of the emancipation of our natural view of the world. This kind of attempts is old, as all natural philosophy seems to be marked by this tendency. Empedocles and Democritus tried to explain the phenomenon of the teleological organisation of beings as a result of senseless mutation of what is useful for conservation.

Aristotle, who opposed this explanation, said of Anaxagoras, who saw an intelligence operating in the cosmos: 'he was the first sober-minded among madmen'². This sounds strange to our ears. We do not consider a teleological proposition sensible. But Aristotle is clear. The scientific attempt to interpret a dog's race towards its bowl with no link to eating, and its race behind a rabbit with no link to hunting has a certain element of fantasy. The programme of a non-finalistic reconstruction of Socrates from the Big Bang is understandable in its fundamental lines, but one cannot consider this programme while reading the Apology of Socrates. Further, this programme must remain purely a programme, because it could only be realised in an infinite number of steps. It becomes lost in the indefinite, which for Aristotle means: it is unreasonable. On

¹ This article was originally published in German, under the title "Die Unvollendbarkeit der Entteleologisierung", in the volume *Finalité et Intentionnalité*, ed. J. Follon et McEvoy, Librairie Philosophique, J. Vrin, Paris, 1992. It has been reproduced here with the permission of the publishers.

² Aristotle, *Metaph* I, 3, 984 b 17.

the contrary, Anaxagoras is sober-minded, because by resorting to the *Nous* he limits the answers to the question ‘why?’ and thereby offers an ultimate answer to the question, an answer which brings the questioning to an end.

The fact that Anaxagoras ultimately does not bring the questioning to an end, but rather, answers the specific questions on what happens here and now by listing a series of efficient causes, is with what Socrates reproaches him with in *Phaedo*³. In the eyes of modern science, however, this is not a reproach, but an advantage. The decisive argument against teleology is precisely that it ends the infinity of research into conditions, that it is an *asylum ignorantiae* and that it supports *ignava ratio*, lazy reason. If it does not in fact do this, it means that there are no consequences and therefore it remains harmless, like Anaxagoras’s *Nous*. But then it falls to Ockham’s razor. This is precisely what Francis Bacon demanded when he wrote that the final cause, ‘is barren, and like a virgin consecrated to God, produces nothing’⁴. However, there is no place for virgins devoted to God in Bacon’s world vision.

What reasons led to the abandonment of the question ‘why?’ in a teleological sense? This was not a demand posed by phenomena. Modern science had non-scientific foundations. Kant talks of two fundamental ‘interests of reason’⁵. In a variation of his thinking we can define one of these interests as the interest in making the world understandable enough so as to understand ourselves as part of that world, and, at the same time, be able to move comfortably in it as free beings. The other interest corresponds to the constitutive existential need of man. It is the interest of self-

³ Plato, *Phaedo*, 98 b ff.

⁴ *De dignitate et augmentis scientiarum*, III, 5, in *The Works of Lord Bacon* (London, 1837), vol. II, 8, p. 340.

⁵ Kant, *KrV* B 490 ff.

preservation through the domination of nature. Modern science is directed, in the first place, by this second interest. That this happens to the detriment of the former is something that Pascal observed when he spoke of the terror when faced with the silence of infinite spaces.⁶ The route cannot be indicated here. It is a route that goes from that type of knowledge implied in the Hebrew word ‘*jadah*’ to the Cartesian concept of ‘*certa cognitio*’. ‘The Lord knows the way of the righteous’⁷ says the first Psalm. ‘I do not know you’⁸, says the judge to the wicked on the last day. In ‘Adam knew his woman and she begot a child’⁹, Franz von Baader showed the context of knowledge and the carnal act¹⁰. Knowledge here means to become one with the other, the subsidence of consciousness of the self. At the end of this route comes the opposite: the clarity without windows of conscience which remains within itself. Nature has become something strange for this consciousness.

An important stage in this path was the theology of creation. For this theology, nature was not something final, as it was for the Ancients. Theology asked questions on the genesis of nature; and this genesis was understood as a result of certain action: divine action. Art is hidden in nature, Aristotle¹¹ said. But, how does art reach this point? How does art reach the flute-player? Answer: through practice. And this in turn was the consequence of planned, intended steps. This was the argument with which mediaeval Aristotelism connected theology to teleology. ‘The arrow is shot to its mark

⁶ Pascal, *Pensées*, frg. 206.

⁷ Ps, I, 6.

⁸ Mt 7, 23.

⁹ Gen, 4.1.

¹⁰ ‘Über die Analogie des Erkenntnis und Zeugungstriebes’, in Franz von Baader, *Sämtliche Werke*, vol. I, (Leipzig, 1851), pp. 39–48.

by the archer', wrote Thomas Aquinas, thus using the phenomenon of finality¹² in nature as a basis to prove the existence of God¹³.

Thomas understood the analogy between divine and human action *mutatis mutandis*: the human artist can only order external causal events to his aim¹⁴; the Creator, conversely, truly introduces teleological art into things¹⁵. The example of the archer, however, has become known in a paradoxical way. In the late Middle Ages, with Ockham and John Buridan, it was used against teleology: aim is only given through conscious action¹⁶. If the aim of natural processes is outwit them, that is, in the divine consciousness, then we can only consider the processes from a causal point of view. We can admire the world as a machine made by the divine builder. Within it, we can only discover the mechanical laws, which God has used. Natural teleology is idolatry, and a mechanical consideration of nature is '*vindicatio gloriae supremae numinis*'¹⁷, wrote the Renaissance natural philosopher Sturmius.

¹¹ Aristotle, *Phys*, II, 8, 199 a 9 ff.

¹² 'Finality' translates here '*Zweckmäßigkeit*'. [Editor's note].

¹³ Thomas Aquinas, *ST I*, q. 2, a. 3; 56, a. 3; see *Sent I*, d. 35 q. 1, a. 1; *De Ver.*, q. 5, a. 2.; *De Pot.*; q. 3, 15; See *In Phys.*, II, 12 (250); *In Metaph.*, V, 16 (1000).

¹⁴ 'Aim' translates '*Ziel*' [Editor's note].

¹⁵ *ST I*, q. 103, a. 8: omnis inclinatio alicuius rei... nihil est aliud quam quedam impressio a primo agente; 103, a.1 ad 3; *De Ver.*, 22, I. I am expressly making a distinction between the violent movement of the arrow and natural movement because it is an intrinsically originated movement; also in the comment to *Physics II*, 14 (268): natura nihil est aliud quam ratio cuiusdam artis, scilicet divinae, indita rebus, qua ipsae res moventur ad finem determinatum; in *Met XII* (2634): inclinatio indita.

¹⁶ A. Maier, *Metaphysische Hintergründe der spätscholastischen Naturphilosophie* (Rom, 1955), p. 300 ff.

¹⁷ J. Chr. Sturmius, *Philosophia eleatica* (Altdorf, 1689), vol. II, p. 359.

A new, pragmatic behaviour of science and praxis is related to this theological motive. Science ceases to be the highest form of praxis and becomes a means for the praxis of progressive domination of the world. However, here teleology is of no use. If we want to do something with nature it is futile to think that natural things in themselves want something. Knowledge of nature is at the service of doing. Understanding something means to ‘imagine what we can do with it, when we have it’, wrote Thomas Hobbes¹⁸. On the contrary, teleology was sympathetic knowledge of nature, an attempt to understand nature as something similar to us in some way. This understanding was not a tool for doing; rather, it was an element of self-understanding of man within the entirety of the world.

Practical and teleological questioning of the world caused their distancing from each other. Man transcends nature and immediately conspires with the creator. Nature becomes an object for use, the ‘*uti*’. The relationship of joyful devotion, ‘*frui*’, that is, knowledge in the archaic sense is reserved, according to Augustine, to the relationship between God and man. Only the bourgeois world has drawn consequences from this. Science is at the service of praxis. A contemplative understanding of the world then appears immoral.

Insofar as nature becomes the sphere of human action, of human pursuit of ends, one eventually must do without the consideration of ends which are naturally immanent to nature. In fact, this should not be so. The idea of man’s dominion of nature was also present in the framework of the ancient comprehension of nature, but this dominion was not seen as being despotic, but as a hierarchy whereby the lowest point in each case was in a pre-established harmony with the highest point. Other beings, not just man, had ends. But, in the same way, the opposite is also true: human ends are also natural ends.

¹⁸ ‘Leviathan’, in Th. Hobbes, *English Works*, vol. 3 (London, 1889), p. 13.

Therefore, the doctrine of the human soul formed part of *Physics*¹⁹. A discussion between Thrasymachus and Socrates at the beginning of Plato's *Republic* is characteristic of this hierarchy of ends²⁰.

