

THEOLOGY AND NATURAL LAW

Rabbi Robert Gordis has recently written, ". . . natural law needs only to be saved from its friends in order to convert its enemies."¹ When one reads that the word "nature," upon which the term "natural law" is based, has some twenty meanings,² it becomes understandable why natural law may well have enemies. No matter how difficult the subject, however, and distressing its nuances, it would seem that "natural law" is not about to disappear from the lexicon of theology. Indeed Vatican II, in the *Constitution on the Church in the Modern World*, points up the relevance of natural law in the contemporary world. ". . . the Council wishes to recall first of all the permanent binding force of universal natural law and its all-embracing principles."³ This is in the context of the savagery of modern warfare.

I am rather happy to be able to quote the Council on natural law, because it should dispel immediately any lurking suspicion that serious discussion of the subject is at odds with the spirit of *aggiornamento*. Even when all the fruits of the modern scriptural revival are acknowledged and employed,⁴ even when the pertinence of contemporary philosophic insights is recognized by theologians,⁵ natural law remains.

What is the relationship between natural law and theology? By natural law I mean the complexus of ideas first synthesized under

¹ "Natural Law and Religion," *Natural Law and Modern Society* (New York, World Publishing Company, 1961) 250.

² P. Delhaye, *Permanence du Droit Naturel* (Louvain, Nauwelaerts, 1960) 10.

³ W. M. Abbott S.J.-J. Gallagher, *The Documents of Vatican II* (New York, America Press, 1966) 292.

⁴ See E. Hamel S.J., "L'Usage de l'Écriture Saint en théologie morale," *Gregorianum*, XLVII (1966): "Le moraliste devra donc se tourner vers d'autres sources, interroger la raison humaine, la loi naturelle, tenir compte de la tradition patristique etc." 71.

⁵ The necessity of which is nicely pointed out in P. Jolif's "Théologie morale et philosophie contemporaine," *Revue des Sciences Philosophiques et Théologiques*, 48 (1964) 19 ff.

that name in the Middle Ages,⁶ and given best expression by Thomas Aquinas.⁷ The term "theology" I use in the broad sense to mean the discipline which identifies, gives an understanding of, and induces reflection upon, the divine *revelata*.

Perhaps the best way to get into our subject is to give the following quotations from Gregory Baum, O.S.A. and Thomas J. Bouquillon. Father Baum writes,

The Church receives the assistance of the Holy Spirit, to teach infallibly the saving revelation of God, i.e. the faith and morals which Jesus announced to us. The Church also teaches with infallibility in matters which are essential to the defense of the Gospel in the world. But her teaching regarding natural wisdom, and the meaning and content of the natural law, however true they may be, and however authoritative her voice in proclaiming them, are not and never can be infallible.⁸

And in *The Critic*:

I realize that not a few authors, in recent years, have claimed that the Church in interpreting the natural law is indeed infallible. This is wrong. The area of the Church's teaching is revelation. Vatican II, in the *Constitution on the Church*, again repeats the principle that the Church's infallibility is as wide as divine revelation, proposing it and at times defending or explaining it. The human wisdom which the Church acquires and teaches does not belong to the area in which she exercises an infallible magisterium.⁹

Bouquillon, on the other hand, writes:

It cannot be doubted that the principal truths of the natural moral order are contained in revelation either explic-

⁶ O. Lottin, *Psychologie et Morale Aux XII^e et XIII^e Siècles*, T. II, 71-100.

⁷ Best, but perhaps not most influential. In Germain Grisez' judgment the Suarezian presentation has been far more influential in shaping contemporary notions of natural law than Thomas'. See, *Contraception and The Natural Law* (Milwaukee, Bruce, 1964) 46-75; also by the same author, "The First Principle of Practical Reason: A Commentary on the Summa Theologiae, 1-2, Question 94, Article 2," *Natural Law Forum*, 10 (1965) 168-201.

⁸ G. Baum, "Birth Control and the Church," *Commonweal*, 81:286.

