THE CATHOLIC UNIVERSITY OF AMERICA

How Is Natural Law Promulgated? A Phenomenological Approach to Aquinas's Natural Law Theory

A DISSERTATION

Submitted to the Faculty of the

School of Philosophy

Of The Catholic University of America

In Partial Fulfillment of the Requirements

For the Degree

Doctor of Philosophy

2017

How is Natural Law Promulgated? A Phenomenological Approach to Aquinas's Natural Law
Theory

Scott Roniger, Ph.D.

Director: Robert Sokolowski, Ph.D.

Thomas Aquinas maintains that the natural law is a law to the fullest possible extent; it is truly and not just metaphorically law, and as such, it must be promulgated in a non-metaphorical sense. If such law is to be *natural* in the sense of being naturally known as directive for human actions, then the issue of the promulgation of natural law is a central philosophical issue. However, natural law theorists have spent comparatively little time investigating the precise manner in which the natural law is promulgated. Aquinas's treatment of law comes within a theological context, which structures his ontological approach to the issues of natural law. To illuminate the promulgation of natural law philosophically, we introduce some themes from phenomenology in order to ascertain how moral issues and obligations manifest themselves.

In the first chapter, we distinguish between the order of being and the order of discovery. In order to study the promulgation of the natural law, we develop an approach to the order of discovery using insights from phenomenology. Distinguishing between the natural attitude and the philosophical attitude, we show that the natural law is originally discovered by human agents in the natural attitude. Finally, we outline various answers to the question of how the natural law is promulgated, and we delineate how our answer is more complete than those given thus far.

In the second chapter, we give a detailed discussion of Aquinas's understanding of law. We show that for Aquinas promulgation is the material cause of law, and we discuss his claim that of creation is the original mode of promulgating the natural law. The issue of secondary causality is crucial in this chapter, and we show that Aquinas presents an interesting structure in the promulgation of law. For Aquinas, the legislator is the primary promulgator of a law, but the

full promulgation includes secondary agents, or co-promulgators, who operate in the medium of language in order to make the law known. In the case of natural law, human agents are the co-promulgators of the law, while God is the legislator and primary promulgator who gives human agents a share in this work of governing created reality.

In the third chapter, we turn to a more explicitly phenomenological approach, with a focus on language, in order to show how we originally manifest the normativity of the natural law. We discuss how human agents are measured by the being and ends of things at the level of perception and speech. We show that language puts human agents in touch with the being and ends of things while also giving them an intellectual distance from them. Language enables human agents to handle presence and absence and introduces them into social and political life. Finally, language enables the distinction between ends and purposes, which is the original manifestation of the natural law.

In the fourth chapter, we show that the manifestation of the natural law begun with the use of language is perfected in virtuous action. Virtuous action forms the character necessary to recognize the naturally good, or the good in itself, as the good of the agent, and it also manifests the ends of human nature. Through the natural pedagogy of imitation, the virtuous agent becomes the rule and measure for human action and therefore continues the promulgation of the natural law by showing others what the law demands in concrete situations. Aquinas says that the secondary precepts of the natural law can be deleted through corrupt personal habits, vicious customs, and bad arguments. We show that the natural law can be promulgated through the inculcation of moral virtue, healthy customs, and rectified speech.

In the conclusion, we show that the natural law pertains to the best human life; it has an essential role to play in human happiness and the imitation of the divine.

This dissertation by Scott Roniger, Ph.L. fulfills the dissertation requirement for the doctoral degree in Philosophy approved by Robert Sokolowski, Ph.D., as Director, and by V. Bradley Lewis, Ph.D., and John McCarthy, Ph.D. as Readers.

_____

Robert Sokolowski, Ph.D., Director

_____

V. Bradley Lewis, Ph.D., Reader

_____

John McCarthy, Ph.D., Reader

To my wife, Christie Roniger (Proverbs 31:10-31)

Universal law is the law of nature. There really is, as everyone to some extent divines, a natural justice and injustice that is common to all, even those who have no association or covenant with each other.

– Aristotle, *Rhetoric*

Tsze-lu said, "The ruler of Wei has been waiting for you, in order with you to administer the government. What will you consider the first thing to be done?"

The Master replied, "What is necessary is to rectify names."

"So! indeed!" said Tsze-lu. "You are wide of the mark! Why must there be such rectification?"

The Master said, "How uncultivated you are, Yu! A superior man, in regard to what he does not know, shows a cautious reserve. If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success. When affairs cannot be carried on to success, proprieties and music do not flourish. When proprieties and music do not flourish, punishments will not be properly awarded. When punishments are not properly awarded, the people do not know how to move hand or foot. Therefore a superior man considers it necessary that the names he uses may be spoken appropriately, and also that what he speaks may be carried out appropriately. What the superior man requires is just that in his words there may be nothing incorrect."

– Confucius, *The Analects*

Contents

Abbreviations

Texts of Thomas Aquinas

Coll. de dec. pra	*Collationes in decem praeceptis*
De ente	*De ente et essentia*
De malo	*Quaestiones disputatae de malo*
De pot.	*Quaestiones disputatae de potentia*
De sub. sep.	*De substantiis separatis*
De ver.	*Quaestiones disputatae de veritate*
In De anima	*Sentencia libri De anima*
In Ethic.	*Sentencia libri Ethicorum*
In Hebr.	*Super Epistolam S. Pauli Apostoli ad Hebraeos*
In Lib. de caus.	*Super librum de causis*
In Meta.	*In duodecim libros Metaphysicorum Aristotelis expositio*
In Perierm.	*Expositio libri Peryermenias*
In Phys.	*In VIII libros Physicorum*
In Polit.	*Sententia libri Politicorum*
SCG	*Summa contra gentiles*
St	*Summa theologiae*

Introduction

Vor dem Gesetz steht ein Türhüter. Zu diesem Türhüter kommt ein Mann vom Lande und bittet um Eintritt in das Gesetz. Aber der Türhüter sagt, daß er ihm jetzt den Eintritt nicht gewähren könne. Der Mann überlegt und fragt dann, ob er also später werde eintreten dürfen. "Es ist möglich," sagt der Türhüter, "jetzt aber nicht."

- Franz Kafka, *Vor dem Gesetz*

In the year 38 A.D., the Roman Emperor Caligula sought to restock the imperial treasuries by instituting tax laws that carried severe financial penalties for anyone who violated the newly minted statutes. To ensure the financial success of his new venture, Caligula initially refused to make the laws known, but he still enforced them and collected the hefty fines. When enough bewildered citizens protested, Caligula had the laws inscribed in tiny letters on a tablet suspended high above the ground on a pillar. Suetonius describes the ordeal as follows: "When taxes of this kind had been proclaimed, but not published in writing, inasmuch as many offences were committed through ignorance of the letter of the law, he at last, on the urgent demand of the people, had the law posted up, but in a very narrow place and in excessively small letters, to prevent the making of a copy."[1] Caligula's legislative ruse and the Roman people's indignant response illuminate essential questions regarding the institution of a legal order. How can a law function as law unless it is made known to its citizens? Is a legislator required to publicize the laws of the polity in order for them to be binding? In more technical language, does promulgation belong to the essential structure of legitimate law? If so, what is the essence of promulgation and what are its essential properties? As Caligula's scheme illustrates, the necessity of promulgation for a law to function properly is too obvious to doubt. How can a citizen be justly obliged to conform his actions to a law that has not been made known to him?

---

[1] Suetonius, *De vita Caesarum*, trans. J. C. Rolfe, Loeb Classical Library, vol. 31 (Cambridge, MA: Harvard University Press, 1913), 470.

As John Locke says, "No body can be under a law, which is not promulgated to him."[2] Without promulgation, we would be perpetually trapped in a Kafkaesque universe, obligated to adhere to unknowable moral and legal principles. As nightmarish as this situation sounds, it is not an aberration relegated to Roman tyrants or surrealist German novelists. The issue of promulgation constantly hovers over any legal order. For example, the increasing complexity of the legal code in the United States of America has forced jurists and legal theorists to revisit the theme of promulgation. In certain cases, citizens have been declared innocent (or not charged with a crime) despite the fact that they have clearly broken the law. Their innocence stems precisely from the impossibility of understanding one's legal obligations in the face of an overwhelmingly intricate and profuse legal order. The law has become so prodigious and complex that it cannot be adequately promulgated, and the courts have had enough sense to understand that in such a situation a citizen cannot properly be declared guilty of a crime even when he clearly transgresses a "law."[3] In fact, we will see that for Thomas Aquinas a law that is not adequately promulgated is no law at all.

We can glean an important point from these brief reflections. The ancient doctrine of *ignorantia legis neminem excusat* rests upon a bipartite foundation: the law must be (1) fitting to its citizens both in terms of the amount of legal enactments and in terms of the complexity of the system itself and (2) the law must be adequately promulgated to the members of the polity. These requirements are not aspects of the positive law alone; they also apply to any doctrine of

---

[2] John Locke, *Second Treatise of Government* (Indianapolis: Hackett Publishing Company, 1980), §57. See also §137.

[3] See Michael Cottone, "Rethinking Presumed Knowledge of the Law in the Regulatory Age," *Tennessee Law Review* 82 (2014): 137-166; Glenn Harlan Reynolds, "Ham Sandwich Nation: Due Process When Everything Is a Crime," *Columbia Law Review: Sidebar* 113 (2013): 102-108.

natural law.[4] In fact, the issue of promulgation is especially pressing for a theory of natural law, since natural law is often characterized as that body of moral knowledge and direction that undergirds and at times judges the various systems of positive law. If the justice of positive laws must be assessed in light of what is known "prior" to them in the natural law, then the crucial question becomes "How does one know the natural law?" We can rephrase this question as "How is the natural law promulgated?" One can even say that the idea that a law must be promulgated is itself an aspect of the natural law. That is, it belongs to the natural law that any authentic law (including the natural law itself) must be promulgated in order for it to function as a law. As soon as we begin to ask why a law should be promulgated or whether it is necessary that a law be promulgated, we are already searching for a natural law foundation for the positive law. Thus, the requirement itself that a law must be promulgated is not dependent upon the positive law. Even if the positive law were silent about the necessity of promulgation, or if the positive law were so corrupt as to say that laws do not need to be promulgated, we would still quickly understand that the law must be publicly manifest and available in order for the legal system to function justly. As the response of the Roman citizens to Caligula's deception reveals, there is a source of moral and legal obligation prior to the legal code of a given political community that demands that laws be sufficiently promulgated.

In this study, we will discuss the issue of the promulgation of the natural law. To that end, we will use Thomas Aquinas's theory of natural law, especially his detailed metaphysical framework, but we will point out that his terse discussion of the promulgation of the natural law can be developed. Aquinas's philosophy of the natural law provides an essential foundation for our discussion, and we will attempt to build upon Aquinas's thought by appealing to specific ideas within Husserlian phenomenology. As we will see, this enlargement is not a radical break

---

[4] We refer to the laws enacted by human legislators for a given society, city, or nation as "positive law."

from Aquinas, but rather an organic development. We will highlight certain themes that Aquinas

introduces but does not dwell upon, and we will attempt to actualize these potentials by using

insights from a realist phenomenology. The phenomenological themes we will draw upon

include presence and absence, constitution, and the philosophy of language insofar as they assist

us in understanding the discovery of natural law. Our aim is not to "reconcile" phenomenology

and Thomism or to show that Edmund Husserl and his interpreters are somehow "compatible"

with Aquinas and the Thomistic tradition. Rather, we will attempt to use two great philosophical

schools as fruitful avenues to approach a philosophical problem of the highest import: the

promulgation of the natural law.[5]

Our work will be phenomenological in two senses. First, it will be phenomenological in a

more general sense, akin to the meaning of phenomenology proposed by Dietrich von

Hilderbrand.[6] Von Hildebrand says that phenomenology is not simply one specific movement

within the history of philosophy, but rather a way of thinking. He says, "[Phenomenology] is

neither a reduction of the world to mere phenomena, nor a mere description of appearance or of

subjective experiences. . . . [I]t is concerned with the very essence of the object. It is . . . the

approach which is at the basis of every great philosophical discovery."[7] Phenomenology is a way

of thinking that takes appearances seriously and maintains that we have intellectual insight into

---

[5] For a comparison of phenomenology and Thomism, see Robert Sokolowski, *Introduction to Phenomenology* (Cambridge: Cambridge University Press, 2000), 206-208. See also Robert Sokolowski, "The Relation of Phenomenology and Thomistic Metaphysics to Religion: A Study of Patrick Masterson's *Approaching God: Between Phenomenology and Theology*," *The Review of Metaphysics* 67 (2014): 603-626. For a similar procedure of using Thomism and phenomenology as two fruitful avenues to approach a philosophical issue, see Kevin White, "Friendship Degree Zero: Aquinas on Good Will," *Nova et Vetera* 9 (2011): 479-518.

[6] See Dietrich von Hildebrand, *What Is Philosophy* (Milwaukee: The Bruce Publishing Company, 1960), 222-226. I agree with this general sense of phenomenology proposed by von Hildebrand, I do not think he is correct in his accusation that the "later" Husserl turned away from a realist philosophy and fell into the trap of idealism.

[7] Ibid., 223. Throughout this work, all brackets within quotations are added by myself. Parentheses are original to the quoted text. Von Hildebrand names Plato, Aristotle, and St. Augustine as examples of classical thinkers who employed this phenomenological method.

the essences of things as they manifest themselves to us. Concerning this wider sense of the word "phenomenology" as it applies to moral philosophy, Molly Flynn says, "Most important, [phenomenology] returns to the things themselves and turns away from theorizing and deducing what moral truths must be from some other set of facts, as though we had no experience of the moral realm. At its best, the phenomenological return to the things themselves is invigorating as descriptions and distinctions ring true to and illuminate our personal experience."[8] This sense of phenomenology will assist us in describing our natural experience of discovering the natural law.

Second, our work will be phenomenological in a more focused sense by drawing upon aspects of the work of Edmund Husserl, the founder of phenomenology. Specifically, we will use Husserl's distinctions between the natural and philosophical attitudes, his development of the theme of constitution, and his descriptions of categorial thinking and speech as these are rooted in pre-predicative experience. In all these discussions, we will attempt to show how Husserl's insights can be applied to a theory of the natural law to give a realist foundation for the manner in which the natural goodness of things appears to the dative of manifestation, the human agent, without causing the study of natural law to become a deterministic moral science based simply on logical deductions.

At the risk of oversimplifying a nuanced issue, we can outline our project as follows. We will show that the issue of the promulgation of any law necessarily involves two interlocking sets of activities. First, the legislator must publicize the law through the proper channels, and second, the subject must discover, or be able to discover, the same law given by the legislator. These two sets of activities are two sides of the promulgation coin. Aquinas evinces a profound understanding of how the natural law is given from the side of the legislator, and he also

---

[8] Molly Flynn, review of Andreas Kinneging, *The Geography of Good and Evil: Philosophical Investigations*, Society 48 (2011): 187.

provides an important framework for approaching the issue of the human subject's discovery of the natural law. However, the issue of discovery can be greatly enhanced by appealing to certain aspects of phenomenology, since an investigation of the discovery of the natural law entails a description of both the structure of human agency and the kinds of activities the human subject must undertake in order to "constitute" the natural law in its objectivity.

The word "constitute" or "constitution" has a special meaning in phenomenology that is different from the meaning it normally has in political philosophy; we will use "constitution" in the phenomenological sense. Robert Sokolowski says that for Husserl constitution is the human agent's "achievement of objectivity, the presenting of the objective to us."[9] Constitution refers to the philosophical account of how objective realities appear to human agents and of the subjective activities that operate in the disclosure of these objectivities. The constitution of the natural law is an achievement of human intellectual and moral activity that manifests the objective natural law to the agent himself and to others. In these areas, phenomenology can enhance our understanding of the promulgation of the natural law.[10]

---

[9] Robert Sokolowski, "Husserl and Frege," *The Journal of Philosophy* 84 (1987): 522. To illustrate the activity of constitution, Sokolowski draws attention to Husserl's discussion of the constitution of signs. Sokolowski says, "A sign is a sign because someone uses it as a sign with which to refer to something. . . . We have to achieve something to make a sign be more than a mere thing. But to recognize that a sign is an achievement, that it is constituted as a sign, does not make the sign dissolve into mere ideas or mental states. It is this cloth (flag) or those marks (words) that are the sign, and I can take something as a sign only if it permits itself to be so taken. But, once I do recognize, philosophically, the constituted character of signs, I can say a lot more about what it is to be a sign and what happens when a sign occurs. The sign does not just dangle there anymore without the context of use." Ibid., 523. See also Robert Sokolowski, *The Formation of Husserl's Concept of Constitution* (The Hague: Martinus Nijhoff, 1970); John B. Brough, "Consciousness Is Not a Bag: Immanence, Transcendence, and Constitution in *The Idea of Phenomenology*," *Husserl Studies* 24 (2008): 177-191; Edmund Husserl, *The Idea of Phenomenology*, trans. L. Hardy (Dordrecht: Kluwer Academic Publishers, 1990), Lecture V.

