

***Ius Gentium* as Publicly Articulated Moral Science**

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Among the various types of law discussed in St. Thomas's theological "treatise on law"—questions 90–108 of *Summa theologia* [ST] I-II—the classification known as the "law of nations" (*ius gentium*) holds an ambiguous epistemological position. Marking a kind of halfway point between the natural law and civil law, it seems to straddle both domains. In fact, in a particularly important text dedicated to this topic in the ST (I-II, q. 95, a. 4), Aquinas classes the *ius gentium* as being closely connected to the natural law, though in a way that is somewhat derivative, not as immediately flowing from human nature (especially in its animality) as does the natural law, but also not as marked by human contingency as is human civil law.

As was recently discussed in a well-documented and insightful article by Barrett H. Turner in *The Thomist*, there have historically been two main lines of Thomist interpretation concerning the exact character of the "law of nations." Very broadly stated, what he refers to as the "Salamancan" line, indebted to Francisco de Vitoria, "interprets Thomas's doctrine of the *ius gentium* as a body of universal positive institutions (that is, specifications, *determinationes*) added to the natural law by agreement of the human race."¹

¹ Barrett H. Turner, "The Law of Nations as Developing Moral Law," *The Thomist* 84, no. 3 (2020): 339–94, at 353–54. In this article, I cannot give Turner's excellent article its due. Even though we differ on the exact nature of the law of nations and its mutability, there are many points on which we agree, given that he "splits the difference" between the two main positions that he sets forth. For further writing by him on this topic, see Turner, "Pope Francis and the Death Penalty: A Conditional Advance of Justice in the Law of Nations," *Nova et Vetera* (English edition) 16, no. 4 (Fall 2018): 1041–1050. I am not sure that I agree with his conclusions regarding how to think about the

This position, which would be common for several centuries among members of the Thomist school, would locate the law of nations *essentially* in the domain of nearly universally adopted customs and institutions, not strictly deduced from the natural law, but rather grounded on “the quasi-political authority of the entire human race, which promulgates the *ius gentium* by customs whose utility for attaining the ends of the natural law under a certain set of social conditions is easily recognized by rational creatures.”²

Turner calls the other line of thought “Maritain’s Neo-Thomist Line,”³ an outlook that would be shared with various nuances by thinkers like Jean-Marie Aubert, Yves Simon, Marie-Michel Labourdette, John Finnis, and others. Setting aside my qualms about his appellation “neo-Thomist,” which does more to obscure than to illumine (for it covers a host of Thomistic figures who have significantly different views on what constitutes “Thomism”), Turner does fairly lay out the major lines of Jacques Maritain’s position, which is most directly articulated in *Man and the State* and *La loi naturelle ou loi non-écrite*.⁴ Basing himself on his particular view of knowledge of the natural law through connaturality,⁵ Maritain contrasted this sort of moral cognition with that which develops in the line of conceptual articulation, thus having a different “gnoseological” character from our knowledge of the natural law, while nonetheless still sharing the same “ontological” foundation. Such conceptually articulated law would be the *ius gentium*.

Rather than add my voice to the dialectic of the various thinkers arrayed by Turner into the two aforementioned camps, I would like to propose a slightly different approach to the “moral epistemology of the law of nations,” though one that I believe lies in line with the best aspects of Maritain’s approach. Continuing a series of reflections that I have undertaken

morality of the death penalty, but the sort of analysis he is undertaking seems to be in the right space of moral-epistemological concerns.

² Turner, “Law of Nations,” 355.

³ See Turner, “Law of Nations,” 372–86.

⁴ See Jacques Maritain, *Man and the State* (Washington, DC: Catholic University of America Press, 1998), 84–101 (esp. 98–99), and *La loi naturelle ou loi non-écrite*, ed. Georges Brazzola (Fribourg: Éditions Universitaires, 1986), 13–35, 51–56, 83–91; sections of the latter can be found in Maritain, “The Ontological and Epistemological Elements of the Natural Law,” in *Natural Law: Reflections on Theory and Practice*, ed. and trans. William Sweet (South Bend, IN: St. Augustine’s Press, 2001), 25–38.

⁵ Below, I will critique Maritain’s position, noting, however, what I believe is the solid basis for his insight, if it is situated more carefully in the general Thomistic theory of moral knowledge.

concerning moral epistemology during the past few years,⁶ I propose that it is most helpful to consider the “law of nations” as being a form of reasoning pertaining to what Scholastic vocabulary would refer to as “moral science,”⁷ namely *discursive philosophical reasoning* concerning the essences, properties, effects, and various other essential relationships that belong to a *human acts, morally considered* (the principal subject of moral philosophy), along with other subjects that are studied in relation to this principal subject (e.g., the principles of human acts, most particularly, the structure of human acts and the moral virtues). Moral science is the activity of reasoning that can be undertaken by knowing agents living together in community, seeking to discursively articulate and explain the moral truth that forms the essential basis for the contingent determinations that will then be codified in particular civil laws, the latter of which are not concerned with questions like “what are the ultimate foundations for property rights?” or “what are the natural rights of those accused of high crimes?” but rather with declarations like: “These are the particular ordinances that govern the rights that one has to this or that kind of property, in this or that political community or communities, and so on,” or “In a trial concerning treason (or human rights violations, etc.), defendants’ rights will be respected in the following ways: X; Y; Z.” The first two questions seek out the *intelligibility that universally follows as a conclusion from the principles of moral reasoning*, while the latter two declarations set the very conditions for the civil incarnation of the requirements of the natural law.