⁹ "The Christian Adventure, Risk and Renewal," *The Critic*, XXIII (1965)

itly, or at least implicitly. This affirmation is contained in the general principles: the natural order is not rejected by supernatural religion but rather admitted into it; the natural law is not abrogated by the supernatural law, but is received into it. Moreover the affirmation is supposed in the demonstration of the moral necessity of revelation with respect to truths pertaining to God and to the natural law; furthermore the same affirmation is handed on by theologians, and is taken as a principle of reasoning by serious authors.¹⁰

Notice that the subject of the quotation just given is "the principal truths of the natural moral order." Bouquillon then goes on to relate that some authors maintain that *all* the truths of the natural moral order are revealed at least implicitly. Here, however, there is dispute, because some theologians like Cajetan and Soto refuse to be as sweeping in their affirmations.¹¹

I think these quotations afford us a most useful contrast. Baum seems to force a strict dichotomy between revealed truths and truths of the natural order. Bouquillon, on the other hand, sees the principal truths of the natural order, and perhaps even all the truths of the natural moral order, as truths also revealed. In fairness to Father Baum the following quotation, taken from *The Critic*, must also be introduced into discussion. "The Church," he says, "speaks with great

¹⁰ T. J. Bouquillon, *Theologia Moralis Fundamentalís* (ed. 3, 1903):

Dubitari non potest, praecipuas veritates ordinis moralis naturalis in revelatione contineri sive explicitè, sive saltem implicitè. Praedicta affirmatio implicatur in principiis generalibus: ordo naturalis non rejicitur religione supernaturali, sed in ea admittitur; lex naturalis non abrogatur lege supernaturali, sed in ea recipitur. Praeterea supponitur affirmatio in demonstratione necessitatis moralis revelationis quoad veritates ad Deum et ad legem naturalem spectantes; expresse traditur a theologis; sumitur etiam ut principium rationationis apud graves auctores. 23.

¹¹ *Ibid.*: Porro disceptatur utrum omnes veritates legis naturalis sint revelatae, si non explicitè et formaliter, saltem implicitè. Nonnulli videntur tenere, non omnes veritates legis naturalis esse saltem implicitè revelatas, licet teneant omnia principia moralis lege supernaturali sanciri, et eorum adimpletionem inculcari. Hinc principia moralia distinguunt in ea quae sola ratione cognoscuntur, in ea quae cognoscuntur ratione simul et revelatione et in ea quae cognoscuntur sola revelatione. Hanc sententiam proponunt Cajetanus, et Dominicus Soto. Alii e contra existimant omnia principia legis naturalis revelata esse saltem implicitè, et non solum principio supernaturali sanciri, sed etiam eo cognosci. 24.

authority in the area of human values, but when she is not dealing with the ethics revealed in the Gospel, she is not exercising an infallible teaching office."¹² He does not explain what he means by "the ethics revealed in the Gospel," but if his general assertion is to make sense he must envision the ethics of the Gospel as distinct from the natural law.

It is important to notice that in Bouquillon's thought the principal truths of the natural moral order are obviously definable, precisely because they belong to the *revelata*. Baum seems to deny not only that they can be defined as *revelata*, but even that they can be defined as the so-called secondary objects of infallibility. Bouquillon offers the possibility that all the truths of the natural moral order, although not explicitly taught in revelation, could be there implicitly, and therefore could be definable.

The question of the relationship between natural law precepts and the precepts of the Bible is, of course, not new. From Gratian to Thomas the problem was agitated among many of the great scholastics. The *Decretum* opens with what Delhaye calls the Augustinian proclamation¹³ that "*Ius naturale est quod in lege et evangelio continetur.*"¹⁴ By the time we reach Thomas in the next century there is no longer any confusion in the *Summa* between the natural and the supernatural law.¹⁵ Nevertheless Thomas apparently sees a clear identification of the moral precepts of revelation and the precepts of natural law. By moral precepts of revelation I mean those contained in both the Old and the New Testament.

So, for instance, we read in the Supplement, question 65, "*De lege naturae est: 'Quod tibi non vis fieri, alteri ne feceris.'*" This is the so called "golden rule," and is found in Tob 4:16 and Mt 7:12. In question 100 Thomas concludes that all the moral precepts of the Old Law belong to the law of nature. "*Omnia moralia praecepta legis sunt de lege naturae.*" However they belong to the natural law in different ways, inasmuch as "Honor thy father and mother" is a

¹² *The Critic*, *op. cit.*, 44.

¹³ *Ibid.*, 68.

¹⁴ *Decretum*, Dist. 1 a (ed. Friedberg) col. 1.