[10] Aquinas says that the natural law is "constituted by [human] reason." See *St*, I-II, q. 90, a. 1, ad. 2; I-II, q. 94, a. 1. English translations from the "Treatise on Law," i.e. *St* I-II, qq. 90-108, are taken from *Treatise on law: The Complete Text (Summa Theologiae I-II, Questions 90-108)*, trans. Alfred J. Freddoso (South Bend: St. Augustine's Press, 2009). Translations from the *Summa theologiae* outside of the "Treatise on Law" are taken from the translation of the Fathers of the English Dominican Province (New York: Benzinger Brothers, 1948). When I provide my own translation, I include the Latin in the footnote. When I modify a published translation, I include the relevant Latin phrases in the body of the text in parentheses. In some cases, even though I do not modify the translation, I include important Latin phrases in the text to give the reader a better sense of Aquinas's argumentation.

Chapter 1

How Is the Natural Law Promulgated?

> Touchstone: "Such a one is a natural philosopher. Wast ever in court, shepherd?"
> Corin: "No, truly."
> Touchstone: "Then thou art damned."
> Corin: "Nay, I hope."
> Touchstone: "Truly, thou art damned like an ill-roasted egg, all on one side."
> Corin: "For not being at court? Your reason?"
> Touchstone: "Why, if thou never wast at court, thou never sawest good manners; if thou never sawest good manners, then thy manners must be wicked; and wickedness is sin, and sin is damnation. Thou art in a parlous state, shepherd."
> Corin: "Not a whit, Touchstone: those that are good manners at the court are as ridiculous in the country as the behavior of the country is most mockable at the court. You told me you salute not at the court, but kiss your hands: that courtesy would be uncleanly, if courtiers were shepherds."

> - William Shakespeare, *As You Like It*

Thomas Aquinas begins his discussion of law in the *Summa theologiae* by showing that law is an extrinsic principle of action. More precisely, he says that God is an extrinsic principle of human action and that God instructs human beings by His law.[1] However, even positive law, which is crafted by human agents, is an extrinsic principle of human action, as distinct from intrinsic principles such as the powers, or abilities, of the human agent and the virtues that perfect these powers in view of their proper objects. At the end of the first question of what is often called his "Treatise on Law," Aquinas provides a formal definition of law. According to Thomas, law is an "ordinance of reason toward the common good from him who has care of the community and promulgated (*Rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata*)."[2] Thus, when Aquinas discusses the issue of promulgation, he says that it belongs to the very essence of all authentic law. That is, promulgation is included in

---

[1] See the *prooemium* to *St*, I-II, q. 90.

[2] *St,* I-II, q. 90, a. 4. (trans. modified). We will discuss this definition in detail in Chapter 2.

7

the definition of law; it is not a mere property of law. If law, as an extrinsic principle of human action, is to assist human agents in forming and directing intrinsic principles of action toward the common good, it must be made known to those subject to the law. Therefore, because promulgation is essential to law, one is faced with two unavoidable questions regarding the status of the natural law. First, is the natural law fully a law, or is it only metaphorically called "law"? Second, if the natural law is truly legal in character, how is it promulgated?[3] These two questions will help us structure our discussion in this chapter.

1. The "Promulgation Problem"

In response to the first question concerning the legality of the natural law, certain philosophers claim that the natural law does not entirely meet the criteria for being an authentic law, and they highlight the issue of promulgation as the source of the deficiency.[4] These scholars claim that the natural law cannot be considered fully legal in character because it is not adequately promulgated. Mortimer Adler says, "If we examine St. Thomas's discussion of the definition of law, we shall find that it applies only to positive law, and that natural law is law only in the manner of speaking."[5] He says that the natural law is law only by "analogy of attribution," which is merely a loose form of analogy distinct from the strict analogy of

---

[3] A full Thomistic answer to this question would include a theological discussion of how the natural law is made known "again" in God's revelation to Israel and in the life, death, and resurrection of Jesus Christ. Our scope in this work is more limited. We will discuss, from a philosophical perspective, how the natural law is naturally promulgated and discovered.

[4] For a detailed catalogue of Thomists who say that the natural law does not meet St. Thomas's definition of law, see Stephen Brock, "The Legal Character of Natural Law According to St. Thomas Aquinas" (PhD diss., University of Toronto, 1988), 11-50.

[5] Mortimer Adler, "The Doctrine of Natural Law in Philosophy," *Natural Law Institute Proceedings* 1 (1949): 76.

proportionality, to the primary analogate, which is human positive law.[6] According to Adler, the natural law does not meet the criteria of authentic law at least in part because it is not promulgated in the proper sense. He says, "We see how ambiguous the word 'promulgation' is when applied to natural and positive law − just as ambiguous as the word 'law' is."[7] Adler sees the natural law as only metaphorically law, and he says that it is only metaphorically promulgated.

Additionally, Dom Odon Lottin, O.S.B. says that the natural law does not adequately satisfy any of the requirements that Aquinas thinks are essential to legitimate law, and he interprets Aquinas as saying that the natural law does not need to be promulgated. Lottin says, "Saint Thomas is certainly . . . concerned with the promulgation of the natural law; but this is only to conclude that this law does not need promulgation."[8] For Lottin (as for Adler), the natural law is not properly a law, and it does not require promulgation.

Finally, Harry Jaffa says that the natural law is not promulgated naturally; rather, the natural law is only adequately promulgated through God's revelation in the Old and New Covenants. Jaffa says, "But . . . [Aquinas's] natural law doctrine implies divine revelation because the fact (as distinct from the possibility) of divine providence is evidently not naturally known to all men. But to be binding the natural law must be known in its legal character, that is, it must be known *to be promulgated*."[9] For Jaffa, the natural operations of human reason unaided

---

[6] See Mortimer Adler, "A Question about Law," in *Essays in Thomism*, ed. R.E. Brennen (New York: Sheed and Ward, 1942), 226-236.

[7] Adler, "The Doctrine of Natural Law," 79.

[8] Odon Lottin, "La valeur des formules de Saint Thomas d'Aquin concernant la loi naturelle," in *Mélanges Joseph Maréchal*, ed. L. Noël (Paris: Desclée de Brouwer, 1950), 369. (my translation): "Saint Thomas est certes préoccupé aussi de la promulgation de la loi naturelle; mais c'est pour conclure que cette loi n'a pas besoin de promulgation."

by divine revelation are not sufficient to know the natural law as a law. According to this interpretation, we need God's assistance through revelation for the natural law to be properly promulgated. Perhaps paradoxically, the natural law is not naturally knowable, at least not as law.

Aquinas explicitly addresses the question of the legal character of the natural law. He presents the following objection to his claim that promulgation belongs to the essence of all authentic law. The objector says, "Natural law has the nature of law to the highest degree (*maxime habet rationem legis*). But natural law does not require promulgation. Therefore, it is not part of the nature of law that it be promulgated."[10] Although the statement "natural law has the nature of law to the highest degree" comes from the objection, Aquinas accepts this idea in his reply. He says, "The promulgation of the law of nature consists in God's having instilled it in the minds of men in order that they might know it naturally."[11] Thus, Thomas confirms the objector's idea that natural law is most properly called a law, and he suggests the mode in which the natural law is promulgated. On this point, Stephen Brock shows that Aquinas presents the natural law as fully meeting the criteria of authentic law.[12] Aside from the question as to the proper exegesis of Aquinas's texts, one doubts whether the natural law could function as the bedrock for the moral direction of an individual or a political community if it were just metaphorically called law; a metaphorically promulgated "law" would not suffice to undergird individual and communal moral decisions. We can therefore answer the first question as to

---

[9] Harry Jaffa, *Thomism and Aristotelianism: A Study of the Commentary by Thomas Aquinas on the Nicomachean Ethics* (Chicago: The University of Chicago Press, 1952), 169. Emphasis original.

[10]*St*, I-II, q. 90, a. 4, obj. 1. (trans. modified). In the body of the article, Aquinas shows that promulgation does in fact belong to the *ratio* of law.

[11] *St*, I-II, q. 90, a. 4, ad. 1.

[12] See Brock, "Legal Character." See also Russell Hittinger, *The First Grace: Rediscovering the Natural Law in a Post-Christian World* (Wilmington: ISI Books, 2003), 39-62.

whether the natural law is fully or only metaphorically law with the response accepted by

Aquinas: "The natural law has the nature of law to the highest degree."

However, the bare assertion that God instills the natural law in our minds so that we

know it naturally leaves one wondering exactly what that statement means and how such

instillation takes place. This leads us to confront the second question: Since it is claimed that the

natural law is fully a law, how is it promulgated?[13] Candace Vogler calls this "the promulgation

problem." She says, "The promulgation problem just is the problem of explaining our capacity

for ethically sound interaction."[14] She stipulates that the promulgation problem, which she says

remains unsolved, includes the demand to explain how different human agents can be seen as

acting from the "same source." She says that the promulgation problem "is to explain the

common source that will make sense of ethically sound interaction among persons who have

very little in common."[15] Vogler says that this problem forces us to confront a question more

basic than "Why be moral?" She says that the promulgation problem presents us with the

following question: "What makes ethical conduct essentially possible and problematic for us?"[16]

We should emphasize Vogler's use of the words "capacity" and "possible." Her formulation of

the promulgation problem enables us to see how fundamental the issue of the promulgation of

the natural law is.[17] Promulgation refers to the human "capacity" for ethical interaction, and thus

---

[13] We will discuss three responses to the question of how the natural law is promulgated in the final section of this chapter.

[14] Candace Vogler, "Modern Moral Philosophy Again: Isolating the Promulgation Problem," *Proceedings of the Aristotelian Society* 106 (2006): 354.

[15] Ibid., 363.

[16] Ibid.

[17] I do not wish to suggest that Vogler's essay deals explicitly with the promulgation of the natural law. In fact, she does not use the phrase "natural law" in this article. However, her description of the promulgation problem fits perfectly with the aim of any study on the natural law's promulgation.

the question concerns what makes ethical conduct "possible." Natural law does not deal simply

with the question "What should I do now?" but with how we as human beings can be involved

ethically with one another at all. Thus, the philosophical study of the promulgation of natural law

describes how we can rise to the level of ethical interaction; it attempts to see how we have this

dunamis or potential. Our investigation will respond to the "promulgation problem" by situating

the activities of human agents that constitute the natural law within the wider metaphysical

framework provided by Aquinas.

2. Three Contexts of Natural Law Thinking

The title "natural law" is used and developed in many different ways and for varied

purposes, so it is helpful to clarify the setting within which we will study the natural law and its

promulgation. Russell Hittinger distinguishes three "contexts" in which the natural law is

employed: (1) the systematic, (2) the dialectical, and (3) the dialogical.[18]

Hitttinger says that natural law thinking within the *systematic* context "is not immediately

concerned with making moral arguments, but rather with making coherent the sources of truth,

including what is recognized or presupposed about the natural habitat of reason."[19] The

systematic context is the most comprehensive and contemplative of the three; natural law

thinking within this context is concerned with identifying and integrating the sources of

knowledge of the natural law. Within the *dialectical* context, philosophers begin with a concrete,

disputed moral question, which is usually occasioned by current cases or moral dilemmas, and

attempt to reason to a specific conclusion. Thus, natural law thinking within the dialectical

---

[18] See Russell Hittinger, "Natural Law and Public Discourse: The Legacies of Joseph Ratzinger," *Loyola Law Review* 60 (2014): 245-247. Although Hittinger introduces this schema within a theological context, it also applies to the strictly philosophical realm with due adjustments.

[19] Ibid., 246.

context seeks to answer a pressing moral question by applying the natural law to a concrete case. Finally, interlocutors operating in the *dialogical* context do not search primarily for answers to specific moral questions or for the coherence of the sources of truth; rather, they use the natural law as an aspect of the search for common premises across religious and philosophical traditions. Hittinger says that natural law thinking in the dialogical context is "a search for common and converging pathways of evidence."[20] All three contexts are intertwined, so a development in one area has consequences for the other two. However, each of these three contexts for reflection on the natural law has its own integrity and proper method of investigation.

In this dissertation, we will operate within the "systematic" context of natural law thinking. We will not attempt to apply our findings to a specific case in order to resolve a current moral dilemma. Although we will use concrete examples to illustrate the points being discussed, the end in view is not to resolve a complex moral question. Also, we are not explicitly concerned with the search for common and converging pathways of evidence with various philosophical or religious traditions. Our aim is more speculative; it is simply to understand how the natural law is originally manifested to human agents.[21]

3. Natural Law and the Three Foci of Order

Now that we have identified the systematic context as the space for our reflections on the

---

[20] Ibid.

[21] For a dialectical approach, see Howard P. Kainz, *Natural Law: An Introduction and Re-examination* (Chicago: Open Court Publishing Company, 2004), 115-134; Fulvio Di Blasi, *God and the Natural Law: A Rereading of Thomas Aquinas* (South Bend: St. Augustine's Press, 2006), 208-228; John Finnis, "Natural Law and Unnatural Acts," *The Heythrop Journal* 11 (1970): 365-387. For a dialogical approach, see the International Theological Commission's "In Search of a Universal Ethic: A New Look at the Natural Law," 2009, accessed May 19, 2016, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html; Hittinger, "Natural Law and Public Discourse"; C.S. Lewis, *The Abolition of Man* (New York: HarperCollins Publishers, 1974).

natural law, we can further specify what we mean by the title "natural law." Yves Simon says

that there is an "eternal return" of natural law thinking despite the vast changes that have taken

place between pre-modern and modern philosophies, social institutions, and political forms.[22]

Part of the reason for this "eternal return" of the natural law is the fact that a natural law theory,

as Simon says, seeks to discover the "prior premises" of human positive law.[23] The natural law

premises are "prior" in a primarily ontological sense; the "prior" is not just chronological in the

sense that we have these issues even before explicitly engaging in politics, but also permanent

and ontological, in that they are the constant source of positive law and also the basis for our

ethical interaction. Thus, natural law theory seeks to answer ultimate questions about the source

of authority and justice; as Vogler's work on the possibility of human ethical conduct helps to

clarify, the natural law investigates the sources of moral interaction. For Aquinas, prior to the

order in human affairs introduced by the positive law, human life and the natural world already

exhibit an ordered structure.[24] Therefore, an investigation into natural law as the "prior premises"

for positive law and for moral interaction involves the distinction between "three foci of order"

that are more fundamental than the positive law.

Following Simon's thought, Hittinger says that the prior premises of natural law coalesce

around the three foci of "order in nature, order in the human mind, and order in the divine

mind."[25] In response to the question "What is a theory of natural law a theory of?" Hittinger

---

[22] Yves Simon, *The Tradition of Natural Law: A Philosopher's Reflections*, ed. Vukan Kuic (New York, Fordham University Press, 1992), 4.

[23] Ibid., 129. Thomas Smith says, "While natural law is a notoriously equivocal concept, most adherents hold that natural law is accessible to human reason across time and cultures and therefore that it can inform political practice by providing a shared horizon of meaning for people of different faiths without relying on mutually incompatible conceptions of divine revelation that might lead to internecine warfare." Smith, "The Order of Presentation and the Order of Understanding in Aquinas's Account of Law," *The Review of Politics* 57 (1995): 608.

[24] Again, in this sentence "prior" and "already" are not just chronological, but ontological and permanent.

says,

> In the first place, natural law can be regarded as an issue of propositions that are first in the order of practical cognition. On this view, a philosophical account of natural law endeavors to bring into focus those "reasons for action" antecedent to reasons yielded through practical deliberation and judgment. In the second place, natural law can also be regarded as an issue of nature or human nature, in which case natural law is not only a problem of the logic and epistemology of practical reason, but also a problem of how practical reason is situated in a broader order of causality. Finally, natural law can be approached not only as order in the mind or in nature, but as the ordinance of a divine lawgiver.[26]

These three foci provide a foundation for the institution of positive law in a political community. We identify (1) order "in" the human mind in the form of propositions that provide direction for moral action prior to our individual deliberations and decisions about what must be done in a concrete situation. These general propositions, such as the prohibitions against murder or adultery, provide a basis for moral deliberation and judgment. However, order in the human mind can be seen in relation to (2) a broader order of causality within the natural world.[27] That is, order in the human mind is somehow shaped by our interactions with the natural entities that we,

---

[25] Hittinger, *First Grace*, xvi.

[26] Russell Hittinger, "Yves R. Simon on Natural Law and Reason," in *Acquaintance with the Absolute: The Philosophy of Yves R. Simon*, ed. Anthony O. Simon (New York: Fordham University Press, 1998), 101-102. The text from Hittinger continues, "Simon held that all three foci − law first in propositions, law first in things, and law ultimately in the mind of a divine lawgiver − provide distinct grounds for philosophical reflection. For this reason, the study of natural law cannot be a simple endeavor. Even apart from complications of history and the great variety of doctrinal contexts, the subject is inherently multifaceted. Philosophers who have focused variously, if sometimes myopically, on natural law chiefly as a problem of moral epistemology, or of nature, or of divine legislation can claim to address some legitimate piece of the subject."