I personally take it for granted that St. Thomas does not have a developed and settled theory of the *ius gentium*. Therefore, I am not *formally* concerned

⁶ See Matthew K. Miner: “A Synthetic Overview of Conscience and Prudence in Moral Reasoning,” in *Conscience: Four Thomistic Treatments* (Providence, RI: Cluny Media, 2022), 1–78; “A Note on Synderesis, Moral Science, and Knowledge of the Natural Law,” *Lex naturalis* 5 (2020): 43–55; “Wisdom be Attentive: The Noetic Structure of Sapiential Knowledge,” *Nova et Vetera* (English) 18, no. 4 (2020): 1103–46; “Beyond Non-Being: Thomistic Metaphysics on Second Intentions,” *Ens morale*, and *Ens artificiale*, *American Catholic Philosophical Quarterly* 91, no. 3 (2017): 353–79; “Appendix 2: On the Speculative, the Speculatively-Practical, and the Practically-Practical,” in Réginald Garrigou-Lagrange, “Remarks Concerning the Metaphysical Character of St. Thomas’s Moral Theology, in Particular as It Is Related to Prudence and Conscience,” *Nova et Vetera* (English) 17, no. 1 (2019): 245–70, at 266–70.

⁷ I believe it is a mistake to call this “science” in the technical Scholastic sense. However, this argument would involve a very technical discussion, the outlines of which can be found in Miner, “Wisdom Be Attentive.” For the sake of terminological continuity with the tradition out of which I am writing, I will retain the expression “moral science” to designate *discursive and speculatively oriented reflection on human acts and their principles, properties, effects, etc.*

here with exegesis *ad mentem Thomae*. However, I do believe that the classic texts of *ST* I-II, q. 95, aa. 2 and 4, present a cogent division of human law into civil law and the *ius gentium*, and thereby provide a clear essential definition of both.⁸ Allow, therefore, an exegesis of this text, which I believe will provide a definition that illuminates quite clearly the epistemological nature of the *ius gentium*.

In article 4, Thomas opens by noting that, when a given genus is divided in an essential manner, it is divided with regard to the formal notion of that genus. He uses the example of the division of the genus “ensouled animal” into “rational” and “irrational” soul, both of which are contained in the aforementioned genus. They are contained there only *in potency*, meaning that the objective notion of “ensouled animal” does not explicitly express either *rational* or *irrational*. However, when defining something according to an essential definition, although it is necessary that, while the specific difference used for such defining be “outside” the genus (for the former qualifies the genus, and thereby adds something to the latter’s meaning, actualizing what is only potential therein), this difference nonetheless must qualify the genus in such a way that the former immediately articulates a distinction within the very formal character of what that genus is. In other words, when we provide an essential division of *ensouled animal*, we must do so not with regard to some accidental characteristic, but, rather, with a difference that articulates a particular way of being ensouled: either as subordinated to a higher level of spiritual life and agency (classically designated by “rational”) or as not so subordinated (“irrational”).⁹

Now, the genus in question in this particular article is “human law,” which he states has as its first essential and generic characteristic the fact that it is “a kind of law derived from the natural law.” Moreover, human law essentially involves a given order in relation to the common good of the political community. Thirdly, as a form of governance, human law also has the essential characteristic of involving certain people who govern. Finally, the human law in its various particularities deals with various classes of actions. The definition derived from the first characteristic will provide a division through formal cause (what formally constitutes human law as a particular act of practical reason). That derived from the second will derive a division

⁸ See Turner’s text for discussion of other relevant places in St. Thomas’s works, as well as in a number of Thomists.

⁹ On the nature of an essential division of a generic notion, see Réginald Garrigou-Lagrange, “On the Search for Definitions According to Aristotle and St. Thomas,” in *Philosophizing in Faith: Essays on the Beginning and End of Wisdom*, ed. and trans. Matthew K. Miner (Providence, RI: Cluny Media, 2019), 21–33, at 27–28.

through final cause and the various essential ends pursued by those who are engaged in the political good (e.g., priests who pray, princes who govern, and soldiers who defend). The third definition is derived from the efficient causality exercised by particular classes of rulers (thus giving rise to the well-known six regimes presented by Aristotle). The final division is derived from the line of the “material” covered by the given laws, thus giving rise to various bodies of law organized around particular topics (in his examples, the corpus of laws against adultery, concerning assassins, and so forth). Of most interest to us is the first division, concerned with the formal aspect of human law *as a kind of moral ordering of reason, derived from the natural law*. Therefore, to understand the definition derived from the formal character of human law as such, we must ask: What might we say about the ways that human reasoning can morally derive something?