¹⁵ Delhaye, *ibid.*, "Il ne peut donc être question pour lui (Thomas) de confondre droit naturel et Evangile, loi de grace." 77.

judgment that can be made after only a minimum of consideration; "Honor the person of the aged" is a judgment requiring much consideration of various circumstances, and is characteristic of the wise; "Do not take the name of the Lord in vain" is a judgment which requires divine instruction. The fact that this last judgment requires divine instruction does not destroy its character as natural law.¹⁶ All three kinds of judgment then can be made by the human mind. If this is true, then why is divine revelation of moral precepts needed? Thomas had answered in question 91, "Because of the lack of certitude in human judgment, especially with respect to particular and contingent matters. In order, therefore, that man can know without doubt what for him is to be done and what is to be avoided, it was necessary that in his own acts he be directed by a law divinely given, concerning which law it is obvious it cannot err."¹⁷

Hence it seems quite clear that for Thomas the moral precepts of the Old and New Testament pertain to natural law; they have also been revealed precisely so that there can be no error about them in individual human actions.¹⁸

¹⁶ Delhaye, *ibid.*: "Enfin, à la limite, continue S. Thomas, il y a des vérités morales parfaitement fondées devant la raison, mais que les hommes n'ont appris que lorsque Dieu les leur a enseignées. C'est le cas, par exemple pour la loi de l'Exode, 20, 4-5 réprochant le culte des idoles." 80.

¹⁷ *I-IIae*, q. 91, a. 4: Secundo, quia propter incertitudinem humani iudicii, praecipue de rebus contingentibus et particularibus, contingit de actibus humanis diversorum esse diversa iudicia, ex quibus etiam diversae et contrariae leges procedunt. Ut ergo homo absque omni dubitatione scire possit quid ei sit agendum et quid vitandum, necessarium fuit ut in actibus propriis dirigeretur per legem divinitus datam, de qua constat quod non potest errare.

¹⁸ This view of the moral necessity of divine revelation in moral matters is repeated by *Humani Generis*:

"For though, absolutely speaking, human reason by its own natural force and light can arrive at a true and certain knowledge of the one personal God, Who by His Providence watches over and governs the world, and also of the natural law, which the Creator has written in our hearts, still there are not a few obstacles to prevent reason from making efficient and fruitful use of its natural ability." ". . . It is for this reason that Divine Revelation must be considered morally necessary so that those religious and moral truths which are not of their nature beyond the reach of reason in the present condition of the human race may be known with a firm certainty and with freedom from all error."

The Catholic Mind, 48 (1950) 688.

Before leaving question 100, another quotation should be of interest. Thomas says clearly that the two great commandments of the Old Law, love of God and love of neighbor, are first and common precepts of the law of nature, which are *per se nota* to human reason, either through nature or through faith. Therefore all the precepts of the decalogue are related to these two as conclusions are related to common principles.¹⁹

It must also be remembered that for Thomas the New Law did not abrogate the moral precepts of the Old Law. "*Lex nova non evacuat observantiam veteris legis nisi quantum ad caeremonialia.*" Indeed, with respect to the substance of the precepts of the New Law, they are all contained in the Old.²⁰

I would submit, then, that Father Baum proceeds too hastily in creating a dichotomy between natural law, as that term has been used historically, and revelation, or the Word of God. The moral precepts which are contained in revelation, and which are identical with the precepts of natural law, can not only be taught by the Church, but taught infallibly, either through the ordinary universal magisterium or the solemn magisterium. To be more specific, they can be taught infallibly as primary objects of infallibility.

Theology, however, not only identifies the *revelata*, it also strives to understand it. So, for example, St. Thomas when discussing the fifth commandment says expressly that not all killing is forbidden by the fifth commandment, but only that killing which is "*indebitum.*" To kill malefactors or enemies of the state is not "*indebitum.*"²¹ The various teachings of the magisterium on direct and indirect killing give us a more precise understanding of what the fifth commandment means. Such statements, it seems to me, should be understood as explaining the *revelata*. I see no reason why the Church

¹⁹ *I-IIae*, q. 100, a. 4, ad prim.:

Dicendum quod illa dua 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.

²⁰ *Ibid.*, q. 107, a. 3, ad secund.: "Sed quantum ad ipsam substantiam praeceptorum Novi Testamenti, omnia continentur in Veteri Testamento."

²¹ *I-IIae*, q. 100, a. 8, ad. test.

could not teach such understanding of the fifth commandment, and teach it infallibly as a primary object of infallibility.²²

The point of this whole section of the paper is to insist that assertions as to what the Church can and cannot do with respect to natural law, must take into account that "natural law" is an historical term. One can, of course, make the term mean what he will, define it perhaps in such a way as to sever its links with revelation, and consider it the mere product of philosophical reflection, and by such procedure refuse the Church infallible teaching rights with respect to it, but it seems to me this is to indulge in a certain form of abstractionism. The term has a theological history which must be respected.

