

Determinacy in Natural Law

KEVIN L. FLANNERY, S.J.
Pontifical Gregorian University
Rome, Italy

A DOCUMENT of the International Theological Commission is a strange animal. It is not a magisterial document, although it is approved for publication by the Prefect of the Congregation for the Doctrine of the Faith. It is not simply an academic publication (like an article in a journal or a monograph), although it does put forward the ideas of a group of academics speaking qua academics. It is also obviously the work of a commission, and so does not pretend to be putting forward a position that is internally coherent in all respects; it is rather an “agreed statement,” onto which the members of the commission (including said Prefect), after presumably lobbying for various sentences and formulations, are willing to sign. Whatever the limitations of such documents, however, they are worth producing and studying. They are a way for the Church in Rome to come to understand better what respected Catholic scholars not in Rome are thinking about important questions and to remain in contact with them. They are also a way for Catholics in general to come to understand the intellectual culture the Church’s magisterium is to some extent addressing when it issues genuinely authoritative documents.

In 2009 the International Theological Commission presented to the public a document on natural law entitled *A la recherche d’une éthique universelle: nouveau regard sur la loi naturelle* (henceforth *A la recherche*).¹ In this article, I consider a number of remarks in *A la recherche* having to do (for the most part) with the bearing of the primary precepts of the natural law upon the moral characterization of particular human acts. Around the time of the Second Vatican Council, one begins to encounter in the writings of certain

¹ The document was composed in French and the French version is the basis of the present article. English translations of *A la recherche* are my own.

Catholic scholars the idea that the general precepts of the natural law are all well and good, but they cannot speak in a determinate way to particular situations and to particular acts that a person might perform. The motivation behind such theories is often—and often explicitly—a desire to allow the use of contraceptives in marriage despite the Church's exceptionless proscription. But the theories invariably make claims about natural law itself and about its principal exponents, especially Thomas Aquinas.

Regarding the more theoretical aspects of ethics, Thomas—in many (but not in all) respects—follows Aristotle, who says in a number of places that we cannot expect from ethics the same type of precision we find in the sciences. What Aristotle says in this regard is perfectly true: the analysis of human acts is not like the analysis of the objects of mathematics or even of biology, where it is important to fix these objects (numbers and animals) by means of definitions so that they might play in their respective sciences predictable and determinate roles. A biologist, for instance, has a problem if an animal he has placed within a particular bird species shows up also, according to his own rules of taxonomy, in a species of dogs. This sort of thing happens, however, all the time in ethics. An act that might be described as a simple act of truth-telling (a member of that “species”) turns out on closer analysis to be also an act of merciless revenge; or an act of striking a match on an ill-lit street corner turns out to be also the launching of an assassination attempt.

But none of this means that, according to Aristotle or Thomas, we cannot make judgments about the morality of particular acts. Far from it. As Francisco Suarez, with Thomas in mind, pointed out back in the seventeenth century (long before “the pill,” that is, but not before theoreticians thought to seek ways to allow acts prohibited by exceptionless precepts), ethics is *about* particular acts: that is where it begins and (in many ways) finishes.² Any attempt exhaustively to classify human acts as one does species of animals will soon be recognized as futile and even ridiculous; but (for instance) the man striking the match knows perfectly well what he is doing and why, as can we know, if we are informed about the plot.

One sees (perhaps vestigial) traces of this philosophical controversy in *A la recherche's* translation and/or interpretation of a passage from Thomas's *Summa theologiae* I–II, q. 94, a. 4, which asks whether natural law is the same everywhere. *A la recherche* §53 begins with the remark:

It is impossible to remain at the level of generality, which is that of the first principles of the natural law. Moral reflection must in effect descend

² Francisco Suarez, *Tractatus de Legibus*, ed. M. André and Carolus Berton (Paris: L. Vivès, 1856), vol. 5 of *Opera Omnia* 2.7.7 (and, more generally, 2.13).

into the concreteness of action in order to shed there its light. But the more it is faced with concrete and contingent situations, the more its conclusions are affected by an element of variability and incertitude.