In *ST* I-II, q. 95, a. 2, he had noted that there are two ways that human reasoning can derive further knowledge from pre-given apprehensions of the truth: the drawing of conclusions from premises and the declaring of determinations for given generalities. The first sort of derivation is akin to the reasoning that takes place in *scientia*, which for him has a very specific meaning: knowledge of conclusions drawn in light of given first principles within a given order of abstraction.¹⁰ It is a discursive manner of knowing which ultimately remains at a level of universality, articulating the intelligibility of reality.¹¹ The second sort of derivation is akin to what takes place in art-craft. St. Thomas uses the example of a builder determining the particular form of a house. We might also think of how someone may decide, based on his own aesthetic preferences, experience level, financial and temporal contingencies, and so on, to build a shed having a given configuration. The exercise of the art of framing carpentry requires learning and understanding, but it ultimately is practical in character. Art is a knowledge that aims at *making*. The ultimate goal of the exercise of the virtue¹²

¹⁰ On the nature of *scientia*, as well as concerning the unity and division of the sciences, see John of St. Thomas, *The Material Logic of John of St. Thomas: Basic Treatises*, trans. Yves R. Simon, John J. Glanville, and G. Donald Hollenhorst (Chicago: University of Chicago Press, 1955), 504–87 (qq. 26–27).

¹¹ More will be said on this topic of *scientia* in what follows. Throughout, my presentation presupposes what I have laid out at much greater length in Miner, “Wisdom be Attentive.”

¹² Or, arguably, the various *virtues* of art, differentiated by particular formal objects. However, that topic lies outside of our concerns here. Recognizing the potentially problematic character of Fr. Marie-Dominique Philippe, at least later in life, nonetheless, his work on a Thomistic “philosophy of making” remains an important touchstone for rigorous systematic reflection on this branch of philosophy. See Marie-Dominique

of art is not knowledge, but a particular constructed reality, in all of its contingencies.¹³

The first form of knowledge retains all the force of the natural law, even though it involves discursively reasoning toward new moral conclusions. The second sort of knowledge, more immediately practical in character, has its force on the basis of the human exercise of political prudence, which is a unique species of prudence,¹⁴ having an intrinsic connection to the common good, not merely in the general and formal way that all citizens must consider it, but directly and materially, as legislating and ruling.¹⁵ It must declare, *here and now, for this particular community*, what is the nature of the *common good* as regards *this particular sort of situation*. Civil laws, *precisely as such*, do not elaborate the fundamental reasons for the moral requirement undergirding them. Instead, they spell out the particular, contingent, changing, and very often changeable ways that this or that moral duty is observed in a particular society.

Philippe, *L'activité artistique: Philosophie du faire*, 2 vols. (Paris: Beauchesne, 1969–1970), republished as vols. 1–2 of *Philosophie de l'Art* (Paris: Éditions Universitaires, 1991–1994); see also his “Situation de la philosophie de l’art dans la philosophie Aristotélico-Thomiste,” *Studia philosophica* 13 (1953): 99–112. The standard canon of twentieth century Thomistic works on this topic comprises: Jacques Maritain, *Art and Scholasticism and the Frontiers of Poetry*, trans. Joseph W. Evans (New York: Scribner, 1962); Maritain, *Creative Intuition in Art and Poetry* (Providence, RI: Cluny Media, 2018); Jacques Maritain and Raïssa Maritain, *The Situation of Poetry*, trans. Marshall Suther (New York: Philosophical Library, 1955); Étienne Gilson, *Painting and Reality* (Providence, RI: Cluny Media, 2020); Gilson, *The Arts of the Beautiful* (Normal, IL: Dalkey Archive, 2000); Gilson, *Forms and Substances in the Arts* (Normal, IL: Dalkey Archive, 2000); Gilson, *Choir of Muses*, trans. Maisie Ward (Providence, RI: Cluny Media, 2018); Gilson, *La société de masse et sa culture: arts plastiques, musique, littérature, liturgies* (Paris: Vrin, 1986). For a speculative study of Maritain’s aesthetics, see John G. Trapani, *Poetry, Beauty, and Contemplation: The Complete Aesthetics of Jacques Maritain* (Washington, DC: Catholic University of America Press, 2011). For a similar, though briefer, study of Gilson, see Joseph Houser, “Étienne Gilson’s Philosophy of Art: A Systematic Presentation of *Painting and Reality*, *The Arts of the Beautiful*, and *Forms and Substances in the Arts*” (Ph.L. thesis, Pontifical Athenaeum Regina Apostolorum, 2014). Related, though with a more political focus, is Francesca Aran Murphy, *Art and Intellect in the Philosophy of Étienne Gilson* (Columbia: University of Missouri Press, Columbia, 2004). Note, however, in line with the observations of Philippe, the expression “philosophy of making” is to be preferred to the idealist-derived term “aesthetics.”

¹³ The reader should, however, recall the important distinctions that exist between art and prudence. For a survey of this topic, as well as relevant texts in the Thomistic tradition, see chs. 2–4 and 9 of Maritain, *Art and Scholasticism*, chs. 2–4 and 9; also see Philippe, chs. 1–2 in vol. 1 of *L'activité artistique*.

¹⁴ See Thomas Aquinas, *ST II-II*, q. 50, a. 1.

¹⁵ I here presuppose the analyses offered in Yves Simon, *A General Theory of Authority* (Notre Dame, IN: University of Notre Dame Press, 1973).

