

St. Thomas, Natural Law, and Universal Ethics

LAWRENCE DEWAN, O.P.

Dominican University College

Ottawa, Canada

ARE there objective moral values capable of bringing people together and securing peace and happiness for them? What are they? How are they recognized? How are they realized in the life of individuals and of the community? These questions about good and evil, questions which always return, are today more urgent than ever, in as much as people are more aware of forming a single community in the world.¹

The Holy Father, Benedict XVI, in an address to the International Theological Commission in October of 2007, spoke of the project of the ITC concerning natural law as “aimed above all to justify and describe the foundations of a universal ethics that is part of the great patrimony of human knowledge which in a certain way constitutes the rational creature’s participation in the eternal law of God.” In this respect he concluded:

¹ This is from the Introduction to *The Search for Universal Ethics: A New Look at Natural Law*, a document published by the International Theological Commission [henceforth “ITC”], in the translation published on the Web page: www.pathsoflove.com by Joseph Bolin. (The Vatican web page presents the document in French and in Italian.) A preliminary note at the beginning of the footnotes tells us that the document was approved in December of 2008, and names the members of the subcommission that produced it.

Let me say at the outset that I am very grateful to Joseph Bolin for having translated for us all this important document; here and there I find reason to substitute my own translation, but let that not indicate any lack of gratitude towards him.

In this paper St. Thomas’s *Summa theologiae* will be indicated by “ST” (and where helpful I sometimes include the pagination from the edition published by the Collège Dominicain d’Ottawa, 1941); also, the reader will find considerable use of italics; in the main, this is my own responsibility. Thanks are due to Enrique Alarcon for making available the Opera omnia of St. Thomas online.

It is not, therefore, a theme of an exclusively or mainly *denominational* kind, although the doctrine on natural moral law is illuminated and developed to the full in the light of Christian revelation and the fulfillment of man in the mystery of Christ.²

Again, on January 15, 2010, Pope Benedict, speaking to the members of the Congregation on the Faith on the occasion of their plenary assembly, recalled their 2008 publication of *Dignitas Personae* on certain bioethical questions. He said:

There are in fact specific contents of Christian revelation that cast light on bioethical problems: the value of human life, the relational and social dimension of the person, the connection between the unitive and the procreative aspects of sexuality, and the centrality of the family founded on the marriage of a man and a woman. These matters engraved in the human heart are also rationally understandable as an element of natural moral law and can be accepted also by those who do not identify with the Christian faith.

The natural moral law is neither exclusively nor mainly confessional, even if the Christian Revelation and the fulfillment of Man in the mystery of Christ fully illumines and develops its doctrine. As the *Catechism of the Catholic Church* says, it “states the first and essential precepts which govern the moral life” (n. 1955). Established in human nature itself and accessible to every rational creature, the natural moral law thus determines the basis for initiating dialogue with all who seek the truth and, more generally, with civil and secular society. This law, engraved in every human being’s heart, touches on one of the essential problems of reflection on law and likewise challenges the conscience and responsibility of legislators.³

My contribution here is intended to underline certain features of natural law as presented by St. Thomas Aquinas, features that discourage any secularizing or Pelagian tendencies that the quest for “universality” might occasion. Still by way of introduction I wish to recall the treatment

² Address of his holiness Benedict XVI to members of the International Theological Commission, Friday, 5 October 2007; to be found on the Vatican webpage. Italics are his.

³ Address of his holiness Benedict XVI to members of the Congregation on the Faith on the occasion of the Plenary Assembly, Friday, January 15, 2010 (from the Vatican webpage).

In the last sentence quoted, the English word “law” as first used is given in the French as “*loi*” but in its second occurrence is given as “*droit*,” so also, in German, the first word is “*Gesetz*” and the second is “*Rechtsauffassung*.” The meaning of the English would be clearer, I would say, if in the second place it said: “(reflection on) *what is just*.”

by St. Thomas of the case of the gentiles, referred to by St. Paul, who obeyed the law as written in their hearts:

... [Paul] commends in them the observance of the law, when he says: "They naturally do what pertains to the law," that is, what the law commands, viz. as regards the moral precepts, which are prescribed by natural reason, just as concerning Job⁴ it was said that he was just and upright and fearing God and distancing himself from what is bad. Hence, he himself said: "My feet have followed his tracks; I have kept to his pathways."

But that [Paul] says: "naturally" raises a question, for he seems to give support to the Pelagians, who said that man through his natural wherewithal could observe all the precepts of the law. Hence, one must explain: [1] "naturally", i.e. through nature *reformed by grace*. For he is speaking of the gentiles *converted to the Faith*, who through the grace of Christ began to observe the moral [precepts] of the law. Or one can say: [2] "naturally", i.e. through the natural law showing them what is to be done; in accordance with Psalm 4: "The many say: who shows us what are good? Signed etc."; which is the natural light of reason in which there is the image of God; and *nevertheless it is not excluded that grace is necessary to move the affections*; just as also through the law there is knowledge of sin, and yet grace is further required to move the affections.⁵

⁴ Job is presented in the book of Job as a foreigner, indeed as a member of a people detested by the Jews after the fall of Jerusalem. Cf. *Le Livre de Job*, traduit par le R. P. Larcher, O.P., a separate volume of *La Sainte Bible*, traduite en français sous la direction de l'École Biblique de Jérusalem (Paris: Les Éditions du Cerf, 1950), Introduction, 7–8: "Job est précisément un étranger. On le fait vivre en dehors de la Palestine, aux confins de l'Arabie et du pays d'Edom. Houz, sa patrie, est mis en relation avec Édom dans *Gen.* 36.28 et dans *Lam.*, 4.21. . . . Non seulement Job est un étranger par rapport au peuple de l'Alliance, mais il appartient encore à une race qui se rendit odieuse aux Juifs lors de la chute de Jérusalem (cf. *Ez.*, 35; *Abd.*, 1; *Ps.*, 137.7). S'il est présenté comme un serviteur modèle de Yahvé, on doit en conclure qu'une tradition vénérable et indiscutable l'avait imposé en Israël."

⁵ St. Thomas, *In Ad Romanos*, chap. 2, lect. 3, re verse 14 (my italics): "[Paulus] commendat in eis legis observantiam, cum dicit: 'Naturaliter faciunt quae sunt legis,' id est, quae lex mandat, scilicet quantum ad praecepta moralia, quae sunt de dictamine rationis naturalis, sicut et de Job dicitur, quod erat iustus et rectus ac timens deum et recedens a malo. Unde ipse dicit: vestigia eius secutus est pes meus, vias eius custodivi.

"Sed quod dicit 'naturaliter,' dubitationem habet. Videtur enim patrocinari Pelagianis, qui dicebant quod homo per sua naturalia poterat omnia praecepta legis servare. Unde exponendum est: 'naturaliter,' id est per naturam gratia reformatam. Loquitur enim de gentilibus ad fidem conversis, qui auxilio gratiae christi coeperant moralia legis servare. Vel potest dici: 'naturaliter,' id est per legem naturalem ostendentem eis quid sit agendum, secundum illud *Ps.* IV, 7 s.: 'Multi dicunt: quis ostendit nobis bona? signatum, etc.,' quod est lumen rationis naturalis, in qua

Our topic, then, is universal ethics: how appropriate is the use of the doctrine of natural law in the quest for such a universal ethics? Would it be better to speak simply about “nature” and “reason” in ethics, leaving aside the “law” dimension? *I would say that it would be inadequate from the viewpoint of reason itself.* The punishment in another life is very important for morals.⁶ We see this well in the presentation of natural law in Cicero’s *De re publica* 3.⁷ Notice that *law as such brings with it the power of coercion, the menace of punish-*

est imago Dei. Et tamen non excluditur quin necessaria sit gratia ad movendum affectum, sicut etiam per legem est cognitio peccati, ut dicitur infra III, 20, et tamen ulterius requiritur gratia ad movendum affectum.”

The references to Job are to 1:1 and 23:11.

- ⁶ On the need for fear as well as love regarding divine providence, cf. St. Thomas, *Commentary on Job*, prologue: “. . . nothing calls men back from wickedness and leads them toward good so much as fear of and love for God.” (Cf. Thomas Aquinas, *The Literal Exposition on Job: A Scriptural Commentary Concerning Providence*, trans. Anthony Damico, Interpretive Essay and Notes by Martin D. Yaffe, [Atlanta: Scholars Press, 1989]), 68.)