Socrates uses the image of the shepherd to describe the government of a nation. Thrasymachus observes that the shepherd hands the sheep over to the butcher and, therefore, does not look for the good of the sheep. Socrates replies that given the art of the shepherd, this ultimate end is accidental. The shepherd, as a shepherd, is in charge of the wellbeing of the sheep²¹. Behind this line of reasoning is the idea that, for men, the best sheep are those that develop in the best way possible as sheep, during the course of their lives. The art of the shepherd is not defined by the art of the butcher. But it is precisely this last part that changes in the modern world. Here the market is what prescribes how the carer must treat the animals, and this maintenance of the animals is not in the least directed towards the good of the animals themselves. This is why there are animal protectors, whose teleological points of view are external to the animal keepers; and so that they have, so to speak, to assert themselves from the outside against the animal keeper's point of view. The anthropocentrism in modern thought leads to the rejection of anthropomorphism. If everything might be an object for him, nothing can be similar to him.

The classical idea of a hierarchy of ends presupposes an objective teleology. Things are not ends for their own sake; they are natural ends in themselves. Modern ontology, on the other hand, only sees aims as a tendency to self-preservation, in other words, to preserve that which already exists. The definition of teleology as a tendency

¹⁹ Aristotle, *De anima*, I, I, 403, a. 27 ff. *De part. Anim.* I, 641, a 22 ff.

²⁰ 'End' translates 'Zwecke'. [Editor's note]

²¹ Plato, *Politeia* 343 b –345 b.

to self-preservation can be described as an inversion of teleology²². When we speak about teleology in modern biology and when teleological structures are simulated with computer models, the goal or end is understood only as an *end for* a given system. The functionality of the system is always defined through its self-maintenance.

Aristotle, on the other hand, interpreted self-preservation as an inferior form of the tendency to participate in the eternal which is part of everything finite²³. The tendency to persist over time is, so to speak, an imitation of an unattainable identity with the eternal. Mediaeval philosophy attempted to ponder objective teleology under the concept of *repraesentatio*. This was profound thinking. If we are to understand it, we must clarify the Aristotelian difference between the *finis quo* and the *finis cuius gratia*. The end is, on the one hand, a state that must be attained and on the other hand, the end is a real thing *because of* which that state must be attained. Because of whom do all beings want their own preservation? Because of themselves? But this line brings out a paradox, as Schopenhauer pointed out. Because when we kill a being, we have also left its need to live aside: if the ultimate end of any tendency is just the being itself that tends, a finite being, then this tending is ultimately absurd. But if God is the aim *cuius gratia*, what can this mean? God cannot gain anything through achieving a given end. We cannot make God, who is the foundation of all happiness, happy. In the line of *repraesentatio* lies the only possibility of an absolute ‘what for’ or ‘because of’. What is finite does not exist because of God, in that it offers something to God, but in terms of what it represents²⁴. At this point, teleological understanding becomes objective.

²² See R. Spaemann, *Reflexion und Spontaneität. Studien über Fénelon* (Stuttgart, 1963), pp. 50–64. (1990, pp. 58–71).

²³ *De anima*, II, 4, 415, a 26 ff.

²⁴ See Thomas Aquinas, *SCG* I, 93 (786); III, 65 (2398).

Existing is not only good for finite beings, but rather, their existence is good in itself.

Once emancipated from the context of metaphysics, the statute of teleology becomes problematic. Modern science has tried to prosper entirely apart from teleology. But in the field of biology this has proved impossible. A certain ill-feeling appeared, which Haldane expressed in a much-quoted observation: 'Teleology is like a mistress to a biologist: he cannot live without her but he is unwilling to be seen with her in public'. In 1958, C.S. Pittendrigh tried to introduce order in biologists 'living conditions' by introducing the concept of 'teleonomy'. The mistress would be replaced by a similar-looking lady, who would play the same role, but without her notorious past.

The illegitimacy of the relationship between biology and teleology has a long history. On the one hand, the object of biology occurs only insofar as biological processes are *sui generis*, not simple derivable from the laws of physics and chemistry nor subject to formulation in the languages of these disciplines. And, indeed, the special aspect of these processes can only be formulated in teleological language. One only understands what a lung is when one knows *what it is for*. The objection whereby it would be enough to state what it actually does, inhaling and exhaling oxygen, or the flight of swallows to the south to ensure they have food is off the mark. It all goes from one place to another certain place. Biology finds an explanation for its question 'why' in that where something goes, and more precisely, when that place where something goes, is advantageous for the subsistence of an individual or a species. If a swallow, in its flight over Italy, lands at a bird breeder's nest, it is of no special explanatory value for its flight, but the fact that her sister finds food in Africa does have that value. Biologists cannot continue without functional considerations, without the use of the word 'good' in the sense of 'good for'. Functional considerations, however, are teleological considerations. They emphasise certain effects above others, insofar as these others are

removed to the category of indirect consequences. They allow one to differentiate between normality and irregularity, according to Duns Scotus, a sign of finalistic considerations²⁵.

On the other hand, however, biology sees itself as a natural science, in the modern sense. Now, rejection of final considerations has been a constitutional element of natural science from the beginning. The idea that nature had tendencies was seen as superstitious as the idea that natural objects could have any effect on other natural objects. Both aspects would dispute the prerogatives of divine omnipotence. The world is a machine, designed by the divine builder for the best of ends, but, like any machine, it works according to purely mechanical laws. The metaphysicist can reflect on divine ends, if he likes, and admire the *regnum sapientiae*, but the object of natural science is the laws of construction, the *regnum potentiae*²⁶.

However, a functional consideration is essential in order to discover these laws of construction. Scientific research, generally speaking, does not randomly ask what may happen if we do this or that; it retrospectively asks what must have happened so that this or that, which we can see, has happened. And only when we have formed a hypothesis, do we check it by carrying out a given action and observing the result, that is, if a given expectation is fulfilled or not. Meanwhile, we are not in the least interested in all phenomena. We do not ask why there is a beer bottle, three pebbles and two flowers lying next to each other in a given parking space; rather, at the very most, we only wonder about it when we see the same combination we have seen ten times in other places. We generally suppose there are causes for the presence of each one of these

²⁵ *Quaest. Subt. S. Met.* V, q. 1 a. 2; ed. Vives, vol. VII, p. 190 b.

²⁶ G. W. Leibniz, 'Du principe de raison', in: *Opuscules et fragments inédits* (Paris, 1903, ND Heidelberg 1961), o. 13; 'Brief an Enond', *GP* III: 607.

elements in that place, but not for exactly the same layout of the objects. We call this layout coincidental.

Conversely, we believe organisms to be specific units and as such they are open to explanation. Their self–constitution, their self–preservation and their reproduction, in other words, their systemic nature, point to a specific coordination of individual causal processes, even when the said coordination can be explained as the result of typical efficient causes, through individual mechanisms that modify each other. In this sense, Sigwart, in 1881, called the teleological outlook a ‘heuristic principle’²⁷. This teleological outlook directs our causal investigation, insofar as it proposes what it is that requires a causal explanation.

The introduction of the term ‘teleonomy’²⁸ is symptomatic of a transformation in the scientific situation. This situation is characterised by more general physical and systemic understanding about the irreversibility of certain processes and their resulting structures. These structures follow from high level regularities that cannot be understood as simple functions of the structures from which they originated. Indeed, organic processes only allow for finalistic description, and that description cannot be transcribed in purely physical language, even if the state of these systems can be thought of as a result of efficient physical processes. The word ‘teleonomy’ is now used for this ontological finality.

Naturally, the concept of ‘purposeful machines’ was originated by the modern computing godfather. The working of such machines can only be described in teleological language. But at the same time, these machines want nothing. Their orientation to ends is nothing but the result of a special layout of causal mechanisms,

²⁷ C. Sigwart, ‘Der Kampf gegen den Zwecke’, in *Kleinere Schriften*, vol. 2., (Freiburg, 1881).

²⁸ Kant, *KU*, A 338. Akk–Ausg, vol. 5, p. 400.

resulting from a program that prepares them for the reception of additional information, that is, to ‘learn’. The expression ‘teleonomy’ must exist for the kind of orientation to ends that can be conceptualised as a result of programs. However, as the biologist Ernst Mayr writes, programs direct ‘a process or behaviour in such a way so that it leads to a previously given end’²⁹.