In article 4, these latter sorts of determinations are said to belong to the civil law. That is, *civil law* is defined as *human law, derived intelligently by way of contingent determination through the exercise of political prudence*. By contrast, the *law of nations* is defined as *human law, derived intelligently in the form of universal conclusions in a way akin to the knowledge had through scientia*. And, in the response to the first objection, he adds a further qualification: the law of nations is concerned with those sorts of conclusions that are not very remote from the premises of the natural law.

Here, we should observe, at least in passing, that the account of the “Salamancan line” presented by Turner bears witness to an alteration in the understanding of the nature of the law of nations. To the degree that those who followed Vitoria considered the law of nations as being a kind of general, broadly customary positive law, they ultimately eliminated the unique noetic category of “derivation” explained by Thomas Aquinas for the *ius gentium* and combined it with the civil law.

Ultimately, this so-called “Salamancan” understanding of the law of nations, on the model of a kind of broadly held adumbration of positive law, has much in common with the more modern treatments of the *ius gentium* as a kind of codified (whether implicitly or explicitly) international law.¹⁶

¹⁶ It is probably best to say that such a “civil law” understanding is predominant but not exclusive, given the way that moral science (and even the natural law itself) is often intermingled in such discussions of the law of nations. In addition to Turner’s article cited above, see Samuel Gregg, “Natural Law and the Law of Nations,” *Natural Law, Natural Rights, and American Constitutionalism*, nlnrac.org/printpdf/90. For a good example of a study inclined in the direction of international law, see the republished edition of John Eppstein’s work (originally 1936) *The Catholic Tradition of the Law of Nations* (Clark, NJ : Lawbook Exchange, 2008); a more recent such example can be found in Daniel Patrick Moynihan, *On the Law of Nations* (Cambridge, MA: Harvard University Press, 1992); also see the work of J. L. Brierly, who was not unaware of the need for the natural law to serve in legal argumentation, *The Law of Nations: An Introduction to the International Law of Peace*, ed. Humphrey Waldock, 6th ed. (Oxford: Oxford University Press, 1963). It is not without interest to consider Maritain’s remarks concerning the way that the civil law and the natural law were often intermingled in classical conceptions of natural law. See Jacques Maritain, *Moral Philosophy: An Historical and Critical Survey of the Great Systems*, ed. Joseph W. Evans, trans. Marshall Suther et al. (New York: Scribner, 1964), 60: “This is why natural law and the *ius gentium*, in Cicero’s time, definitely began to cross together the threshold of commonly accepted ideas. Let us say that it was under the protective covering of the juridical idea of the *ius gentium* that the philosophical idea of natural law succeeded in imposing itself explicitly on the common consciousness: a phenomenon which was made easier by the pantheist confusion between human reason and divine reason, and which involved fairly damaging confusions between the two ideas themselves of natural law and *ius gentium*. . . . But for [such Stoic thinkers as Cicero, Epictetus, and Marcus Aurelius], natural law (where God instructs the conscience concerning first norms by

Granted, this outlook is not without its classical foundations, as is evident in the very words of St. Isidore of Seville, cited in part by St. Thomas in *ST* I-II, q. 94, a. 4: "Thus, it is called the law of nations because nearly all peoples [*gentium*] make use of it."¹⁷ In this, Isidore is merely summarizing what one can find formulated centuries earlier, for example, in the *Institutiones* of the roman jurist Gaius (ca. 130–180):

Every people that is governed by statutes and customs observes partly its own peculiar law and partly the law common to all mankind. That law which a people establishes for itself is peculiar to it, and is called *ius civile* as being the special law of that state, while the law that natural reason establishes among all mankind is followed by all peoples alike, and is called *ius gentium* as being the law observed by all mankind.¹⁸

However, one has reason to ask why (nearly) "all peoples" make use of the law of nations. Is it because the *ius gentium* is customary (and hence, a kind of first step in the very order of the civil law)? Or is it rather because the law of nations expresses a domain of rationally articulated moral truth that can be relatively instantiated within a given moral-intellectual culture?

The latter seems to be what is proposed in St. Thomas's definition and, in its essential lines at least, lies at the basis of Maritain's own articulation of the *ius gentium*. On this presentation, it represents a form of discourse at the level of the "speculatively practical."¹⁹ This type of knowledge, which includes that of moral science, can be said to direct moral action "from

means of the essential inclinations of human nature) was also the law of the *civitas maxima* (in other words the juridical order proper to a city of the world founded on the *ius gentium*). . . . It took many centuries to make the necessary distinctions which the Stoics and Cicero had neglected, and to decant the basic truths which they had recognized but at the same time compromised by the simplistic and absolutist nature of their formulations."

¹⁷ Isidore of Seville, *Etymologiae* 5.6, thelatinlibrary.com/isidore/5.shtml (trans. mine).

¹⁸ *Gai Institutiones or Institutes of Roman Law by Gaius*, trans. and ed. Edward Poste, 4th ed., revised and enlarged by E. A. Whittuck and A. H. J. Greenidge (Oxford: Clarendon, 1904), 1 (cited in Gregg, "Natural Law and the Law of Nations").