A few lines later comes the passage from Thomas:

Practical reason [writes Thomas in the *Summa theologiae*] is concerned with contingent realities, in which human actions are performed. This is why, even though in the general principles there is a certain necessity, the more one confronts particular matters, the more indetermination there is.

A la recherche §53 then marks an ellipsis, after which it gives the reader another sentence, which is taken from the same article of the *Summa theologiae* and acknowledges that “there is not the same practical truth or rectitude among all peoples with respect to proper but only general matters” and that, even where “rectitude” is the same regarding proper matters, it is not known equally to all.³ In Thomas, but not in *A la recherche*, there then follows the example of a person who is “obliged” to return a deposit left to him in trust but is actually obliged *not* to return it, for to do so would be unjust.⁴ The section that contains this example is marked in *A la recherche* §53 by another ellipsis; it then concludes with a last bit from *ST* I–II, q. 94, a. 4: “And here, the more one descends into detail, the more the indetermination increases.”⁵

³ The French of *A la recherche*, following the CERF translation (see note 6), speaks of “applications particulières” where Thomas’s Latin has simply “propria.” Since in Thomas’s account of natural law the distinction between general precepts (“praecepta communia”) and proper precepts is so important, it is best to adhere closely to Thomas’s choice of terms here. Things proper (proper precepts, for instance) are not necessarily particulars. (See, for instance, *ST* I–II, q. 94, a. 6 corp.: “. . . ad legem naturalem pertinent primo quidem quaedam praecepta communissima, quae sunt omnibus nota, quaedam autem secundaria praecepta magis propria, quae sunt quasi conclusiones propinqua principii.”)

⁴ A deposit is simply an object left to one in trust by its owner. See below, note 7.

⁵ Here is the whole of *A la recherche* §53: “Il est impossible de demeurer au niveau de généralité qui est celui des principes premiers de la loi naturelle. La réflexion morale, en effet, a besoin de descendre dans le concret de l’action pour y jeter sa lumière. Mais plus elle affronte des situations concrètes et contingentes, plus ses conclusions sont affectées d’une note de variabilité et d’incertitude. . . . Bien qu’il vécût à une époque de chrétienté, un théologien comme saint Thomas d’Aquin en avait une perception très nette. ‘La raison pratique, écrivait-il dans la Somme de théologie, s’occupe de réalités contingentes, dans lesquelles s’exercent les actions humaines. C’est pourquoi, bien que dans les principes généraux il y ait quelque nécessité, plus on aborde les choses particulières, plus il y a d’indétermination . . . Dans le domaine de l’action, la vérité ou la rectitude pratique n’est

One interesting thing about these various translations from *ST* I–II, q. 94, a. 4 is that they repeat almost word for word the standard French translation,⁶ *except* where we read in *A la recherche* of “indetermination” [“indétermination”]. In fact, in the relevant places, the standard French translation renders Thomas’s “invenitur defectus” and “invenitur deficere” much more accurately as “on rencontre de défaillances” (“one encounters defects”) and “les exceptions se multiplient” (“the exceptions are more numerous”).

What does it mean to encounter failure or defect in the application of a general principle? This is best understood by studying the larger passage in the *Summa theologiae* to which the various bits given in *A la recherche* §53 belong. After saying (as we have seen) that practical truth or rectitude can differ among peoples, although not with respect to general matters but only proper matters, and that, even when the rectitude is the same, it is not always known equally to all, Thomas says that there is much more regularity in speculative reason: it is true everywhere that the interior angles of a triangle are equal to two right angles—although not everyone knows this.