I take it that this was the point of the line of thought presented as Ivan Karamazov’s in Fyodor Dostoyevsky, *The Brothers Karamazov*, trans. Constance Garnett (New York: Random House, 1950), 78–79: Another character, Miusov, speaking of Ivan Fyodorovitch Karamazov: “. . . Only five days ago, in a gathering here, principally of ladies, he solemnly declared in argument that there was nothing in the whole world to make men love their neighbors. That there was no law of nature that man should love mankind, and that, if there had been any love on earth hitherto, it was not owing to a natural law, but simply because men have believed in immortality. Ivan Fyodorovitch added in parenthesis that the whole natural law lies in that faith, and that if you were to destroy in mankind the belief in immortality, not only love but every living force maintaining the life of the world would at once be dried up. Moreover, *nothing then would be immoral, everything would be lawful*, even cannibalism. That’s not all. He ended by asserting that for every individual, like ourselves, who do not believe in *God or immortality*, the moral law of nature must immediately be changed into the exact contrary of the former religious law, and that egoism, even to crime, must become, not only lawful but even recognized as the inevitable, the most rational, even honourable outcome of his position” (italics mine).

- ⁷ Marcus Tullius Cicero, *The Political Works of Marcus Tullius Cicero: Comprising his Treatise on the Commonwealth; and his Treatise on the Laws*. Translated from the original, with Dissertations and Notes in Two Volumes. By Francis Barham, Esq. (London: Edmund Spettigue, 1841–42). Vol. 1. Chapter: *Cicero’s Commonwealth: Book III*. (<http://oll.libertyfund.org/title/546/83303>; accessed on 2010-07-10): “[Laelius speaking] There is a true law, a right reason, conformable to nature, universal, unchangeable, eternal, whose commands urge us to duty, and whose prohibitions restrain us from evil. Whether it enjoins or forbids, the good respect its injunctions, and the wicked treat them with indifference. This law cannot be contradicted by any other law, and is not liable either to derogation or abrogation. Neither the senate nor the people can give us any dispensation for not obeying this universal

ment.⁸ To ignore the need for this feature is to set aside the difficulties proper to human nature.⁹

Having “zeroed in” on natural law as our topic, I see three or four points that need our attention. These are (1) natural law and *human knowledge*

law of justice. It needs no other expositor and interpreter than our own conscience. It is not one thing at Rome and another at Athens; one thing to-day and another to-morrow; but in all times and nations this universal law must for ever reign, eternal and imperishable. It is the sovereign master and emperor of all beings. God himself is its author,—its promulgator,—its enforcer. He who obeys it not, flies from himself, and does violence to the very nature of man. *For his crime he must endure the severest penalties hereafter, even if he avoid the usual misfortunes of the present life*” (my italics).

⁸ Cf. *ST I–II*, q. 90, q. 3, ad 2; q. 92, a. 2 corp. [1217a33–36] and ad 3; q. 95, a. 1 corp. [1231a17–27]; q. 100, a. 9; *II–II*, q. 64, a. 3. Cf. Thomas regarding those same gentiles spoken of by Paul, *To the Romans*, chap. 2, lect. 3: “he [Paul] shows their dignity, in this, that, not having such law, they themselves are law for themselves, inasmuch as they fulfill the office of law towards themselves, instructing themselves and inclining themselves towards the good; because, as the Philosopher says [*EN* 10.9 (1180a21–24)], ‘law is a statement having compulsive power, issuing from some prudence and understanding.’” [*Super Ep. Ad Romanos*, chap. 2, lect. 3: “Tertio ostendit eorum dignitatem, in hoc scilicet quod huiusmodi legem non habentes, ipsi sibi sunt lex, inquantum scilicet funguntur officio legis ad seipsos, instruendo se et inducendo ad bonum, quia, ut Philosophus dicit *Ethic.*, ‘lex est sermo coactionem habens ab aliqua prudentia et intellectu procedens.’”]

⁹ As I pointed out in my book *Wisdom, Law and Virtue* (New York: Fordham University Press, 2008), chap. 17, p. 311, Thomas certainly uses the need to provide coercion to approach the need for the political order, seen as the source of law. The need for law is regularly argued by Thomas on the grounds of the unruliness of youth (beyond what parents can deal with). Cf. especially *ST I–II*, q. 95, a. 1. One might think that it is only the *fallen* human being who has need of law and political government. However, in Thomas’s *Sentences Commentary* we read: “At the beginning, when God fashioned man, he could have [poterat] formed another man from the mud of the earth whom he might have left *in the condition of his own nature*, as mortal and susceptible to injury and *experiencing the battle of concupiscence against reason*; in that person nothing of human nature would have been missing, because this [condition] *follows from the principles of the nature*. Nevertheless, this weakness would not have had in him the character of sin or punishment, since this weakness would not have been caused by the will” (*In II Sent.*, d. 31, q. 1, a. 2, ad 3 [ed. Mandonnet, p. 810]).

Concerning the undesirable side of matter, cf. *ST I*, q. 91, a. 3; this is the reason that a natural human being would have a battle with the side of passion which is difficult to control rationally. Thus, it seems to me that the argument for the necessity of human law, as based on the presence among us of unruly youth, should not be taken as dependent on the theological premiss of fallen man, i.e., on original sin; it is an argument which considers what pertains to human nature as such.

of God; (2) Thomas's conception of "natural inclination" as found in rational creatures; (3) primacy of human natural friendly love for God more than for ourselves; and (4) original sin and the weakening of that natural inclination.

I begin with the conception of law presented by St. Thomas, a conception taken from our experience of law in human affairs. The definition he proposes is:

. . . [law] is nothing other than an ordering by reason towards the common good, promulgated by one who has responsibility for the community.¹⁰

God as Origin and Promulgator of Natural Law

That *all* law has a divine origin is a doctrine not difficult to find in the writings of Thomas Aquinas. At *ST* I–II, q. 93, a. 3 the explicit point is that all law derives from the eternal law, eternal law which has already been explained as "the plan of divine wisdom inasmuch as it is directive of all acts and movements."¹¹

Prior to this, the particular *location* of the discussion on law within the moral part of the *ST* already suggested this doctrine. The *ST*, and in general the work of St. Thomas, is meta-philosophical. It is a study and teaching of what has been revealed to us by God himself, and thus surpasses mere human wisdom, that is, philosophy. However, revelation presupposes the order of nature, and Thomas's teaching *envelops* philosophy rather than excluding it.¹²

In the *ST* 1–2, the more summary overall picture of the moral order,¹³ the treatment begins with beatitude, the ultimate goal of human life, as something whose attainment depends in some measure on human action;¹⁴ it then speaks of (1) that action, (2) its principles *within* the human agent, viz. the virtues, and finally (3) the *extrinsic* principles of that

¹⁰ *ST* I–II, q. 90, a. 4 (ed. Ottawa, 1209a3–7). The Latin runs: "potest colligi definitio legis, quae nihil est aliud quam quaedam rationis ordinatio ad bonum commune ab eo qui curam communitatis habet promulgata."

¹¹ *ST* I–II, q. 93, a. 1 (ed. Ottawa, 1218a48–50): "lex aeterna nihil aliud est quam ratio divinae sapientiae, secundum quod est directiva omnium actuum et motionum [eternal law is nothing else but the plan of the divine wisdom inasmuch as it is directive of all acts and movements]."

¹² Cf. *ST* I, q. 1, a. 1 (ed. Ottawa, 2b9–20) and I, q. 2, a. 2, ad 1.

¹³ Concerning the division of the moral part of the *ST* into two parts, first more universal and second more particular, cf. *ST* I–II, q. 6, prologue.

¹⁴ *ST* I–II, q. 5, a. 7.

action, primarily God. So presented, God is seen as *guide* by virtue of *law* and *support* by virtue of *grace*.¹⁵

Law thus is presented as a divine influence. One might think that this means merely that some special sort of law, the “divine law” specially revealed to us by God, is such a help.¹⁶ As the *ST* 1–2 carefully develops the overall causal picture, one sees that the word “law” names a reality found according to priority and posteriority, flowing from the divine intellect and will, and remaining, wherever properly found, a rational participation in that divine reality.¹⁷

Thomas begins the *ex professo* treatment of law with a general presentation of the essence of law, and does so, as I said, by considering primarily law as human beings make it. His general definition, I repeat, is: “. . . [law] is nothing other than an ordering by reason towards the common good, promulgated by one who has responsibility for the community.” Once this is done, he presents the variety of kinds of law: eternal, natural, human, and divinely revealed laws.¹⁸

Eternal law is the plan of direction of the universe, the plan present within God himself. It is thus identical with God himself.¹⁹ This obliges

¹⁵ *ST* I–II, q. 90, prologue; the distinction between law and grace, guidance and support, is not hard and fast: what is most truly the New Law is the grace of the Holy Spirit: I–II, q. 106, a. 1.