Pittendrigh introduced the expression by consciously distancing it from the concept of teleology that he considered teleological. The telenomic discourse, he writes, is indebted to Aristotelian teleology as an ‘efficient causal principle’³⁰. Here, the mistaken interpretation of Aristotle is clear. Specifically, Aristotle placed the efficient causal principle in opposition to the teleological principle, unlike Hans Driesch, who introduced his Entelechy as a causal factor next to others³¹. Throughout the entire Aristotelian literature of the Middle Ages, on the contrary, the axiom: ‘*cuiuscumque est causa finalis eius est efficiens causa*’ rules³². Considering an event as the result of a process that is essentially directed at the production of the said result and which can only be understood in this way, does not exclude it, but calls for considering it as completely caused by mechanical causes. ‘The term ‘teleology’ would not have

²⁹ E. Mayr, *Evolution und Vielfalt des Lebens* (Berlin, 1979), p. 213.

³⁰ C.S. Pittendrigh, ‘Adaptation, Rational Selection and Behavior’, in *Behavior and Evolution* (New Haven, 1958), p. 394.

³¹ See H. Driesch, *Philosophie des Organischen* (Leipzig, 1928), p. 302, ff.

³² Duns Scotus, *Ord.*, I dist. 6, n. 240; ed. Vat, vol. IV, p. 280; see William Ockham, *Rep.* II, q. 5; *Op. Theol.* V, p. 83; also in Robert Grosseteste, *Comm. In Phys. II*, ed. R. C. Dales, Boulder, 1963, p. 40; Roger Bacon, *Comm. Nat. II*, 5, 1. (op. Hact. Ined. II, Oxford 1909); ed. R. Steele, p. 123; Thomas Aquinas, *De princ. Nat.*, 4; of Thomas’ disciple, Petrus v. Auvegne, *Quaest in Metaph. III.*, q. 4, ed. W. Dunphy, in: *Med. Stud.*, n° 26 (1964), p. 296; William Ockham, *Sum. Nat. Philos.*, II, c. 4; *Op. Philos.*, VI, p. 221; etc.

disappeared', says Pittendrigh 'because it is loaded with the supposition that the aim is causally operative in each current working of the machine'³³.

Here, the key is the meaning of the word 'causally'. Doubtless, in a machine directed by a program, the program is causally operative if we understand this to mean that the regular achievement of a desired result cannot be explained without resorting to the existence of the program. It is not causally efficient in the sense that in itself it is not one of its own elements, nor is it a factor in its realisation. But who said such a thing? Certainly not Aristotle. The *causa finalis* is not, by definition, *causa efficiens*!

Meanwhile, this has been detected. Thus, Ernst Mayr, again, writes: 'most of the examples of processes oriented to aims that Aristotle has given are of the same kind as those Pittendrigh and I would call telenomic'³⁴. The understanding of Aristotle as a telenomist has become usual among biologists, after realising that the caricature of teleology designed at the beginning had nothing to do with the Aristotelian 'because of'. Kullmann has clarified this³⁵; Rupert Riedl thought he could include Aristotle in his genealogical line³⁶. Ernst Mayr goes even further and even abandoned intolerance against the concept of teleology. He sees it as a vague superior concept, under which various phenomena, defined with precision, can be subsumed³⁷. Telenomic processes are a sub-class of this kind. They are true processes directed at aims, because oriented programs are distinguished from processes which, based upon more simple natural laws

³³ Brief an E. Mayr, quoted by E. Mayr, a.a.O., p. 211.

³⁴ E. Mayr, a.a.O.

³⁵ Kullman, 'Die Teleologie in der aristotelischen Biologie. Aristoteles als Zoologe. Embryologie und Genetiker', in: *Sitzungsber der Heidelberg Akad. D. Wiss., Phil.-Hist. KI*, 1979, 2.

³⁶ R. Riedl, *Evolution und Erkenntnis*, 2nd edn (München-Zürich, 1984), p. 123 ff.

³⁷ E. Mayr a.a.O, p. 198 ff.

such as the law of gravity or the second law of thermodynamics, always achieve final states. Mayr designates these processes, apparently directed at aims, as ‘telematic’. Finally, he makes a distinction between evolutionary changes over the course of generations, which, based on the game of casual generation of variants and natural selection of the most apt, generate the appearance of being directed at ends, through orthogenesis, from telenomic and telematic processes. The description of such changes can, in his opinion, renounce teleological language.

It is interesting to see that those processes that manifestly constitute the first paradigm of all teleological language, that is, human actions, do not appear among these classes, as a special class. In contemporary biology these are subsumed in the former model, which can nevertheless only be understood in itself as a result of human action, the telenomic model; in other words, a programmatically directed mechanical process or, better put, a process which is directed through an open information converting program.

We should not be surprised by this. Because if philosophers have often said that teleology in the proper sense is the adequate interpretation for human action and, otherwise it is an unacceptable analogy³⁸, it is difficult to make such a position scientifically plausible. This is because it allows the dimension of finality in man to suddenly, so to speak, appear, and it excludes man from the natural context. The alternative is therefore that either human action following aims is in itself ontologically secondary and, ultimately, a casual product, which can be interpreted in terms of

³⁸ See the so-called critique of anthropomorphism in N. Hartmann, *Der Aufbau der realen Welt*, 3, (Aufl. Berlin, 1964), p. 485 ff. W. Stegmüller, *Probleme und Resultate der Wissenschaftstheorie und Analytischen Philosophie*, vol. I: Erklärung und Begründung, 2. (Aufl. Berlin–Heidelberg–New York, 1983), y E. Topitsch, *Vom Ursprung und Ende der Metaphysik* (Wien, 1958).

selection from a prominent collection of determinist casual processes, in other words, teleonomically, or, on the contrary, the category structure of the ‘tending towards’, in various degrees of complexity is a constituent of natural beings, i.e. that this being is, from the beginning, more than pure positivity and objectivity. And any reconstruction of orientation to aims is generally possible only because we previously have the dimension of the ‘tending towards’.

This is the question on which the teleology–teleonomy issue hinges. To clarify this question further, we shall turn once more to Aristotle. Is what he teaches really teleonomy, in the now canonical definition of the term? The answer can only be: no. When we, following Rupert Riedls’s brief definition, define teleology as the supposition of ‘a prefixed goal’ and teleonomy as the ‘origination of successful programs’³⁹, Aristotle cannot have taught teleonomy, simply because species of living beings, in his view, are eternal. Programs cannot, therefore, have emerged. Individuals emerge. Regarding their well–directed arrangement in terms of ends, Aristotle rejects Empedocles’s doctrine, whereby this arrangement or layout is a consequence of directionless mutation and selection⁴⁰. He rejects this doctrine by pointing out the constancy of species. If this, in turn, is justified by a casually originated and subsequently selected genetic program, this is not a problem for him, because he, as we have said, believes that species are not originated at all. According to Pittendrigh, Mayrs and Riedls’s definition, then, Aristotle does not teach teleonomy; he is and remains a teleologist.

Then, where does the opinion that he is not a teleologist come from? The first answer has to do with the inevitable discovery that Aristotle did not teach anything as

³⁹ R. Riedl, *Die Spaltung des Weltbildes* (Berlin–Hamburg, 1985), p. 79.

⁴⁰ Aristotle, *Phys.*, II, 8, 198 b 10 ff.

obscure as what Pittendrigh and Riedls understand teleology to be. We would like to know who taught such a thing. The disposition of biologists to talk about fundamental issues of philosophy, and the demand of even taking the place of the *prima philosophia*, is often in a reverse relationship to knowledge of differentiated philosophical theorems.

Still, and this is the second reason, we should not deny the fact that the model of a cybernetic program is very close to the model that Aristotle uses, the model of art. If the art of building ships were in the wood, he writes, then it would be as if nature itself operated, and the ship would, by nature, be a natural thing⁴¹. Shipbuilding would be autopoiesis. Only Aristotle, unlike the teleonomists, was conscious of the analogical character of this sentence. Art, for him, is a model of nature, but he does not confuse the model with what it simulates through the model. He has a teleonomic model, but his ontology is teleological.

The decisive reason, however, for Aristotle to be excluded from the verdict against teleology has to do with the fact that the concept of teleology, to date, is impregnated with 18th century stoic and rationalist philosophy, not without reason, because the expression originates in Christian Wolff. Teleology here is mostly a universal context of external finality, within which all world events are interrelated, and everything is for some good. Aristotle nevertheless expressly rejected such a vision of universal teleology. The fact that rain is a condition for the growth of cereal does not mean, he says, that cereal is the reason for the cycle of water. Proof: the very same rain destroys cereal crops time and time again⁴². And Aristotle expressly differentiates this ecological context from the programmed self-constitution of an organism.

⁴¹ Aristotle, *Phys.*, II, 8, 199 b 28 ff.