¹⁹ This expression is sometimes associated with Maritain because of his particular positions voiced regarding "practically practical sciences." It is, in fact, a division of knowledge that is rooted in the older Scholastic tradition. For a very brief introduction to this, see the various essays on moral reasoning cited in note 6 above. Moreover, as regards the particular details of the speculative and the practical deployed here, see in particular my "A Note on *Synderesis*, Moral Science, and Knowledge of the Natural Law," as well as the introduction to *Conscience*.

afar”²⁰ because its object (free moral human acts and all that is related to them precisely as free and moral²¹) is something that must shape and measure human freedom. A purely “speculative” object of knowledge does not directly inform the *moral character* of a free act, considered precisely as moral. In a purely speculative mode, one can consider *becoming, act and potency, beauty, unity, the “agent intellect,” practical intellection precisely as a psychological process*, and so on.²² Such knowledge—whether belonging to “natural philosophy,” metaphysics, or to the philosophy of the soul and the “ontology” of knowledge—can be said, in a somewhat improper sense, to “direct” human action from afar, insofar as practical knowledge is founded on speculative knowledge. However, a consideration of *justice* or *temperance*, or even of something like *moral reasoning considered insofar as it indicates the right way one should understand the stages of moral intellection and volition*, indicates something about how the human intellect and will *should* be deployed in the exercise of freedom. In other words, in the domain of moral philosophy, one is always dealing with an object, no matter how abstract, that is destined to measure a human act (either directly, as is clearly the case with discussions of the various virtues, whose very formal structure is destined to be the formal structure of the virtuous will and virtuous sense appetites,²³ or indirectly, as is the case with the various “presuppositions” that must be discussed in order to understand the nature of a free human act, for example *passions, virtue in general, law, the “psychology of moral acts,”* and so forth).

All of this “practical” aspect of “moral science” comes to it insofar as its object is moral in character, thereby also marking its ultimate end as being to lay out the intelligible structure of human action precisely as related to

²⁰ The “closest” that it gets is the casuistic consideration of a kind of *individuum vagum*. On this notion, see Miner, *Conscience*, 44, 45n115, 51, 57n136, 75; William A. Wallace, *The Role of Demonstration in Moral Theology* (Washington, DC: The Thomist Press, 1962), 199–202.

²¹ For a decent, if somewhat brief, treatment of this, see Jacques-Casimir Guérinois, *Chlypeus philosophiae thomisticae* (Venice: Balleoniana, 1729), 23–28 (q. 1, articulus unicus, no. 2).

²² As later Scholastics would say: according to its “moral being” in relation to how freedom should be measured (in contrast to the psychological processes involved in such moral reasoning). This opens up a subject too difficult for a single article. For more information, see Miner, “Beyond Non-Being,” 365–71, and “Synthetic Overview,” 22n54.

²³ That is, the activity of prudence aims, ultimately, at functioning as the extrinsic formal cause of the will, giving the will its very specification. However, as I discuss throughout “Synthetic Overview,” one must heed the way the will uniquely is involved in determining the practical intellect, though in a different order of causality, namely in the line of efficient causality.

moral goodness. Moral philosophy can never be purely speculative after the manner of the physical and biological sciences, logic, natural philosophy, mathematics, or metaphysics. It will always be marked by practicality, so much so that one is on good grounds saying that, in the end, *moralis est tota practica*: through and through, moral philosophy is wholly in the domain of practical cognition.²⁴

However, this is where the adverb “speculatively” is of great importance in relation to the adjective “practical.” Utter practicality pertains only to prudential reasoning (and, most particularly, the prudential *imperium*), whether personal or on behalf of a group (i.e., “political prudence”). Prudence alone guides *my* (or *our*) action directly. And in matters of human law, political prudence alone directs the *particular acts of citizens directly*. With all of its contingency, such prudence declares by way of command what must be done. Such political prudence will most essentially be exercised when the common good of the community is materially considered by a given polity’s authority.²⁵ However, to the degree that civil law, by its very essence, seeks to articulate the *particularized determinations* that are to direct the common life of a given political community, it too represents a kind of codification of particular determinations of political prudence. As was well said by Fr. James Schall: “Civil law or human positive law meant that in addition to reason, which was man’s proper natural law, there needed to be specific acts of reason, commands, that reasonably decided on what men living in groups should do to achieve their purposes, both of living well and of living rightly.”²⁶

Now, what is the noetic character of the law of nations understood as a universal “derivation” from the natural law, at the level of moral science? As I have argued elsewhere,²⁷ our knowledge of the natural law begins with our apprehension of moral truths by way of the *habitus* of *synderesis*, our ability

²⁴ See Antoine Goudin, *Philosophia iuxta inconcussa tutissimaque Divi Thomae dogmata*, vol. 4 (Paris: Nouvelle Bibliothèque, 1854), 3–6 (pt. 3 [Ethica], quaestio praeambula [“Dico secundo” and “Dico tertio”]). Slightly different versions of Goudin’s text can be found, though on this point they are substantially the same. This is broadly speaking the position that one finds in the various texts cited from Maritain, Simon, and others in my “Synthetic Overview.” On this point, I differ from certain contemporary Thomists, whose thought I respect, though I must register disagreement when they seem to present moral philosophical thought as though it were ultimately speculative.

²⁵ See Simon, *General Theory of Authority*.

²⁶ James V. Schall, “Natural Law and Law of Nations: Some Theoretical Considerations,” *Fordham International Law Journal* 15, no. 4 (1991): 997–1030, at 1002.