God is “extrinsic” to created reality in the way that the efficient cause is other than its effect; he is so present to every creature as to be most deeply within it, because of the nature of his proper effect, the act of being; we may say that his immanence flows from his transcendence: cf. *ST* I, q. 8, a. 1 *in toto*. On his mastery as mover of created reality, cf. *ST* I, q. 105, aa. 3, 4, and 5.

¹⁶ It should be noted that, in the vocabulary of the *ST*, “divine law” [*lex divina*] refers to the divinely *revealed* law: cf. *ST* I–II, q. 91, a. 4; it is a higher mode of participation in the eternal law than is the natural law: cf. *ibid.*, ad 1. On the other hand, the expression “eternal law” [*lex aeterna*] signifies the plan within the divine mind, thus identical with God himself: *ST* I–II, q. 93, a. 1.

¹⁷ Notice *ST* I–II, q. 100, a. 2 (ed. Ottawa 1260a47–49), speaking of the human being’s being in a community with God through “divine law,” i.e., *revealed law*: “Sed communitas ad quam ordinat lex divina, est hominum ad Deum, vel in praesenti vel in futura vita. Et ideo lex divina praecepta proponit de omnibus illis per quae homines bene ordinentur ad communicationem cum Deo. Homo autem Deo coniungitur ratione, sive mente, in qua est Dei imago.” [But the community towards which the divine law orders is of human beings toward God, whether in the present or the future life. And therefore the divine law proposes precepts concerning all those matters through which humans are well ordered towards community with God. But man is conjoined to God *by reason or mind, in which there is the image of God*.]

¹⁸ *ST* I–II, q. 91 *in toto*. For simplicity’s sake I omit the “law of sin” (cf. I–II, q. 91, prologue) presented in a. 6.

¹⁹ *ST* I–II, q. 91, a. 1, ad 3.

us to reflect on the sort of unified field the general term “law” names. Early in the *ST*, that is, in question 13 of the first part, Thomas explained the way in which human language bears upon divine things.²⁰ This is the doctrine of “the divine names.” What do we mean when we say the words “good” or “wise” of God? We learn that it is through a sort of *analogy* that “good” is said of God. To say: “God is good” is not to say merely that God is the *cause* of the goodness of creatures, or merely that God is “*not* bad.” Rather, we mean that what we call “goodness” in creatures exists by priority, in a higher way, in God.²¹ Thus, as regards the reality named, it is found more truly in God than in creatures, whereas the name applied is applied first to that which is found in creatures, and has the mode of signifying appropriate for creatures.²²

All this surely applies to “law” as well. It is a word invented to name the human reality, but it is said properly of the eternal law which is in God, and indeed that is what most of all deserves the name “law.”²³

The presentation of eternal law gives the most dominating metaphysical vision of the domain of law. We then can see the way that, within the life of the rational creature which is man, there is a root of all man’s law-making, a root in what is called “natural law,” this being the name of our *participation* in the eternal law.²⁴

Presenting eternal law, in *ST* I–II, q. 91, a. 1, St. Thomas immediately recalls the presentation of divine providence in *ST* I: We read:

... *law* is nothing else than a dictate of practical reason in the leader who governs some perfect community. Now, it is evident, given that the world is ruled by divine providence, as was had in book 1, that the whole community of the universe [*communitas universi*] is governed by divine reason. And therefore the very plan [*ratio*] of the government of things present in God as in the governor [*principe*] of the universe has the intelligible note [*ratio*] of *law*. And because divine reason [*ratio*] conceives [*concepit*] nothing temporally, but rather has an eternal concept

²⁰ Cf. my paper “St. Thomas and the Divine Names,” *Science et Esprit* 32 (1980): 19–33.

²¹ *ST* I, q. 13, a. 2 (ed. Ottawa, 77b42–47).

²² *ST* I, q. 13, a. 6 (82b15–30).

²³ I have spoken here of “law” along the lines that Thomas teaches concerning the positive, absolute names such as “goodness” and “wisdom.” It is true that the word “law” indicates, when said of God, a relation to creatures. However, I take it that it is the sort of relation to creatures that is involved in all divine acts of understanding and willing of creatures. They are said of God as being in him eternally (*ST* I, q. 13, a. 7, ad 3), and this is true of “law” also, as is clear in such texts as *ST* I–II, q. 91, a. 1.

²⁴ *ST* I–II, q. 91, a. 2; also cf. q. 93, a. 6.

[*habet aeternum conceptum*], as is said in *Proverbs* 8.23,²⁵ one ought to call such law “eternal.”²⁶

Providence was discussed in *ST* I, q. 22, and the full sapiential vision of law must include that teaching. Here I wish to focus on one feature of the doctrine of natural law. Natural law is *properly* called “law,” something that cannot be said of the eternal law’s participation by lower, non-rational creatures. Natural law is properly law because of the human being’s participation in providence, as rationally *providing for himself* in some measure.²⁷ We are not, of course, the *source* of the legislation; rather, it is in us as in those who are ruled and measured by it.²⁸

Natural law is possessed by the human being primarily through the vision of what goodness is,²⁹ a vision that attests to our immediate relation to the universal cause of being and goodness.³⁰ What is primary in

²⁵ The Vulgate, at *Proverbs* 8.22–24, has wisdom say: “[22] Dominus possedit me ab initio viarum suarum, Antequam quidquam faceret a principio. [23] *Ab aeterno ordinata sum, et ex antiquis antequam terra fieret.* [24] Nondum erant abyssi, et ego iam concepta eram.” [The Lord possessed me from the beginning of his ways, before he had made anything, from the beginning. From eternity I was ordered, and from of old, before the earth was made. The depths were not yet, and I had already been conceived.]

²⁶ *ST* I–II, q. 91, a. 1. For Thomas’s conception of the universe as primarily a community of persons ordered towards the divine personal being, cf. “St. Thomas, the Common Good, and the Love of Persons,” chap. 16 in my book *Wisdom, Law, and Virtue*.

²⁷ *ST* I–II, q. 91, a. 2, ad 3. The participation by non-rational creatures in the eternal law “cannot be called ‘law’ save by likeness.”

²⁸ *ST* I–II, q. 90, a. 3, ad 1 and I–II, q. 91, a. 2.

In this respect I do not like the language of para. 115 in the ITC document. We read: “To be able to be recognized by all men and in all cultures, the norms of behavior in society should have their *source in the human person himself, in his needs, in his inclinations*. [Bolin trans.; italics mine.]

The French is: “Pour pouvoir être reconnues par tous les hommes, dans toutes les cultures, les normes du comportement en société doivent avoir *leur source dans la personne humaine elle-même, ses besoins, ses inclinations*.”

²⁹ Intellect, as knowing what goodness is, is the very principle of will: cf. *ST* I, q. 59, a. 1.

³⁰ *ST* II–II, q. 2, a. 3 (ed. Ottawa, 1416a6–17). So true is this that in some texts Thomas identifies natural law simply with the natural light of reason whereby we know the difference between the good and the bad. We read in a sermon given in Lent of 1273, entitled *Collationes de decem praeceptis*, and sometimes *De duabus praeceptis caritatis et decem legis praeceptis*, that the natural law just is the light of the human intellect conferred by God on the human being at creation: “. . . *lex naturae; et haec nihil aliud est nisi lumen intellectus insitum nobis a Deo*, per quod cognoscimus quid agendum et quid vitandum. Hoc lumen et hanc legem dedit

Thomas's presentation of law is its being rational, an expression of reason.³¹ The *vision of that reasonableness* is the source of the obligation it presents to us.³²

In so speaking I by no means wish to obscure the element of *inclination* which the law includes. Such inclination is, intrinsically, a sort of *loyalty to the reasonable*. Thus, in speaking, in *ST* I-II, q. 91, a. 2, of the eternal law as regulating all of creation, St. Thomas speaks first of all things, inasmuch as they participate in the impression coming from God, as having *natural inclinations* towards their proper acts and goals; he goes right on to say that inasmuch as the rational creature has a more excellent participation in divine providence, as itself providing for itself and others, it too participates in the eternal law by having *natural inclination* to the due act and end. Yet in concluding this very passage, what Thomas points to as natural law in us is the *light of natural reason* by which we distinguish the good from the bad. The properly human *inclination* is rooted in the *light of natural knowl-*

Deus homini in creatione." [. . . the law of nature; and this is nothing else but the light of the intellect placed within us by God, through which we know what is to be done and what is to be avoided. God gave man this light and this law in creating [him].]

As described by James Weisheipl in *Friar Thomas D'Aquino* (Garden City, NY: Doubleday, 1974): " . . . the points in the vernacular sermon were jotted down and later written out in Latin 'after Thomas had preached' " (402) by one of Thomas's secretaries, Friar Peter d'Andria (319); and so one must be prepared for a sort of "short-hand" way of speaking.