⁴² Aristotle, *Phys.*, II, 8, 199 b 16 ff.

On the contrary, Thomas Aquinas, in his commentary to *Physics*, argues that saying this is confusing a *causa generalis* with an *effectus particularis*⁴³. The rain is generally a necessary condition for the growth of cereal and it has this consequence ‘*ut in plurimis*’, whilst the rain ruining a cereal crop is accidental. But Thomas interprets constituent ecological contexts as teleological, in the sense of the Stoa. Still, this presupposes that in any case, the cereal must be, for some reason. Having said that, this ‘must be’ can only be founded on the divine will.

There is therefore a theological premise behind universal teleology. God is not thought about here solely as a universal *telos*, but also as a universal *causa efficiens*, as the Creator, to whom things not only owe their being, as in Aristotle, but also their being thus and no other way. Universal teleology, however, which reaches its summit in Leibniz’ *Theodicy*, where he makes every being a means for the plenitude of the whole⁴⁴, weakens the central part of Aristotle’s thinking, whereby each living substance is in itself the end of its own process, and not through any utility, but through being, it participates in the divine⁴⁵.

The issue of universal teleology now gains renewed virulence regarding the theory of evolution. The very term ‘evolution’ suggests the idea that the succession of species should be considered an analogy of the development of an organism; it is therefore something that ‘develops’, that is, it carries out a program with an objective.

⁴³ Expos. S. *Phys.* II, lect. 12 (254).

⁴⁴ For the same reason, the universal teleological ethics of utilitarianism loses the force of individual ethical rules, insofar as it demands each action be measured by the rule of the total scales of the best possible. See Spaemann, ‘Über die Unmöglichkeit einer universalteleologischen Ethik’, *Philosophisches Jahrbuch* 88, 1981, p. 83 ff.

⁴⁵ Aristotle, *De anima*, II, 4, 403, a 24–b7.

This suggests the idea of orthogenesis, an entelechially directed process, so to speak. Biologists have serious objections to this thinking, which complement the fundamental Aristotelian concept.

Because reality precedes possibility is an axiom for Aristotle. The 'what for' of a process must be real, so that it can be understood as a reason for the process. The *eidos* of a living substance, that is the end of its development, is already carrying out the program, specifically, in the previous individual of the species. But this cannot be said of the entire evolutionary process. When we consider it as oriented towards an end, then it is not by an immanent program, but simply a divine intention that lays out the whole of the process so that evolution can follow that path and no other. This intention can in no way be a subject for natural science, only for the metaphysics of a religious faith and its interpretation through theology. Faith does not need encouragement from the affirmation of causality in the process. Thomas Aquinas taught that God is *causa prima*, the reason for both the casual and the necessary events, both of free action and of determined processes⁴⁶. If man, who loves God, can be understood as the end of evolution, this has nothing to do with the theory of orthogenesis, with teleology in a scientifically relevant sense. Indeed: from a certain point of view, the teleological interpretation of evolution even questions why this interpretation is frequently chosen, that is to say, the idea that man is an end in itself. Biologists like Carsten Bresch, for instance, consider man to be a stage on a path of increasing complexity, at the end of which man himself would be superseded⁴⁷. Superseded by whom?

Criticism of similar forms of teleology has good company philosophically. It not only has Aristotle on its side, but also Hegel, for whom the *telos*, of which history is a

⁴⁶ *SCG*, II, c. 30, (1066), *ST I*, q. 83, a. 1 ad 3.

⁴⁷ C. Bresch, *Zwischenstufe Leben* (Munich, 1977).

gradual and conscious realisation, must always be thought of as a real and present one⁴⁸. For, if there is one thing on which Hegel agrees with Aristotle, it is precisely on the primacy of the real over the possible.

As regards the critical assessment of external finality, of universal teleology and of the teleological explanation of evolution, we could see a recovery, a scientific reconstruction of the original philosophical idea of the *telos* in the new conceptual imagery of biology. But this appearance leads to error. The difference remains. But not where biologists think it is. It is no longer about a difference between two biological theories, as in the time of the controversy on vitalism, it is the difference between two disciplines, biology and philosophy. We can but hope this difference is clear, it is not necessarily opposition, but rather, a difference in levels of comprehension. Undoubtedly, this presupposes the idea that biology cannot be seen as the highest level, as the *prima philosophia*, that teaches us what life is and what knowledge proper is.

I have said that teleonomy is a scientific reconstruction of teleology. The issue at stake is what we can expect from reconstructions and how they behave *vis a vis* what has been reconstructed. Kant understood the ‘Newton of the blade of grass’ as someone who reconstructs the blade of grass. What does this re-constructer do? What distinguishes a program we have created from a natural program? What distinguishes life from its simulation? Hegel writes, commenting on Aristotle: ‘the main concept in Aristotle is that nature can be understood as life, the nature of something that is an end in itself, unity with itself, the principle of its own activity’⁴⁹. And he praises Aristotle, who, unlike ‘the new science’ has overcome external finality. Now, any reconstruction remains within the sphere of external finality. *We* are the ones who join certain parts

⁴⁸ G.W.F. Hegel, *System der Philosophie I*, p. 422.

⁴⁹ G.W.F. Hegel, *Geschichte der Philosophie*, p. 343.

onto others, so as to produce a movement, which later, we again describe teleological. We say that a torpedo seeks a ship and finds it. Clearly, the torpedo seeks nothing at all. Its programme is only a programme *for us*, the builders. That is to say: we only know the meaning of ‘tending towards something’ by association, that is, through our own experience; and not because we, as active beings, set ourselves goals, but because we find the direction towards goals beforehand within ourselves, in the form of a tendency. We can talk of external finality only because we have already experienced the ‘tending–towards’, as a form of the internal unity of living beings. The programme behind the concept of teleonomy seeks to rebuild the original and ultimate phenomenon of the ‘tending–towards’⁵⁰, from elements, categorical unity from multiplicity, the interior from the exterior, the being oneself – identity – from objectivity, negativity from positivity. This, however, is logical nonsense, in the light of which nothing can be thought.

Teleology is different from teleonomy in that it is always presupposed. Teleonomy is simulated teleology. The selective advantage of teleonomic structures is interesting in this context, but it is not an argument. It may well be that increasing interiority, unequivocal systemic unity of a certain material framework, for instance, a town or village, offers advantages in terms of survival. What is philosophically interesting is in what is hidden behind words like ‘fulgurations’, ‘emergencies’ or ‘qualitative leaps’. It is in the appearance of new units, new kinds of ‘tending–towards’, which do not appear programmed only to an external observer, but they are ‘for the sake of themselves’ and they experience themselves as such. Such a ‘being for oneself’ means indifference towards the conditions of origin, ‘mediated immediateness’, to put it the Hegelian way. The lack of epistemological productiveness of the evolutionary

⁵⁰ ‘Phenomenon of the ‘tending–towards’’ translates ‘Phänomenon des Aus–seins–auf’. [Editor’s note.]

theory of knowledge rests upon this. It might contribute to the explanation of our mistakes, but it contributes nothing to our concept of knowledge. If we were to build a machine which suddenly made us think it could feel pain, we would no longer be under the impression that we had created that perception. In the same way parents do not feel they have created their children. The science of nature is research into conditions. Within it there is nothing like ‘being itself’. Being oneself is emancipation from all the conditions of origin⁵¹. Nevertheless, the being oneself of finite beings has the form of ‘tending–towards’, of ‘tending to be’. This is why Aristotle can say that the tendency of beings to self–preservation and to preservation of the species is a tendency to participate in the divine⁵².

This sentence from *De Anima* in itself contradicts any attempt to include Aristotle among those in favour of the concept of teleonomy. The attempt to substitute the concept of teleology with the concept of teleonomy is an attempt to interpret our self–understanding as simulation. But being able to interpret simulation as simulation, the program as a program, always presupposes the experience of ‘tending–towards’.

The need to overcome this dualism in modern science, the so–called ‘split image of the world’⁵³ is behind the absurd project of deriving finality from causality. The concept of efficient causality was already included in the concept of finality. The modern concept of causality does not include the thought of ‘tending–towards’. That is why it can only be constructed as a secondary dimension. For Aristotle, causal

⁵¹ See R. Spaemann, *Sein und Gewordensein. Was erklärt die Evolutionstheorie in Evolutionstheorie und menschliches Selbstverständnis*, ed. R. Spaemann, P. Koslowski, R. Löw (Weinheim, 1984), pp. 73–91.

⁵² See Aristotle, *De anima*, II, 4, 403, a 24–b7.