He then continues:

But, with respect to the proper conclusions of practical reason, neither [1] is truth or rectitude the same with everyone—nor [2], for those for whom [the truth or rectitude] is the same, is it known equally. For everywhere the following is right and true: ‘one ought to act according

pas la même chez tous dans les applications particulières, mais uniquement dans les principes généraux; et chez ceux pour lesquels la rectitude est identique dans leurs actions propres, elle n’est pas également connue de tous. . . . Et ici, plus on descend dans le détail, plus l’indétermination augmente.’” In the appended note, it gives the bits taken from Thomas’s *ST* I–II, q. 94, a. 4: “Ratio practica negotiatur circa contingentia, in quibus sunt operationes humanae, et ideo, etsi in communibus sit aliqua necessitas, quanto magis ad propria descenditur, tanto magis invenitur defectus . . . In operativis autem non est eadem veritas vel rectitudo practica apud omnes quantum ad propria, sed solum quantum ad communia, et apud illos apud quos est eadem rectitudo in propriis, non est aequaliter omnibus nota. . . . Et hoc tanto magis invenitur deficere, quanto magis ad particularia descenditur.” Reading *A la recherche* §53, one gets the impression that the last piece of quotation, “Et ici, plus on descend dans le détail, plus l’indétermination augmente,” refers to the penultimate piece (about rectitude, etc.). It does not; it refers rather to the general principle “deposits are to be returned” [“deposita sunt reddenda”]. But this is not clear in the CERF translation either, since it translates “Et hoc” as “Et ici.” If one follows the development of the argument of *ST* I–II, q. 94, a. 4 corp., one notices that Thomas twice introduces a sentence with the words “Et hoc.” In both cases, he is referring to the same thing: that (in general) deposits are to be returned.

⁶ *Thomas d’Aquin: Somme Théologique* (Paris: Les Éditions du CERF, 1984).

to reason.' From this principle, however, there follows, as if a proper conclusion, that deposits ought to be returned. And this indeed [1] is in general true although in some case or another it can happen that it would be injurious—and therefore irrational—for deposits to be returned: for instance [a], someone asks [for the return of a deposit] in order to attack the fatherland. And this [i.e., principle that deposits ought to be returned] is found to be more likely to fail [deficere] the more one descends into particulars, for instance [b], if it is declared that deposits are to be returned “with this proviso” [cum tali cautione]⁷ or “in this way”—for as the appended particular conditions increase in number, so also increase the ways in which [the principle] can fail [deficere], so that rectitude would be found neither in returning nor in not returning [deposits].

So then it needs to be said that the law of nature, with respect to the first general principles, is the same with everyone both according to rectitude and according to knowledge thereof. But with respect to certain proper principles—which are quasi-conclusions of the general principles—[the law of nature] is the same with everyone in general, both according to rectitude and according to knowledge thereof, but in a few cases it can fail [potest deficere] both [1] with respect to rectitude, because of certain particular impediments (just as also the generable and corruptible things of nature fail in particular cases on account of impediments) and also [2] with respect to knowledge thereof. And the explanation of *this* is that some individuals have a reason corrupted due to passion or due to a bad custom or due to a bad habit of nature: for instance [c], as Julius Caesar informs us in *The Gallic Wars*, at one time among the German peoples robbery was not considered iniquitous, even though it is expressly against the law of nature.⁸

⁷ The question of whether a deposit (such as a weapon) ought to be returned to a madman occurs as early as Plato's *Republic* (see R. i, 331E5–332A2; see also ii, 382C7–10). In Roman law, a *cautio* is often a note appended to a contract, stating its terms. In Isidore of Seville's *Etymologiae* 5.25.19, a *depositum* is described in the following way: “Depositum est pignus commendatum ad tempus, quasi ‘diu positum.’ Deponere autem quis videtur, cum aliquid metu furti, incendii, naufragii, apud alium custodiae causa deponit.” A few lines later (5.25.24), Isidore defines a ‘hypotheca’ (originally a Greek term denoting a deposit): “Hypotheca est, cum res commodatur sine depositione pignoris, pacto vel cautione sola interveniente.” Here a *cautio* is equivalent to a written or verbal specification of the terms of a contract pertaining to a deposit.