That the intellectual light spoken of here is to be identified with the agent intellect we see in such a passage as the following, from the *Disputed Questions on Spiritual Creatures* 10 (a work dated 1267 in Rome, according to the Leonine editor, B.-C. Bazan): " . . . we say that *the light of the agent intellect* about which Aristotle speaks is immediately impressed on us by God, and in function of it *we distinguish the true from the false, and the good from the bad*. And it is about that that the Psalm says: 'The many say: who will show us good things? The light of your countenance has been stamped upon us, O Lord,' i.e. [the light] through which what are good are shown to us. Thus, therefore, that which produces in us actual intelligibles, in the mode of participated light, is something of the soul and is rendered multiple in keeping with the multitude of souls and of human beings."

It should be underlined that actual knowledge of the first intelligibles and first truths is a product of abstraction from sensible experience, not something inborn; the intellectual light or agent intellect must derive information from sensible things even as regards the first notions and first truths: cf. *Qq. de anima*, q. 5, *De veritate*, q. 11, a. 1, *Quodlibet* 10.4.1 [7].

³¹ *ST* I-II, q. 90, a. 1.

³² Reason as *ordering towards the end* is the principle of obligation here: cf. *ST* I-II, q. 90, a. 1 and especially I-II, q. 99, a. 1.

edge.³³ Thus, the treatment of our human “natural inclination” used in explaining the triad of the theological virtues reads:

... the theological virtues order the human being towards supernatural beatitude in the way that the human being is ordered to the end connatural to him by *natural inclination*. Now this comes about in function of two items: *firstly*, in function of reason or intellect, inasmuch as it contains the first universal principles known by us through the natural light of the intellect, from which reason proceeds both in things to be considered and in things to be done. *Secondly*, through the rightness of the will *naturally tending towards the good of reason*.³⁴

However, as already touched upon, two essential features of law are (1) that it be made by the one responsible for the common good of the community for which it is law,³⁵ and (2) that it be promulgated to those subject to the law.³⁶ *I take this to mean that law appears in its adequate reasonableness only when it is so promulgated as to reveal its having its proper origin.*

I was delighted to find this conception confirmed by the *Catechism of the Catholic Church* in its presentation of natural law.³⁷ We read:

³³ Consider *ST I*, q. 60, a. 1 *sed contra* (of which St. Thomas obviously approves): “... dilectio sequitur cognitionem, nihil enim amatur nisi cognitum, ut Augustinus dicit, X *De Trin.* Sed in Angelis est cognitio naturalis. Ergo et dilectio naturalis.” [...] love follows upon cognition, for nothing is loved unless it is known, as Augustine says in 10 *On the Trinity*. But in angels there is natural knowledge. Therefore, there is also natural love.]

In the case of natural law, *both its cognitive features and its inclinative features* are viewed as coming forth from the nature of the rational being, from the essence of the intellective soul. However, each comes forth from that essence taken precisely as apt to give rise to that sort of perfection. Hence, there does not seem to be any reason to regard inclination as prior to and a cause of our natural knowledge (and thus to speak of knowledge *through* inclination). Inclination is rather viewed by St. Thomas as something that accompanies knowledge naturally. For the two aspects, “*per modum cognitionis*” and “*per modum interioris principii motivi*,” cf. *ST I–II*, q. 93, a. 6.

³⁴ *ST I–II*, q. 62, a. 3: “... virtutes theologicae hoc modo ordinant hominem ad beatitudinem supernaturalem, sicut per naturalem inclinationem ordinatur homo in finem sibi connaturalem. Hoc autem contingit secundum duo. Primo quidem, secundum rationem vel intellectum, inquantum continet prima principia universalis cognita nobis per naturale lumen intellectus, ex quibus procedit ratio tam in speculandis quam in agendis. Secundo, per rectitudinem voluntatis naturaliter tendentis in bonum rationis.” Cf. “Jacques Maritain and the Philosophy of Cooperation,” chap. 13 in my book *Wisdom, Law, and Virtue*.

³⁵ *ST I–II*, q. 90, a. 3.

³⁶ *ST I–II*, q. 90, a. 4.

³⁷ I am using the English translation given on the Vatican website.

Man participates in the wisdom and goodness of the Creator who gives him mastery over his acts and the ability to govern himself with a view to the true and the good. The natural law expresses the original moral sense which enables man to discern by reason the good and the evil, the truth and the lie:

The natural law is written and engraved in the soul of each and every man, because it is human reason ordaining him to do good and forbidding him to sin . . . *BUT THIS COMMAND OF HUMAN REASON WOULD NOT HAVE THE FORCE OF LAW IF IT WERE NOT THE VOICE AND INTERPRETER OF A HIGHER REASON TO WHICH OUR SPIRIT AND OUR FREEDOM MUST BE SUBMITTED.*³⁸

Here Leo XIII is presented as clearly teaching *the need to recognize a higher reason as the source of an authority rightly seen as legal.*

The Adequacy of Natural Law's Promulgation

This raises the question of natural law's *adequate* promulgation. So much is it an issue that in Thomas's article on the necessity for promulgation of law, in the question on the definition of law, an objection is based precisely on the case of *natural law*. *One finds what is essential to law maximally in natural law*, says the objector, and yet it stands in no need of promulgation! To this Thomas replies: ". . . it is to be said that the promulgation of the law of nature is from the very fact that God places it

³⁸ *Catechism of the Catholic Church*, paragraph 1954; my italics. The text quoted by the Catechism here is from *Libertas praestantissimum*, 597, an encyclical letter of Pope Leo XIII, published June 20, 1888. [The uppercase letters are from me.] An English translation of *Libertas praestantissimum* can be found in *The Church Speaks to the Modern World: The Social Teachings of Leo XIII*, edited, annotated, and with an Introduction by Etienne Gilson (Garden City, NY: Doubleday, 1954), 55–85, and entitled "On Human Liberty." For the quoted passage, cf. para. 8 at p. 62 and the notes i and j at p. 82.

Notice also the following passage from the same place in the encyclical, stressing the importance of the supernatural dimension [Para. 8]: ". . . To this rule of action and restraint of evil God has vouchsafed to give special and most suitable aids for strengthening and ordering the human will. The first and most excellent of these is the power of His divine *grace*, whereby the mind can be enlightened and the will wholesomely invigorated and moved to the constant pursuit of moral good, so that the use of our inborn liberty becomes at once less difficult and less dangerous. Not that the divine assistance hinders in any way the free movement of our will; just the contrary, for grace works inwardly in man and in harmony with his natural inclinations, since it flows from the very Creator of his mind and will, by whom all things are moved in conformity with their nature. As the Angelic Doctor points out, it is because divine grace comes from the Author of nature that it is so admirably adapted to be the safeguard of all natures, and to maintain the character, efficiency, and operations of each."

within the minds of human beings so as to be naturally known.”³⁹ Now, for this reply to be sufficient, it surely requires that our knowledge of natural law include an appreciation of *divine providence as its source*.

This is a point on which Suarez insisted in his presentation of natural law.⁴⁰ He explains that the issue is not: “does the natural law come from God *as author of natural reason*?” It is rather: “does it come from him *precisely as a legislator*?” He holds that it comes to us in such a way that we know it is from God as from a legislator.⁴¹

The ultimate objection to this in Suarez’s discussion bears upon the need for God to *intimate* to the human being what the law is. For law really to be law, there must be, not only the will of the legislator in the matter, but also the intimation or insinuation that that is his will. Here Suarez answers that intimation of the will follows with the same necessity (as he had earlier mentioned), viz. from the perfection of divine providence. And thus the very judgment of right reason naturally inserted in man is the *sufficient sign* of that divine will, nor is any other insinuation necessary. And he says:

The proof is, that the judgment of reason indicates, just by virtue of itself, divine providence of a sort fitting for God, and morally necessary for his full lordship and due subjection of man to him, in which providence this legislation is contained. Furthermore, for this reason it is known through natural reason that God is offended by sins which are done against natural law, and their punishment pertains to him, and judgment [in their regard]: therefore, *the natural light itself is, just by itself, the sufficient promulgation of natural law*, not only because it manifests the intrinsic inappropriateness or appropriateness of acts, which the uncreated light of

³⁹ The objection (ST I–II, q. 90, a. 4, obj. 1) reads: “Videtur quod promulgatio non sit de ratione legis. *Lex enim naturalis maxime habet rationem legis*. Sed lex naturalis non indiget promulgatione. Ergo non est de ratione legis quod promulgetur.” [It seems that promulgation does not belong to the essence of law; for natural law has the essence of law in the highest degree; yet natural law has no need of promulgation. Therefore, it does not belong to the essence of law that it be promulgated.]

