The Many Meanings of “Natural Law”

“A few years ago I appeared on ‘Firing Line’ with my Notre Dame colleagues Gerhardt Niemeyer and Ralph McInerny for a discussion of natural law. My memory of that occasion is vivid: our attempt to discuss the possibilities for the theory of natural law in the contemporary intellectual climate was frustrated throughout by the way we seemed to be talking about three different subjects. Father Niemeyer approached the topic of natural law as if it essentially concerned moral objectivity, and, from his point of view, Kant was as much a defender of the theory of natural law as Suarez; McInerny and I quibbled about how much of the specifically Thomist project can still be defended; and William F. Buckley, the host of the program, was primarily concerned about whether a natural law argument could be mounted to show that the progressive income tax was unjust. In short, we spent most of the program simply talking past one another.” — David Solomon

Six Uses of the Term “Natural Law”

A1. The principles of morality are universal & immutable truths (Q. 94, aa. 4-5)

• “… just and unjust actions … have been defined relatively to two kinds of law … —particular law and universal law. Particular law is that which each community lays down and applies to its own members: this is partly written and partly unwritten. Universal law is the law of Nature. For there really is, as every one to some extent divines, a natural justice and injustice that is binding on all men, even on those who have no association or covenant with each other. It is this that Sophocles’ Antigone clearly means when she says that the burial of Polyneices was a just act in spite of the prohibition: she means that it was just by nature.” (Aristotle, Rhetoric, I.13)

• In this sense, to assert the existence of a natural law is to deny the truth of cultural relativism, subjectivism, and related doctrines.

A2. The principles of morality are knowable by natural reason (Q. 94, aa. 2 & 4)

• In this sense, to assert the existence of a natural law is to deny the necessity of revelation to a knowledge of morality. In one important sense, religion is not necessary to morality. Atheism is not inconsistent with the recognition of moral goodness, virtues, obligation, &c.

• Of course, religion might still be connected to morality in other ways: it might provide greater certainty (Q. 91, a. 2), provide inspiration, or provide assistance (i.e., grace) (QQ. 109-114).
B3. The first precept of morality ("the natural law") is that "good is to be done and pursued, and evil is to be avoided." (Q. 94, a. 2)

- Some moral philosophers might insist on a distinction between the right & the good, rejecting this formulation of the first precept as at best out of focus (e.g., W. D. Ross, The Right & the Good?).
- Utilitarians could accept it, interpreting good as happiness (pleasure & the absence of pain), with everyone’s happiness counting equally (cf. J. S. Mill, Utilitarianism).

B4. [As in B3 above], with goodness understood as “fullness of being” (or perfection of one’s nature) (Ia, Q. 5; IaIæ, Q. 18, a. 1)

- Fullness of human being is achieved by rational conduct, including using one’s faculties in accordance with their nature (e.g., sexual activities used in a way open to procreation & marital friendship).
- This contrasts natural law with
  - Utilitarianism (emphasis on pleasure)
  - Ross (emphasis on intuitively knowable duties)
  - Kant

C5. Morality fits the definition of law (Q. 91, a. 1)

- The definitions
  - "an ordination of reason for the common good, made by him who has care of the community, and promulgated" or
  - "a dictate of practical reason emanating from the ruler who governs a perfect community"
- As such, it can be related to other forms of law and first to “eternal law”—"the very Idea of the government of things in God the Ruler of the universe"—Q. 90, a. 1; Q. 93.
  - Natural Law is the rational creature’s way of taking part in the eternal law or, the way in which rational creature is subject to Divine providence (Q. 90, a. 2; Q. 94)

C6. Moral principles are the foundation (and standard) of human law (Q. 91, a. 3).

- The definition of human law
  - a particular determination of certain matters of natural law by human reason (Q. 95, a. 2)
- St. Thomas claims that it is necessary (but not sufficient) that a human law have a foundation in natural law (Q. 96, aa. 2-3; also implicitly Q. 91, a. 4).

St. Thomas’ Definition of Natural Law

- The rational being’s way of participating in the eternal law
- So the relation of eternal to natural law
  - is a relation of whole to part
Knowledge of the Natural Law

- The fundamental precepts of the natural law must be self-evident.
  - This is true of the first principles of any demonstration
    - E.g. in geometry: Any two points can be joined by a straight line.
    - So, in ethics: Good is to be done & pursued; evil is to be avoided.
- There are two senses of self-evident:
  - Self-evidence *per se* ("in itself")
    - where the predicate is contained in the notion of the subject
    - though we may not recognize this fact.
    - e.g., Angels are not circumscriptively in a place.
  - Self-evidence in relation to us
    - not only self-evident in itself
    - but also knowable immediately to anyone who knows the terms
    - e.g., The whole is greater than the parts.

Analogy of Speculative to Practical Reason

<table>
<thead>
<tr>
<th>Speculative Reason</th>
<th>Practical Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>The first thing falling under apprehension</td>
<td>Being</td>
</tr>
<tr>
<td>The first indemonstrable principle</td>
<td>The same thing cannot be affirmed &amp; denied at the same time</td>
</tr>
<tr>
<td>The resultant precept (for practical reason)</td>
<td>Good is to be done &amp; pursued; evil is to be avoided</td>
</tr>
</tbody>
</table>

Goods

- So, what counts as good?
  - St Thomas' answer from elsewhere in the *Summa*
    - Certain activities (to be pursued)
      - ultimately—happiness with God in Heaven (Thomas' theological answer)
      - here on earth—contemplation and friendship (Aristotle's philosophical answer, endorsed with a qualification by St. Thomas)
    - The activities corresponding to the virtues
      - justice, temperance, courage, & prudence
    - certain acts (to be done)
      - those in accordance to reason with respect to object, end & circumstance (cf. Q. 18)
  - St Thomas' elaboration in this article (Q. 94, a. 2)
    - Those things to which we are naturally inclined
      - I.e., those things to which we (all) are inclined as a result of our human nature;
      - Not those things which one might personally feel an inclination to as a result of our personal experiences and preferences.
    - [See next slide]

Other Attempts to Identify the Goods to be Pursued

- John Finnis' list of human goods (from his *Natural Law & Natural Rights*):
  - Life (including health, freedom from pain)
  - Knowledge (for its own sake)
  - Play ( = performance which has no point beyond the performance itself)
  - Aesthetic Experience
  - Friendship
  - Practical Reasonableness ( = being able to bring one's own intelligence to bear effectively on problems of choice)
  - 'Religion' ( = having thought about questions of origins of cosmic order & of human freedom & reason)
Other Attempts to Identify the Goods to be Pursued (cont’d.)

- Mortimer Adler’s list (in his “Education & the Pursuit of Happiness,” Reforming Education)
  - Bodily goods
  - Economic goods
  - Political goods
  - Social goods
  - Goods of personal association
  - Goods of mind
  - Goods of character

Natural Law as a Fourth Principle of Thomistic Ethics

1. The Dionysian Principle
   - An act is good only if it is good in all respects; it is bad if it is bad in any respect.

2. The Three Fonts of Morality
   - The three things that determine the goodness or badness of a human action are—the object, the end, & the circumstances.

3. The Reason Principle
   - Good human actions are those which are in accordance with reason.
   Plus …

4. The First Precept of the Natural Law:
   - Good is to be done & pursued;
   - Evil is to be avoided.