But there is more to our question than merely showing an historical identification of revealed and natural law precepts. Natural law represents a *theoria*. As such, it represents an historical reflective effort to discover the principles which govern man's moral being. It is an effort to get at the intelligibility of morality. Because natural law was seen within the total framework of the eternal law, the natural law *theoria* did anything but abstract from man's concrete life within the order of salvation. If natural law ethics threatened, in times past, the specifically Christian character of morality, this, I feel, must be attributed to other causes than the natural law *theoria* itself. Natural law was part of a synthesis which embraced eternal, divine, and human law.

The fact that natural law became somewhat detached from its theological context, often for apologetical reasons, should not blind us to the fact that it represented a theological effort to answer the searching question why is good good, and evil evil. In essence natural law theory insists on the intrinsic character of human morality. Man is the measure of morality, but not in the ancient Greek meaning of that phrase, which left man autonomous, but in the Judaic-Christian sense, that human nature is theonomous. Man is the image of God.²³ Natural law is theonomous because by definition it is the participation of the eternal law by rational creatures. It represents a

²² I am not asserting the Church has done so.

²³ Fuchs, *Natural Law* (New York, Sheed & Ward, 1965), ch. 4.

rejection of legal positivism, whether human or divine. It emphatically rejects subjectivism in morality. It insists on the primacy of love, but continues that the law of love must express itself in an order of intelligibility, which is the intelligibility of the good, as apprehended by man in his relation to himself, God, and society. Natural law embraces all of man's basic tendencies and establishes man's basic goods. It captures man as he acts, and insists that in all his actions good must be done and pursued and evil avoided. Aside from the immediate grasp of primary principles, and the more difficult perception of secondary principles, natural law embraces necessary conclusions which derive from such principles. There is a universality to natural law, and also an immutability, although with regard to the latter St. Thomas allowed that there could be change, at least in man's apprehension of natural law.²⁴ Finally, natural law, at least in St. Thomas, involves the assertion that there are underivable principles for the practical intellect, just as there are underivable principles of the speculative intellect (*I, IIae*, q. 94, a. 2).

What judgment is to be passed on this *theoria* by contemporary theology? It would be easy enough to point to the *magisterium* of the Church and the constant teaching of Catholic theologians, and insist that the credentials of natural law *theoria* are permanent and valid. This, I believe, would fail to take account of two questions that deeply concern contemporary Catholic theology.

Before suggesting an answer to our question, therefore, I would like at least to advert to these problems, both of which tend to cast a shadow on the certitude usually attributed to accepted theological conclusions.

Both problems arise from the contemporary emphasis on the historical dimension of revelation and theological development. The first concerns the certitude moralists attribute to their conclusions as a consequence of certain rational constructions inherited from the past. The second concerns the certitude moralists find for their conclusions in the historical enunciations of the *magisterium*.

²⁴ M. B. Crowe, "Human Nature: Immutable or Mutable," *The Irish Theological Quarterly*, XXX (1963) 204-231; L. Ryan, "The Indissolubility of Marriage in Natural Law," *Ibid.*, XXX (1963) 293-310, and XXXI (1964) 62-77.

With respect to the first problem, I must admit difficulty in trying to articulate it clearly. I am not satisfied with the use of such terms as "relative" and "absolute," nevertheless, they do help situate the problem. Let us say that scholasticism has been the language of traditional Catholic theology, and let us say further, that scholasticism is identified in its origins and development with a particular phase of Western civilization. Theological conclusions elaborated within that structure may indeed seem valid, only to be questioned when the thought structures shift and change as a result of cultural transformations. Conclusions accepted as absolute within one framework can conceivably be relativized when judged within another. Friedrich Gogarten, who rejects natural law, has written,

The kind of reality that theology asks about is the reality of God and his revelation. Because this is an eternal, unchanging reality, it is not difficult to understand why theological questions and answers along with the concepts used to formulate them, tend to preserve their validity beyond the time in which they were truly valid.²⁵

For Gogarten, and others, the theology of the Middle Ages, born of a structured and static view of reality, is no longer capable of expressing the reality of God and his revelation. Metaphysical thinking has lost its power and validity. Man has become conscious that he is not living in a pre-constructed world order, but is making the real to be. ". . . our relation to the world has become completely different from the relation of ancient or medieval man to his."²⁶

With respect to the second problem, the long discussion during the fifties of the church-state problem has certainly prompted theologians to be more conscious of the historical milieu of magisterial teaching. Historical reflection no longer limits itself to a mere examination of causes, consequences, and the "first" meaning of particular magisterial pronouncements, but extends to a careful appraisal of the pertinent historical *problematique*. A realization of the *problematique* of church-state theory in the last century, for in-

²⁵ *The Reality of Faith* (Philadelphia, Westminster Press, 1959) 11. Translated from the German by Carl Michalson and others.