And the reply (ST I–II, q. 90, a. 4, ad 1): “Ad primum ergo dicendum quod promulgatio legis naturae est ex hoc ipso quod Deus eam mentibus hominum inseruit naturaliter cognoscendam.”

⁴⁰ On this, see especially Franciscus Suarez, S.J. [1548–1617], *Tractatus de legibus et legislatore Deo*, in *Opera Omnia*, ed. Carolus Berton (Paris, 1856): apud Vivès, t. V. Book II is *De lege aeterna, et naturali, ac jure gentium*. Cap. VI: *An lex naturalis sit lex divina praeceptiva* (pp. 104–12).

The following three paragraphs in my main text are reproduced from “Natural Law and the First Act of Freedom: Maritain Revisited,” chap. 14 in my book *Wisdom, Law, and Virtue*, at 558–59.

⁴¹ This, of course, is precisely what Thomas shows in ST I–II, q. 91, aa. 1 and 2. God as *princeps* of the universe is the supreme *legislator*, pronouncing the eternal law (a. 1), and natural law is a participation in the eternal law (a. 2).

God shows: but also because it intimates to man [*hominis, sic; lege homini*] that the contrary actions displease the author of the nature, as the supreme Lord, and care-giver, and governor of that same nature: therefore, this is sufficient intimation of that law, as Thomas judges in I–II, q. 90, a. 4, ad 1 . . . ⁴²

He is referring to Thomas's saying that the promulgation of natural law is sufficient, by virtue of God's inserting it into our minds so that it is naturally known. The point here seems to be that we have by natural reason⁴³ some knowledge of a *perfect providence*, and thus we see our natural knowledge as the expression of a law.⁴⁴

Our Knowledge of Natural Law and Our Knowledge of God

Thus far, then, we must conclude that one's knowledge of the morally right has the quality, the status, the nobility, of natural law precisely inasmuch as it is *recognized* as guidance provided by the author of natural reality.

This suggests a very "cognitive" encounter with natural law and its author. That is, where Jacques Maritain's conception of natural law stressed *non-conceptual* knowledge, "knowledge *through inclination*" as the meaning of natural law's being "naturally known,"⁴⁵ I believe that Thomas is conceiving of will as depending on intellect, *inclination as flowing from cognition*.⁴⁶

⁴² Suarez, *Tractatus de legibus*, para. #24, p. 112A.

⁴³ What I mean here by "natural reason" is a spontaneous reasoning process found in all humans (as will emerge in what follows).

⁴⁴ I think that in this matter Suarez is better than Maritain. Maritain, in the posthumously published study *La loi naturelle ou loi non écrite* (Texte inédit, établi par Georges Brazzola) (Fribourg: Éditions Universitaires, 1986), 105–11, takes the position that the natural law depends on reason, "not on will": "Loi naturelle dépend de la Raison, non du vouloir." Thus, in his table on p. 106, he has this very explicitly. Thomas Aquinas's position is portrayed as divine reason issuing in the natural law which enters man through the natural inclinations, thus bringing us to the precepts. This seems to me quite wrong, most of all in the expression "not on will." Obviously, law, for Thomas, is an expression of reason. However, it is the work of the governor, and this providential role is presented by Thomas, very explicitly, as "what pertains simultaneously to intellect and will": cf. *ST* I, q. 22, prologue, and a. 1, ad 1, on God as giving *precepts*. Cf. also *ST* I–II, q. 97, a. 3, ad 1: " . . . dicendum quod lex naturalis et divina procedit a voluntate divina" (and cf. the entire article). Thus, also, Maritain's criticism of Suarez (in the same context) on this issue as non-Thomistic is wrong.

⁴⁵ According to Maritain, only the absolutely first principle of natural law: "that we must do good and avoid evil," is known to all human beings just by virtue of the concepts involved, and this, Maritain says (*Man and the State* [Chicago: University of Chicago Press, 1951], 90), is not the law but rather its preamble and principle.

Quoting from "Jacques Maritain and the Philosophy of Cooperation," which is chap. 13 in my book *Wisdom, Law, and Virtue*, at 213: "Regarding the second

Notice that Maritain excludes the first principle of the law from “the law.” I would contrast this with Thomas who is ready to say that the very light of the human intellect is “the law.”⁴⁷ (Maritain is being affected by his own view of natural law as “*known through inclination*.” Obviously, he does not want to say this about the first principle of the law.)

Our cognitive encounter with natural law as properly promulgated raises the question of the sort of knowledge we have of God at the very outset of natural law.⁴⁸ In fact, that is already an essential issue, even apart from the promulgation question, when one recalls that the Ten Commandments are presented as first principles of natural law,⁴⁹ and that the Ten Commandments themselves he presents as based on the law of love! We read:

element, gnoseological, Maritain asserts that natural law is ‘known to human reason *not* in terms of conceptual and rational knowledge’ (82–83), but ‘*through inclination*’ (91). ‘That kind of knowledge is not clear knowledge through concepts and conceptual judgments; it is obscure, unsystematic, vital knowledge by connaturality or congeniality . . .’ (91–92). Only the absolutely first principle of natural law: ‘that we must do good and avoid evil’ (90) is known to all human beings just by virtue of the concepts involved, and this, Maritain says (90), is not the law but rather its preamble and principle.” (Numbers in the foregoing refer to pagination of Maritain’s *Man and the State*.)

⁴⁶ Cf. above, notes 33 and 34.

⁴⁷ Cf. above, note 30.

⁴⁸ This is a question I have discussed before in these pages in connection with Kevin Flannery’s book *Acts Amid Precepts: The Aristotelian Logical Structure of Thomas Aquinas’s Moral Theory* (Washington, DC: The Catholic University of America Press, 2001). Cf. my review article in *Nova et Vetera* 5 (2007): 431–44.

⁴⁹ I quote from “Jean Porter on Natural Law: Thomistic Notes,” which is chap. 15 in my book *Wisdom, Law, and Virtue*, at 245, speaking of the question whether the multiplicity of precepts indicated in *ST* I–II, q. 94, a. 2 are presented as *per se nota* propositions: “It is true that Thomas here does not give an exact list of precepts, preferring to assign fields in accordance with the three levels of natural inclination he notes. And already, by the time we get to the particular applications which are the Ten Commandments, we are said (in the *prima secundae* context, at any rate) to be in the domain of *conclusions*, not *per se nota* principles. It should be noted, however, that St. Thomas changed his view of the presence of the *per se notum* as regards the precepts of natural law. Thus, while in the *Prima Secundae* the Ten Commandments are presented as immediate conclusions from the first principles, by the time he writes the *secunda secundae* Thomas has decided that they are most manifest principles of natural law: thus, they are surely being considered as *per se nota*. [*ST* II–II, q. 122, a. 1 (2034a3–6): Respondeo dicendum quod praecepta Decalogi sunt prima praecepta [Piana: principia] legis, et quibus statim ratio naturalis assentit *sicut manifestissimis principiis*. [‘the precepts of the Decalogue are the first principles [other reading: precepts] of the law, and to which natural reason immediately assents as to most manifest principles’ (my italics)].”

It seems that not all the moral precepts of the Old Law are reduced to the ten precepts of the Decalogue; for the first and principal precepts are: “you shall love the Lord your God,” and “you shall love your neighbour,” as is had in *Matthew* 22. But these two are not contained among the precepts of the Decalogue. Therefore, not all the moral precepts are contained in the precepts of the Decalogue.⁵⁰

And the reply:

... it is to be said that those two precepts are the first and general precepts of the law of nature, which are known by virtue of themselves to human reason, either by nature or by faith. And therefore all the precepts of the Decalogue are related to those two as conclusions to general principles.⁵¹

While⁵² I do not agree with Maritain that the knowledge of natural law is non-conceptual, I do agree that it is natural. St. Thomas teaches that the human being has a *spontaneous reasoning* to the existence of God. We see what I have in mind in Thomas’s answer to the question: does it belong to natural law that the human being offer sacrifice? He says:

... *Natural reason* declares to man that he is subject to some higher being, because of the deficiencies that he experiences in himself, with respect to which he needs to be helped and directed by some higher being. And whatever that is, it is that which everywhere is called “a god.”⁵³

⁵⁰ ST I–II, q. 100, a. 3, obj. 1: “Videtur quod non omnia praecepta moralia veteris legis reducantur ad decem praecepta Decalogi. Prima enim et principalia legis praecepta sunt, ‘Diliges dominum deum tuum, et, diliges proximum tuum,’ ut habetur Matth. XXII. Sed ista duo non continentur in praeceptis Decalogi. Ergo non omnia praecepta moralia continentur in praeceptis Decalogi.”