⁸ “Sed quantum ad proprias conclusiones rationis practicae, nec [1] est eadem veritas seu rectitudo apud omnes; nec [2] etiam apud quos est eadem, est aequaliter nota. Apud omnes enim hoc rectum est et verum, ut secundum rationem agatur. Ex hoc autem principio sequitur quasi conclusio propria, quod deposita sint reddenda. Et hoc quidem [1] ut in pluribus verum est, sed potest in aliquo casu contingere quod sit damnosum, et per consequens irrationabile, si deposita reddantur; puta [a] si aliquis petat ad impugnandam patriam. Et hoc tanto magis

I have attempted to make the structure of this argument more apparent by inserting bracketed numbers and letters. This structure is announced in the first sentence: “with respect to the proper conclusions of practical reason, neither [1] is truth or rectitude the same with everyone—nor [2], for those for whom [the truth or rectitude] is the same, is it known equally.” This is basically Thomas’s response to the question asked in the title of the article: “Whether the law of nature is one [the same] with everyone.” He will first [1] explain how the rectitude [“rectitudo”] of even proper principles (which are “quasi conclusions” of the general principles)⁹ can differ among different people—*without*, however, a loss of rectitude in their application. He will then [2] show how difference of rectitude in application might not be an issue and yet, among certain people, the rectitude be unknown. He gives three examples: the first two [a] and [b] pertain to [1] (rectitude differently applied); the third [c] pertains to [2] (ignorance even where rectitude differently applied is not an issue). Most of the above passage is about [1]; failure with respect to knowledge [2] is discussed only at the very end of the quotation.

“Failure” (or defect) is the subject of both sections [1] and [2]. The word itself ought not to be understood as necessarily connoting a bad situation. In section [1], it refers to the fact that the proper principle as

invenitur deficere, quanto magis ad particularia descenditur, puta [b] si dicatur quod deposita sunt reddenda cum tali cautione, vel tali modo, quanto enim plures conditiones particulares apponuntur, tanto pluribus modis poterit deficere, ut non sit rectum vel in reddendo vel in non reddendo.

Sic igitur dicendum est quod lex naturae, quantum ad prima principia communia, est eadem apud omnes et secundum rectitudinem, et secundum notitiam. Sed quantum ad quaedam propria, quae sunt quasi conclusiones principiorum communium, est eadem apud omnes ut in pluribus et secundum rectitudinem et secundum notitiam, sed ut in paucioribus potest deficere et [1] quantum ad rectitudinem, propter aliqua particularia impedimenta (sicut etiam naturae generabiles et corruptibiles deficiunt ut in paucioribus, propter impedimenta), et etiam [2] quantum ad notitiam; et hoc propter hoc quod aliqui habent depravatam rationem ex passione, seu ex mala consuetudine, seu ex mala habitudine naturae; sicut [c] apud Germanos olim latrocinium non reputabatur iniquum, cum tamen sit expresse contra legem naturae, ut refert Iulius Caesar, in libro *De Bello Gallico*.”

⁹ In Thomas, this concept of a “quasi-conclusion” is important. (See, for instance, *In IV Sent.*, d. 33, a. 2c and *ST* I–II, q. 94, aa. 4–6.) The proper principles (or precepts) are not *deduced* from the general (or common) principles but are specifications of them. I discuss this more fully below. *A la recherche* appears to appreciate that the lower precepts of natural law are not deduced from higher precepts; see, for instance, §54, where we read: “in morals pure deduction by syllogism is not adequate” [“qu’en morale la pure déduction par syllogisme n’est pas adéquate”]. But, as will be shown below, it occasionally loses hold of this truth.

originally formulated is simply not present—without, however, any loss of rectitude. In example [a], there is no negative aspect whatsoever: the principle is absent but (and) justice is done. The holder is not obliged to return the deposit to the owner who would use it in order to attack the fatherland; in fact, he is obliged not to return it and he does the right thing. Reading example [b], one does get the impression that Thomas is not much in favor of the accumulation of legal specifications (“as the appended particular conditions increase in number, . . . rectitude would be found neither in returning nor in not returning [deposits]”); but what he apparently regards as not especially good is not the failure of the general principle to make an appearance at the concrete level—it is left in the background in order that the law might be more precise—but rather the loss of a clear message regarding the natural law in that particular regard.