²⁶ *Ibid.*, 23.

stance, certainly suggests that 19th century magisterial propositions on the subject, though cast in apparently absolute terms, can and indeed must, be relativized. If this is so, then an enormous field of investigation is opened up to the theologian, and creates the necessity of finding critically justified principles by which, in individual problems, the transtemporal and absolute truths of magisterial teaching can be distinguished from truths that are absolute only within a given *problematique*. The fact that this *can* be a problem means that it *must* be.

It is against this background that natural law *theoria* must be evaluated. It is clear that for centuries theologians have employed natural law as a source for Christian moral teaching. It is clear that natural law *theoria* was first fully elaborated in the Middle Ages. Can it be that natural law *theoria*, thus elaborated and expressed, represents merely a thought structure of a particular moment in cultural history, and should be abandoned by a later age that has undergone many cultural transformations?

I would first suggest that natural law *theoria* is an example of theological development, as theological development is explained by Father Bernard Lonergan. It was theological in context and nature. That it was theological in context needs, I believe, no argument. That it was theological in nature can be argued not only because of the identification of the precepts of the Bible with the precepts of natural law, but because natural law, itself part of a larger synthesis, was articulated in quest of understanding the foundations, not only of a natural morality, but of the supernatural morality of the Gospel itself. It represents a true theological development, in which theologians were attempting to get behind the multiplicity of moral utterances in order to grasp the principle or principles that underlay them. It was a quest for principles that are "prior in reality," and that are the real foundation for culturally conditioned expressions of moral rectitude.

Even if one accepts the conclusion that natural law *theoria* is theological in nature, he is not thereby constrained to admit immediately that the development was or remains valid. How, then, does one judge of the theological validity of natural law *theoria*?

I believe we must first consent to talk about natural law in its general outline, summarized above. Then an attempt must be made to show that natural law *theoria*, in its general outline, is true to its sources. Next we must turn to the only source we have for judging the validity and permanence of any theological development, the magisterium of the Church.

It must be noted from the beginning that the medieval theologians had no reflexive grasp of history or the historical process, which is so prominent in philosophy and theology today. Nevertheless, they employed sources in constructing the *theoria* that transcended particular cultures, and particular moments within a specific culture. This, I would say, means the *theoria* was constructed from sources historically situated, even though the problem of history was not reflexively considered.

Thus, St. Thomas employed Sacred Scripture extensively in his treatment of natural law, making reference not only to St. Paul, and the New Testament in general, but also to the precepts of the Old Testament. These utterances were the product of a particular culture. He also employed elements from Hellenism, making, of course, extensive use of Aristotle. He also refers to St. Augustine and Isidore of Seville, thereby spanning a good portion of the Patristic Age. He is aware of the work of Gratian and the material found in the medieval canonical collections. He is in contact with the legal tradition of Roman Law.

It is true that all these elements are looked at from the vantage point of medieval man, and the pattern made of them is associated with the Middle Ages. Nonetheless, there can be no doubt that the medieval theologians thought they were enunciating an insight transtemporal in its significance. They thought they were expressing a truth that could be witnessed to by the culturally diversified sources they employed.

These sources were, for the most part, specifically theological, and when they were not, as for instance Aristotle's *Ethics*, they were transformed by theological insight. Natural law became theonomous instead of autonomous by the doctrine of participation, and specifically Christian by the doctrine that charity was the form of all the

virtues.²⁷ It is also true that St. Thomas was quite aware of cultural differences, using that fact to explain why natural law is not perceived in its entirety by all peoples.

. . . among the Gentiles the natural law was obscured in many points, and so they did not consider it wrong to have intercourse with a concubine and in many cases practiced fornication as though it were lawful.²⁸

In other words, natural law is everywhere the same, but its full perception may be interfered with because of cultural factors. This is certainly an affirmation of a transtemporal reality. Certainly St. Thomas and other medieval theologians were aware of the continuity with the past in their construction of natural law *theoria*. Indeed, it would seem that their judgment that natural law *theoria* as witnessed to in the sources used to construct it, has not been challenged by modern scholarship.