⁵¹ Ibid., ad 1: “... dicendum quod illa duo praecepta sunt prima et communia praecepta *legis naturae*, quae sunt *per se nota rationi humanae, vel per naturam vel per fidem*. Et ideo omnia praecepta Decalogi ad illa duo referuntur *sicut conclusiones ad principia communia*.”

The option, “by nature or by faith,” touches on the issue: Original Sin has weakened natural inclination as regards the love of God more than our own selves (cf. ST I–II, q. 109, a. 3 [1354b39–49]); as also on the need for revelation even of the truths of reason knowable by philosophy yet pertaining to the faith: ST I, q. 1, a. 1.

⁵² The following three paragraphs are from my paper “The Foundations of Human Rights,” *Science et Esprit* 62 (2010): 227–36, at 235–36.

⁵³ ST II–II, q. 85, a. 1 (1861b48–54): “Respondeo dicendum quod *naturalis ratio* dictat homini quod alicui superiori subdatur, propter defectus quos in seipso sentit, in quibus ab aliquo superiori eget adiuvari et dirigi. Et quidquid illud sit, hoc est quod apud omnes dicitur ‘deus.’”

Thomas is not presenting a scientific demonstration of the existence of God, but is reporting and attempting to describe what is some universal spontaneous *natural inference*. Man's experience of himself is as a being which cannot stand by itself, without aid, and which cannot survive without steering, without direction, from some source of intelligent direction, moving things along for man's protection and welfare.

Here, then, we have *a type of natural knowledge*, that is, not the fruit of deliberate study and method, but given in the way that eyes and ears are given, and yet a knowledge which is not merely the intellectual insight into starting points, whether of simple terms like "the good" or of propositions like "the good is to be done and promoted, and the bad avoided", but a naturally occurring, spontaneous *reasoning process*.⁵⁴

This is to say that Maritain was right in speaking of natural law as the last refuge of intellectual agreement among men, men who cannot agree in theoretical matters at all. We are dealing with what is often a rather implicit confidence that *nature* is a source of divine wisdom.

Since writing about such natural knowledge of God in my Flannery review in these pages, I have noticed the relevance for the topic of what St. Thomas taught concerning natural justice and "what is right among the peoples" [*ius gentium*]. I wish here to cite this most important consideration for the doctrine of natural law, as taught by Thomas in *ST* II-II, q. 57, a. 3, the third article in Thomas's question on the object of justice; it asks about the difference, if any, between *the naturally right* and *what is right among the peoples* [*ius gentium*].

We read, in the body of the article:

I answer that it must be said, as has been said, that the naturally right or just [*ius aut iustum*] is that which by its own nature is adequate or commensurate for the other person. Now, this can occur in two ways.

In one way, as regards the *absolute* consideration of it: as the male by its nature [*ratione*] has commensurateness relative to the female, that from it [the female] it [the male] generates [something], and [similarly] the parent [is so related] to the child, that it nourish it.

In another way, something is naturally commensurate to the other person not as regards its absolute nature [*rationem*], but in accordance with something that *follows* from it: for example, the ownership of possessions [*proprietas possessionum*]: for, if this field is considered absolutely, it has nothing whereby it should belong more to this person than to that one; but if it is considered as regards the convenience for

⁵⁴ For more on this doctrine of spontaneous reasoning to the existence of God, see my above-mentioned review article of Kevin Flannery's book in *Nova et Vetera* 5 (2007): 431–44, at 433–38.

cultivating, and as regards the peaceful exploitation of the field, so taken it has some rightness towards belonging to this one person and not to this other: as is clear from Aristotle, in *Politics* 2 [chap. 5: 1263a21].

Now, to apprehend something absolutely belongs not merely to man, but also to the other animals, and therefore the “right” which is called “natural” in the first way is common to us and to the other animals.

But from the “naturally right,” so said, “that which is right among the peoples” is separated, as the Jurisconsul says, because the former is common to all animals, while the latter is common solely to human beings among themselves. [This is because] to consider something by comparing it to what follows from it is proper to reason, and therefore this is *natural for the human being, in accordance with natural reason which decrees it*. Thus, Gaius, the jurisconsul, says that *what natural reason establishes among all human beings, this all peoples obey, and it is called “what is right among the peoples.”*⁵⁵

We thus see here that Thomas makes personal ownership of property something pertaining to the object of natural law for human beings. I suggest that the same considerations apply to the general spontaneous “sizing up” of the human condition, of which Thomas spoke in *ST II–II*, q. 85, a. 1, on offering sacrifice to a God as pertaining to natural law.

Particular Remarks on the ITC Document

It hardly needs saying that it is the Church’s obligation to direct the minds of all who will listen to the foundations of morals, that is, to natu-

⁵⁵ *ST II–II*, q. 57, a. 3: “Respondeo dicendum quod, sicut dictum est, ius sive iustum naturale est quod ex sui natura est adaequatum vel commensuratum alteri. Hoc autem potest contingere dupliciter. Uno modo, secundum absolutam sui considerationem, sicut masculus ex sui ratione habet commensurationem ad feminam ut ex ea generet, et parens ad filium ut eum nutriet. Alio modo aliquid est naturaliter alteri commensuratum non secundum absolutam sui rationem, sed secundum aliquid quod ex ipso consequitur, puta proprietates possessionum. Si enim consideretur iste ager absolute, non habet unde magis sit huius quam illius, sed si consideretur quantum ad opportunitatem colendi et ad pacificum usum agri, secundum hoc habet quandam commensurationem ad hoc quod sit unius et non alterius, ut patet per Philosophum, in *II Polit.* Absolute autem apprehendere aliquid non solum convenit homini, sed etiam aliis animalibus. Et ideo ius quod dicitur naturale secundum primum modum, commune est nobis et aliis animalibus. A iure autem naturali sic dicto recedit ius gentium, ut Iurisconsultus dicit, quia illud omnibus animalibus, hoc solum hominibus inter se commune est. Considerare autem aliquid comparando ad id quod ex ipso sequitur, est proprium rationis. *Et ideo hoc quidem est naturale homini secundum rationem naturalem, quae hoc dictat.* Et ideo dicit Gaius iurisconsultus, quod naturalis ratio inter omnes homines constituit, id apud omnes gentes custoditur, vocaturque ‘ius gentium.’” For the vocabulary of natural reason as source of a decree: “*dictat*,” cf. again *ST II–II*, q. 85, a. 1: offering sacrifices is part of “natural law [*lex*]” and “natural right [*ius*].”

ral law. It is ironic that contemporary society has given rise to a considerable global movement to protect nature, the “green” movement, while at the same time abusing human nature in a way that undermines the rational foundations of human life.

The document of the ITC argues soundly in pointing to the variety of cultures that manifest awareness of universal principles. It is in the approach through “experience” followed by “foundations” that I find tendencies that trouble me. The doctrine of “natural law” is a doctrine of *divine* help. If one does not have the view of divine instruction and the threat of punishment, one is not in a doctrine of *law*.

This raises the question of the distinction between awareness of the “morality” of certain courses of action and “theoretical justification in terms of ‘natural law.’” Surely, the doctrine of natural law is a doctrine of common awareness of a God and punishment (at least as it was presented by Cicero).

An approach where one acknowledges “natural inclination” but does not consider nature *as the product of a providential supreme agent* is not much help in morals.

Thus, I question *their* distinction (not *all* distinction) between the awareness and theoretical justification.

I compliment the ITC document for gathering in its notes a valuable documentation for the history of natural law.

As I finish rereading the introduction of the ITC document, I ask whether the distinction between “common experience” in chapter 2 and that of “theory” in chapter 3 is such that the chapter 2 “precepts of the natural law” are so called *per se* or *per accidens*.

Cf. note 37 in para. 32: quoting Hugo Grotius (b. 1583–d. 1645). This also touches on the rejection by modern rationalism of *the link to divine wisdom*. This is what I wish to avoid, that is, the picture without God as required source.

In paragraph 36 we see the distinction between the “behavior” recommended by a variety of cultures and the “theoretical explanation” of the type of behavior. ITC acknowledges the difficulty this involves, as to *dialogue* on the *foundation* of the moral norms.