Section [2] does refer to a bad situation (a certain population is regularly committing theft), but the problem is not simply the absence of the principle (for, as we have seen, absence is not *per se* a negative) but the fact that the absence is due to the ignorance of the people of something they ought to know.

So then, with respect to [1], the proper principle “deposits are to be returned” sometimes either [a] fails to apply, as when returning a weapon to a man would be irrational if he clearly intends to use it to attack the fatherland,¹⁰ or [b] is so qualified in positive law that its original form for that reason fails to be present at the level of concrete application. In this latter case, instead of speaking of the general principle “deposits are to be returned,” judges and lawyers speak of the qualified principle “deposits are to be returned except when doing so might threaten the fatherland” (or something similar). Thomas’s main point with respect to [1] is simply that, at the level of application, a proper principle might be subject to variation (without loss of rectitude) either because of particular circumstances (impediments to its application) or because of the decisions of legislators.

With respect to [2] and the example [c] of the Germans who thought that robbery was not iniquitous, it is important to note that Thomas concludes that point with the remark “even though it is expressly against the law of nature.” This connects the example to his original formulation of his response, as contained in the first sentence of our quotation: (to repeat)

¹⁰ See *ST* II–II, q. 57, a. 2, ad 1. Note that in *ST* I–II, q. 94, a. 4 Thomas says that the proper principle “*deposita sint reddenda*” is a quasi-conclusion of the general principle “*ut secundum rationem agatur*.” He then says that returning the deposit (the weapon) to the other person would be “*damnosum, et per consequens irrationabile*”; in other words, it would contradict the general principle from which the proper principle is “derived.”

“with respect to the proper conclusions of practical reason, neither [1] is truth or rectitude the same with everyone—nor [2], for those *for whom [the truth or rectitude] is the same*, is it known equally.” In example [c], he is assuming that neither of the issues identified in [1] (that is, in examples [a] and [b]) is involved. The rectitude of the law remains without variation: the Germans just lack knowledge about its application in certain circumstances.¹¹

What can we conclude from all this regarding the supposed “indetermination” of moral precepts as applied in concrete instances? Consider the three examples that Thomas gives (which appear to exhaust the possible types of cases). In example [a], a weapon, for instance, is not to be returned to the person who owns it but who wants to use it in order to attack the fatherland. To return the weapon, Thomas maintains, would be to go against the general principle (‘one ought to act according to reason’) from which the proper principle (‘deposits are to be returned’) is derived as a quasi-conclusion. There is no indeterminateness here: what the law calls for is clear. In example [b], a deposit is to be returned with a proviso (such as, ‘unless doing so would threaten the fatherland’). Again, no indeterminateness here: if anything, such a law might be faulted for being too determinate in stating things that might just as well be left implicit. In example [c], certain Germans believe that in some circumstances stealing is permitted (and, obviously, in the same circumstances, they do not believe that deposits are to be returned). Again, according to Thomas’s account, what natural law calls for is clear and determinate—even if these individuals do not fully grasp the pertinent principle.