⁵³ A. Eddington, *Science, Perception and Reality* (Humanities Press, 1963), or: *Philosophie der Naturwissenschaft*, N. 31/10.

processes could only be considered as having an objective, and the first cause, the νοησις νοεσεως operated only as ως ερωμενον, only as ‘for the sake of’⁵⁴. For this reason it is not logical to use Aristotle to support the concept of teleonomy.

Meanwhile, we have not distanced ourselves from Aristotle as much as it would seem. The opinion that modern thought has elevated the Aristotelian *causa efficiens* to the type of cause *par excellence* is very common. This is erroneous. It can be easily seen that, for Aristotle and for Aristotelianism, efficient causality in itself does not involve regularity in the effects. This regularity is, to be more precise, a decisive argument for the constitutive meaning of the ‘because of’⁵⁵. Without this, anything would be generated from anything at any time. Eliminating the *causa finalis* would be possible only insofar as its decisive function was integrated in the definition of the *causa efficiens*, indeed the *causa efficiens* could only be defined through the regularity of the connection of events; in other words, through the law of nature. Thus, the analogy with action has not disappeared from the comprehension of causality; rather, it has just changed places. The ‘*omne agens agit propter finem*’ is replaced by the ‘*omne agens agit secundum regulam*’. Why the analogy of action has moved from the direction towards ends to regularity, that is to say, to the law, is an issue we cannot pursue here. The introduction of the concept of teleonomy, which should free biology from ontological commitments, doesn’t clarify this issue further. In fact, this concept only warily introduces a different ontology, but it is one that cannot be developed according to its principles. The programme of de–teleologisation cannot be completed.

De–teleologisation is inconclusive because it is itself a human endeavour and therefore it is oriented towards aims. If the intentionality of human action is a victim of

⁵⁴ Aristotle, *Metaph.* XII, 7, 107 b 3; XII, 9, 1074 b 3 ff.

⁵⁵ Aristotle, *Phys.*, II, 8, 198 b 32 ff.

anti-teleological reductionism, then any theory, including the reductionist theory will fall, as a systematic misinterpretation of itself. Nietzsche was conscious of this consequence. He considered that the end of the idea of truth had arrived, and an era of new myths had begun⁵⁶.

If we consider that authentic teleology, in the sense of Konrad Lorenz concept of fulguration⁵⁷, is not a fundamental category, but an emerging property, non reducible to its conditions of origin, then we must ask ourselves when this property appears for the first time. Normally, the answer is that it appeared with conscious human action. But this is misleading. Conscious action only takes place as a secondary appropriation or rejection of tendencies that have, firstly, a character of instinctive impulse. We are not stones that will and act; we are living beings that will and act. The decision to eat or fast is simply the conscious appropriation or rejection of that which is forewarned in hunger, and also somehow in the way of 'tending-towards'. And wherever we go to aid non-human life, it behaves in a similar way. One can only aid a being that directs itself towards something, but is too weak to reach it. There is only teleology in human action because and insofar as there is a direction in natural tendency.

However, the origin of finality cannot be placed at the beginning of life or of the central nervous system, if we do not abandon the idea of the unity of reality or we do not want to renounce any understanding of that reality. Bertrand Russell showed that the connection of *causa finalis* and *causa efficiens* is unrelinquishable.⁵⁸ The concept of cause, in general, falls together with the concept of finality. They are both equally

⁵⁶ See F. Nietzsche, *Götzendämmerung*, KGA, VI, 3 p. 73 ff.

⁵⁷ See K. Lorenz, *Die Rückseite des Spiegels* (München, 1973), p. 48 ff.

⁵⁸ See B. Russell, 'The Notion of Cause', in *Mysticism and Logic* (London 1918).

anthropomorphic. We know actions as causes. Outside the context of action, science only deals with natural laws, not with causes.

But Russell was not radical enough. Not only does the concept of cause collapse, together with the concept of finality, the concept of something continuous over time and of movement falls as well. Descartes needed to resort to the trustworthiness of God in order to give the *res cogitans* continuity. Without this resort, an author like Parfit definitively loses the continuity of a person in a sequence of momentary states of consciousness, which are only weakly interlinked⁵⁹. The unity of the person over time presupposes that being, existing, has a vectorial meaning, as Aristotle supposed, and already teleologically interpreted the pure duration of time. The existence of finite beings is synonymous with the tendency towards being. But since the unity of the person is the paradigm for all substantiality that persists over time, for things too, the latter also collapses with the former. Whitehead supposed the ontologically fundamental entity as a minimum duration below all temporal changes. But he saw that even this elementary microphysical unity could only be understood if one understands it as the unity of a fundamental ‘tending–towards’, as tendency and fulfilling. True unity, which clearly separates a thing from its environment, only exists when that thing is constituted through the innerness of a tendency, of an inclination. Nietzsche, again, saw this when he, as a consequent anti–teleologist, described things as the last anthropomorphic fictions⁶⁰.

Neither the unity of something real nor movement can be considered without the thought of anticipation. It is no coincidence that Leibniz, who, with the aid of

⁵⁹ See D. Parfit, *Reasons and Persons* (Oxford, 1984).

⁶⁰ See Nietzsche, *Götzendämmerung*, KGA, VI, 3, p. 85. Also in the *Fragments of the Nachlass* (Musarion): IX, 415, 156; XVI, 21; XIX, 52, 57 ss; 65.

infinitesimal calculation, first made movement an object of mathematical physics, dissolves movement into an infinite series of discrete states and thereby leaves aside its nature as movement. Leibniz knew this; he knew that when we want to think about movement as movement, and about what is moved as such, we must think about it by analogy with persons who act, that is, as *conatus*⁶¹. This, however, amounts to saying: teleologically. One can call this anthropomorphism. In modernity, anthropomorphic nature has had to give way to an anthropocentric reduction of nature to pure objectivity. This reduction has now reached man himself, who has become a pure object of transcendental subjectivity, alienated from the world, which receives the name of 'Science'. The resulting relinquishment of the anthropomorphic vision of nature leads man himself to finally become anthropomorphism. However, as a result, anthropomorphism also loses its meaning. Since the abolition of finality can only be completed at the cost of abolishing man, we cannot think about or desire its fulfilment.

Bibliography

Aquinas, Thomas, *Summa Theologica* (New York: Benziger Bros., 1947). Translated by the Fathers of the English Dominican Province.

Aquinas, Thomas, *Summa contra gentiles* (Notre Dame: University of Notre Dame, 2001–2003). Translated by Pegis, Anton C., James F. Anderson, Vernon J. Bourke, and Charles J. O'Neil (*On the Truth of the Catholic Faith (Summa Contra Gentiles)*). 5 vols. New York: Doubleday, 1955–57).

Aquinas, Thomas, *In duodecim libros Metaphysicorum Aristotelis expositio*, ed. A. M. Pirotta (Turin and Rome: Marietti, 1950).

⁶¹ More on this in R. Spaemann/R.Löw, *Die Frage Wozu?* (Munich 1981), pp. 114–121.

- Aquinas, Thomas, *In octos libros Physicorum Aristotelis expositio*, ed. P.M. Maggiòlo (Turin and Rome: Marietti, 1965) [contains Leonine Commission text of 1884]. (*Commentary on Aristotle's Physics*, Translated by Blackwell, Richard J., Richard J. Spath, and W. Edmund Thirlkel; Rare Masterpieces of Philosophy and Science. (New Haven: Yale University Press, 1963), reprint, Aristotelian Commentary Series. (Notre Dame, IN: Dumb Ox Books, 1999).)
- Aquinas, Thomas, *Quaestiones disputatae de veritate. Opera omnia*, vol. 22 (Rome: Leonine Commission/Editori di San Tommaso, 1970–1975).
- Aquinas, Thomas, *De potentia*, in *Quaestiones disputatae*, vol. 2 ed. P. Pession (Rome and Turin: Marietti, 1953).
- Aquinas, Thomas, *De principiis naturae ad Fratrem Sylvestrum. Opera omnia*, vol. 43 (Rome: Leonine Commission/Editori di San Tommaso, 1976), pp. 1–47.
- Aristotle, *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. J. Barnes (Princeton: Princeton University Press, 1984).
- Auvergne, Petrus de, *Quaest in Metaph. III. Q. 4*, ed. W. Dunphy, in *Med. Stud.* 26 (1964).
- Baader, Franz von, 'Über die Analogie des Erkenntnis und Zeugungstriebes', in Franz von Baader, *Sämtliche Werke*, vol. I, (Leipzig, 1851), pp. 39–48.
- Bacon, Francis, 'De dignitate et augmentis scientiarum', in *The Works of Lord Bacon* (London, 1837).
- Bacon, Roger, *Comm. Nat* ed. R. Steele (op. Hact. Ined. II, Oxford 1909).
- Bresch, Carsten, *Zwischenstufe Leben*: (Munich and Zurich: R. Piper and Co. Verlag, 1977).
- Drisch, Hans, *Philosophie des Organischen* (Leipzig: Verlag von Wilhelm Engelmann 1928).