²⁷ See Miner, “Synthetic Overview” and “Note on *Synderesis*.” Likewise, see these important works: Ryan Brady, *Conforming to Right Reason: On the Ends of the Moral Virtues and the Roles of Prudence and Synderesis* (Steubenville, OH: Emmaus

to grasp first moral truths. Such truths play the same role as first principles in the order of speculative reason.²⁸ Although these truths are more profoundly understood through discursive reflection (above all philosophical reflection²⁹), they are *per se nota*, understood on the force of their own terms, not in light of the “objectively illative” mediacy of a syllogistic middle term.³⁰ In their regard, discursive reflection remains directly in the service of immediate insight. Technical elaboration may be necessary in order to understand aright the terms of first moral truths grasped by *synderesis*; however, in themselves, such terms and statements retain a kind of independence from various particular systems of moral philosophy. They are, as it were, the very sources of moral philosophy itself.³¹

Now, the truths grasped by *synderesis* can be drawn in one of two directions of practico-moral reasoning: toward prudential determination or toward conceptual explication.³² Very often in human life, our grasping of

Academic, 2022); Dominic Farrell, *The Ends of the Moral Virtues and the First Principles of Practical Reason in Thomas Aquinas* (Rome: Analecta Gregoriana, 2012).

²⁸ And also, according to Thomist theological thought, the truths grasped through supernatural faith play the role of principles in acquired theological wisdom (traditionally called “theological science”).

²⁹ And, in the supernatural order, by “acquired” theological reflection, traditionally referred to as “theological science.”

³⁰ On the distinction between such objectively illative knowledge and subjectively illative discursive knowledge, see Miner, “Wisdom be Attentive,” 1126n65, and Réginald Garrigou-Lagrange, “Theology and The Life of Faith,” in *Philosophizing in Faith*, 421–43, at 430–31 and 439–43. Concerning its distinction from argumentation using an extrinsic middle term, see Miner, “Wisdom be Attentive,” 1142n97. Also, for brief but very clear exposition of the classical Thomist notion of *scientia* presupposed by this article, see the section “The General Notion of Science” in Michel Labourdette, “Theology: Faith Seeking Understanding,” in *The Thomistic Response to the Nouvelle Théologie: An Anthology*, ed. and trans. Jon Kirwan and Matthew K. Miner (Washington, DC: Catholic University of America Press, 2023), 89–126.

³¹ What holds for the truths of faith and “technically elaborated common sense” holds, *mutatis mutandis*, for such first truths of the merely natural-moral order (as well as for those of the speculative order too). See Réginald Garrigou-Lagrange, *Thomistic Common Sense: The Philosophy of Being and the Development of Doctrine*, trans. Matthew K. Miner (Steubenville, OH: Emmaus Academic, 2021), 83–134, and esp. 217–300. In this regard, particular consideration, no doubt accompanied by some improvements, should be given to the important points made by Maritain regarding moral truths which are akin to first principles known “by the wise.” See Maritain, *Loi naturelle*, 133–41.

³² This is somewhat analogous to the way that knowledge through supernatural faith can either remain within its fully supernatural form of personal assent to the truths of the revealing God taught by the Church or descend into discursive theological assent, which is supernatural in its object but human in its mode of discursive reflection.

a moral truth is understood in terms of *what this truth means for me*, either as judging my past behavior, as a source of reflection on possible future behavior, or as engaged in the choices facing me right here and now. In this regard, it is more or less remotely tied up in the “order of intention” or the “order of deliberation” involved in our own personal human activity. Insofar as this truth is thus considered not in its complete generality, but rather as befitting *for me*, it is marked by the affective character of personalized moral agency, which spans all the various stages of moral cognition.³³ Such affectivity will involve some aspect of the subject who does or does not “harmonize” with the moral truth in question, in line with the adage “Qualis unusquisque est, talis finis videtur ei”: the end appears to a given man in a way that accords with his particular character. As was sagely observed by Fr. Réginald Garrigou-Lagrange, in line with Thomas Aquinas’s own thought: “To the man who is truly humble, all that calls for humility appears good; to the man who is vainglorious, that which is inspired by the spirit of vain-glory appears fitting or conformed to his interior dispositions.”³⁴ This regular phenomenon of knowing moral truths insofar as they more or less descend into the particularities of one’s own life is doubtlessly one of the reasons that led Jacques Maritain to emphasize the role of “connaturality” in our knowledge of the natural law.³⁵

However, although they are practical in object, moral truths can be appreciated in their own truthfulness, “unpacked,” as it were, in reasoned discourse. And whereas the judgments involved in simple volition, intention, and the activity of prudence always aim at an act which is meant to be *my* or *your* particular act, thus appreciating what we might call the “*personal* radiation” of universal moral truth, moral science appreciates what we might call the latter’s “intelligibly communicable radiation” in discourse, which can be shared among peoples, not perhaps with all the erudition of moral

³³ On this role of affectivity throughout the various stages of moral reasoning, see Miner, “Synthetic Overview,” 18–78.

³⁴ Réginald Garrigou-Lagrange, “Prudence’s Place in the Organism of the Virtues,” in *Philosophizing in Faith*, 153–171, at 168.