There is, therefore, no basis for *A la recherche*’s claim that *ST I–II*, q. 94, a. 4 contains an argument for the indeterminateness of general practical principles. Thomas holds no such thing. And one certainly finds no support in *ST I–II*, q. 94, a. 4 for *A la recherche*’s (somewhat later) assertion that “only the conscience of the subject, the judgment of his practical reason, is capable of formulating the immediate norm of action” [*A la recherche* §59].¹² This is not to say that Thomas would not acknowledge that there are instances when the application of a general precept is not

¹¹ Thomas refers us explicitly to Caesar’s *De bello gallico*, where the Germans are not said to countenance all stealing but “stealings” that occur beyond the confines of the city: “Latrocinia nullam habent infamiam quae extra fines cuiusque civitatis fiunt, atque ea iuventutis exercendae ac desidia minuendae causa fieri praedicant” [Alfredus Klotz, ed., *Commentarii belli gallici* (Leipzig: Teubner, 1957), vol. 1 of *C. Iuli Caesaris commentarii* 6.23.6].

¹² “[L]a science morale ne peut fournir au sujet agissant une norme qui s’appliquerait de façon adéquate et comme automatique à la situation concrète: seule la conscience du sujet, le jugement de sa raison pratique, peut formuler la norme immédiate de l’action” [*A la recherche* §59].

clear;¹³ but neither would he assert that there is something *in principle* indeterminate about the application of general principles to particular cases. When, with a particular type of situation it is not obvious where justice stands, a lawmaker must make a decision and his decision will carry the weight of law—until replaced, in legitimate fashion, by another and presumably better law.

It has to be acknowledged, however, that one does find in *A la recherche* statements that go quite contrary to the idea that only personal conscience is capable of applying general principles in concrete instances. Just after making that statement in *A la recherche* §59, the document remarks that moral science “does not abandon conscience to mere subjectivity: it aims at the subject’s acquisition of intellectual and affective dispositions that allow it to open itself to moral truth such that its judgment is adequate.”¹⁴ It mentions a number of “sins against nature,” including suicide and “certain sexual practices . . . directly opposed to the reproductive finalities inscribed in man’s sexual body.”¹⁵ It speaks of “murder, theft, lying, wrath, greed, [and] avarice” as universally recognized “objects of reprobation.”¹⁶ Regarding lying, it cites in a positive way Augustine’s argument for its intrinsically evil character [*A la recherche* §26, n. 30].

A la recherche also puts forward another purportedly Thomistic argument, intended apparently as support for the idea that natural law can have a direct bearing upon positive law in certain regards; in fact, however, it betrays considerable confusion regarding Thomas’s moral theory and consequently presents something weaker than that theory. The first two sentences of §91 read as follows:

Positive law must endeavor to put into practice the requirements of natural law. It does this either by way of conclusion (the natural law prohibits homicide, positive law prohibits abortion), or by way of determination (natural law requires that the guilty be punished, positive

¹³ See *ST* I–II, q. 96, a. 1, ad 3; *ST* II–II, q. 47, a. 9, ad 2 and q. 60, a. 3, ad 1. See also Aristotle’s *Politics* iii, 15, 1286a9–31; 16, 1287a23–25, b15–25.

¹⁴ “Mais en même temps elle n’abandonne pas la conscience à la seule subjectivité : elle vise à faire acquérir au sujet les dispositions intellectuelles et affectives qui lui permettent de s’ouvrir à la vérité morale de telle sorte que son jugement soit adéquat” [*A la recherche* §59].

¹⁵ “Ainsi certaines pratiques sexuelles s’opposent-elles directement aux finalités reproductrices inscrites dans le corps sexué de l’homme” [*A la recherche* §80].

¹⁶ “Par ailleurs, certains comportements sont universellement perçus comme objets de réprobation: meurtre, vol, mensonge, colère, convoitise, avarice . . .” [*A la recherche* §36].

penal law determines the punishments to be applied for each category of crime).¹⁷

In a note appended at this point (n. 82), *ST* I–II, q. 95, a. 2 is cited. *ST* I–II, q. 95, a. 2 does indeed make the important distinction between conclusions—or, actually, quasi-conclusions—and determinations.¹⁸ Thomas says, that is, that, from the general principle of natural law “one should do no evil to anyone,” one can derive, as “a sort of conclusion,” the precept “one must not kill.” He then adds that (as *A la recherche* §91 accurately reports) natural law requires that the guilty be punished but leaves to positive law, as “a sort of determination,” the specific punishment.