At paragraph 37 we read:

Still, *independently* of the theoretical justifications of the *concept* of natural law, it is possible to discover the *immediate givens of consciousness*⁵⁶ of which it wants to give an account. The object of this chapter is precisely

⁵⁶ I substitute here a more literal translation than Bolin’s “*the fundamental elements of the awareness*,” so as to retain what may be a Bergsonian echo.

to show how to gather together [*comment sont saisies*] the common moral values that constitute natural law. We will then see how the *concept* of natural law is based on an explanatory picture that founds and legitimizes moral values, in a manner that can be shared by many.⁵⁷

My point is that *we should not exclude from* “the immediate givens of consciousness” in this matter the *divinity of the source of the experience*: otherwise, we are not speaking of the experience of being subject to natural law as law. My concern is about *the way one distinguishes between moral awareness and rational foundation*. I do not like the restriction of “concept” to the realm of “explanatory picture.” This smacks of the Maritainian “knowledge through inclination” explanation of natural law.⁵⁸

I notice the headline of paragraph 39: “moral experience: one must do good.” I wonder about the word “experience” here; I would say that we are already at the first “concept” and the first “moral truth.” I notice that they speak of the experience of this moral “call”—“*fait l’expérience d’un appel intérieur à accomplir le bien*” (“experiences an interior *call* to do good”). I would bear down hard on this word “call”: *Who* is calling?

In paragraph 42 we read:

Thus it recognizes the eternal law, i.e., the plan of God regarding creation, and participates in God’s providence in a particularly excellent manner, guiding itself and guiding others.⁵⁹

Are we in “experience” or “theoretical foundations”? Are we discovering “the immediate givens of consciousness”? Does it recognize *the plan of God as the plan of God*?

At paragraph 43 we come to this:

⁵⁷ French: “Pourtant, quoi qu’il en soit des justifications théoriques du *concept* de loi naturelle, il est possible de mettre au jour les *données immédiates de la conscience* dont il veut rendre compte. L’objet du présent chapitre est précisément de montrer *comment sont saisies les valeurs morales communes* qui constituent la loi naturelle. C’est seulement ensuite que nous verrons comment le *concept* de loi naturelle prend appui sur un cadre explicatif qui fonde et légitime les valeurs morales d’une façon susceptible d’être partagée par plusieurs.”

I added the French “*comment sont saisies*” in citing the English, because the document is not merely speaking of “gathering together” the moral values, but of their very “way of being grasped.”

The italics in certain words are mine.

⁵⁸ Cf. above, at note 45.

⁵⁹ French: “En cela, *elle perçoit la loi éternelle, c’est-à-dire le plan de Dieu sur la création*, et elle participe à la providence de Dieu d’une manière particulièrement excellente en se dirigeant soi-même et en dirigeant les autres.”

The moral obligation that the subject recognizes does not come, therefore, from a law that would be exterior (as a heteronomy), but affirms itself from within the subject itself. In fact, as indicated by the maxim we have cited—"One must do good and avoid evil"—, the moral good determined by reason "imposes itself" on the subject. It "ought" to be accomplished. *It has a character of obligation and of law.* But the term "law" here does not refer to scientific laws, which limit themselves to describing the factual constants of the physical or social world, nor to an imperative imposed on the moral subject arbitrarily from without. The *law* designates here *an orientation of the practical reason which indicates to the moral subject what kind of action is conformed with its fundamental dynamism and necessary for its being, which tends to its full realization. This law is normative in virtue of an internal requirement of the spirit.* [Here, *pace* Bolin, I would suggest the word: "mind".] It is born in the very heart of our being as an *invitation* to the realization and *transcending of ourselves*. It is not therefore a matter of subjecting oneself to the law of another, but of accepting *the law of one's own being*.⁶⁰

We see here a regrettable tendency to justify the legal character of the precept simply on the basis of *nature in itself*, rather than as coming from the wise author of nature itself. *This will not do!*—There is not sufficient attention to the *appropriateness* of the term "law" here. No one is a *law* unto himself.⁶¹ And what has happened to the grasp of the *eternal law*, mentioned above, in paragraph 42? Moreover, the French "appel" [English "invitation"] implies a *someone* inviting; it can hardly be merely *our own self* that is doing the calling or inviting.⁶²

⁶⁰ French [43]: L'obligation morale que perçoit le sujet ne vient donc pas d'une loi qui lui serait extérieure (hétéronomie pure) mais elle s'affirme à partir de lui-même. En effet, comme l'indique l'axiome que nous avons évoqué: "Il faut faire le bien et éviter le mal", le bien moral que la raison détermine "s'impose" au sujet. Il "doit" être accompli. Il revêt un caractère d'obligation et de loi. Mais le terme de "loi" ne renvoie ici ni aux lois scientifiques qui se contentent de décrire les constantes factuelles du monde physique ou social, ni à un impératif imposé arbitrairement de l'extérieur au sujet moral. La loi désigne ici *une orientation de la raison pratique qui indique au sujet moral quel type d'agir est conforme au dynamisme foncier et nécessaire de son être qui tend à sa pleine réalisation.* Cette loi est normative en vertu d'une exigence interne à l'esprit. Elle jaillit du cœur même de notre être comme un *appel* à l'accomplissement et au dépassement de soi. Il ne s'agit donc pas tant de se soumettre à la loi d'un autre que d'accueillir la loi de son propre être.

In fairness to the ITC I will note that the last sentence could be translated: "Thus, it is not *so much* a matter of subjecting oneself to the law of another as *rather* a matter of accepting the law of one's own being."

⁶¹ Cf. ST I–II, q. 90, a. 3, ad 1, and again ST I–II, q. 91, a. 2. —One can be a "law unto oneself" but as *receiving* the law from a *higher power*.

⁶² Would it be relevant here to recall that St. Thomas presents law as pertaining to the discussion of the *external* principles of human action? Cf. above, note 15.

Paragraphs 44–47 are placed under a general heading: 2.3. La *découverte* des préceptes de la loi naturelle: universalité de la loi naturelle. (Bolin: *The discovery of the precepts of natural law: universality of natural law.*)

What we find here is a reading of *ST* I–II, q. 94, a. 2, but with considerations suggestive of the thinking of Jacques Maritain. We are told that the knowledge is not “conceptual” (at least as this pertains to “philosophical and theological theory”). There is much insistence on the role of affectivity (as if we could not have conceptual thinking as the *source* of affectivity).

After reading through to the beginning of paragraph 52, I am convinced that it is worthwhile to offer my own reading of I–II, q. 94, a. 2. *It is normal to understand later parts of the ST in the light of what Thomas has already taught in the earlier parts.* Thus, I base myself on the nature of our “natural inclinations” as presented by St. Thomas already in I–II, q. 62, a. 3, with the natural knowledge *preceding* the natural movement of the appetite (not “knowledge *through* inclination”). Then, secondly, I would stress the point that for Thomas the first level of natural inclination, *common to all substances*, surely includes *the natural love for God more than for one’s own self*, together with the natural inclination towards preservation, not only of the individual as an individual, but of the species: that is, reproduction! (cf. *ST* I, q. 60, a. 5, ad 1 and ad 3).⁶³ The second level is not proper to “all living beings” (cf. paragraph 49) but to *animals*, in that it speaks of the *more particular mode* of reproduction, viz. sexual relations and the education of the young. The third is not about “the tendency to living in communion with God or the Absolute” (cf. paragraph 50) but *to know the truth about God*, and to live in society. The *love of God* pertains to the first level of natural inclination (cf. *ST* I, q. 60, a. 5).

I will grant that we must have “imperfect”⁶⁴ knowledge in these matters, as distinct from philosophical demonstration.⁶⁵ However, the human being’s knowledge of God is fundamental for the doctrine of natural law as such.⁶⁶

⁶³ Indeed, the inclination to *reproduce one’s kind* is found in *all natural things*, and is used by St. Thomas as the approach to God’s willing things other than himself, in *ST* I, q. 19, a. 2.

⁶⁴ Cf. para. 44: “C’est une saisie souvent imparfaite, encore obscure et crépusculaire, mais qui a la profondeur de l’immédiateté.”

English: “It is a grasp often imperfect, still obscure and dim, but it has the profundity of immediacy.”

⁶⁵ Cf. *ScG* chap. 3, par. 38 *in toto*.

⁶⁶ Again, cf. *ST* II–II, q. 85, a. 1: that offering sacrifice to God pertains to natural law. Let us recall also the doctrine of St. Thomas commenting on Psalm 8: the natural instinct to find God in the universe. On all this I refer the reader to my review of Flannery, cited in note 48 above.

Coming now to chapter 3, with the move from “experience” to “theories,” notice in paragraph 61 the note 60:

At this first level, the expression of the natural law *sometimes* abstracts from an explicit reference to God. Certainly the openness to transcendence makes part of the virtuous behaviors that must be expected from the fulfilled man [French: *Certes, l'ouverture à la transcendance fait partie des comportements vertueux qu'on est en droit d'attendre de l'homme accompli*; I would translate: *Certainly openness to transcendence constitutes part of the virtuous behavior one has a right to expect in a mature human being*], but God is not [I add the word: “yet,” French has “encore”] necessarily recognized as the foundation and the source of the natural law, nor as the last end that mobilizes and hierarchizes the different virtuous behaviors. The explicit non-acknowledgment of God [French: “*Cette non reconnaissance explicite de Dieu*” I would translate as: This absence of an explicit recognition of God] as the ultimate moral norm seems to prevent the “empirical” approach to the natural law from being constituted as properly moral doctrine.⁶⁷

My first question here would be: have they thus far given the reader enough notice of the importance of knowledge of God in the fundamental awareness of natural law, such that he might appreciate this present judgment of theirs? Their words “sometimes abstracts” suggests that natural law can be “experienced” with or without appreciation of the role of God in its existence. *I think there should have been more knowledge of God present* in their account of the “experience” of natural law.