So, with reference to the classical text in Romans 2, it is still interpreted as referring to natural law.²⁹

With reference to the Gospels and Epistles, C.H. Dodd writes in his "Natural Law in the Bible,"—

The doctrine of Noachian precepts is the Jewish equivalent for the Stoic doctrine of the law of nature. All this, then, was part of the accepted background of the writers of the New Testament and we are assured that in discovering hints of a universal or natural law in the Gospel and Epistles we are not importing an alien element in their thought.³⁰

With reference to Biblical thought in general, Rabbi Robert Gordis has stated,

The roots of natural law are not to be sought only in Greco-Roman culture. The Hebraic component, as embodied in the

²⁷ Fuchs, *ibid.*, 67 ff.; see also R. Flacelière, "Morale Grecque et Morale Néo-Testamentaire," *Morale Chrétienne et Requêtes Contemporaines* (Paris, 1954) 108.

²⁸ In *VI Sent.*, d. 33, q. 1, a. 3, ad 1. See, L. Ryan, "The Indissolubility of Marriage in Natural Law," *The Irish Theological Quarterly*, XXX (1963) 299-300.

²⁹ Fuchs, *ibid.*, 18 ff. See H. Bouillard's criticism of Barth's interpretation of Romans 2 in *Karl Barth—Parole de Dieu et Existence Humaine*, 2^e Partie, 237.

³⁰ *Theology*, Reprint 17, p. 7.

Old Testament, the Apocrypha, the New Testament, and rabbinic literature is of comparable antiquity.³¹

Certainly the moral teaching of the Patristic period cannot be understood without reference to natural law, and the speculation the Fathers engaged in with respect to the law of nature before and after the Fall.

I therefore think it would be false to look at natural law *theoria* as representing merely the thought structure of a particular moment in Western civilization. Its intrinsic elements span the ages of Christian source materials.

Indeed it is this natural law *theoria*, the result of theological speculation, which presided over the development of Catholic moral doctrine from the Middle Ages onward.

This brings us to a discussion of the magisterium of the Church.

The magisterium of the Church has certainly seemed to "canonize" the natural law *theoria*, at least in its general assertions, insisting not only on the existence of natural law and its knowability through reason and revelation, but also on its direct pertinence to specifically Christian morality.³² Indeed, the Church has often made specific application of natural law principles to concrete and individualized problems, as Fuchs has so well documented.³³

The question, then, is whether these various magisterial statements represent teaching that is continuously valid. It must be granted that recourse to natural law is characteristic of documents that are fairly recent.³⁴ The reasons for this are probably reducible to two: one, that in a Christian world divided by the Reformation, natural law seemed a bridge between the Catholic and Protestant world, and two, that the Church became aware of the deep inroads of positivism throughout Western civilization. The essential point is, however, that when the Church embarked upon a vigorous insistence on natural law, she did not create a *theoria*, but rather turned to a

³¹ *Natural Law and Modern Society*, 250.

³² Fuchs, *ibid.*, chapter 1.

³³ For a lengthy and thoroughly competent treatment of natural law as a properly theological entity, see Calvez-Perrin, *The Church and Social Justice*, chapter 2, p. 47. (Translated from French by J. R. Kirwan, 1961)

³⁴ Fuchs, *ibid.*, 3.

theoria already in existence, with its long and specifically Christian tradition going back to Judeo-Christian, Patristic, and medieval origins. Natural law, as employed by the Church, is not merely an *ad hoc* contrivance for an isolated and particular *problematique*.

We have already seen the quotation from Vatican II which refers to "the permanent binding force of universal natural law." The word "permanent" is exactly pertinent to our whole discussion, especially since Vatican II was quite aware of the meaning of historical process, but nevertheless refused to suggest that historical process invalidated the permanence and universality of natural law principles.

Indeed the key documents of Pius XII's pontificate, with reference to morality, were written in the reflexive awareness of the growing tendency to introduce subjectivism and relativism into morality.³⁵ In combating such trends the Church reiterated the permanent validity of natural law in supernatural morality.

In general, then, I would conclude that, from the theological point of view, natural law must be considered a permanent and enduring part of Christian moral doctrine. There is no slightest hint that the teaching Church is abandoning or rejecting it. Quite to the contrary. As Cahal B. Daly has written, ". . . Pope John's great encyclicals, which aroused the admiration of all men of good will everywhere, were based explicitly on an appeal to natural law."³⁶ John C. Murray S.J. makes the point even more strongly when he says,

. . . the law of nature, which prescribes humanity, still exists at the interior of the Gospel invitation, which summons to perfection. What the follower of Christ chooses to perfect is and can only be humanity. The Christian call to transcend nature, notably to transcend what is noblest in nature, the faculty of reason. But it is not a call to escape from nature, or to dis-

³⁵ I refer to *Humani Generis*, already quoted; to the *Instruction of the Holy Office on "Ethics of the Situation,"* AAS 48-144; the Papal address *On the Proper Formation of the Christian Conscience of Youth,* AAS 44-270, and the Papal address *To the World Federation of Young Catholic Women,* AAS 44-413.