[27] "Order in nature" refers to the realm of entities having their own inner principles of motion and rest as distinct from the world of human production. It is the world of *physis* in distinction from *techne*. Aristotle says, "Of things that exist, some exist by nature, some from other causes. By nature the animals and their parts exist, and the plants and the simple bodies . . . for we say that these and the like exist by nature. All the things mentioned plainly differ from things which are not constituted by nature. For each of them has within itself a principle of motion and of stationariness (in respect of place, or of growth and decrease, or by way of alteration). On the other hand, a bed and a coat and anything else of that sort, *qua* receiving these designations – i.e. in so far as they are products of art – have no innate impulse to change." *Physics*, Book II, Ch. 1, 192b8-18. See Sean Kelsey, "Aristotle's Definition of Nature," *Oxford Studies in Ancient Philosophy* 25 (2003): 59-87. Translations of the works of Aristotle, other than the *Politics*, are from *The Complete Works of Aristotle: The Revised Oxford Translation*, ed. Jonathan Barnes (Princeton: Princeton University Press, 1984). Translations of the *Politics* are from Aristotle, *Politics*, trans. Carnes Lord (Chicago: The University of Chicago Press, 2013).

in the company with others, confront in experience. Such experience enables us to actualize our own nature with its finalities and native excellences, which, as we will show in subsequent Chapters, are normative for our intentions and actions. Finally, these first two foci of order are both seen as expressions of (3) order "in" the divine mind. Natural law thinking, especially within the "systematic" context, involves distinguishing these three foci of order and contemplating how they are integrated with each other.

The issue of promulgation spans all three foci of order. For Aquinas, order in the human mind and order in nature are not laws in themselves. Rather, they are law-abiding or expressions of law. Aquinas is a pre-modern thinker, and his conception of the natural law is importantly distinct from both John Locke, who says that natural law is human reason,[28] and Jean-Jacques Rousseau, who says that natural law is the voice of nature (*la voix de la nature*).[29] While Locke locates natural law exclusively in the order of the human mind and Rousseau reduces natural law to the order in nature, Aquinas says order in the divine mind is the source of the natural law.[30] This claim raises a crucial question concerning how order in the human mind and order in nature depend upon order in the divine mind. To answer this question is to give a response to the issue of the promulgation of the natural law. Thus, by delineating these three foci of order and inquiring into their relationships to each other, we have laid out the terrain upon which we can develop our systematic response to the question of promulgation.

Finally, Simon's and Hittinger's uses of the preposition "in" raise interesting philosophical questions. What does it mean to say there is order "in" the human mind, "in" non-

---

[28] See Locke, *Second Treatise*, §6 and 57.

[29] See Jean Jacques Rousseau, *Discourse on the Origin of Inequality*, trans. Donald A. Cress (Indianapolis: Hackett Publishing Company, 1992), Preface, p. 13.

[30] See *St*, I-II, q. 93, a. 3; I-II, q. 91, a. 2; *SCG*, III, c. 114.

human nature, or "in" the divine mind? As we saw in Caligula's legislative ruse, law must be publicly manifested, or promulgated, in order to function as a law. How can the natural law be publicly manifest if it is "in" the divine and human mind? What sense can "in" have when we are speaking of a public manifestation of legal direction? Since we will be exploring the promulgation and hence discovery of the natural law, how do these "propositions that are first in the order of practical cognition" get "in" the human mind?

4. The Order of Being and the Order of Discovery

The distinctions between order in the divine mind, order in nature, and order in the human mind coupled with the idea that the natural law comes from the "divine mind" lead us to a perennial philosophical issue: the distinction between the order of being and the order of discovery. Within this distinction, the word "order" refers to a relationship of priority and posteriority; it helps us identify what has primacy, or what is first, in a given area. On the one hand, what is first in the "order of being" refers to what has priority in an ontological sense. It shows us what is ontologically first in the nature, the being, or the existence of a given reality. That which has primacy in the order of being is what is first in itself. On the other hand, that which is first in the "order of discovery" refers to what is initially encountered and understood by a human subject; it refers to what is first for us.[31] As Aristotle says, we move from what is first for us, or from what is first in the order of discovery, to what is first in itself, or to what is first in the order of being. He says,

---

[31] For the use of this distinction within metaphysics, see Thomas Joseph White, O.P., *Wisdom in the Face of Modernity: A Study of Thomistic Natural Theology* (Ave Maria: Sapientia Press, 2009), 3-32 and John Wippel, *The Metaphysical Thought of Thomas Aquinas: From Finite Being to Uncreated Being* (Washington DC: The Catholic University of America Press, 2000), 22-64. Within natural law theory, Hittinger often has recourse to this distinction. See Hittinger, *First Grace*, 51-57; see also Russell Hittinger, "A Response to Commentators," in *Ethics Without God? The Divine in Contemporary Moral and Political Thought*, ed. Fulvio Di Blasi (South Bend: St. Augustine's Press, 2008), 143-146.

> The natural way of doing this is to start from the things which are more knowable and clear to us and proceed towards those which are clearer and more knowable by nature; for the same things are not knowable relatively to us and knowable without qualification. So we must follow this method and advance from what is more obscure by nature, but clearer to us, towards what is more clear and more knowable by nature.[32]

This distinction and the proper integration of what has primacy for us with what has primacy in itself is especially acute in discussions about the promulgation of the natural law.[33]

To illustrate this strategic distinction, we can consider the following example. Imagine a young lawyer who is preparing to work on an important case with his colleagues. The lawyer begins with the expectation that he will be playing a central role in the preparation of the arguments, since he has been successful in this role in previous trials. However, at the outset of the case, the senior partners at the firm have decided to relegate the young attorney to menial tasks in preparation for the trial. More is at stake in this case than in the cases the young lawyer has worked in the past, and, given the gravity of the case and the lawyer's limited experience, they do not have complete confidence in his abilities to accomplish the work that must be done. However, the senior partners do not immediately inform the young lawyer of their decision, but they give him numerous small directives that limit their younger colleague's input. These small decisions have the effect that the young lawyer is no longer given the responsibility of preparing briefs or of taking part in important discussions about the arguments to be made in court.

Initially, the young lawyer encounters the directives from his senior partners that limit his

---

[32] *Physics*, I.1, 184a15-21.

[33] There is a debate between "New Natural Law" thinkers and "Traditional Natural Law" thinkers concerning what we have called the distinction between the order of being and the order of discovery. John Finnis distinguishes between the ontological order and the epistemological order in order to show that we do not derive an "ought" from an "is," and many "New Natural Law" scholars follow this distinction. See John Finnis, "Natural Inclinations and Natural Rights: Deriving 'Ought' from 'Is' according to Aquinas," in *Lex et Libertas: Freedom and Law according to St. Thomas Aquinas,* ed. Leo Elders (Rome: Studi Tomistici, 1987), 47–48; Martin Rhonheimer, *Natural Law and Practical Reason: A Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000), 15–16. For a response from the "Traditional Natural Law" camp, see Steven Jensen, *Knowing the Natural Law: From Precepts and Inclinations to Deriving Oughts* (Washington, DC: The Catholic University of America Press, 2015), 17-21.

input as strange and perplexing. He wonders why he is being asked to perform menial tasks

when he has grown accustomed to taking part in the essential aspects of cases in the recent past.

He understands each request from his colleagues on its own terms, but he also senses there is

something more at play. The directives seem to coalesce in a way that could not be merely

accidental. There seems to be some structure, some unity to all the menial tasks he has been

assigned. He begins to see that he is being kept away from the real work of the case, and so he

starts asking questions about why he is not allowed to assist in the preparations for the trial.

Finally, he discovers what has been "behind" and "in" all of the minor decisions the partners

have made regarding his work on the case. He discovers that the partners do not completely trust

his ability to handle such an important case and have decided to marginalize him during the trial.

The partners' lack of confidence in the young lawyer and their decision to keep him off

the case has primacy in the order of being. Since their agreement is first in the order of being, it

is the ontological source of the many small actions and decisions that keep the young lawyer

away from the case. It is therefore also the source of unity of all the actions of the partners, and

by discovering this ontological source the young lawyer finally has an explanation for all of the

demoting requests he has received.[34] However, in the order of discovery, the young lawyer first

encounters the directives themselves that limit his involvement. He understands each one on its

own terms, but he quickly sees that they all belong together in some way. The menial tasks and

manifest lack of responsibility are initially encountered by the young lawyer as disorienting, but

finally he understands that these aspects of the situation flow from the partners' agreement to

limit his work on the case. Thus, what is first in the order of being is last in the order of

---

[34] Alasdair MacIntyre points out that modern thinking tends to separate too sharply causes and explanations, whereas in the Aristotelian-Thomistic view, causes and explanations, while not the same, are intertwined. He says, "*We* in the idioms of our contemporary speech distinguish sharply causes from explanations, but cause is always explanation-affording and *aitia qua* explanation is always cause-specifying." *First Principles, Final Ends and Contemporary Philosophical Issues* (Milwaukee: Marquette University Press, 1990), 4.

discovery. In our example, the partners' decision exhibits a temporal priority as well as an ontological priority; it is first in being, and it is temporally prior to the slights. However, we should notice that "what is first in the order of being" does not necessarily carry this temporal meaning. Strictly speaking, it is a metaphysical claim about what "gives" being and unity to an entity or a situation.

When Aquinas speaks of the natural law in the *Summa theologiae*, he presents his teaching according to the order of being.[35] He defines the natural law by showing what is first in the order of being or existence, and his reflections are also structured by the Christian theological purposes of his great work.[36] Aquinas does give some important indications about how we can proceed in the order of discovery, but these rudiments are not complete or systematically arranged. Thomas Joseph White says, "Aquinas himself did not seek to present a purely philosophical order of discovery, or *via inventionis*, even for many of the metaphysical principles that he invokes within the context of his Christian theological writings."[37] Therefore, part of our task is to pull together Aquinas's philosophical principles concerning the order of discovery and to develop them using insights from phenomenology.

---

[35] Thomas Smith distinguishes between the "order of presentation" and the "order of understanding." Smith's distinction is accurate, but it must be added that what he calls the "order of presentation" tracks what we name the "order of being" and his "order of understanding" tracks the "order of discovery." He says, "I must show first that Aquinas does not confuse reason and revelation in his account of natural law. The best way to do this is to distinguish the order of Aquinas's presentation of natural law from the order of our understanding of natural law. In other words, I will try to distinguish Aquinas's presentation of natural law (which necessarily involves discussions of theology, in as much as it is located in a theology textbook) from his account of the way human beings understand natural law (which does not require any recourse to revelation)." Smith, "The Order of Presentation," 612.

[36] On the relationship between things and definitions, see Aristotle, *Metaphysics*, VII.9, 1034b20-1038a35.

[37] White, *Wisdom in the Face of Modernity*, XXIX.

5. Answer to an Anticipated Objection to Our Approach

At this point, we can anticipate an objection to our approach of using the two roads of Thomism and phenomenology to investigate the promulgation of the natural law. Is it somehow "arbitrary" or *ad hoc* to attempt to use both of these approaches to investigate the natural law? As we will see in more detail, such an approach is not arbitrary. Louis de Raeymaeker says, "It is permissible to regret that the Angelic Doctor has not left us a description – let us call it a phenomenological one – of the living basis of his theories. This basis he has at his disposal throughout his philosophic work. St. Thomas draws upon fundamental ideas, 'categories,' which he himself has abstracted, starting from his personal experience."[38] De Raeymaeker says that, although Aquinas had recourse to his own personal experience as the living basis of his philosophy, the lack of an explicit phenomenological description can cause difficulties among some of the interpreters of Aquinas. De Raeymaeker says that some philosophers "have inherited abstract categories which they themselves have not abstracted and which they employ without referring them to any personal experience. The result is that their philosophic activity unfolds itself only on the levels of a logical analysis of concepts and of the reasoning connected therewith. In addition the categories employed risk having a content devoid of much density or flexibility."[39] De Raeymaeker says that contemporary philosophers working within the Thomistic tradition are enabled by the exigencies of their philosophical climate to raise problems that were not posed "*ex professo*" in Aquinas's life and milieu.[40]

---

[38] Louis de Raeymaeker, "What St. Thomas Means Today," *The Review of Politics* 20 (1958): 19. Emphasis added.

[39] Ibid., 19.

[40] Ibid., 19-20.

As de Raeymaeker shows, we must be attentive to the fact that Aquinas has not left us a developed phenomenological description of his philosophical approach to the world, even though Aquinas himself constantly had recourse to his own personal experience as a basis for his philosophical and theological activity. The relative lack of a phenomenological approach in St. Thomas is connected to White's comments that Aquinas does not explicitly develop the "order of discovery." The phenomenological approach goes hand-in-hand with the order of discovery, with what is first for us, so neglecting one will hinder the other. This absence of an explicit phenomenological method has consequences for Aquinas's doctrine of the promulgation of the natural law. Thomas Smith says,

> Perhaps it should come as no surprise that when [Aquinas] discusses natural law, he does not give a detailed account of the way we come to understand its precepts. Neither did he explain how the natural law was promulgated naturally, nor how its sanctions operated naturally. These were not his goals. So Aquinas never provides a systematic account of the way in which human beings come to know the most general principles of the natural law.[41]

Thus, to raise the issue of the promulgation of the natural law and to use phenomenology to develop an answer to this issue is to attempt to achieve greater insight into a crucial philosophical topic that was not emphasized by Thomas himself. This recognition does not denigrate the work of Aquinas in any way. The pressure created by a post-modern and post-Christian culture and by philosophical schools of thought that challenge or diminish the importance of the natural law imbues the issue of the promulgation of the natural law with an urgency that was absent in Aquinas's intellectual and cultural milieu.

Furthermore, one must be attentive to the setting of Aquinas's most detailed discussion of the natural law. The "treatise on law" comes within the *Summa theologiae*, which is Aquinas's

---

[41] Smith, "The Order of Presentation," 623. While Smith is correct to say that Aquinas does not give a detailed explanation of how the natural law is promulgated naturally, there are resources within Aquinas's thought that can be used to construct a "Thomistic" account of the promulgation of the natural law.

masterpiece of systematic theology. He attempts to see human nature and the natural law as coming from God and returning to God within the economies of creation and redemption. Lawrence Dewan says, "The *ST* [*Summa theologiae*], and in general the work of St. Thomas, is *meta-philosophical*. It is a study and teaching of what has been revealed to us by God himself, and thus surpasses mere human wisdom, i.e. philosophy. However, revelation presupposes the order of nature, and Thomas's teaching envelops philosophy rather than excluding it."[42] In keeping with his work as a whole, Aquinas's "meta-philosophical" discussion of the natural law is structured by being placed within a theological setting. Aquinas is certainly concerned with the philosophical issues of the natural law itself and how it provides a basis for the positive law; he shows that law, as an extrinsic principle, rules and measures the activities that we undertake, such that our own actions are not measured solely, or even primarily, by our own desires. However, his main objective is to show (1) the harmony between the natural law, the old law given to the Israelites, and the new law of Christianity, (2) how the gracious gift of God in the old law repairs and elevates the natural law after original sin, and (3) how the new law of grace and the Holy Spirit fulfills, elevates and perfects both the natural law and the old law by means of the passion, death, and resurrection of Jesus Christ. In this context, Aquinas makes brilliant use of philosophical principles, but clearly these issues are theological, and therefore Aquinas's teaching "envelops philosophy rather than excluding it." Aquinas's overriding concern for theological clarity leaves certain philosophical issues underdeveloped, such as the promulgation of the natural law.

Although the significance of word counts can be ambiguous, in this case a comparison between the amounts of discussion devoted to the old law and the natural law is illuminating.

---

[42] Lawrence Dewan, "St Thomas and the Divine Origin of Law: Some Notes," *Civilizar Ciencias Sociales y Humanas* 15 (2008): 124. Emphasis added.

Aquinas explicitly discusses the natural law in approximately 4,100 Latin words, and only one

question (q. 94) is devoted exclusively to the natural law. On the other hand, around 46,500 Latin

words spanning eight questions (qq. 98-105) are devoted to the old law.[43] While a greater

amount of discussion does not necessarily entail doctrinal priority, this disparity is an interesting

indication of the end Aquinas has in mind while writing the treatise on law, which is to clarify

the relationship between the order of nature, positive law, the old covenant and the new

covenant. In sum, while Aquinas provides an indispensible framework for a natural law theory,

this framework must be filled in and developed.[44]

6. Phenomenology's Contribution to the Promulgation Problem and Aquinas's Thought

Phenomenology will assist our investigation by enabling us to develop a fuller account of

the order of discovery of the natural law and by showing us how we are able to name the

discovery as a discovery. Phenomenology requires that we look at human consciousness in its

correlation to the "things themselves." This correlation is captured by the word "intentionality."

However, this use of intentionality or intention does not refer to our purposes for action, as in "It

was the young lawyer's intention to get to the bottom of things." Rather, intentionality within

phenomenology has a meaning tied primarily to the theory of knowledge, not moral philosophy.