³⁵ He was not wrong to do so, but he might charitably be faulted for not pushing more clearly to the level of *synderesis*. Maritain’s focus on inclinations is not surprising, however, given the way that St. Thomas talks about “inclinations” in the famous text of *ST* I-II, q. 94, a. 2. Nonetheless, note, for example, St. Thomas’s own remarks in ad 2 there about how *synderesis* is the “*habitus* containing [*continens*] the principles of the natural law.” I discuss this topic at greater length in my article “Note on *Synderesis*, Moral Science, and Knowledge of the Natural Law.”

philosophy, but nonetheless in a way that is a kind of sketch of this sort of articulation of the truth content and implications of various moral truths.³⁶

Given the space limitations of this brief article, let us merely expand on an example given by St. Thomas in *ST* I-II, q. 95, a. 4: notions of property and the justice of buying and selling are necessarily connected with the natural law's requirement that men live together sociably. The latter truth is something that is grasped by *synderesis*, perhaps something very general like "man must strive to live in society with other men and women, rendering to each what is owed to him or her."³⁷ However, such knowledge of commutative justice is incredibly general, requiring the further articulation of the nature of property, the social relationships involved in purchases, and so forth. St. Thomas is not concerned here with particular and specific laws of purchasing and selling,³⁸ but instead is referring to given moral topics that

³⁶ Prudence is, of course, communicable to various degrees throughout its discourse, for if it were not, one could never take counsel with others, nor explain one's action to others. However, the tendency as prudential reasoning moves toward the ultimate command is toward the incommunicable, an *imperium* that holds for *me* in *my* particular circumstances (obviously, based on the objectivity of the moral virtues). See Yves R. Simon, *Practical Knowledge* (New York: Fordham University Press, 1991), 71: "The most striking, if not the most profound, contrast between prudence and moral philosophy involves the communicability of knowledge. Once more, what is really decisive, *the final factor of certainty in prudence, is incommunicable*. What we communicate when we succeed, as it frequently happens, in convincing our neighbor that our prudential decision was right is a host of inconclusive considerations. These are plausible enough to cause persuasion, as long as there is no particularly strong ground of opposition, but these plausible considerations did not cause the certainty of the conclusion. The certainty was caused by agreement with right inclination, and this is a cause of certainty that no discourse can communicate" (emphasis added).

³⁷ I would consider this the primordial source of the virtue of commutative justice. Closer to St. Thomas's language in *ST* I-II, q. 94, a. 2, one might say that this moral insight lays at the basis of our basic inclination to live in society with others. Where he notes, in the same article, other such socially oriented truths belonging to the natural law, St. Thomas seems to imply the virtues of truthfulness (cf. II-II, q. 109) and studiousness (cf. II-II, q. 166), as well as friendliness (cf. II-II, q. 114).

³⁸ In this regard, one can see a root exegetical difference between myself and Turner, who in remarking on *ST* I-II, q. 95, a. 4, states in "Law of Nations," 348: "Thomas does not specify whether he means that there is a general need for laws about buying and selling, or whether he is referring to specific laws about types of contracts or more minute regulations of just exchange." Based on the immediate context of the article in question, it seems clear that St. Thomas cannot have specific laws in mind, for he sets what he says about just exchanges in explicit contrast to particular determinations, which is what "specific laws about types of contracts or more minute regulations of just exchange" would be. It should be noted, however, that Turner does contrast such regulations with "the specifications unique to this or that civil code." Further discussion is needed

can be articulated *only* through discursive (though universal) reasoning. In the Scholastic language of the notion of “scientific conclusions,” we could say: precisely as *scientific*, such conclusions are neither formally-explicitly nor formally-implicitly expressed in the self-evident principles in which truths of the natural law are articulated, but instead are “virtually” present within the principles leading to these conclusions, potentially within the scope of the principle in question (e.g., the basic social nature of commutative justice), but requiring objectively illative discursive reasoning to be known.³⁹ That is, they are, *new truths* reached only through the discourse of intrinsic, objectively illative *middle terms*.⁴⁰

It is here that we can see a point on which Maritain’s thought likely requires some development and correction.⁴¹ As noted above, he perhaps held that the natural law is known only through connaturality because he was desirous to note the way that we very often know truths of the natural law within the context of some kind of personal-moral reflection, not moral-scientific analysis. Therefore, the role of affectivity is almost always

in order to consider where he and I would agree and differ about the admittedly nebulous domain of moral truths pertaining to “legal science,” where one considers various indeterminate civil laws in abstraction from their full specification in a given law code.

³⁹ Concerning the technical notion of “objectively illative” reasoning, see note 30 above.

⁴⁰ One might, in a broad sense, say that such conclusions are “virtually-implicitly” contained in their premises. However, in the vocabulary that I am following here, I am reserving the qualifier “implicitly” for truths that can be the subject of further explicitation by subjectively illative discourse, not objectively illative inference. Nonetheless, the latter sorts of conclusions remain *conclusions* (indeed, properly scientific conclusions), not *prudentially commanded determinations*. This choice of vocabulary is made in line with the noetics presupposed by Garrigou-Lagrange and Reginald Schultes in their critique of Francisco Marín-Sola’s position concerning the *De fide* definability of theological conclusions. On this, see Reginald Schultes, *Introductio in historiam dogmatum* (Paris: Lethielleux, 1922); Schultes, *Fides implicita: Geschichte der Lehre der fides implicita und explicita in der katholischen Theologie* (Regensburg: Pustet, 1920); Schultes, “Éclaircissements sur l’évolution du dogme,” *Revue des sciences philosophiques et théologiques* 14, no. 3 (1925): 286–302; Schultes, “Circa dogmatum homogeneam evolutionem,” *Divus Thomas* (Piacenza) 2 (1925): 83–89, 554–64; Garrigou-Lagrange, *On Divine Revelation*, trans. Matthew K. Miner, vol. 1 (Steubenville, OH: Emmaus Academic, 2022), 96–100, 320–26; 81–97; Garrigou-Lagrange, *De virtutibus Theologicis* (Turin: Berruti, 1949), 131–62. The details and ultimate resolution of that particular debate are outside the scope of this paper.