- Duns Scotus, Ioannes, *Opera omnia*, vol. VII (Paris: Ludovicum Vives, 1893).
- Duns Scotus, Ioannes, *Opera omnia*, vol. IV (Civitas Vaticana: Typis Polyglottis Vaticanis, 2006).
- Eddington, Arthur, *Science, Perception and Reality* (New York: The Humanities Press, 1963) [= *Philosophie der Naturwissenschaft*, N. 31/10].
- Grosseteste, Robert, *Commentarius in VIII libros physicorum Aristotelis: E fontibus manu scriptis nunc primum in lucem*, ed. Richard C. Dales (Boulder, Col.: University of Colorado Press, 1963).
- Hartmann, Nicolai, *Der Aufbau der realen Welt*, 3, (Aufl. Berlin, 1964).
- Hegel, G.W.F., *System der Philosophie I*, in *Sämtliche Werke* (Stuttgart–Bad Cannstatt: Frommann, 1964) Glöckner–Ausg., vol. 8.
- Hegel, G.W.F., *Vorlesungen über die Geschichte der Philosophie*, in *Sämtliche Werke* (Stuttgart–Bad Cannstatt: Frommann, 1965) Glöckner–Ausg., vol. 18.
- Hobbes, Thomas, ‘Leviathan’, in Thomas Hobbes, *English Works*, vol. 3 (London, 1889).
- Kant, Immanuel, *Kant’s gesammelte Schriften*, ed. Akademie der Wissenschaften (Berlin: 1902–).
- Kant, Immanuel, *Kritik der reinen Vernunft*, ed. Jens Timmerman (Hamburg: Felix Meiner, 1998).
- Kullman, Wolfgang, ‘Die Teleologie in der aristotelischen Biologie. Aristoteles als Zoologe. Embryologie und Genetiker’, in *Sitzungsber der Heidelberg Akad. D. Wiss., Phil.–Hist. KI*, 1979, n° 2.
- Leibniz, Gottfried Wilhelm, ‘Letter to Remond’, in *Die philosophischen Schriften*, ed. C. I. Gerhardt (7 vols, Hildesheim: Georg Olms, 1965), vol. III.

- Leibniz, Gottfried Wilhelm, 'Du principe de raison', in *Opuscules et fragments inédits de Leibniz: extraits des manuscrits de la Bibliothèque royale de Hanovre* (Paris, 1903, Hildesheim: Olms, 1961).
- Lorenz, Konrad, *Die Rückseite des Spiegels* (München: Piper Verlag, 1973).
- Maier, Anneliese, *Metaphysische Hintergründe der spätscholastischen Naturphilosophie* (Rome: Edizioni di Storia e Letteratura, 1955).
- Mayr, Ernst, *Evolution und die Vielfalt des Lebens* (Berlin, Heidelberg and New York: Springer, 1979).
- Nietzsche, Friedrich, *Fragments of the Nachlass* (Musarion), in *Kritische Gesamtausgabe*, vol. VII, 1 (Berlin [etc.]: Gruyter, 1977).
- Nietzsche, Friedrich, *Götzendämmerung*, in *Kritische Gesamtausgabe*, vol. VI, 3 (Berlin [etc.]: Gruyter, 1969).
- Ockham, William, *Opera philosophica et theologica ad fidem codicum manuseriptorum edita* (New York: St. Bonaventure University, 1980).
- Parfit, Derek, *Reasons and Persons* (Oxford: Oxford University Press, 1984).
- Pascal, *Pensées* (Paris: Librairie Générale Française, 2000).
- Pittendrigh, Colin S., 'Adaptation, Rational Selection and Behavior', in A. Roe and G. G. Simpson (eds.), *Behavior and Evolution* (New Haven: Yale University Press, 1958).
- Plato, *Complete Works*, edited with introduction and notes, by John Cooper (Indianapolis, IN: Hackett Pub., 1997).
- Riedl, Rupert, *Die Spaltung des Weltbildes* (Berlin–Hamburg: Paul Parey, 1985).
- Riedl, Rupert, *Evolution und Erkenntnis*, 2nd edn (München–Zürich: Piper, 1984).
- Russell, Bertrand, 'The Notion of Cause', in *Mysticism and Logic, and Other Essays* (London and New York: Longmans, Green and Co., 1918).

Sigwart, Christoph, 'Der Kampf gegen den Zwecke', in *Kleinere Schriften*, vol. 2, (Freiburg, 1881).

Spaemann, Robert, 'Sein und Gewordensein. Was erklärt die Evolutionstheori in Evolutionstheorie und menschliches Selbstverständnis', in R. Spaemann, P. Koslowski, and R. Löw (eds.), *Evolutionstheorie und menschliches Selbstverständnis. Zur philosophischen Kritik eines Paradigmas moderner Wissenschaft*, (Weinheim: Acta humaniora, 1984), pp. 73–91.

Spaemann, Robert, 'Über die Unmöglichkeit einer universalteleologischen Ethik', *Philosophisches Jahrbuch*, 88 (1981): 70–89.

Spaemann, Robert, and Löw, Reinhard, *Die Frage Wozu?* (Munich: Piper Verlag, 1981).

Spaemann, Robert, *Reflexion und Spontaneität. Studien über Fénelon* (Stuttgart: Klett–Cotta, 1963/1990).

Stegmüller, Wolfgang, *Probleme und Resultate der Wissenschaftstheorie und Analytischen Philosophie*, 2nd ed (Berlin–Heidelberg–New York, 1983), vol. I: *Erklärung und Begründung*.

Sturmius, J. Chr., *Philosophia eleatica* (Altdorf, 1689).

Topitsch, Ernst, *Vom Ursprung und Ende der Metaphysik* (Wien: Springer Verlag, 1958).

SUBJECT INDEX

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| 'external' order | Affectio commodi |
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| 'normal' person | Affective constitution |
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| Abolition of finality | American and French Revolutions |
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| Absolutism | Anthropology |
| Abstract human nature | Anthropomorphic fictions |
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| Act for the sake of the other | Appetite |
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| Active force | Aristotelian cosmology |
| Acts of the will | Aristotelian forms |
| Actualism | Aristotelian natural science |
| Actus interior | Aristotelian theory |
| Ad opposita | Artificial virtues |

Astuteness	Bridging concepts
Asylum ignorantiae	Bürgerlicher Zustand
Ateleological conception of nature	Business ethics
Atheism of the ethical world	By duty
Aufheben	Calvinist theory
Authority	Casual product
Authorization	Casuistry
Auto-constitution	Categorical imperative appetite
Autonomous ethics	Causa efficiens
Autonomy	Causa finalis
Autonomy of the monad	Causa generalis
Baconian Nature	Causal explanation
Basic goods	Causal history
Basic natural tendencies/inclinations	Causal mechanisms
Basic truths	Causal relations
Being towards	Causality
Benevolence	Causality by freedom
Benevolence and obligation	Causality through freedom
Bioethics	Certa cognitio
Biological explanation	Certitude
Biological teleology	Chance
Biologistic	Christian tradition
Biology	Christianity
Blossoming/flourishing	CI (categorical imperative)
Body	Citizenship

Civil constitution	Compossibility
Civil law	Conatus
Civil life	Concupiscence
Civil society	Conditional necessity
Civil state	Confined benevolence
Classical conception of the natural law	Conflict
Classical natural law theorists	Conformity with duty
Classical natural law theory	Confucianism
Classical natural right	Conscience
Clay theory of the origin of life	Conscious activity
Coercion	Conscious agents
Coercive power	Consciousness
Coexistence	Consensus
Coexistence of freedoms	Consequentialism
Coexistence of liberties	Consequentialist
Coexistence of sovereign states	Constriction
Cognitive powers	Contingency
Command	Contract
Command of practical reason	Contracting
Common good	Contractualism
Common law	Convention
Common sense	Conventionalist
Community of persons	Conventionalist theory of culture
Commutative and distributive justice	Copernican revolution
Complexity	Corporality