³⁶ "Natural Law and Morality Today," *American Ecclesiastical Review,* CLII (1965) 362.

mantle nature's own structure, and least of all to deny that man is intelligent, that nature is intelligible, and that nature's intelligibility are laws for the mind that grasps them. Insofar as they touch moral life, the energies of grace, which are the action of the Holy Spirit, quicken to new and fuller life the dynamisms of nature, which are resident in reason.³⁷

Specifically, the theology of natural law faces many tasks, not the least of which is to convey the sense of natural law's dynamism. As Jacques Leclercq says, "The *science* of natural law changes . . ."³⁸ Natural law must always know the demands of human nature, especially of man's social nature. In concrete terms he suggests that, "Sociology is the science *par excellence* which allows us to attain to that knowledge."³⁹

Natural law *theoria* must also strive to incorporate the insights of cultural anthropology into its general structure and understand the dynamisms underlying man's evolution in society. It is interesting to note the suggestion of Charles Fay that, "an ethics which is both Thomistic and evolutionary is an intrinsic possibility."⁴⁰ Indeed, natural law, far from being a relic of the past has, even in today's world, a program for the future.

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Digest of the Discussion:

Two salient points stood out in Father McKeever's presentation: the relation of natural law teaching to the Church's magisterium, and the relation of natural law theory to historical development. I will comment briefly on these two items.

It is asserted that the Church is entitled to teach concerning

³⁷ "Natural Law and Public Consensus," *Natural Law and Modern Society*, 71.

³⁸ "Natural Law and the Unknown," *Natural Law Forum*, 7 (1962) 3.

³⁹ *Ibid.*, 8.

⁴⁰ "Toward a Thomistic-Anthropological View of the Evolution of Obligation," *Natural Law Forum*, 7 (1962) 38-53.

the natural law, because it is her function to proclaim "teachings on faith and morals." But there is a common misunderstanding concerning this term, "teaching on faith and morals." At times one gets the impression that "faith" ought to refer to divine revelation, and "morals" to the whole field of the moral life. More accurately, the phrase should be taken to refer to divine revelation, which includes *credenda* as well as *facienda*. Indeed, the Second Vatican Council, in its *Constitution on the Church*, equates the term "matters of faith and morals" with the term "matters of the Gospel."

Father McKeever said that the *facienda* as well as the *credenda* can be proposed to be believed; indeed the *facienda* (and *omitenda*) can be proposed infallibly, as primary objects of infallibility. But the question requiring further clarification is that of the secondary objects of infallibility: defending the Good News of Salvation. Perhaps, during the course of our discussion, we could have a clarification of this question: What is the value of the teaching which says that infallibility extends to non-revealed truths, i.e. truths discovered by reason alone (commonly referred to as secondary objects of infallibility)?

The second point on which I wished to comment was that of historical development and the natural law. Recently, especially with the development of theories of evolution, we are being brought to an awareness that nature itself is in movement, and therefore any law of nature is based on movement toward something rather than on establishing something immobile. Now this matter of the changeability of the natural law should be placed in its proportionate importance, and therefore in its proportionate unimportance, because when we compare this with certain changes that have taken place in dogmatic issues throughout the centuries in the Church, we would not be so concerned that this is going to undo the structure of the Church. For instance, there are some difficulties that arose in the Arian heresy in the fourth century and the Monothelite heresy of the seventh century. The result was that, in the judgment of some ecclesiastical writers, the hierarchy on certain occasions were unfaithful to their commitment to uphold orthodox doctrine, whereas the people kept their faith.

Here we have an unchangeable dogmatic truth which nevertheless

was subjected to the vicissitudes of a changing Church. And so, when we come to an issue of the natural law, we want to show that it pertains to what was revealed. As changes occur and people begin to be concerned about the authority of the Church or the Pope being compromised, we must turn to the most basic question: What in this particular issue is in the revealed Word of God?

Father McKeever commented on the problem of change. He pointed out that Liam Ryan has recently written that St. Thomas accounts for the diversity of moral and ethical standards to be found throughout the world under the headings of the influence of custom and evil habits, the unequal development of reason and Revelation, and the diversity of conditions and circumstances. Thomas himself attributes the approval of fornication in certain pagan writings to certain cultural influences on the perception of the content of natural law. It is well known that certain philosophers of the pagan world approved of homosexuality, even though broadly they could be considered in the natural law tradition. Therefore man can progress culturally, and this progress can lead to a better knowledge of the content of natural law. Perhaps the race will so progress that some elements of the natural law will no longer be important: but there is a permanent structure of natural law which is unchangeable, while knowledge of the natural law has grown.