⁴¹ However, I will note that it has been only through nearly a decade of reflection on this topic in light of Maritain that I have come to my own position. Therefore, out of intellectual filial piety, I feel the need to clearly state that I am not whole-cloth critiquing the man who has been my teacher in these difficult matters.

engaged when we grasp such truths through the *habitus* of *synderesis*.⁴² However, technically, according to St. Thomas (and, more importantly, in a way that is likely more conformable with the truth of the matter), we know the truths of the natural law intellectually through *synderesis*. The subsequent affective personalization of that truth is in line with the nature of moral truth, which is destined to “measure” our acts. However, that latter process does not represent the primordial means by which we grasp insights into moral truth in its most general sense. It must have intellectual and conceptual content, and that is grasped through *synderesis*, the *habitus* of first principles in the practical order.

Thus, when Maritain remarks that the *ius gentium* is epistemologically unique because it involves the “conceptual exercise of reason,”⁴³ some nuance is needed. It is not so much the *conceptual* character of such knowledge that makes the *ius gentium* unique as it is the fact that knowledge of the *ius gentium* involves *the exercise of discursive reason and rational inference*. This latter sort of knowing, which in the general language of Scholastic jargon would be “moral science” (at least in its broadest outlines, insofar as this can penetrate the general domain of moral-intellectual culture), is what characterizes the knowledge that belongs to the *ius gentium*. In short, we can say: the law of nations is discursive moral science insofar as it can guide public debates regarding the general goodness and wickedness of human agency, whether individual or in common. It is not the whole of moral science, but rather something like moral science *insofar as it exists in the state of general public discourse*.⁴⁴

Here, too, we see what is most powerful in such an account of the *ius gentium*, for it ultimately bears witness to the fact that the legal structures of positive civil law are intelligible only insofar as they represent a particular, politically prudent, circumstanced, civil codification of moral claims which

⁴² As is also clear on various occasions in his writings on the natural law, Maritain wanted to avoid a kind of rationalism that would lead to a kind of subordination of moral insight to philosophical reasoning, a false subordination that ultimately reverses the reality of things.

⁴³ See, for example, Maritain, *Man and the State*, 98.

⁴⁴ More could be said here, as I am deploying Maritain’s use of a later Scholastic distinction between *nature* and *state*, which can also be applied to the state of theological science *in via* and *in patria*, as well as to questions regarding the moral virtues in separation from charity. See Jacques Maritain, *An Essay on Christian Philosophy*, trans. Edward H. Flannery (New York: Philosophical Library, 1995); Réginald Garrigou-Lagrange, “The Instability of the Acquired Moral Virtues in the State of Mortal Sin,” in *Philosophizing in Faith: Essays on the Beginning and End of Wisdom*, ed. and trans. Matthew K. Minerd (Providence, RI: Cluny Media, 2019), 171–82.

are, in the end, based upon foundations that are “binding beyond our civil boundaries,” with a force that at once limits the pretensions of political authority and yet also provides the utterly necessary connection from civil law to the natural law.⁴⁵ Thus, I believe it is useful to conclude our reflections with the words of Fr. Schall, who once stated with his wonted clarity:

Civil law then determines how particular things will be done. But in essentials—whether there be a juridical system, whether there be enforcement agencies, whether there be private property and family—civil law remains subject to *jus gentium*. That is, reason sees that such institutions are required for the kind of beings we are if we are to reach our immediate and highest ends. The highest ends of activity are not to be achieved well without these intermediate considerations and institutions. There is a discourse of reason that exists, and must exist, “among the nations.” The various cultures and polities are not simply “diverse” and incommensurable. They have common grounds of discourse about the *what is* of human reality.

The import of this position in terms of political philosophy and its relation to law is that civil rule as such is limited, but necessary and good. Civil or positive human law is not the giver of human nature. It does not establish what it is to be a human being, nor is it the provider of the elements of that human being’s proper good and activity. All civil law has to defend itself before the bar of reason at every level. The so-called “sovereignty” of law ought not to mean that civil or constitutional law is subject to nothing but itself or the wills of those who constituted them. Those who constituted them are in turn subject to what they are. This is their freedom and their glory.⁴⁶

N.V

⁴⁵ Schall, “Natural Law and Law of Nations,” 1021.

⁴⁶ Schall, “Natural Law and Law of Nations,” 1025–26. Thanks are owed to Dr. Thomas Howes, Fr. Cajetan Cuddy, O.P., and Fr. Christiaan Kappes for their discussion and input regarding this article.