Corporeal nature	Descriptivism
corporeity	Desires
Corpuscularianism	Desiring subjectivity
Corruption of nature	Despotic rule
Corruption optimi pessima	Despotism
Covenant	Determinate obligation
Created intellect	Determination
Creation	Determination of will
Creationist theology	Dictamina rationis rectae
Creationist thinking	Dignity
Criminal law	Direct purpose
Cuiuscumque causa finalis eius	Directive function
Cultural relativism	Directive or coordinative function of the law
Cultural world	Discursive reason
Culture	Distinctio formalis a parte rei
Curvature of the will	Distinction rationis cum fundamento in re
Customs	Divine action
Cybernetic program	Divine command theorists
Cycles	Divine command theory
Cyclicity	Divine Commandments
Decision	Divine intellect
Deconstruct	Divine intelligence
De-finalisation	Divine intention
Denaturalized will	
Deontic role of benevolente desire	

Divine law	Efficient causation
Divine Law theorist	Efficient cause
Divine legislation	Egoism
Divine legislator	Egoistic motivational conditions
Divine Light	Emancipation
Divine mind	Emancipation from nature
Divine omnipotence	Emancipation of the natural state
Divine precepts	Empirical practical reason
Divine Providence	Empiricism
Divine Reason	Empiricism of practical reason
Practical knowledge	Empiricist
Divine understanding	Empiricist faith
Divine voluntarism	End of natural right
Divine Will	Ends
Divine willing	Ends in themselves
Doctrine of right	Entzweiung
Doctrine of signs	Epagoge
Dogmatism	Epistemological finiteness
Dualism	Erheben
Dualism	Essence
Duties	Essential heterogeneity
Duty	Essential sense
Education	Essentialism
Effectus particularis	Essentialist
Efficient causal principle	Essentialist thinking

Eternal harmony	Exemplary idea
Eternal ideas	Existentialist
Eternal law	Experience
Eternal law	Expression
Eternal reason	Expression of freedom
Ethical descriptivism	Exterior act
Ethical judgements	External finality
Ethical knowledge	External nature
Ethical rationalism	Extrinsic finality
Ethical realism	Extrinsic principle
Ethical relativism	Extrinsic purpose
Ethical theory	Facts and values
Ethical world	Factual judgements
Ethicity	Factum of reason
Eudaemonist ethic	Fact–value distinction
Evaluative institutions	Faculty of judgment (power of judgment)
Evaluative judgement	
Eventus sequens	Faktum of reason
Evolution	Feeling of the good
Evolutionary changes	Fideism
Evolutionary explanation	Final causes
Evolutionary process	Finalistic considerations
Evolutionary theory	Finality
Evolutionary theory of knowledge	Finis cuius
Excessive desires	Finis operis et operantis

Finis quo	Fortuna
Finite rational beings	Fragility
Finite rational subject	Free will
Finiteness	Freedom
First immediacy	Freedom of choice
First practical principle	Freedom of the will
First precept of natural law	Friendship
First principle of natural law	Fulfilment
First principle of practical reason	Function
First principles	Functional components
First truths	Functional considerations
Firstness	Functional role
Flourishing	Functional talk
For the other's sake	Functionality
Force	Genesis of nature
Forces	Genetic code
Forma dat esse	Genetic engineering
Formal causation	Genetic program
Formal cause	Gerund form
Formal ethics	Goals
Formal grounds for the determination of the duties	God
Formal grounds of obligation	God, nature and reason
Formula of the law of nature	God's Will
Fortitude	Golden rule
	Good

Good human life	Horizon of meaning
Good in itself	Horizon of mutual recognition
Good life	Horizon of self-manifestation of the
Good lives	Whole
Good of nature as a whole	Horizon of subjectivity
Good reciprocity	Hormai
Goodness	Human action
Goodness	Human agency
Habit	Human animals
Habits	Human being
Haecceitas	Human being's desire
Happiness	Human city
Harmony of the universe	Human communities
Has a function	Human culture
Hedonism	Human desire
Heteronomous ethics	Human dignity
Heteronomy	Human ends
Heuristic principle	Human goals or purposes
Hierarchy of ends	Human good
Highest and greatest good	Human goods
Historicisms	Human inclination
Historicity of the moral world	Human intentionality
History	Human law
Homogeneity of laws of nature	Human life
Horizon	Human nature

Human need	Imperative mode
Human power	Imperatives of duty
Human relationship	Imperio
Human rights	Imperium
Human species	Impersonal legalism
Human universality	Inalienable right
Human universality (or transcendentality)	Inclination
Human voluntarism	Inclinationes
Human will	Inclinations
Human world	Inclinations and freedom
Humanism	Indirect consequences
Humanity	Indirect purpose
Humanly meaningful content	Individual action
Hybris	Individual identity
Hypothetical imperative	Individual subjectivity
Idea of nature in terms of rationality	Individual substance
Ideal nature	Individualism
Idealism	Individuals
Identity	Individuation
Identity and alterity	Inherent force
Ignava ratio	Innatism
Immanent activity	Inner cosmos
Immanent causation	Inorganic
Immanent program	Inorganic forms
	Inorganic function

Inorganic system	Internal act of the will
Inorganic teleological behaviour	Internal law of the substance
Inorganic teleology	Internal legislation
Inorganic world	Internal nature
Institutional aporia	Inter–personal relations
Institutional facts	Interpretant
Instrument of rationality	Intersubjective (interpersonal)
Instrumental causation	relationship
Instrumental reason	Inter–subjective ethics
Instrumentalization	Inter–subjective relations
Intellect	Inter–subjective relationship
Intelligible cause	Intra–subjective ethics
Intelligible form	Intrinsic and extrinsic principles
Intelligible nature	Intrinsic law
Intentio	Intrinsic principle
Intention	Intrinsic purpose
Intentional relation	Intrinsic telos
Intentional relationship	Intrinsically evil
Intentional talk	Intrinsically good
Intentionality	Inversion of teleology
Intentions	Inviolability of conscience
Interaction	Iusnaturalism
Interests	Iusnaturalist
Interests of reason	Iusnaturalist tradition
Internal act	I–will

Jadah	Legislator
Judaism	Legislator
Judgement	Legitimacy
Judgement of value	Legitimizing authority
Judgment	Lex indita
Juridical obligation	Lex insita
Juridical science	Liberal tradition
Jus/dominium	Liberation
Justice	Libertas indifferentiae
Kantian theory	Liberty as independence
Kantian tradition	Life
Kingdom of ends	Limited self–love
Language	Limiting concept
Law of freedom	List of goods
Law of gravitation	Living body
Law of nature	Living creatures
Law of Right	Living nature
Lawgiver	Living organism
Laws of nature	Living species
Laws of right	Living substance
Legal conception of ethics	Living things
Legal justice	Logical–formal principles
Legal procedure	Logical–pragmatic arguments
Legal renovatio	Logos
Legality	Love

Love	Modern solipsism
Luck	Modern state
Machine	Molecular biology
Material principles	Monad
Material principles of obligation	Moral abilities
Materialist faith	Moral and social institutions
Matter	Moral autonomy
Maxim	Moral being
Maxims for actions	Moral beliefs
Meanings of nature	Moral bind
Mechanical laws	Moral culture
Mechanism	Moral duties
Mechanism in nature	Moral experience
Mechanistic	Moral faculty
Mere causation	Moral feeling
Metaphysical anthropology	Moral goodness
Metaphysical foundation for natural law	Moral imperative
Metaphysical perspective	Moral judgement
Metaseiosis	Moral knowledge
Minimal natural law	Moral laws
Modern biology	Moral obligation
Modern freedom	Moral order
Modern natural right	Moral perception
Modern natural science	Moral personality
Modern science	Moral personality

Moral positivism	Myths
Moral powers	Nationalism
Moral reason	Native right
Moral relation	Natura ad unum, ratio ad opposita
Moral relationships	Natural
Moral relativism	Natural affections
Moral rule	Natural appetite
Moral sense	Natural ends
Moral sensibility	Natural forms
Moral sentiments	Natural forms and ends
Moral theology	Natural freedom
Moral value	Natural fulfilment
Moral virtue	Natural good
Morality and autonomy	Natural goodness
Morality and legality	Natural inclination
Morality and rationality	Natural jurisprudence
Morality and right	Natural justice
Mortality	Natural kind
Motivation	Natural law
Motivational efficacy	Natural law and individual action
Motives of interest	Natural law method
Mutual availability	Natural law theorists
Mutual recognition	Natural Law theorists
Mutual threat	Natural law theory
Mysticism of practical reason	Natural laws