One notices, first of all, that *A la recherche* has replaced a primary (general) precept of the natural law with a secondary precept: in fact, with the fifth commandment. But that is not so important for present purposes. It would appear that *A la recherche* is attempting to toughen up the bond between natural law (which “prohibits homicide”) and positive law (which “prohibits abortion”) by making it into straightforward deduction. It is willing to concede that the relationship between the precept ‘the guilty should be punished’ and the particular punishment is merely that of determination—but at least (it seems to be saying) Catholic legislators can insist that a ban on abortions is *entailed* logically by the natural law precept prohibiting homicide.

Thomas, however, is in no need of such help; indeed, it undermines his whole approach to the relationship between natural law and its particular applications. In *ST* I–II, q. 94, a. 4, he calls attention to the parallel between the principle of non-contradiction and the first precept of practical reason (“good is to be done and pursued, evil avoided”). In the theoretical realm, any proposition, whether it be one of the axioms of geometry or the simple proposition that Socrates is seated, is a specification of the principle

¹⁷ “Le droit positif doit s’efforcer de mettre en oeuvre les exigences du droit naturel. Il le fait soit par manière de conclusion (le droit naturel interdit l’homicide, le droit positif prohibe l’avortement), soit par manière de détermination (le droit naturel prescrit de punir les coupables, le droit pénal positif détermine les peines à appliquer pour chaque catégorie de crimes)” [*A la recherche* §91].

¹⁸ On quasi-conclusions, see above, note 9. That Thomas is speaking about quasi-conclusions in *ST* I–II, q. 95, a. 2 is apparent in the “hedged” language he uses: “Derivantur ergo *quaedam* a principiis communibus legis naturae *per modum* conclusionum, sicut hoc quod est non esse occidendum, ut conclusio *quaedam* derivari potest ab eo quod est nulli esse malum faciendum.” The argument continues: “*Quaedam* vero *per modum* determinationis, sicut lex naturae habet quod ille qui peccat, puniatur; sed quod tali poena puniatur, hoc est *quaedam* determinatio legis naturae.”

of non-contradiction in the sense that its truth excludes the truth of its contradictory. It cannot be denied that an axiom of geometry is, in a sense, closer to the principle of non-contradiction on account of its necessity (and the other's contingency); but in both propositions—the axiom and the contingent proposition—we encounter the full force of the principle of non-contradiction. To say that Socrates is seated and not seated (at the same time and in the same sense) is as much a violation of that principle as to say that the whole both is and is not greater than the part.

A similar thing can be said about the practical realm. An injurious and spiteful remark is as much a turning away from the good as is a murder—although, of course, the precept against murder is closer to the first precept of practical reason than any precept against gossiping. To defraud an elderly woman of her small investment is as much a violation of the precept “deposits are to be returned” as is a billion-dollar ponzi scheme: the same principle is immediately involved. So, for *A la recherche* to change Thomas's quasi-deduction into a simple deduction, with the (supposed) idea of giving more force to natural law, is to miss the whole point of Thomas's very careful depiction—in *ST* I–II, q. 94, a. 4 and elsewhere—of the relationship between higher and lower precepts. That relationship is *always* one of specification, whether as quasi-conclusion or as determination (as when a determinate punishment is specified). Specification of a higher precept (such as the first precept of practical reason) in either way does not weaken its force or render the precept's application at a lower level indeterminate.¹⁹

I conclude, therefore, that the claim on the part of *A la recherche* to be representing the thought of Thomas Aquinas in its remarks about natural law's “indetermination” is unsustainable. I would further maintain (although I have not argued explicitly for this thesis here) that Thomas's understanding better represents the way in which law—including natural law—works.

N.V

¹⁹ For helpful criticisms of this essay, my thanks to Fr. Stephen Brock and Prof. John Finnis.