Sokolowski says, "The core doctrine in phenomenology is the teaching that every act of

---

[43] In Freddoso's translation of the treatise on law, the discussion of the natural law takes approximately fifteen pages. By contrast, the discussion of the old law takes up approximately 175 pages.

[44] Benedict Ashley says that Aquinas's reflections on human nature, especially as they are related to natural law, also have the status of being an indispensible framework, but one that needs to be filled in using the best of contemporary sources. He says, "Aquinas carefully analyzed for us the knowledge we can acquire in daily life prior to any special technique of observation. His results, therefore, have the special value of not being colored by current ideologies, but at the same time they must not be taken for anything but an extremely broad outline that must always be filled in with much more detail as our study of human nature advances." Benedict Ashley, "The Anthropological Foundations of the Natural Law: A Thomistic Engagement with Modern Science," in *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, ed. John Goyette, Mark S. Latkovic, and Richard S. Meyers (Washington, DC: The Catholic University of America Press, 2004), 7.

consciousness that we perform, every experience that we have, is intentional; it is essentially 'consciousness of' or an 'experience of' something or other. All our awareness is directed toward objects."[45] By concentrating on this sense of intentionality, phenomenology is able to show that "the mind and the world are correlated with one another. Things do appear to us, things truly are disclosed, and we, on our part, do display, both to ourselves and to others, the way things are."[46] Phenomenology describes both the structure of intentionality itself, of the way human intelligence is correlated with the world, and the many variegated ways in which different realities show up to us. Sokolowski says, "[Phenomenology] signifies the activity of giving an account, giving a *logos*, of various phenomena, of the various ways in which things can appear."[47] By using phenomenological insights, we can give an account of the way in which the natural law appears to human agents. Also, the phenomenological understanding of intentionality will clarify the questions raised above concerning the preposition "in" by showing the "public" nature of human intelligence and action.

Phenomenology sheds light on human intelligence by focusing our attention on the intentional nature of consciousness, and it enables us to focus on the identity of a given reality as that reality manifests itself to us in a manifold of appearances. Returning to our example of the young lawyer, we can say that phenomenological analysis lets us see the way in which the unity or identity of the partners' decision to relegate him from the case is presented in a manifold of appearances, which in our example would be the various slights that he encounters, and yet it is

---

[45] Robert Sokolowski, *Introduction to Phenomenology* (Cambridge: Cambridge University Press, 2000), 8. Husserl says, "Conscious processes are also called *intentional*; but then the word intentionality signifies nothing else than this universal fundamental property of consciousness: to be consciousness of something; as a *cogito*, to bear within itself its *cogitatum*." Husserl, *Cartesian Meditations: An Introduction to Phenomenology,* trans. Dorion Cairns (Dordrecht: Kluwer Academic Publishers, 1999), §14, 33.

[46] Sokolowski, *Introduction*, 12.

[47] Ibid., 13.

the same pact (or the same relegation) that shines through each different episode.

Phenomenology restores appearances to their proper ontological place by showing how being

displays itself to us, and therefore it allows us to identify a given reality as the identity "within"

and "behind" its characteristic manifestations. Sokolowski says, "The point of phenomenological

description is to show what kind of manifold is involved in bringing about the concrete and

intuitive presence of the object we are concerned with, which is the identity within this manifold

[of appearances]. . . . The submission of phenomenology to the way things are means that as

philosophy it is content to describe these unities and the manifolds without trying to explain why

they are like this."[48] This statement nicely illustrates the two roads, Thomistic and

phenomenological, that we will take to understand the natural law. Although a phenomenological

approach would not try to give the "ultimate" explanation as to why the natural law is "like this,"

Aquinas's metaphysics does in fact attempt to show ultimately why the natural law is what it is

and why it is promulgated the way that it is. However, the natural law also has its characteristic

manifold of appearances, and the natural law is the identity within this manifold. Our use of

phenomenology will enable us to see the natural law as an identity in and behind its

characteristic manifestations. Phenomenology helps us to begin with what is "first for us" by

showing that appearances are a part of what is real. Appearances are a part of being; appearances

are, and they should not be contrasted with being or put over against it. Further, phenomenology

shows how we, as human agents involved with truth, are the datives of manifestation. That is, we

are the ones to whom things appear; we are the ones that can take being, its appearances, truth,

and the natural law as important issues.

---

[48] Robert Sokolowski, *Husserlian Meditations: How Words Present Things* (Evanston: Northwestern University Press, 1974), 103.

A. The Distinction between the Natural and Philosophical Attitudes

Phenomenology is enlightening because it looks at what we normally live through in our everyday interactions. The philosopher engaged in phenomenology looks at the correlation between things and the conscious actions human agents must execute to make those things presentable to themselves and others, and to accomplish this clarification he must look at the correlation from a unique standpoint. In order to understand what phenomenology is, we have to see not only what it looks at but also how it looks at it and how it speaks about it. Thus, we have to distinguish two attitudes or perspectives (*Einstellungen*) that human agents can take toward the world and the corresponding ways that language about the world must be modified.[49]

We first distinguish between (1) the natural attitude and (2) the phenomenological attitude.[50] The natural attitude includes (1.a) the naive, direct focus on objects, whether they are present or absent,[51] that marks our original perspective on the world, and (1.b) a kind of pre-philosophical reflection on judgments or propositions, in which an agent adopts a critical focus toward a particular judgment and measures it against the object or state of affairs being discussed. However, (2) the phenomenological or philosophical attitude is a more fully reflective, detached perspective that contemplates and discusses the necessities, connections, and possibilities within the natural attitude (both 1.a and 1.b). The philosophical perspective enables

---

[49] According to Thomas Prufer, when we speak as philosophers, we speak in "transcendentalese," which is distinguished from but parasitic upon our mundane use of language. See Prufer, *Recapitulations: Essays in Philosophy* (Washington, DC: The Catholic University of America Press, 1993), 58-65. See also Robert Sokolowski, *Phenomenology of the Human Person* (New York: Cambridge University Press, 2008), 182-183.

[50] See Edmund Husserl, *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy: First Book, General Introduction to a Pure Phenomenology*, trans. F. Kersten (Boston: Kluwer Academic Publishers, 1982), §27-30; *The Crisis of European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy*, trans. David Carr (Evanston: Northwestern University Press, 1970), §51. See also, Sokolowski, *Introduction*, 42-47 and 185-197; Sokolowski, *Husserlian Meditations*, 103-104 and 250-255; Sokolowski, "Husserl's Discovery of Philosophical Discourse," *Husserl Studies* 24 (2008): 167-175; Sebastian Luft, "Husserl's Phenomenological Discovery of the Natural Attitude," *Continental Philosophy Review* 31 (1998): 153-170.

[51] The important issue of presence and absence will be discussed in detail in Chapters 2 and 3.

us to analyze and discuss the subjective intendings and their objective correlates precisely as intended by subjective activities and as contemplated from the philosophical perspective. We will show that these distinctions are crucial for understanding how human agents discover the natural law and how our theory of natural law relates to this discovery.

Husserl defines an attitude as "a habitually fixed style of willing life comprising directions of the will or interests that are prescribed by this style, comprising the ultimate ends, the cultural accomplishments whose total style is thereby determined."[52] Thus, "attitude" for Husserl does not connote a fleeting emotional state. Rather, an attitude refers to the stance we take or a perspective we adopt toward the world or an aspect of it; an attitude or perspective in this sense can be a focus on a distinct aspect of an object, or it can be a special kind of reflection. Concerning the natural attitude, Dermot Moran says, "The natural attitude has to count as one of Husserl's greatest and perhaps most misunderstood phenomenological contributions."[53] For Husserl, the natural attitude, especially (1.a) the naive, direct focus on objects, is our default mode of operating and living as human agents in the world; Sebastian Luft says it is "a title for our everyday life,"[54] or our everyday perspective we naturally operate within as we engage with entities, other people, and practical necessities. We do not have to make a conscious decision to adopt the natural attitude since it is the original, default mode in which we relate to the world.[55] From this perspective, human agents simply live through and enjoy the presences and absences

---

[52] *Crisis*, 280.

[53] Dermot Moran, "Husserl's Transcendental Philosophy and the Critique of Naturalism," *Continental Philosophy Review* 12 (2008): 413.

[54] Luft, "Husserl's Phenomenological Discovery," 154.

[55] Husserl says, "We speak in this connection of the natural primordial attitude, of the attitude of natural life, of the first originally natural form of cultures . . . All other attitudes are accordingly related back to this natural attitude as reorientations [of it]." See *Crisis*, 281. However, we must also add that natural sciences are carried our within the natural attitude as well. Thus, the kind of thinking and discussion within the natural attitude can be quite sophisticated, but it is not fully reflective.

of reality as it appears to them without thematizing the natural attitude itself or explicitly naming presence and absence. In the natural attitude, human beings "straightforwardly" intend objectivities without turning explicitly toward the subjective activities involved in disclosing these objects to themselves. Husserl says that in the natural attitude, "Perceiving straightforwardly, we grasp, for example, the house and not the perceiving [of the house]."[56] In the natural attitude, persons are involved in truth and do disclose things to themselves and to others as they make decisions and judgments, but they are not yet reflective about truth itself or the activities that enable them to reach the various forms of truth. They are directly absorbed in the practicalities and necessities of everyday life and in the truth involved with them, but they do not yet reflect on such truth.

In describing what he calls the "General Thesis" of the natural attitude, Husserl says that the natural attitude is pervaded by the belief, *doxa*, that the world itself exists. He says, "This 'fact-world,' . . . I find to be out there, and also take it just as it gives itself to me as something that exists out there."[57] Thus, belief is the default mode of our acceptance of the world and the entities in it, including entities currently absent from us. In fact, the world itself is seen as the correlate of the natural attitude. The world is not the sum of things within the world, but rather it is "the ultimate setting for ourselves and for all the things that we experience. The world is the concrete and actual whole for experience."[58] Thus, world belief is primordial in the sense that it can never be corrected or refuted, nor can a human being learn to acquire it since it undergirds the entire conscious life of human agents.

Within the natural attitude, which is pervaded by the general world belief, situations often

---

[56] Husserl, *CM*, §15, 33.

[57] *Ideas*, §27.

[58] Sokolowski, *Introduction,* 44.

arise that cause someone to focus critically on a small, particular area of experience. Such disturbances of our naive, object-directed consciousness give rise to a focus or pre-philosophical reflection on particular judgments (not judgments as such) and to an attempt to confirm or refute those judgments by measuring them against objects or states of affairs. Thus, a person can and does subject particular beliefs or statements made within the natural attitude to refutation or confirmation, and each person can do this by shifting his focus from things to the judgments made about those things.[59] Human agents reflect on a judgment someone has made, but they become reflective only toward the particular judgment that has arisen as needing confirmation or denial, and thus they attempt to "match" the judgment against the object or state of affairs being discussed. The world, or the horizon, that lies behind and surrounds the particular judgment now subject to verification remains intact. Therefore, this judgmental reflection is nested within the natural attitude, and although they are distinct, our normal, everyday life constantly oscillates between the naive object-directed focus and the reflection on particular judgments. While propositional reflection is an aspect of the natural attitude, it is also more contemplative and detached than the naive interactions, but both the naive intendings and the propositional reflection are played off against the philosophical attitude; they are both "pre-philosophical."

Finally, the phenomenological or philosophical perspective requires another shift; we have to move ourselves (or do we have to be moved?) into the phenomenological standpoint in order to name the natural attitude, with its two aspects we have discussed, as natural. The act of recognizing and naming the natural attitude as such is only possible once we have "transcended it" in philosophical reflection. Luft says, "The natural attitude is hidden to itself; thematizing this attitude – discovering it . . . means already being in another attitude, namely, the philosophical

---

[59] See Sokolowski, *Introduction*, 186-197. See also Husserl, *Formal and Transcendental Logic (FTL)*, trans. Dorion Cairns (The Hague: Martius Nijhoff, 1969), §44-48.

attitude."[60] He says that the natural attitude "only becomes thematizable to the philosopher who

is defined precisely by the fact that he stands outside of the natural attitude."[61] Within the

philosophical attitude, we can look at what we live through in the natural attitude, with its two

major aspects of naive object awareness and judgmental reflection. Husserl says that in the

phenomenological attitude we take the position of a "disinterested onlooker" by simply

contemplating the subjective activities and their intentional correlates precisely as intended. He

says,

> The reflecting Ego's non-participation in the "positing" (believing, taking a position as
> to being) that is part of the straightforward house-perception in no wise alters the fact that
> his *reflecting* experiencing is precisely an *experiencing* experiencing of the house-
> perception with all its moments, which belonged to it before and are continuing to take
> shape. And among these, in our example, are the moments of the perceiving itself, as
> the flowing subjective process, and the moments of the perceived "house", purely as
> perceived.[62]

In the pre-philosophical attitude, human agents disclose entities and constitute objectivities in the

presence and absence of those entities, but they do not think of disclosure or constitution itself,

nor do they thematize presence, absence, and the identity of things across the couple presence-

absence, nor do they see objects "*as the intentional correlates of modes of consciousness of

them.*"[63] Sokolowski says, "In phenomenological reflection . . . we turn our focus toward these

disclosures themselves, toward the evidences that we have accomplished, and we think about

what it is to be datives of manifestation and what it is for beings to be manifest. Phenomenology

is the science that studies truth."[64] In the natural attitude, we experience things and achieve truth,

---

[60] Luft, "Husserl's Phenomenological Discovery," 155.

[61] Ibid.

[62] *CM*, II, §15, 34-35. See also II, §17 and III, §23, 56 where Husserl says, "By epoché we effect a reduction to our pure meaning (cogito) and to the meant, purely as meant."

[63] Ibid., 37.

but in the philosophical attitude we "experience experiencing" and discuss the truth about truth itself.

Philosophy therefore commences for us when we take up a new posture toward our natural attitude and its involvements. Sokolowski says, "When we engage in philosophy, we stand back and contemplate what it is to be truthful and to achieve evidence. We contemplate the natural attitude, and hence we take up a viewpoint outside it. . . . Instead of being simply concerned with objects and their features, we think about the correlation between the things being disclosed and the dative to whom they are manifested."[65] In the philosophical or phenomenological perspective we are concerned "not with the object but with the object in its ways of being given. And we appreciate and understand the transcendence of the object to its appearances."[66] In the philosophical attitude, we contemplate ourselves as the datives of manifestation and see things as they are given to us, and we investigate the subjective activities, which are ongoing but "hidden" from us in the natural attitude, necessary to bring transcendent objectivities to light for ourselves and others.[67]

The shifts in focus that we have discussed, both within the natural attitude (from things to judgments about things) and from the natural to the philosophical attitude, can be illuminated by returning to our previous example of the young lawyer. Instead of thinking about him in the process of being alienated from his firm, imagine him on a day in which he must argue a case in court. Throughout the course of the day, the lawyer will have many mundane experiences, interactions, and conversations in addition to his arguments in the trial. In all these actions, both

---

[64] Sokolowski, *Introduction*, 185.

[65] Ibid., 186.

[66] Sokolowski, *Husserlian Meditations*, 104.

[67] See *FTL*, §69.

within and outside the trial, he is involved with the world in what we have called the "natural attitude." He allows things to come to light in their presence and absence, and he makes decisions based on the world as he encounters it.

In most of his mundane conversations outside the courtroom, the lawyer operates with a naive, object-centered consciousness; he trusts the reports of his interlocutors as accurately portraying the objects and states of affairs being discussed. However, in the courtroom, the lawyer examines a witness in the trial. The witness gives his testimony of the events in question, but his account seems to conflict with his previous statements to the police and with the evidence the lawyer has gathered. Noticing these discrepancies, the lawyer interrogates this witness from a different standpoint than the one he took in his mundane conversations; he shifts his focus from the state of affairs under discussion to the propositions enunciated by the witness, which now call for further examination. The lawyer keeps his everyday, "naive" stance toward the world as a whole in place, but instead of simply living through the statements of the witness to the things spoken about, he stands back and reflects upon the judgments themselves and their truth or falsity. He examines the witness's statements in an attempt to confirm or refute them based on the truth of what really occurred; he attempts to see if they fit with the evidence or break against it. In short, the lawyer remains in the natural attitude but reflects critically on the judgments or statements of the witness in order to ascertain the truth about the situation and to see who is telling the truth.[68]

---

[68] The shift within the natural attitude from naive object intendings to propositional reflection need not be as dramatic as our example might suggest. To offer another illustration, imagine that I enter my house and tell my wife, who is in the next room, that I just put the mail on the table. Even though the "mail's being on the table" is absent from her, she acknowledges my efforts and says, "Thank you." I then tell her that the cherry blossoms are blooming and that they are beautiful, but this statement surprises her. "It's only early February; it's too early for the cherry blossoms," she thinks. She then responds to me, "Are you sure?" Her first statement, "Thanks," shows that she is operating with a naive object focused intentionality, but her question "Are you sure?" shows that my statement about the cherry blossoms has prompted her to shift into propositional reflection. She now focuses on my

Throughout these movements of human intelligence, the lawyer has not entered into philosophy. The philosopher cannot be practically involved in the trial, at least not qua philosopher, because as Husserl says, "Philosophy . . . lies in a *new dimension*."[69] One could see this point displayed by Plato in his presentation of Socrates's speech during the trial in the *Apology*. As a philosopher, Socrates does not argue as an attorney; rather, he highlights truth itself and takes as his guiding principle the point that the excellence (*aretē*) of any speaker is simply to display what is.[70] His repeated declarations concerning his ignorance of how to make speeches could be seen as expressing the fact that Socrates is no longer speaking within the natural attitude; he lives the philosophical life and thus concentrates on truth itself by using a language troped from the normal courtroom setting.