Natural man	Nature and freedom
Natural motives	Nature and reason
Natural philosophy	Nature of life
Natural principle	Naturgesetz
Natural principle of law	Natürliche Freiheit
Natural process	Natürliche Gesetze
Natural program	Naturrecht
Natural religion	Naturzustand
Natural right	Necessitas legalis
Natural rights	Necessitas problematica
Natural science	Necessity of ends
Natural selection	Neminem laedere
Natural sociability	New natural law
Natural state	New natural law theorists
Natural substance	New natural law theory
Natural teleology	Non-human
Natural tendencies	Non-living
Natural tendency	Normality
Natural virtues	Normative conflict
Natural will	Normative judgment
Natural world	Normativity
Naturalism	Obedience
Naturalistic	Objective rights
Naturalistic fallacy	Objective spirit
Nature	Objective system of duties

Objective teleology	Organic world
Objective values	Organism
Objectivity	Original pact
Objective principles	Orthogenesis
Obligation	Overall good
Obligatory character	Panpsychism
Obligatory force	Partial truths about nature
Occasionalism	Participation
Ockham's razor	Particles and forces
Official	Particular ends
Omne agens agit propter finem	Parts of organisms
Omne agens agit secundum regulam	Passions
Ontological difference	Pathological desire
Ontological finiteness	Pathological needs
Ontological status of values	Patterns of behavior
Opening	Penal function of the law
Operative sense of nature	Penal model of law
Opus rationis	Perception
Order	Perfection
Order of nature	Perfectionism
Orexis	Perfectionist
Organic and inorganic	Performative notion of knowledge
Organic forms	Performs a function
Organic processes	Permanent structural fact
Organic teleology	Persistence

PERSON	Political horizon
Personal autonomy	Political institution
Personal dignity	Political justice
Personal good	Political legitimacy
Personal identity	Political legitimization
Personhood	Political life
Persons	Political philosophy
Perspective	Political rationality
perspectivism	Positive divine law
Phenomenology	Positive juridical order
Philosophical interpretation of science	Positive law
Philosophy and natural science	Positive right
Philosophy of identity	Post-idealism
Physical intentionality	Post-political
Physical law	Potentia Dei absoluta
Physicism	Power
Physics	Power of judgement
Physiosemosis	Powers of the mind
Physis	Practical cognition
Pleasant	Practical dictates of reason
Pleasure	Practical judgements
Polis	Practical knowledge
Political action	Practical law
Political community	Practical law passions
Political friendship	Practical laws

Practical necessitation	Principle of Least Action
Practical necessity	Principle of legality
Practical order	Principle of mutual recognition
Practical philosophy	Principle of natural law
Practical principles	Principle of obligation
Practical proposition	Principle of right
Practical purpose	Principle of sufficient reason
Practical reason	Principle of unity, permanence and identity
Practical reasoning	Principle of universal benevolence
Practical schematism	Principle of what is best
Practical thought	Principles of independence and autonomy
Practical truth	Principles of morality and law
Practical value	Private right
Pragmatism	Process of the spirit
Praxis	Program
Praxis and physis	Progress
Pre-established harmony	Promising
Pre-political	Property
Prescriptivism	Providence
Pre-social state	Providential framework
Price	Providential telos
Principium dijudicationis	Providentialism
Principium executionis	Providentially guaranteed objectivism
Principle of coexistence of freedom	
Principle of compossibility	

Prudence	Rationalis naturae individua substantia
Prudential reasoning	Rationalism
Psychological affections	Rationalism of the faculty of judgement
Psychological facts	Rationalist
Psychopharmacology	Rationalist fallacy
Public or social persona	Rationality
Public Right	Rationality of freedom
Punishment	Rationality of individual action
Punitive function	Rationality of natural law
Pure practical reason	Realist
Purification of inclinations	Reason and nature
Purification of the drives	Reason and passion
Purpose	Rechtlicher Zustand
Quantum mechanics	Rechtslehre
Quantum physics	Reciprocity
Quantum theory	Recognition
Radix libertatis in intellectu constituta	Recognition of the Other
est	Recognition of the Other's
Random variation	unconditionality
Randomness	Reflection
Ratio boni	Regnum potentiae
Rational being	Regnum sapientiae
Rational law	Regulative view
Rational nature	Relational life
Rational order	Relational reciprocity

Relative notions of goodness	Rule–utilitarian
Relative, objective good	Ruling authority
Relativism	Sanctions
Renaissance	Scepticism
Renovatio	Science and metaphysics
Repraesentatio	Science of human nature
Representation	Science of moeurs
Reproductive technology	Science of right
Res cogitans	Science of the state
Respect	Scientia transcendens
Responsibility	Scientific laws of nature
Revealed religion	Second immediacy
Revelation	Second nature
Rewards	Secondary precepts
Right	Secondness
Right of freedom	Secular ethics
Right to freedom	Self–conscience
Right to resistance	Self–determination
Rights	Self–directedness
Rights theory	Self–direction
Role	Self–evident
Roman law	Self–evident practical principles
Rule of reason	Self–evident precepts of practical
Ruler	reason
Rules of prudence	Self–experience

Self-governance	Sensus moralis
Self-interest	Sentimentalist
Self-knowledge	Sentimentalist foundational deontology
Self-legislation	Sexuality
Self-love	Sign
Self-manifestation	Sign-vehicle
Self-manifestation of the Whole	Simulated teleology
Self-perfection	Simulation
Self-preservation	Sittlichkeit
Self-regulating entities	Slavery
Self-understanding	Social Darwinism
Semantic horizon	Social group
Semantic sphere	Social intercourse
Semioethic animal	Social life
Semioethics	Social personae
Semiosis	Social theories of the mind
Semiotic	Social-science research
Semiotic animals	Soul
Semiotic awareness	Soul as biological principle
Semiotic realism	Source of moral ideas
Sense of totality	Sources of obligation
Senses of 'nature'	Sovereign
Sensible effect	Sovereign rule
Sensible experience	Species
Sensible nature	Species neutrality

Species–neutral	Substantial form
Species–neutral universality	Substantive goods
Species–neutrality	Supreme good/highest good
Species–specific	Supreme principle of natural law
Species–specifically human	Supreme universal formula of
Speculative understanding	obligation
Sphere of ethicicy	Synderesis
Sphere of morality	System
Spirit	System of moral beings
Spiritual automata	System of needs
Spontaneity	System of right
State of nature	Systematic process
State of right	Tabula rasa
Status civilis	Technique
Status naturalis	Telematic processes
Statutory right	Teleological
Structure	Teleological causation
Sub ratione boni	Teleological considerations
Sub–cycle	Teleological inclination
Subject	Teleological interpretation
Subjective principles	Teleological language
Subjective rights	Teleological principle
Subjectivism	Teleological process
Subjectivity	Teleological talk
Substantial change	Teleology

Teleology of providence	Thirdness
Teleology of rational nature	Thomistic natural law
Teleonomic	Totality
Teleonomic discourse	Traditional natural law theory
Teleonomic processes	Transcendental
Teleonomy	Transcendental apriorism
Telos	Transcendental conscience
Temperance	Transcendental good
Tendencies	Transcendental horizon
Tendency	Transcendental opening
Tendential ends	Transcendental theory of action
Tending towards	Transcendentality
The Rule	Transformation of natural forms
Theological–political	Transformation of social and cultural forms
Theology of creation	Transgression of natural law
Theonomous ethics	Transient causation
Theoretical reason	Triadic relations
Theories of language	Trial of ordeal
Theories of the spirit	Trials by ordeal
Theories of the state	Tribalism
Theory of action	Truth
Theory of evolution	Truth of desire
Theory of obligation	Truth of nature
Theory of rights	Two ideas of nature
Third Antinomy	

Type (Typus) of morality	Universal value
Type of the moral law	Universal will
Typological function of natural law	Universal/transcendental nature
Ultimate end	Universalisation
Ultimate ground of obligation	Universality
Ultimate natural end	Universality of moral laws
Unconditional offering	Universality of reason
Unconditional prohibitions	Universality/transcendentality
Unconditionality	Universality/transcendentality of logos
Unicuique suum tribuere	Unnatural
Unintended consequences	Ut natura
Unity of experience	Ut ratio
Unity of nature	Utilitarianism
Unity of the person	Utilitarians
Universal commands of natural law	Value judgements
Universal foundation	Veracitas Dei
Universal good	Versöhnung
Universal human nature	Via determinationis
Universal judgement	Virtue
Universal law	Virtue and happiness
Universal law of nature	Virtue ethics
Universal law of right	Vis active
Universal principles	Vis coactiva
Universal reductionism	Vis coactiva
Universal teleology	Vis motrix

Vitalism	Whole of Sense
Voluntarism	Will
Voluntas ut natura	Will of God
Voluntas ut ratio	Willkür
Weltgericht	Wrath-model of law
Western civilization	Wrath-model of law
Western tradition	Zwang (coercion)

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