As I begin rereading chapter 3, I notice their speaking of the harvest obtained from the sort of experience they had in mind in chapter 2:

60. The *spontaneous acquisition of fundamental ethical values*, which are expressed in the precepts of the natural law, constitutes the point of departure of the process that then leads the moral subject to the judgment of conscience, in which it enunciates the moral requirements that impose themselves on it in the concrete situation. It is the task of the

The ITC is certainly right to underline [paragraph 52] the possibility of weakening or obliteration of some precepts; the problem of sin, etc.

⁶⁷ French: “A ce premier niveau, l’expression de la loi naturelle fait *parfois* abstraction d’une référence explicite à Dieu. Certes, l’ouverture à la transcendance fait partie des comportements vertueux qu’on est en droit d’attendre de l’homme accompli, mais Dieu n’est pas encore nécessairement reconnu comme le fondement et la source de la loi naturelle ni comme la fin dernière qui mobilise et hiérarchise les différents comportements vertueux. Cette non reconnaissance explicite de Dieu comme norme morale ultime semble interdire à l’approche ‘empirique’ de la loi naturelle de se constituer en doctrine proprement morale.”

theologian and of the philosopher to return to this experience of the acquisition of the first principles of ethics, to demonstrate their validity and to ground them in reason. The recognition of these philosophical or theological foundations, however, does not in the least condition the spontaneous adherence to common values. In fact the moral subject can put into practice the orientations of natural law without being capable, by reason of particular intellectual conditions, of explicitly comprehending them and their ultimate theoretical foundations.⁶⁸

It does not sound as though the “moral subject” has appreciated the *rationality* of what he or she thinks is right. In short, I wonder if their split between chapter 2 and chapter 3 is really good for a presentation of the importance of *natural law*.

I do, of course, agree with paragraph 61 on the value of metaphysical vision for an appreciation of natural law. However, I think that the *embryonic metaphysics* in the “experience” of natural law is *underestimated* by the document. When they spoke earlier of the meaning of “law” they mentioned the *eternal law*, but they gave no sense of the good person’s appreciation of *God as cause of law*.

Already, before that, I had said: “Even as I finish rereading the introduction of the ITC document, I ask myself whether the distinction between ‘common experience’ in chapter 2 and that of ‘theory’ in chapter 3 is such that the chapter 2 ‘precepts of the natural law’ are so called *per se* or *per accidens*.” It is still a good question, I am afraid. Or should we say that they themselves answered it in note 60? I repeat its conclusion:

*This absence of an explicit recognition of God as the ultimate moral norm seems to prevent the “empirical” approach to the natural law from being constituted as properly moral doctrine.*⁶⁹

⁶⁸ French: “[60] La saisie spontanée des *valeurs éthiques fondamentales*, qui s’expriment dans les préceptes de la loi naturelle, constitue le point de départ du processus qui conduit ensuite le sujet moral jusqu’au jugement de conscience dans lequel il énonce quelles sont les exigences morales qui s’imposent à lui dans sa situation concrète. Il appartient au philosophe et au théologien d’opérer un retour sur cette expérience de la saisie des premiers principes de l’éthique *pour en éprouver la valeur et la fonder en raison. La reconnaissance de ces fondements philosophiques ou théologiques ne conditionne pas toutefois l’adhésion spontanée aux valeurs communes*. En effet, le sujet moral peut mettre en œuvre pratiquement les orientations de la loi naturelle sans être capable, en raison de conditionnements intellectuels particuliers, d’en discerner explicitement les fondements théoriques ultimes” [italics mine].

⁶⁹ French, note 60: “Cette non reconnaissance explicite de Dieu comme norme morale ultime semble interdire à l’approche ‘empirique’ de la loi naturelle de se constituer en doctrine *proprement morale*” [italics mine].

In paragraph 63, where they present natural law as a participation in the eternal law, notice the way they put it:

The natural law is therefore defined as a participation in the eternal law. It is mediated, on the one hand, *by the inclinations of human nature*, expressions of the Creative Wisdom, and, on the other hand, *by the light of human reason which interprets them* and which is itself a created participation in the light of divine intelligence. Ethics presents itself as a “participated theonomy.”⁷⁰

We must recall that this is an expression of their interpretation of *ST* I–II, q. 94, a. 2 on the natural inclinations and their role in our formation of natural law precepts. I favour a reading of “natural inclination” in the rational creature which rather sees the appetitive dimension as *flowing from* the intellective dimension (cf. I–II, q. 62, a. 3).

Note 64, attached to the expression “participated theonomy,” requires our comment; we read:

John Paul II, Encyclical *Veritatis splendor*, n. 41—The teaching on natural law as the foundation of ethics is accessible by right to natural reason. History attests to this. But in fact, this teaching reached its full maturity only under the influence of Christian revelation. First of all, because the comprehension of the natural law as a participation in the eternal law is strictly linked with a metaphysics of creation. Now, although this is of right accessible to philosophical reason, it was truly presented and explained only under the influence of biblical monotheism. Secondly, because revelation, e.g., through the Decalogue, explains, confirms, purifies, and completes the fundamental principles of the natural law.⁷¹

I certainly do not oppose the reference to revelation of the Decalogue. This is especially true in that, as St. Thomas teaches (*ST* I–II, q. 109, a. 3),

⁷⁰ French, note 64: “La loi naturelle se définit alors comme une participation à la loi éternelle. Elle est médiatisée, *d’une part, par les inclinations de la nature*, expressions de la sagesse créatrice, et, *d’autre part, par la lumière de la raison humaine qui les interprète* et qui est elle-même une participation créée à la lumière de l’Intelligence divine. L’éthique se présente ainsi comme une ‘théonomie participée.’”

⁷¹ French: “L’enseignement sur la loi naturelle comme fondement de l’éthique est de droit accessible à la raison naturelle. L’histoire l’atteste. Mais, de fait, cet enseignement n’a atteint sa pleine maturité que sous l’influence de la révélation chrétienne. Tout d’abord, parce que la compréhension de la loi naturelle comme participation à la loi éternelle est étroitement liée à une métaphysique de la création. Or, celle-ci, bien qu’elle soit de droit accessible à la raison philosophique, n’a été vraiment mise au jour et explicitée que sous l’influence du monothéisme biblique. *Ensuite, parce que la Révélation, par exemple à travers le Décalogue, explicite, confirme, purifie et accomplit les principes fondamentaux de la loi naturelle.*”

after original sin we do not have an adequate natural love for God, and that latter love is the basis for the conception of the Ten Commandments (I–II, q. 100, a. 3, ad 1).

I would follow Thomas in seeing the divine causality which is creation as appreciated by Aristotle. One should notice how much of the doctrine of inclinations of nature is taken from Aristotle as imitation of the divine.⁷²

Still, at this point we are touching on the issue I wish to highlight, namely that natural law *as law* requires *rational appreciation of adequate promulgation*.

I wonder if the approach of the document is not too slanted towards a “non-law” conception of the general “experience” of natural law.

Conclusion

In general, my complaint is that the use of the word “law” involves one in our awareness of divine promulgation, whereas the line taken by the ITC tends towards a “self-perfection” picture. One sees that in their paragraphs 43/44/45.

So also, *the downplaying of conceptualizing*, and *their sort* of stress on connaturality depreciates the cognitive quality of natural inclination as presented by St. Thomas.

Their point about the first level of inclination is, I believe, deceptive, in that it obscures the role of the creature’s love for God more than for oneself as primary in natural inclination of all substances. *ST* I–II, q. 94, a. 2 should be read in the light of the earlier part of the *ST*, especially I, q. 60, a. 5.

The question that remains is: how legitimate is my criticism of the document of the ITC? Are my concerns relevant? I think so. They pertain to Thomas’s insistence on the need for *revelation* even as regards what is naturally knowable.⁷³

N V

⁷² Cf. my paper “St. Thomas Aquinas as an Example of the Importance of the Hellenistic Legacy,” *Doctor Communis* (2008), fasc. 1–2 (Vatican City): 88–118.

⁷³ *ST* I, q. 1, a. 1 (ed. Ottawa, 2b9–20).