Thus, the philosopher, from his position as a disinterested onlooker, can sit in the back of the courtroom and look at what has taken place in the natural attitude. He can distinguish between the two aspects of the natural attitude: (a) the naive object-centered awareness and (b) the reflection on specific judgments carried out by the lawyer during the examination. Husserl helps us see that "the natural attitude and the sciences it sustains take the possibility of knowledge for granted. The philosophical attitude, on the other hand, does not. As the phenomenology of knowledge, it reflects on the relationship between knowledge and its object. Its aim is to reveal the essence of knowledge. Now knowledge is essentially knowledge of

---

judgment, which has shown itself in need of verification or falsification. I am thankful to Dr. Herbert Hartmann for this example.

[69] Husserl, *The Idea of Phenomenology*, 21. Emphasis original. Just prior to this statement, Husserl says, "In the sphere of positive research, one science can readily build upon another and one can serve the other as a methodological model, although only to a certain extent determined and limited by the nature of the areas of research in question. *Philosophy, however, lies in a wholly new dimension*. It requires a *wholly new point of departure* and a wholly new method, a method that distinguishes it in principle from every 'positive' science." Ibid., 20. Emphasis original.

[70] See *Apology*, 17d-18a.

objectivity."[71] Only from his detached position could the philosopher ask what it means to constitute an objectivity or what it means to be a speaker; only within the philosophical attitude and with an appropriately adjusted language could he investigate the way in which language itself is correlated with or labels the world (as distinct from examining specific judgments as to their correlation or lack thereof with a particular object). More specifically, the philosopher might discuss what it is about humans that makes killing them or stealing from them wrong, or more fundamentally he may ask, along with Vogler, what achievements of human intellectual and affective life make moral action "essentially possible" in the first place. The philosopher would discuss what it means to be truthful in both theoretical and practical life; as Aristotle says, philosophy is a theorizing of truth.[72] But he would only be able to ask these questions and make these distinctions if he pursues truth in a comprehensive way using a language adapted from the natural attitude; he must adopt a new perspective and speak a modified language to focus on the human subject's correlation to the world.

B. The Natural Law Itself as Discovered in the Natural Attitude

We spoke earlier of Hittinger's distinctions concerning the three contexts of natural law thinking, and we said that our investigation of the promulgation of the natural law would unfold within the "systematic" context as opposed to the dialectical or the dialogical. We can connect Hittinger's understanding of the systematic context to our description of the philosophical or phenomenological attitude. Only if we adopt philosophical language and enter into the philosophical attitude can we study the natural law in a systematic way. From the philosophical

---

[71] Brough, "Consciousness Is Not a Bag," 179. Sokolowski says that it is helpful to speak of phenomenology as engaging in an investigation of truth instead of an investigation of knowledge. See Sokolowski, "Husserl's Discovery of Philosophical Discourse," 169-172.

[72] See *Metaphysics*, II.1, 993a30; 993b16-31. See Kurt Pritzl, "Aristotle's Door," in *Truth: Studies of a Robust Presence*, ed. Kurt Pritzl (Washington, DC: The Catholic University of America Press, 2010), 15-39.

stance, we can simply contemplate and discuss how the natural law comes to light for human agents and how its "sources of truth" are coherently integrated. Only within this attitude can we attempt to respond to Vogler's promulgation problem by seeing the correlation between the human subject and the moral objectivity of the natural law. In fact, the promulgation problem as described by Vogler could only be raised from within the philosophical attitude, since the name "promulgation" carries an enhanced signification in Vogler's usage. A legislator might speak of a problem with promulgation, but he would not understand those words precisely the way we have in our discussion.

The phenomenological distinction between the natural attitude, with its two aspects, and the philosophical attitude also enables us to handle an issue among contemporary natural law theorists. John Finnis says that there is an important distinction between the natural law itself and a theory of the natural law.[73] For Aquinas, the natural law itself is a set of propositions that function as norms for human action undergirding any system of positive law, such as "We ought not lie," "We ought not steal."[74] However, knowledge of the natural law can mean one of two things: (1) knowledge of these propositions themselves or (2) knowledge of these propositions discussed philosophically as expressions of the natural law. Brock says, "The propositions that constitute natural law are one thing, and the propositions about those propositions, e.g. that they

---

[73] See John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 24-25. Finnis says, "Of the natural law itself there could, strictly speaking, be no history." However, Finnis says, "There is a history of the opinions or set of opinions, theories, and doctrines which assert that there are principles of natural law." He says that we must "see the importance of maintaining a distinction between discourse about natural law and discourse about a doctrine or doctrines of natural law. Unhappily, people often fail to maintain this distinction." Ibid.

[74] See *St*, I-II, q. 90, a. 1, ad. 2; I-II, q. 94, a.1. We might even include the following statement from Aristotle as an expression of the natural law, but one that is uttered from the philosophical perspective. Aristotle says, "But not every action nor every passion admits of a mean; for some have names that already imply badness, e.g. spite, shamelessness, envy, and in the case of actions adultery, theft, murder; for all of these and suchlike things imply by their names that they are themselves bad, and not the excesses or deficiencies of them. It is not possible, then, ever to be right with regard to them; one must always be wrong. Nor does goodness or badness with regard to such things depend on committing adultery with the right woman, at the right time, and in the right way, but simply to do any of them is to go wrong." *Nicomachean Ethics* (*NE)*, II.6, 1107a9-18.

constitute a natural law, are another. The former are norms of action; the latter are theoretical reflections on these norms as objects of knowledge."[75] This distinction between the natural law itself and a theory of the natural law is promising, and phenomenology can provide natural law theorists with a more complete explanation of this distinction and its importance.

The distinction and correlation between the natural and philosophical attitudes enable us to see that the discovery of the natural law itself happens in the pre-philosophical life of each individual. The natural law itself is an expression of moral truth discovered by and binding for each human agent operating within the natural attitude. A Thomistic natural law theory would include the claim that, as Alasdair MacIntyre says, "plain persons all have within themselves an authoritative knowledge of the content of [natural] law."[76] The natural law itself is not originally discovered by philosophers; human agents operating in the natural attitude, or "plain persons" in MacIntyre's formulation, need not wait until a philosopher tells them about the natural law before they can know it and act in accordance with it. The philosopher contemplates what human agents operating in the natural attitude achieve, and the philosopher names this achievement and seeks to understand how it is manifest.

When the person in the natural attitude constitutes (or discovers) the natural law, he is concentrating on some aspect of the world that invites or demands his response, and he knows the truth of the natural law as obliging him in a specific context under the pressure of a decision that must be made here and now. For example, the young lawyer must attempt to respond to the insults from his partners in a way that both respects their seniority and defends his dignity, and a

---

[75] Brock, "Legal Character," 100.

[76] Alasdair MacIntrye, "Theories of Natural Law in the Cultures of Advanced Modernity," in *Common Truths: New Perspectives on Natural Law*, ed. Edward B. McLean (Wilmington: ISI Books, 2000), 93. In the final chapter, we will see that MacIntyre's claim that "plain persons" all have an authoritative grasp of the contents of natural law must be given more nuance. Not "all plain persons," but only virtuous agents, practically wise persons, have an authoritative grasp of the natural law.

child at the incipient stages of the moral life must control his desire for candy in accordance with his parent's command not to eat sweets before dinner. Both the lawyer and the child have some awareness of the natural law itself, at least at the level appropriate for their intellectual development; they have discovered it by dint of being morally responsible human agents, even if they do not have a theory of it. However, the philosopher looks at the discovery itself. The man innocent of philosophy is concerned with the situation that calls for an intelligent response and with the natural law that he has discovered as obliging him, but the philosopher is concerned with the natural law as discovered and as discoverable, that is, as promulgated. Philosophy names the natural law itself as the natural law and speaks about the discovery of natural law as a discovery.

The fact that human beings discover the natural law itself in the natural attitude, as distinct from the philosophical attitude, has important consequences. As we will argue in detail in Chapter 4, the virtuous agent operating within the natural attitude has a significant role in manifesting the natural law; by his character and moral excellence in action, he makes known, or promulgates, what is good by nature, what is fitting for and perfective of human agents. The virtuous agent is the "rule and measure" of human actions.[77] However, some may object that this appeal to the virtuous agent is ineffective because human beings need a criterion to enable them to recognize who the virtuous agent is in the first place. One could object that a human being could only identify which agents are virtuous if he already possesses a theoretical understanding of virtue and practical goodness, and thus the appeal to the virtuous agent as manifesting what is good by nature would result in a vicious circle. Such an objection would confuse the natural and philosophical attitudes; by collapsing this distinction, the objector would effectively deny that

---

[77] See *NE*, III.4, 1113a30-34. We will discuss this description of the virtuous agent as the "rule and measure" in detail in Chapter 4.

human agents operating in what we have called the natural attitude discover the natural law, and he would claim that the virtuous man would only be known, and natural law itself would only be recognized, when philosophical arguments are applied to concrete situations. However, once we make the distinction between the natural and philosophical attitudes, we (from the philosophical perspective) can see that the original manifestation of what is naturally good for human agents must be located in the practical order. There is a natural necessity in the structure of appearance of moral goodness, and such goodness is originally manifest in action undertaken within the natural attitude, where human agents naturally recognize that caring for one's children, respecting one's parents, and living in peaceful communities based on a common search for truth are fitting for human beings.

In the natural attitude, human agents originally see moral goodness as displayed in the morally excellent performances of the virtuous agent, and only if they later shift into the philosophical perspective will they develop a theory of moral virtue to "match" the original practical recognition. In the natural attitude, it is inevitable that the original manifestation of moral excellence comes in a moral action; it is not the case that human agents in the natural attitude are able to recognize moral excellence only when they have a theoretical definition of moral virtue. Rather, moral virtue is first recognized in its practical display and later, in philosophical reflection, a theory of practical reason is developed. Such a procedure fits with Aristotle, who says, "We must consider [the good], however, in the light not only of our conclusion and our premises, but also of what is commonly said about it; for with a true view all the facts harmonize, but with a false one they soon clash."[78] The distinction between the natural attitude and the philosophical attitude, coupled with the recognition that the natural law itself is

---

[78] *NE*, I.8, 1098b9-11.

originally discovered in the natural attitude, opens up the possibility of seeing the virtuous agent

as an effective promulgator of the natural law, a claim that is central to our project.[79]

Additionally, propositional reflection nested within the natural attitude is crucial not only

for discovering the truth about statements of fact; the natural ability to reflect on judgments also

has an important application in the practical realm. There is a practical analogue to propositional

reflection, and it is significant for understanding our discussion of the promulgation of natural

law. In practical activity within the natural attitude, human agents can reflect on what they

propose to do, or on what someone else proposes should be done. Such practical reflection is at

the basis of deliberation; human agents can deliberate and alter the proposed course of actions in

part because they have the ability to reflect on judgments concerning proposed actions. Human

agents can also reflect on what they are already doing, on actions currently being performed. It is

not only in deliberation leading up to a concrete action that human agents can perform

"propositional" reflection on proposed actions; even in the course of performing the action itself

a human agent retains the ability to reflect upon and reappraise what he is doing. Such practical

reflection on a proposed or ongoing action enables human agents to think about the action

(proposed or ongoing) as corresponding (or failing to correspond) with what should be done in

view of achieving the desired end or *telos*.

Thus, human agents can turn from the goal to be realized in or by the action and consider

what should be done to realize this goal; they can also reflect on the action itself and discern if it

properly achieves the end in view. This reflection is important not only for finding the correct

means to a specific practical end, such as finding the best manner in which to help the poor in the

---

[79] This claim does not suggest that the recognition of the virtuous agent is in some way "automatic" or pre-rational; such interpretations of our claim would denigrate the intelligence at work in the natural attitude. In Chapter 4, we will discuss the structure inherent in the manifestation of virtue as well as the effect the virtuous agent has on those around him, and we will mention briefly how vicious agents can be seen to have the opposite effect.

local community; it also enables human agents to reflect on whether or not their actions correspond to the overall *telos* of a human being. Human agents can reflect critically on their character and decisions to see if they correspond to the truth of a happy human life in communion and friendship with others. Such reflection is not yet philosophical thinking, but it enables human agent to reappraise what they are doing in light of the specific ends to be pursued or the general natural ends of human life that cannot be altered. In Chapter 4, we will show that knowledge of the natural law (at least its "secondary precepts") can increase or decrease in the life of an individual or a community over time, and the growth or decline in knowledge of the natural law is possible because human agents, while remaining in the natural attitude, have the ability to turn from the end in view to the proposed or ongoing actions aiming to achieve the end in order to discern if these actions correspond to the end, just as they can turn from a state of affairs to a judgment to see if the judgment corresponds to the way things are.[80]

One could also connect the discovery of the natural law itself in the natural attitude with Husserl's distinction between two kinds of truth: (1) the truth of disclosure (or manifestation) and (2) the truth of correctness.[81] Husserl says that truth can be considered as actuality (*Wirklichkeit*), which is the actual givenness of the present existent state of affairs. In the truth of disclosure, a human agent registers a fact or state of affairs without being concerned about confirming or denying any previous judgments about that fact. Husserl says, "The true is now the *actually existent*, or the *truly existent*, as the correlate of the evidence that gives the actuality

---

[80] We will discuss the distinction between the "primary precept" and the "secondary precepts" of natural law in Chapter 2, and we will also show that these precepts are made known in different ways.

[81] See Husserl, *FTL*, §46; see also Sokolowski, *Introduction*, 158-162. In turn, one can also see these two concepts of truth from Husserl as connected with Aristotle and Aquinas's concepts of truth as the grasp of simples and truth as correctness within judgments. Of course, one could only adequately distinguish and name these kinds of truth from the philosophical perspective.

itself."[82] The truth of disclosure refers to the simple presencing of an intelligible object; it is the

manifestation of what is real or actual. In terms of natural law thinking, we could say that the

truth of disclosure refers to the initial coming to light of some moral truth or obligation. In the

truth of disclosure, a responsible human agent manifests the essence, or nature, of some state of

affairs and sees that he is obliged by the way things naturally are and not only by his local

customs, laws, or personal preferences. He thus becomes aware of some practical truth deeper

than his desires or the conventional way of life of his community.

The truth of disclosure grounds the truth of correctness. Husserl says that the truth of

correctness "signifies *a correct critically verified judgment* – verified by means of an adequation

to the corresponding categorial objectivities 'themselves.'"[83] This kind of truth refers to the

correctness of a judgment that has been verified; the judgment is first articulated or proposed,

and it is then "tested" against the state of affairs, where it is found to match a registered fact. The

truth of correctness is linked with our ability to carry out propositional reflection within the

natural attitude and to turn from things to judgments, or to things as proposed by someone else.

When we make this shift, we can confirm (or deny) a proposition and thus evidence the truth of

correctness by seeing the proposition as matching the state of affairs. When the judgment is

"tested" and seen to fit or blend with the actual state of affairs, it then shares in the more

elementary truth of disclosure. The truth of disclosure therefore bookends the truth of

correctness. In natural law thinking, there are propositions about moral responsibility itself and

about the truth of specific practical situations, and these propositions can be verified in an

attempt to sort out moral dilemmas. The essence of things and of natural moral responsibilities

that come to light in the truth of disclosure will be ingredient in these propositions as proposed

---

[82] *FTL*, §46, 127.

[83] Ibid.

and as verified, but these contested propositions will be true in a different way than the more fundamental truth of disclosure. This kind of reflection is especially important for questions that arise within the dialectic and dialogical contexts of natural law thinking, and phenomenology can shed light on the different kinds of moral truth evidenced in these different contexts.

Thus, phenomenology sheds light on the manner in which both the natural law itself and a theory about the natural law are connected with truth. The natural law itself is discovered and followed or rejected by human agents in their everyday operations, and thus it is a fundamental moral truth available to all men of sufficient intellectual development within the natural, pre-philosophical attitude. The philosophical perspective enables us to contemplate this truth obtained by human agents in the natural attitude as well as those capacities and activities of the human subject that are necessary for this discovery. Phenomenology theorizes about the truth of the natural law itself, and it helps us to see the correlation between the subject, the world, and the natural law, but it does so in a way that respects and honors the truth achieved in the natural attitude. As Husserl says, "Phenomenological explication does nothing *but explicate the sense this world has for us all, prior to any philosophizing,* and obviously gets solely from our experience – *a sense which philosophy can uncover but never alter.*"[84] Philosophers do not originally discover the natural law, but they contemplate it and name it in a way that illuminates the nature of the natural law itself as well as its promulgation.