Father Sebastian McDonald, C.P., asked whether natural law should be interpreted as content, or perhaps only as method—which method would remain authentic throughout the ages.

Father McKeever replied, saying the natural law is not just a method. As Germain Grisez recently demonstrated in the *Natural Law Forum*, the first principle of the natural law is the intelligibility of the good, which results in the principle: The good is to be done and pursued and evil is to be avoided. But it also leads to principles which are known from direct perception, which are equally underived. This would constitute the basic unchanging structure of content of the natural law, while method has to do with deriving conclusions from moral principles. In the first part of his paper *Father McKeever* said he was referring to the *underived* principles of the natural law—not the derived conclusions, which are more and more subject to error as we recede from the perceptions on which they are founded.

Father Augustine Rock, O.P., said: St. Thomas distinguished between primary and secondary principles of the natural law, indicating that the secondary principles are changeable. The problem as he posed it was not a philosophical nor a theological problem, but an anthropological problem, and St. Thomas was not aware of what we know of anthropology today. He did not think he had the solution, but was opening the way to a solution. Our problem is to discern the changeable from the unchangeable, and see how what is deduced or "secondary" is still natural law.

Father McKeever replied that from the *Sentences* to the *Summa* the meaning of "secondary precepts" varied for St. Thomas. In the *Sentences* it means the variable precepts of natural law. In the *Summa* it means precepts *derived* from the primary precepts, which primary precepts are underived and *per se nota apud omnes*. Experience and education are required for the formulation of secondary precepts. The problem of changeability in St. Thomas seems to refer either to changes in perceptions of the natural law or to changes dependent upon changing circumstances. In either case many theologians would argue that for St. Thomas change would be in the accidental order.

The following interventions were made concerning the Church's magisterium: *Father George Malone* of Chicago pointed out that, while Pius XII defended the right to teach the natural law, most theologians do not mention this. *Father Joseph Farragher, S.J.*, of Alma College, California, said that Pius XII did not mean that we arrive at certain conclusions *solely* from the natural law, nor apart from revelation, but from a knowledge of the natural law which gives further knowledge of revelation. When the Popes stressed the natural law they meant that in their opinion the Church cannot change this, as it can change things by its legislative power. They were saying that what pertains to the natural law pertains to the divine law: she was using her interpretive function and not her determining power. *Father Charles Curran* of Catholic University made two points: (1) Although *Father McKeever* expressed the view that natural law is not just method, but also content, the natural law as taught by the Church has never been a coherent *theoria*. (For example, Aquinas cites four or five definitions of the

natural law, including those of Gratian, Ulpian, Isidore and Cicero.) (2) The Church has never really used a theory of natural law to come to its conclusions, but simply to bolster its conclusions.

To Father Curran's first point *Father McKeever* replied: There are *elements* of the natural law theory contained in the Church's synthesis which are valid and which are recognizable as pertaining to natural law theory. This can be seen in a variety of documents, especially in the Church's condemnation of Situation Ethics. To the second point *Father McKeever* said he did not think the Church simply bolsters its arguments with natural insights: its natural law teaching is always theological, because it is pertinent to the Christian moral message, as for example when the Church taught that contraception offends the natural law *and* the law of God. *Father Curran* replied that "natural and divine law" means a basic human insight common to all men. *Father McKeever* added that one may speak of *sensus communis*, and in this context we should note the progression of common sense social teaching from Leo XIII to Pius XII and beyond.

Father John Cousins, C.P., remarked that perhaps Baum's concept of the natural law is the one we are arriving at. Thus, *Father McKeever* has made reference to the use of natural law in the social encyclicals. Leo XIII said private property was a basic human right and a dictate of the natural law. But now the actual owning of property is not so important as the ability to earn. Therefore the natural law teaches the right to have an education as a basic human right rather than the right to property. This indicates that the Church's teaching is prudential: a *sensus communis* in moral matters. Perhaps we have been exaggerating the Church's role. The Church is simply telling what is good and natural; hence it is presenting a common sense teaching, or a prudential teaching, rather than an infallible teaching.

Father McKeever concluded by saying that in this whole question of private property the constant principle is that man has a right to a share of the world's goods so that he may be able to practice virtue. This is a principle both of natural law and of theology, for the Church is not just teaching philosophy, but what pertains to revelation. *Father McKeever* agreed that the application

of natural law to concrete situations can develop, and that encyclicals must be interpreted within the problematique they set out to discuss.

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