7. Who Promulgates the Natural Law and How Is It Promulgated? Three Responses

In the final section of this chapter, we will examine three responses to the questions: (1) Who promulgates the natural law? (2) How is the natural law promulgated?[85] Since law implies a

---

[84] *CM,* V, §62, 151.

ruler (or rulers) of a community setting down rules that must be obeyed by the members of that community, the promulgation of law must be seen as imperatives coming from someone and directing some group. Therefore, these two questions are intertwined; the question of how the natural law is promulgated entails an investigation into who promulgates it.[86]

A. God Is the Promulgator of the Natural Law

The first answer given to the question of the mode of promulgation and hence the promulgator of the natural law appeals directly to divine authority, and this answer was present in some classic thinkers. Proponents of this view claim that God is the promulgator of the natural law, and it can be seen at least as early as Cicero. Cicero says, "True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting; it summons to duty by its commands, and averts from wrongdoing by its prohibitions."[87] Cicero then adds that no human senate, law, or community can dispense us from adhering to the true law, and he contrasts the changing laws of human communities with the immutability of this universal law. Concerning the promulgation of this universal law, Cicero says,

> One eternal and unchangeable law will be valid for all nations and all times, and there will be one master and ruler, that is, God, over us all, for he is the author of this law, its promulgator, and its enforcing judge. Whoever is disobedient is fleeing from himself and denying his human nature, and by reason of this very fact he will suffer the worst penalties, even if he escapes what is commonly considered punishments.[88]

---

[85] The issue of promulgation is often mentioned briefly in works on natural law but rarely given extended attention. For example, Simon writes extensively about St. Thomas's definition of law and how it applies to the natural law, but he says only the following about promulgation: "The fourth and last component will not be elaborated in this context: law has to be promulgated, it has to be conveyed to the knowledge of those who are subject to the law." Simon, *The Tradition of Natural Law*, 109. In a recent book on our knowledge of the natural law, Steven Jensen raises the issue of promulgation in only one paragraph. He says, "Originally, [the natural law] exists in the one who promulgates, which seems to be God." Jensen, *Knowing the Natural Law*, 156.

[86] The question of the relation between the legislator and promulgator of the law is related to but distinct from the question as to whether or not the subjects of a given law must perceive the law itself as coming from the legislator in order for the law to be binding.

[87] Marcus Tullius Cicero, *On the Republic*, trans. Clinton W. Keyes, Loeb Classical Library, vol. 16 (Cambridge, MA: Harvard University Press, 1928), III, 22.

Cicero also stresses the mind of God as the source of true law. In the *De legibus*, the character

Marcus, who presents Cicero's view on law, explains that the wisest philosophers say, "Law is

not a product of human thought, nor is it any enactment of peoples, but something eternal which

rules the whole universe by its wisdom in command and prohibition. . . . Law is the primal and

ultimate mind of God, whose reason directs all things either by compulsion or restraint."[89] Thus,

Cicero integrates the idea that law is (in) the mind of God, or what we above identified as order

"in" the divine mind, with the idea that God himself is the promulgator of the natural law.

Recently, many Thomists have argued that Aquinas also presents God as the promulgator

of the natural law.[90] In response to an objection that says the natural law is not promulgated,

Aquinas says, "The promulgation of the law of nature consists in God's having instilled it in the

minds of men in order that they might know it naturally."[91] In his interpretation of this passage,

Dewan says that it is necessary that "our natural knowledge of natural law include an

appreciation of *divine providence as its source*."[92] Clearly, God's "insertion" of the natural law

---

[88] Ibid. It is interesting to highlight Cicero's claim that violators of the true law corrupt their nature and receive the worst kind of punishments, even if they escape the normal penalties associated with criminals, such as fines, prison sentences, or even exile.

[89] Cicero, *On the Laws*, trans. Clinton W. Keyes, Loeb Classical Library, vol. 16 (Cambridge, MA: Harvard University Press, 1928), II, 4, 8. For a discussion of Cicero's conception of law, see Kainz, *Natural Law*, 10-13 and S. Adam Seagrave, "Cicero, Aquinas, and Contemporary Issues in Natural Law Theory," *The Review of Metaphysics* 62 (2009): 491-523.

[90] See Lawrence Dewan, "St. Thomas, Natural Law, and Universal Ethics," *Nova et Vetera* 9 (2011): 737-762; Hittinger, *First Grace*, 10-91; Steven Jensen, *Knowing the Natural Law*, 156; Stephen Brock, "Legal Character," 95-123; David Oderberg, "The Metaphysical Foundations of Natural Law," in *Natural Law in Contemporary Society*, ed. Holger Zaborowski (Washington, DC: The Catholic University of America Press, 2010), 74-75.

[91] *St,* I-II, q. 90, a. 4, ad. 1. We referred to this text on p. 9 above. In the next chapter, we will go into detail concerning Aquinas's understanding of God as the promulgator of the natural law.

[92] Dewan, "St. Thomas, Natural Law," 749. Dewan claims that for Aquinas (1) God is the promulgator of the natural law and (2) in knowing the natural law we necessarily know it as coming from God. He says that some basic knowledge of the natural law, of God's existence, and of the natural law as an expression of God's providence

into the minds of men and our "appreciation of divine providence" as the source of the natural law suggest that God is the promulgator of the law of nature. This mode of promulgation also includes the notion that men will come to know the law naturally. God promulgates the natural law by "inserting" it into the human mind such that we discover it through the natural operations of human reason. We will attempt to clarify what this statement means in the next chapter, but here we simply underscore the role of God as the promulgator of the natural law.

B. The Human Agent as Promulgator of the Natural Law

A second group of thinkers attempts to answer the question concerning the promulgation of the natural law by appealing to the role of the human agent. These philosophers argue in various ways that God is not the principal promulgator of the natural law, but rather human agents promulgate the natural law through the exercise of human intelligence and free choice. For example, Frederick Copleston says, "Every man possesses also the light of reason whereby he can reflect on these fundamental inclinations of his nature and promulgate to himself the natural moral law."[93] Copleston goes on to explain the claim that the human person promulgates the natural law to himself. He says,

> For Aquinas . . . it is the human reason which is the proximate or immediate promulgator of the natural moral law. This law is not without a relation to something above itself; for it is . . . the reflection of or a participation in the eternal law. But inasmuch as it is immediately promulgated by the human reason we can speak of a certain autonomy of the practical reason. This does not mean that man can alter the natural moral law which is founded on his nature. But it means that the human being does not receive the moral law simply as an imposition from above; he recognizes or can recognize its inherent rationality and binding force, and he promulgates it to himself.[94]

Thus, Copleston draws attention to the role of the human agent as the promulgator of the natural

---

is available to human reason unaided by divine revelation, so the promulgation of the natural law does not depend upon God's revelation in the Old and New covenants. See ibid., 750-762.

[93] Frederick Copleston, *Aquinas* (London: Penguin Books, 1955), 213.

[94] Ibid., 214.

law, but he maintains the idea that the human agent cannot create or even alter the natural law.

Sokolowski seems to suggest a similar position regarding the role of the human agent as the promulgator of the natural law. While Copleston helps us see that we do not simply receive the moral law "as an imposition from above," Sokolowski goes into more detail by showing that the discovery of the natural law is at the same time the dawning of an obligation. Sokolowski says that the natural law "surfaces as obliging us."[95] Following Francis Slade, he focuses on the ends of things that we encounter in our activities as intelligent agents and distinguishes these ends from our human purposes in our actions.[96] He then shows how the ends of things are related to the discovery of the natural law and hence our moral obligations, since the ends of things are normative for our interactions with them. He says,

> We realize that we are obliged to act in the light of this or that end, and we are obliged in the sense conveyed by the phrase "noblesse oblige." It is the thing to do, the thing to be done, the thing that is worthy of us and makes us honorable as human agents. We ourselves, after all, to the extent that we are rational agents, are the promulgators of natural law. We do oblige ourselves, but in a way different from the self-legislation described by Kant. We oblige ourselves because we are able to see the *telos* of the things we are dealing with and can recognize the ontological priority of these ends over our purposes and wishes. We become witnesses to the truth of things, that is, witnesses to what the things should be.[97]

Thus, Sokolowski shows the role of the human agent in promulgating the natural law without falling into the Kantian dilemma of a self-legislating subject.

Martin Rhonheimer goes much further in his stress on the role of the human agent in the promulgation of the natural law than either Sokolowski or Copleston. Rhonheimer says that

---

[95] Robert Sokolowski, "Discovery and Obligation in Natural Law," in *Natural Law in Contemporary Society*, ed. Holger Zaborowski (Washington, DC: The Catholic University of America Press, 2010), 39.

[96] For Slade's distinction between ends and purposes, see Francis Slade, "Ends and Purposes," in *Final Causality in Nature and Human Affairs*, ed. Richard Hassing (Washington, DC: The Catholic University of America Press, 1997), 83-85. See also Slade, "On the Ontological Priority of Ends and Its Relevance to the Narrative Arts," in *Beauty, Art, and the Polis*, ed. Alice Ramos (Washington, DC: The Catholic University of America Press, 2000), 58-69.

[97] Ibid. The distinction between ends and purposes will be explored in detail in Chapter 3.

human reason does not simply discover the natural law, but rather practical reason constructs the law of nature. He says, "For [Aquinas], the natural law is not simply 'discovered' by reason, but rather 'constituted' by reason for an active practical understanding. Thomas understands the natural practical reason as a law-giver and not simply as an executory of the law."[98] Rhonheimer highlights Aquinas's comments that (1) the natural law is the work of human reason and (2) the natural law is the human agent's participation in the eternal law.[99] Rhonheimer says,

> For the rational creature to really participate in a law (namely, the eternal law of God) does not simply and only mean "to be subject to this law" or "to come to know the law and then to apply it to concrete acts." It means, instead, to formally possess and even in a way to be the law; this means to possess the very reason which properly is the law because it formulates the law, promulgates it and imposes it through reason's own obliging force.[100]

For Rhonheimer, it is not that we are the witnesses to the truth of things by understanding their end or *telos* and then coordinating our purposes with those ends, but rather human reason is the natural law because it constructs the law, promulgates it, and imposes it.[101]

C. The Natural Law Is Promulgated Through the Instrumentality of Nature

Brock suggests a third answer to the question of the promulgation of the natural law, and Sokolowski's writings on the natural law and our discovery of it can be seen as a fuller explanation of this third option. Brock follows Aquinas in saying that God is the legislator and promulgator of the natural law, and he adds that the natural law is promulgated "by nature" or

---

[98] Martin Rhonheimer, *Natural Law and Practical Reason: A Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000), 5.

[99] For these two claims in Aquinas, see, respectively, *St*, I-II, q. 94, a. 1 and I-II, q. 91, a. 2.

[100] Martin Rhonheimer, "Natural Law as a 'Work of Reason': Understanding the Metaphysics of Participated Theonomy," *The American Journal of Jurisprudence* 55 (2010): 51.

[101] In this subsection, one could also mention the work of Pamela Hall. Hall's work can be seen as another example of a philosophical account that stresses the role of the human agent in the promulgation of the natural law. See Pamela Hall, *Narrative and the Natural Law: An Interpretation of Thomistic Ethics* (Notre Dame: University of Notre Dame Press, 1994).

"naturally." Since law is an act of reason and will, the natural law cannot be identified with the world of non-rational nature. That is, for Aquinas the natural law is not a law spontaneously constituted by the world of nature. Brock says, "Nature can be at most an instrumental source of law."[102] Brock shows that according to Aquinas the natural law exists in the human agent insofar as he is ruled by the eternal law of God, but this divine governance takes place through the "instrumentality" of the world of nature, in which entities exhibit natural inclinations to their fitting ends. Brock says, "A natural law can exist only in what is ruled by the eternal law and has the eternal law somehow imposed upon it *through the instrumentality of nature*."[103] Thus, Brock highlights the role that the order of the natural world plays in the promulgation of the natural law.

Brock also uses the word "instrumentality" to describe the human subject's role in the promulgation of the natural law. He says, "Man's natural understanding of good and bad must therefore be a certain participation or derivation of the eternal law, a participation mediated by the natural light of his own reason. Such a participation, received by man through the instrumentality of his own rational nature, can be understood at once to be a natural promulgation to him of the eternal law, or a natural law."[104] We should note that in Brock's statements we encounter the three foci of order: order in the divine mind, order in nature, and order in the human mind.[105] Brock shows that for Aquinas promulgation includes all three orders. God promulgates the natural law to men through (1) the "instrumentality" of the ordered world of nature and through (2) the instrumentality of the human intellect, which encounters and

---

[102] Brock, "Legal Character," 74.

[103] Ibid., 75.

[104] Ibid., 82.

[105] Brock himself does not explicitly distinguish between the three foci of order, but his treatment follows the fault lines of these distinctions.

beholds the order in the natural world. The natural law is promulgated within this setting, and by integrating the three foci of order in this way Brock is able to see the role of God and the human subject in the promulgation of the natural law.

What we have named the "order of nature" and the "order in the human mind," as well as what Brock calls the "instrumentality" of nature and of the human intellect, can be illuminated and deepened by Sokolowski's reflections, which exhibit a phenomenological approach to the issue of the promulgation of the natural law. As we said above, Sokolowski and Slade distinguish between ends and purposes, and Sokolowski shows the importance of this distinction for the natural law.[106] Sokolowski's use of the *telos* of things and of our own human nature as normative for our actions serves to specify the "instrumentality of nature" by showing how the order of the natural world functions in the promulgation of the natural law. Sokolowski also focuses on the fact that the *telos* (end) of a thing is inseparable from the thing's *eidos* (form) because the end is simply the form brought to perfection, and he shows how both the form and the end of a thing show up to us in our use of language.[107] These points illuminate the path of discovery of the law of nature, and they will assist us in formulating our answer to the question of the promulgation of the natural law.

D. Our Answer to the Promulgation Problem: Promulgator and Co-Promulgators

In our answer to the question of how the natural law is promulgated, we will integrate and develop features from all three responses given above. Using an exegesis of Aquinas's treatment of the natural law, we will distinguish (1) between the legislator and the promulgators

---

[106] See Sokolowski, "What Is Natural Law? Human Purposes and Natural Ends," *The Thomist* 68 (2004): 507-529; Sokolowski, "Knowing Natural Law," in *Pictures, Quotations, and Distinctions: Fourteen Essays in Phenomenology* (Notre Dame: University of Notre Dame Press, 1992): 277-292.

[107] For the connection between the *eidos* and *telos* of entities and how both are captured and carried in our speech, see Sokolowski, *Human Person*, 186-189.

of a law and (2) between the primary promulgator and the secondary or co-promulgators. We will show that the legislator is also the initial promulgator of the natural law and that human agents are co-promulgators of the natural law. As opposed to Rhonheimer's position, we will show that human reason is not the law of nature, and our use of practical reason does not amount to being a lawgiver. Aquinas's metaphysics of creation, especially his distinction and integration of primary and secondary causality, enables us to see that God is the sole legislator and initial promulgator of the natural law, but human agents do constitute the same natural law and hence act as co-promulgators. In the second half of this work, we will use phenomenology to elucidate the manner in which human agents discover and co-promulgate the natural law through the use of language, the development of political life, and the cultivation and activities of virtue. We will show that the very cultivation of virtue and the virtuous life serve as a promulgation because they manifest what a human being can be; virtue shows the *telos* of the human being and thus reveals the natural law by showing its fulfillment.

Chapter 2

The Promulgation of the Natural Law
According to St. Thomas Aquinas

Prima dicitur lex naturae; et haec nihil aliud est nisi lumen intellectus insitum nobis a
Deo, per quod cognoscimus quid agendum et quid vitandum. Hoc lumen et hanc legem
dedit Deus homini in creatione.

- St. Thomas Aquinas, *Collationes in decem praeceptis*

Thomas Aquinas develops his thought on law in Book III of the *Summa Contra Gentiles*

and in the so-called "Treatise on Law" in the *Summa theologiae*, I-II, qq. 90-108, especially qq.

90-97. In this chapter, we will develop insights from both of these *loci classici* in order to

articulate Aquinas's understanding of the promulgation of the natural law.

1. A Philosophical Sketch of Aquinas's Notion of Law

To understand Thomas Aquinas's theory of natural law generally and the promulgation of

natural law specifically, we must first sketch his overall view of law and show how the natural

law is distinct from other species of law. Aquinas begins his treatment of law in the *Summa*

theologiae by giving the nominal definition of law, and we will begin by analyzing this nominal

definition. At the outset of the discussion, Thomas says, "Law is a certain rule and measure of

acts in accord with which one is either induced to act or restrained from acting."[1] Yves Simon

says that the nominal definition is an important starting point because we must begin our

investigation of law (as with any reality) with "the commonly accepted meaning of the word, its

nominal and dialectical definition. We call it 'nominal' inasmuch as it expresses the distinction

between the meaning of one name and that of another, and we call it 'dialectical' inasmuch as it

---

[1] *St*, I-II, q. 90, a. 1.

expresses an agreement among minds, a sort of a social settlement regarding the import of a word."[2] Thus, Aquinas begins his treatment of law by attending to the socially accepted meaning of the word *lex*. From this somewhat vague starting point in which law's proper effect is noticed, he will develop a more distinct definition that moves to the essence of law, but the starting point should not be denigrated even though it is vague. The commonly accepted starting point is crucial, and it contains within it a *dunamis* that will be actualized in the full definition of law. As we saw in the first chapter, we move from what is first for us toward what is first in itself.

Simon correctly identifies the importance of the "import of a word" as a starting point for a "nominal definition." Sokolowski distinguishes between the accidentals and the essentials of a given reality, and he says that this distinction does not show up in the syntax of our speech, but rather in the content of what we say. Sokolowski further subdivides the essentials of a thing into the properties and the essence itself (what the thing is), with the essentials (properties and essence) being played off against the accidentals. He says, "The essence of things stands 'beneath' or 'behind' the properties and accidents, and the properties 'flow from' it."[3] He says these spatial metaphors are used to "express a logical and ontological relationship"[4] and describes our coming to know a thing as follows:

> We do not enjoy direct access to the essence of a thing. The essence, what the thing is, is presented not by itself but only in and through the properties that flow from it. It would be wrong to say, however, that we *first* collect a lot of properties and only *subsequently* infer that they flow from an essence. Properties and essence come together. We would

---

[2] Simon, *The Tradition of Natural Law,* 70. It is important to note the role of the name of an entity in nominal definitions (nominal comes from the Latin *nomen*, name).

[3] Robert Sokolowski, *Human Person*, 106. Aquinas expresses a similar thought in *St,* I, q. 75. In the prologue to this question, Aquinas says that in his treatment of the human soul he will utilize the three-step approach of Pseudo-Dionysius for the study of spiritual substances by examining essence, power, and operation. Note that Aquinas begins with the essence of the thing. He first attempts to "define" the thing he is examining, and then he shows how the powers and operations flow from the thing. Generally, his procedure matches the order of being, not the order of discovery. Such a method is appropriate for a systematic summary of Catholic theology for "beginners."

[4] Ibid.

not know that certain phenomena are properties unless we also had an inkling of the essence of the thing and had begun to take the thing as one, as an instance of a kind.[5]

There is a "concomitant manifestation of both properties and essence,"[6] but we can also turn toward the intelligibility of the thing and target its essence by trying to give a definition of the thing. However, "this thing, in its essence, is not originally and directly given by itself; it can only be given within its properties, its per se attributes."[7] The move to capture the essence itself by means of a strict definition is a subsequent maneuver, and it often accompanies the shift to the philosophical perspective.

The schema given by Sokolowski is crucial for our study of Aquinas's definition of law generally and natural law specifically. It is important to note that being a "rule and measure for human actions" is a *per se* property of law.[8] Once we see something as a rule and measure for human actions, we have already caught a glimpse of the essence of law, but we have not yet isolated the essence itself by giving law a strict definition.

Next, we note that Aquinas often uses two words to describe law in its function of regulating human action; law is a kind of (1) rule (*regula*) and (2) measure (*mensura*) for human actions. How do the two words *regula* and *mensura* relate to each other? Do they signify different aspects of law? Are they synonyms for one aspect of the law? Aquinas does not answer these questions. Simon suggests that these terms remain somewhat vague throughout Aquinas's treatment of law, but he says that we can "confidently depend on the common understanding of

---

[5] Ibid., 107. Aquinas makes a similar point. He says, "Substantial forms, which in themselves are unknown to us, are known by their accidents;" *St,* I, q. 77, a. 1, ad. 7. Again, he says, "Our intellect, which takes cognizance of the essence of a thing as its proper object, gains knowledge from sense, of which the proper objects are external accidents. Hence from external appearances we come to the knowledge of the essence of things" *St*, I, q. 18, a. 2.

[6] Ibid.

[7] Ibid., 108.

[8] The second property of law, its having coercive force, is discussed below.

such terms as 'rule' and 'measure.' The latter term is somewhat unusual in the context of human affairs, but simple reference to its ordinary quantitative use suffices to make it clear, as well as graphic and effective, as a supplement to the term rule."[9] In relation to the natural law, the terms *regula* and *mensura* contain a potential that neither Aquinas nor Simon exploit.[10] Additionally, Aquinas often uses the same phrase, *regula et mensura*, to refer to the virtuous man as a rule and measure of human acts.[11] Therefore, we can profitably ask: What is the relationship between law as a rule and measure and the virtuous man as a rule and measure? I only mention these issues now, but in Chapter 3 of this work, we will distinguish between rule and measure to illuminate the manner in which the natural law functions as a regulator of human actions based upon the way we as agents interact with the natures and ends of things. In Chapter 4, we will examine the relationship between law and virtue as it bears upon our theme of promulgation. By describing both the law and the virtuous agent as the rule and measure of human actions, Aquinas suggests that the virtuous man embodies in a unique way the *telos* of the law, and therefore he is the one who can concretely manifest the potential of the law in its full actualization.

Since law is a rule and measure for human actions, Aquinas further specifies that law belongs properly to reason (*ratio*) because reason is the rule and measure of human actions. Aquinas concludes that law can exist in two ways. "In one way, as in the measurer and ruler. And since this is proper to reason, law in this sense is in reason alone (*Uno modo, sicut in mensurante et regulante. Et quia hoc est proprium rationis, ideo per hunc modum lex est in ratione sola*). In another way, as in the ruled and measured (*Alio modo, sicut in regulato et*

---

[9] Simon, *The Tradition of Natural Law,* 72.

[10] In *St,* I-II, q. 90, a. 1, Aquinas elaborates on the notions of rule and measure by showing that the principle of any genus is the "rule and measure" of that genus. However, our question remains: Do rule and measure signify different aspects of the "principle of any genus," or are they merely synonymous?

[11] See *St*, I, q. 1, a. 6, ad. 3; I, q. 109, a. 4, ad. 3; *In Ethic.*, liber III, lect. 10, n. 494.

mensurato). And this is how law exists in all the things that are inclined in any way by any kind of law."[12] Aquinas's insistence that law is a work of reason that can be "in" two subjects, one as ruling and measuring and the other as ruled and measured, is a crucial component of law that will be developed by his understanding of promulgation. Specifically as regards the natural law, the connection between reason as ruling and reason as ruled will be especially important.

In connection with law's function of being a rule and measure for human actions, Aquinas maintains that law has "coercive force." This is the second per se property of law. Law is binding and obligatory. He says that law gets its name (*lex*) from the idea of physical restraint (*ligare*) precisely because law obligates one to act *(obligare)*.[13] Aquinas says, "Law by its nature has two characteristics: first, it is a rule of human acts (*regula humanorum actuum*); second, it has coercive force."[14] These two aspects are part of the *essentials* of law, but they are not yet the *essence* of law. They are essential characteristics of law, analogous to man's risibility and capacity to speak, and by beginning with them Aquinas will lead us into the essence itself of law.

A. The "Scientific" Definition of Law

In the fourth article of question 90, Aquinas gives his stricter, "scientific" definition of law. Aquinas defines law as an "ordinance of reason toward the common good from him who has care of the community and promulgated (*Rationis ordinatio ad bonum commune, ab eo qui curam communitatis habet, promulgata*)."[15] Thus, he says that promulgation is one of the four features or marks of the essence itself of all authentic law. Promulgation is part of the definition of law and not just one of its properties. This means that promulgation is not of secondary

---

[12] *St,* I-II, q. 90, a. 1, ad. 1 (trans. modified).

[13] See *St*, I-II, q. 90, a. 1. Note again the importance of attending to the meaning of the word or the name.

[14] *St*, I-II, q. 96, a. 5 (trans. modified).

[15] *St,* I-II, q. 90, a. 4 (trans. modified).

importance to a legal system; rather, it is part of the essence itself of law and thus pertains to the very intelligibility of legal order. Since the properties of any entity flow from the essence itself, we can say that the legal properties of being a rule and measure for human acts and having coercive power "flow" in part from the promulgation of law. Additionally, the spatial dimensions of the prepositions *ad* and *ab* are interesting; they indicate that law is a dynamic, transitive action, going from (*ab*) the one who is in charge of the community toward (*ad*) the common good by way of being given (*promulgata*) to those who are subject to the law through rational direction. Law connotes a kind of publicly manifested act of reason that dynamically moves from the ruler to the subjects in their shared pursuit of a common good.

Metaphysically, the transitive nature of the act of legislating recalls Aristotle's understanding of teaching. For Aristotle, the act of the teacher, the agent of education, is "in" the student, the patient.[16] There is only one act involved in the teaching-learning pair; it is a hendiadys, a one through two, with the two aspects "teaching" and "learning" being two profiles or two faces of the one act between the teacher and student. Seeing them as a "two" requires seeing the one act (teach-learn) now from the side of the teacher, now from the side of the student. It is an interesting anomaly that we do not possess a single word in English that covers both aspects of the "teach-learn" relationship.[17] To understand the nature of the "teach-learn" act, the philosophical viewer must hold both aspects together. Similarly, the act of reason of the legislator is "in" the subjects guided by his legislation. The metaphysics of transitive action

---

[16] For the distinction between immanent and transitive actions, see Aristotle, *Metaphysics*, IX.8, 1050a1-b25. See also *Physics,* III.3, 202a10-b25. For an excellent discussion of transitive action as it applies to moral philosophy, see Kevin Flannery, *Action and Character According to Aristotle: The Logic of the Moral Life* (Washington, DC: The Catholic University of America Press, 2013), 39-70.

[17] Would "education" necessarily include both aspects?

clarifies the way in which law can be "in" two subjects, one as ruling and measuring, the other as ruled as measured. These are two faces of the one act of legislating.

As "part" of the essence of law, promulgation enables the ruling reason of the legislator to function in the two per se properties of law mentioned above, being a rule and measure of human acts and having coercive force. Promulgation allows the reason of the governor to serve as a *binding rule and measure* for human acts; as "part" of the essence of law, promulgation shows how the properties of being a binding rule and measure flow from the essence of legislation. Aquinas says,

> Law is imposed on others in the manner of a rule and measure. But a rule or measure is imposed by being applied to the things ruled and measured *(applicatur his quae regulantur et mensurantur)*. Hence, in order for a law to acquire the power to obligate, which is proper to law, it must be applied to the men who are supposed to be ruled by it *(secundum eam regulari debent)*. Now this sort of application is accomplished by the law's being brought to their knowledge through its promulgation. Hence, promulgation is necessary in order for law to have its power.[18]

We can now connect the idea that legislation is a transitive action with the fact that promulgation, as "part" of the essence of law, enables the coercive power of law as a rule and measure to "get to work." We are accustomed to speak about the "law" as an object; we use "law" as a noun, as in the phrase "the law of the land." The noun "law" makes one think of a list of rules and thus the dynamism of ruling and legislating can be obscured. However, we should recall that law originally and primarily refers to the *act* of ruling, specifically, the *act* of legislating.[19] The proper effect of the act of legislating is not the body of law codified in law

---

[18] *St*, I-II, q. 90, a. 4 (trans. modified). See also *In Ethic.*, liber 10, lect. 14, n. 2153, where Aquinas says, "Law has *(habet)* coercive power inasmuch as it is promulgated by the ruler or prince. And it is discourse proceeding from some prudence and intellect directing toward the good *(Et est sermo procedens ab aliqua prudentia et intellectu dirigente ad bonum.)*. Therefore, law is obviously necessary to make men good *(bonos)*." (trans. modified).

[19] See *St*, I-II, q. 93, a. 1. Aquinas says, "Just as the divine wisdom's conception has the character of an *artistic conception* or *exemplar* because all things are created through it, so too the divine wisdom's conception has

books, but the intelligent guiding of subjects toward the common good. The actively guided

subject being directed to the common good is the effect and characteristic end of law.

Unfortunately, we have excessively "nouned" the verb "to legislate," but it is important to

recover the active aspect of the verb "to legislate."

Nouns name objects, but if we understand law primarily as the *transitive activity* of

intelligently guiding subjects to the common good, then what does the verb "to legislate" name?

Sokolowski says that a verb "can be taken to name a manifestation. It [the verb] names the way

the subject appears."[20] While nouns are more abstract and tend to pull away from our concrete

setting, verbs capture the public manifestations of activities in the context in which they occur.

Aristotle says that the verb connotes time, so verbs bolt us down to a specific moment when the

appearance takes/took place.[21] This function of verbs in language helps us to see a crucial point

concerning transitive actions, such as legislating. Transitive actions are manifestations that are

"named" by verbs, and thus they are inherently public activities. There can be no private

teaching between a professor and a student, a builder cannot privately build a house, and I cannot

privately walk to Baltimore from the District of Columbia.[22] The teaching, the building, and the

walking to Baltimore are all public activities, and the verbs we use to capture these activities

name these public manifestations. Recovering the verbal foundation of law helps us see that law

---

the character of *law* insofar as it moves all things to their appropriate ends. Accordingly, the eternal law is nothing other than the divine wisdom's conception insofar as it directs all acts and movements."

[20] Robert Sokolowski, *Presence and Absence: A Philosophical Investigation of Language and Being* (Bloomington: Indiana University Press, 1978), 12. Sokolowski continues, "The appearance named by the verb is not to be taken in a comparative sense; we do not mean the appearance as contrasted to the reality, what the subject just seems to be as opposed to what it truly is. Normally a thing is as it appears and its manifestation shows what it is."

[21] See *De Interpretatione*, 3, 16b5-25.

[22] This is not to say that the teaching cannot be private in the sense of being hidden from the view of others not teaching or being taught. It simply means that at least between the teacher and student, the transitive action must be public.

is necessarily a public, transitive action; it is public because it is transitive.[23] In the definition of

law given by Aquinas, promulgation captures this inherently public aspect of the essence of law.

Law would not be law if it were not promulgated; a private law is a contradiction in terms.

In all transitive activities, the party perfected by the action is the recipient of the action,

the "patient." The *telos* of any transitive action is the improvement or perfection of the one

receiving the act, that is, the one in which the act acts.[24] Thus, the subject of law rejoices in the

reception of a legal code. As Locke shows, law is tied to the liberty of a people because it is the

law that liberates them, which entails the distinction that liberty is not license.[25] For example, the

patient in a medical procedure is the one properly perfected, or improved, by the transitive

actions of the doctor, and therefore the patient desires the procedure and rejoices in its

completion even if it causes some discomfort initially. If the doctor is improved by his healing

actions, such improvement is secondary. Because legislating is a transitive action, the subject

perfected by the action is the one who is guided by the law. Law is therefore an act of perfecting

the subjects of the law and the common good of their shared activities, which are directed and

protected by the act of legislating. For Aquinas, this fact suggests a connection between the

"treatise on law" and the first five questions in the *Prima secundae* of the *Summa theologiae*,

where he discusses happiness as the final end of the human person. Law directs the human agent

to his proper perfection and guides his search for happiness. Aquinas says,

> Since (a) every part is ordered toward its whole in the way that what is incomplete
> (*imperfectum*) is ordered toward what is complete (*perfectum*), and since (b) a man is part
> of a complete community, law must properly be concerned with the ordering that leads to

---

[23] This fact does not imply that only transitive actions are public. It will be argued in Chapter 4 that the acts of virtue, which are immanent actions, are also public in important ways.

[24] See *St*, I, q. 18, a. 3, ad. 1; *In Meta.*, liber IX, lect. 8, n. 1862-1865.

[25] See Locke, *Second Treatise*, §6, 22, 57. One need not agree with Locke's overall theory of political life, including his understanding of the states of nature, war, and society and his version of the social contract, in order to appreciate his point that liberty is always understood in relation to life under the rule of law.

communal happiness (*ad felicitatem communem*). Hence, in the definition of legal affairs alluded to above, the Philosopher makes mention of both happiness and political communion. For in Ethics 5 he says, "The laws (*legalia*) we call 'just' are those that effect and conserve happiness and its elements within the political community." For as Politics 1 puts it, a city is a complete community.[26]

Aquinas's claim that law is directed to the communal happiness of those subject to the law echoes a classical position on law and the common good. The metaphysics of law as a transitive action connect to and clarify Plato's claim that the leader of any group, insofar as he is true to his craft as leader, benefits not himself but those subject to his direction; the true craftsman benefits not himself but those he is responsible for directing.[27] Thus, law is the *public perfecting* of the rational agents subject to the law though the manifested acts of reason of the legislator in view of a common good.

B. The Four Causes of Law

In his definition of law in *St*, I-II, q. 90, Aquinas employs the Aristotelian procedure of displaying the intelligibility of a thing by showing the four causes of the *definiendum*.[28] The very structure and order of the articles in *St*, I-II, q. 90 evidences this Aristotelian pattern of investigating a phenomenon by describing its causes; the four articles deal sequentially with the four causes.

In article 1, Aquinas shows that law pertains to reason, and therefore the formal cause of

---

[26] *St,* I-II, q. 90, a. 2. See also *De Regno*, I.16. For a critique of the "New Natural Law" position on law and its relation to human happiness, see John Goyette, "On the Transcendence of the Political Common Good: Aquinas Versus the New Natural Law Theory," *The National Catholic Bioethics Quarterly* 13 (2013): 133-156. For the "New Natural Law" position, see John Finnis, *Aquinas: Moral, Political, and Legal Theory* (New York: Oxford University Press, 1998), 222-247.

[27] See Plato, *Republic*, 341c-347e. At 342e, Socrates tells Thrasymachus, "No one in any position of rule, insofar as he is a ruler, seeks or orders what is advantageous to himself, but what is advantageous to his subjects; the ones of whom he is himself the craftsman. It is to his subjects and what is advantageous and proper to them that he looks, and everything he says and does he says and does for them." Translations from the *Republic* are from Plato, *Republic*, trans. G.M.A. Grube (Indianapolis: Hackett Publishing Company, 1992).

[28] For the historical sources of Aquinas's definition of law and a commentary on this definition, see Dom Odon Lottin, "La définition classique de la loi," *Revue Néo-Scolastique de Philosophie* (1925): 129-145.

law is that it be an ordinance of reason or a work of intelligence. For Aquinas, the formal cause

of all legitimate law, or the essence of law, is reason as ordering and directing toward the

common good. It is significant that Aquinas says reason is of the essence of law, while force of

will is not. Aquinas recognizes that the will of the person who has care of the community must

be engaged in order to direct his citizens toward the good,[29] but Aquinas understands the will's

involvement as subordinate to reason. The force of will, or the power that obliges the citizens to

obey, is not "part" of the essence of law. Power of will and coercion are properties of law, as we

have noted, but they are not of the essence itself of legitimate legal enactments. On this point,

Thomas Hobbes's concept of civil law is an interesting contrast to Aquinas's formulation of the

essence of law. For Hobbes, the civil laws are commands that manifest the will of the sovereign;

law is a "Sign of the Will" imposed to determine right and wrong. For Hobbes, knowledge of the

law is knowledge of the "will of the Soveraign."[30] By contrast, Aquinas is rooted in Aristotle's

political philosophy, and thus Thomas explains law as the public manifestation of the *reason of*

the legislator as this reason orders the community toward the common good. As Aristotle says,

"One who asks law to rule, therefore, seems to be asking god and intellect alone to rule, while

one who asks man adds the beast. Desire is a thing of this sort; and spiritedness perverts rulers

and the best men. Hence law is intellect without appetite."[31] Thus, reason undisturbed by passion

is the formal cause of law.

 In article 2, Aquinas says that law is ordered to the common good as its final cause. The

telos of law is the common good of the community being ruled, and Aquinas specifies that the

---

[29] See *St,* I-II, q. 97, a. 3.

[30] Thomas Hobbes, *Leviathan,* Pt. II, Ch. 26. All citations from Hobbes's *Leviathan* are from Thomas Hobbes, *Leviathan*, ed. Richard Tuck (New York: Cambridge University Press, 1996).

[31] *Politics*, III.16, 1287a28-32.

common good to which the law inclines is the *common happiness of the political community*. As

the end of law, the happiness of the citizens in the enjoyment of the common good serves as the

first principle in practical reasoning about legislation. The common happiness of a political

community must be understood as necessarily including the happiness of the members of that

community. Aristotle criticizes Plato's Socrates for asserting that the happiness of the city does

not include the happiness of its members, especially the guardians of the *Republic*:

> [Socrates] even destroys the guardians' happiness, asserting that the legislator should make the city as a whole happy. But it is impossible for it to be happy as a whole unless most people, or all or some of its parts, are happy. For happiness is not the same kind of thing as evenness: this can exist in the whole but in neither of its parts, but happiness cannot. But if the guardians are not happy, which others are?[32]

Aquinas follows Aristotle on this point. The happiness of the whole city is impossible without

the happiness of its parts (i.e. its citizens).[33] Charles De Koninck captures Aquinas's idea that the

common good is inextricably tied to the individual's good. He says, "The common good is

eminently diffusive of itself insofar as it is more communicable; it extends to the singular more

than the singular good does: it is the better good of the singular."[34] Thus, to legislate for the

common good is to work for the good of the community and the individuals in it.

In article 3, Thomas shows that the one who has care of the community properly enacts

the law. Therefore the governor (or governing body), as the one who has charge of moving the

community toward the common good, is the efficient cause of law the insofar as he rationally

orders his subjects. The legislator is the "craftsman" of the law.

We have seen that for Aquinas the formal cause of law, treated in article 1, is reason

---

[32] *Politics*, II.6, 1264b16-24. For Socrates's claim that the guardians of the city need not be happy for the city to he happy, see *Republic*, 419a-420e.

[33] See *St*, II-II, q. 47, a. 10, ad. 2.

[34] Charles de Koninck, "The Primacy of the Common Good Against the Personalists," in *The Writings of Charles de Koninck*, 2 vols., ed. and trans. Ralph McInerny (Notre Dame: University of Notre Dame Press, 2009), 75.

without desire, the final cause of law, treated in article 2, is the common good, and the efficient cause, treated in article 3, is the legislator. Finally, in article 4 Aquinas says that law must be applied to those subject to the law through promulgation. How should we understand the causality of promulgation?

Clifford Kossell says that promulgation is an "instrumental cause" of law, since law is applied to its subjects via promulgation.[35] Conversely, Michael Zuckert says that promulgation is the formal cause of law.[36] Zuckert makes a crucial mistake in such an interpretation of the four causes of law. If the formal cause, the essence, the *eidos* of law is that the dictates of the ruler be promulgated, then we inevitably fall into a form of Hobbesian legal positivism. With Zuckert's understanding of law, the dictates of a tyrant that destroy the common good would have the essence of law simply by being publicly decreed. There would be no basis for distinguishing between an unjust law and a just law if promulgation were the very essence of law; we could only have recourse to technicalities in the mode of promulgation. If Zuckert were correct that promulgation is the formal cause of law, then we could not say, with Augustine and Aquinas, that an unjust law is no law at all but a kind of violence.[37]

However, it is more in keeping with Aquinas's thought to see promulgation as the *material cause of the law*. Therefore, the fourth article of *St*, I-II, q. 90 completes the causal picture by displaying promulgation as the material substrate of legislating. In sum, the four articles develop respectively the four causes, and this very structure implies that article four, concerning promulgation, concerns the material cause of law. In addition to textual accuracy,

---

[35] See Clifford G. Kossell, "Natural Law and Human Law (Ia IIae qq. 90-97)," in *The Ethics of Aquinas*, ed. Stephen Pope (Washington, DC: Georgetown University Press, 2002), 169-193.

[36] See Michael Zuckert, "Natural Law Without God? Considering Russell Hittinger's *The First Grace*," in *Ethics Without God? The Divine in Contemporary Moral and Political Thought*, ed. Fulvio Di Blasi, Joshua P. Hochschild, and Jeffrey Langan (South Bend: St. Augustine's Press, 2008), 130-132.

[37] See Augustine, *On Free Choice of the Will,* Book I.5. See *St*, I-II, q. 93, a. 3, ad. 2.

understanding promulgation as the material cause of law is philosophically enlightening because it enables us to see that law must go from a directing mind to a directed mind and that this direction must be realized "in" something. Law is the *ordinatio rationis ad bonum commune*, and this ordination of reason is manifested by being promulgated. However, what does the claim that promulgation is the "material cause" of law amount to?

In approaching this question, a text from Aquinas's commentary on Aristotle's *Physics* is helpful. Commenting on Aristotle's dictum that "that out of which a thing comes to be and persists" is a cause of the thing (i.e. the bronze of the statue), Aquinas says that the material cause functions and hence is a cause of a given thing only when the form of the thing is "in" the matter. For example, the bronze is only the material cause of the statue when it is actualized by the shape of the statue; the bronze *as shaped* by the form of the statue is the material cause. Otherwise, the bronze is only improperly called the matter of the statue; it is not truly the matter until it becomes the statue. Aquinas says that Aristotle adds the phrase "when it (i.e. the form) is in it (*insit*)" in order to differentiate the material cause from a mere privation. Aquinas says, "For the statue, indeed, comes to be from bronze, which is in the statue when it is made. It also comes to be from the unshaped, which, however, is not in the statue when it is made. Hence, bronze is a cause of statue, but the unshaped is not, since it is only a *per accidens* principle."[38] We are tempted to think of the material substrate according to the model of efficient causality, and thus the material cause is viewed as prior to the fully formed substance. However, the bronze is the material cause of the statue only when it is the statue; that is, only when it is "formed" as a statue can bronze be the material cause. Since law is an act of reason shared between intelligent agents, promulgation is the material cause of law when the form of law, the ruling and measuring reason,

---

[38] *In. Phys.*, liber II, lect. 5, n. 178, taken from *Commentary on Aristotle's Physics*, trans. Richard Blackwell, Richard Spath, and Edmund Thirlkel (Notre Dame: Dumb Ox Books, 1995).

is *in* the community of minds that are now shaped by the promulgated law and able (*dunamis*), as rational entities obliged by the law that is promulgated in/to them, to be activated toward the common good.

We now have multiple senses of law being "in" something. First, law is "in" the one who rules or measures a community, i.e. the legislator(s), as in an active principle of rational ordering. Second, law is "in" the subjects or the "community of minds" ruled and measured by the law in the passive sense of being guided intelligently to the common good. How do these two senses of law being "in" something relate to each other? To answer this question, we must add a third sense of law being "in" something. Law is also "in" the modes of communication proper to the promulgation of a given law; law is "in" the speech issued by legislators to their citizens in view of the common good. This third sense of a law being "in" something provides a bridge between the first two modes. However, promulgation is not simply communication, it is not simply informing someone of something. Rather, law shapes a community; the reason of the ruler activates a community by forming them through the law, which enables them to enjoy the common good precisely as the formed community. The community that is to be shaped by law is only the substrate-community. As the law is installed in the community through intelligent communication via language, this substrate community is disposed precisely to be the substrate of a governed entity. That is, it is through the legally formed communication that the substrate community is activated as the governed entity enjoying a common good. It is precisely as rational, as able to receive and respond intelligently to directives of reason in language, that human beings and human communities are "substrates" for law.

Therefore, we have to approach two more questions to understand the promulgation of natural law for Aquinas. First, what is the mode of communication proper to the promulgation of

natural law? In other words, what is the matter that is actualized by the ruling and measuring reason? Second, how is the ruling and measuring reason "in" the community of mankind through this mode of communication? How is this mode of communication actualized as law? These two sets of questions set the agenda for the rest of this work. We will approach answers to these questions based on Aquinas's thought in this chapter, and the subsequent chapters will be a development of the foundation that Aquinas provides.

C. A Note on Promulgatio

Before moving to Aquinas's understanding of natural law, we will further develop the idea of promulgation (*promulgatio*) by appealing to its etymology. The Lewis and Short Latin dictionary defines "*promulgatio*" as a "making publicly known, a proclaiming, publishing," and the verb *promulgo* means "to expose to public view, to make known."[39] The *Oxford English Dictionary* says that "promulgation*"* carries the sense of being exposed to public view; it is "the official publication or public proclamation of a new law, decree, ordinance, etc., thereby putting it into effect."[40] Although Lewis and Short says that the precise etymology of *promulgo* is unknown, there is a note referencing the work of Festus the Grammarian, a 2nd Century Roman scholar whose work is an important reservoir of classical Latin. Festus notes that laws are said to be promulgated when they are first made known to the people, and he suggests that the word *promulgari* is equivalent to *provulgari*.[41] Taking this suggestion from Festus, the word "*promulgare*" can be split into "*pro*" and "*vulgare*," which means "to spread among the

---

[39] Charlton T. Lewis and Charles Short, *A Latin Dictionary* (Oxford: Clarendon Press, 1879), s.vv. "promulgatio" and "promulgo."

[40] *Oxford English Dictionary*, 3rd ed. (hereafter *OED*), s.v. "promulgation," accessed January 14, 2016, http://www.oed.com.proxycu.wrlc.org/view/Entry/152502?redirectedFrom=promulgation.

[41] Sexti Pompei Festi, *De verborum significatione quae supersunt cum Pauli Epitome* (Lipsiae: Sumptibus Simmelii eiusque socii. 1880), 224. In the entry for "Promulgari" Festus has the following explanation: "Leges dicuntur, quum primum in vulgus eduntur, quasi provulgari." Accessed February 8, 2016. http://babel.hathitrust.org/cgi/pt?id=mdp.39015024230255;view=1up;seq=276.

multitude; to make general, common, or universal; to put forth to the world, publish."[42] The

"making common or universal" inherent in promulgation can be furthered clarified by examining

the prefix "pro," which is derived from the adverbial and prepositional form of this word. For our

purposes, it will be helpful to distinguish three senses of "pro." These three meanings of "pro"

are closely connected and will help clarify the nature of promulgation.

First, "pro" has the sense of *standing in front of* those to whom one is speaking and

publicizing something for them. This sense of "pro" retains the spatial aspect noticed in the use

of "*ab*" and "*ad*" in Aquinas's definition of law. Second, "pro" has the temporal aspect of

*pro*longing something, of sustaining it so that it can reach into the future. This temporal aspect of

"pro" is also heard in the word "protention," a stretching forward from present to future in

anticipation. Third, "pro" refers to the work of making the publicized content intelligible to those

who are the target of the public material; this aspect is "pro" in the sense of *pro*portionate. This

sense of proportionality does not mean simply that the law must be expressed in appropriate

language and given through adequate channels, although it does include those aspects. More

fundamentally, this sense of proportion displays the fact that law, once promulgated, elevates the

reason of the substrate-community so that its members participate in the legal order of actions to

the common good. Through the knowledge of the law, the subjects are able to think practically in

a more elevated manner, and therefore they are able to pursue common ends through common

actions in a more human way. Through promulgation, the law raises the minds of people and

enables them to be agents together by calibrating the practical reasoning of the subjects with the

rule initiated by the governor.

Thus, promulgation literally means to stand in front of a multitude and elevate the

practical reasoning of a community by putting a law into effect through making it common or

---

[42] Lewis and Short, s.v. "vulgo."

universally known, an activity that stabilizes the community both at the moment of promulgation and into the future. Promulgation "proportionalizes" the ruling reason of the legislator by expressing it in law; it makes the law fitting to the minds of those subject to the law. Promulgation, or to promulgate, is therefore a publicizing to a multitude of a body of directives that serve as a measure for human actions that are proportionate to the mind of the one receiving the publicized content. Promulgation is the "public proportionalizing" of the foundational directives of human behavior within a social and political context, and this public proportionalizing has the *telos* of perfecting the persons subject to the law by making them able to participate in the common good. Through the promulgation of law, their minds are able to engage in the thinking and acting that serves the common good.

As we have seen, promulgation concerns the manifestation or appearance of a directive for human actions. The direct objects of the action of promulgation (or legislation) are the "rules and measures" of action contained in the law, and the dative of promulgation is the knowing subject that is obliged to conform his actions to the publicized directives. Thus, promulgation essentially involves the knowing subject or the "dative of manifestation" and his intellectual encounter with and assimilation of a publicized, intelligible norm for human actions. For Aquinas, an inquiry into the promulgation of natural law is therefore an inquiry into (1) the manner in which the legislator publicly proportionalizes the law containing the most fundamental directives for human conduct towards the common good and (2) the manner in which the knowing subject comes to know nature, both his own nature and the natures of other things, and how this knowledge of nature can be a directive for human action. At this point, we can also raise the issue of the relationship between the legislator and the promulgator of the law. Are they the same person?

2. Natural Law as Participation in the Eternal Law

Before we can approach this question, we must first give Aquinas's distinctions between the various forms of law. In the *Summa theologiae*, Thomas describes eternal law, natural law, human law, and divine positive law, which includes both the Old Law given to the people of Israel and the New Law of Christianity.[43] Thus, Aquinas approaches natural law by distinguishing it from other species of law. However, we must ask how these species of law are related to each other. What is the basis of this classification of laws for Aquinas?

The first and most fundamental distinction between the various kinds of law is the distinction between divine law and human law. This distinction is based upon the legislative origin of law; that is, law is first and most fundamentally distinguished based upon who the legislator is. For Aquinas, this distinction takes priority because law is most properly found "in" the mind of the legislator. Thus, the first distinction reflects what is first in the order of being. Hittinger says, "Thomas teaches that Law is 'in' the intellect that actually performs the act of measuring and ruling; in a derivative sense, law can be said to be 'in' whatever is measured and ruled. Properly speaking, law is always 'in' the active principle, which is to say, in a mind."[44] Therefore, law is first distinguished into human law and divine law based upon the legislative point of origin: divine law has God as its legislator, while a human law requires a human legislator. Strictly speaking, for Thomas there are only two kinds of law: human and divine.

If this is the case, how do the other species of law relate to this initial distinction? Once law is divided into divine and human, Aquinas continues to make distinctions between *kinds of*

---

[43] See *St,* I-II, q. 91.

[44] Hittinger, *First Grace*, 96.

divine law.[45] The eternal law, the natural law, the Old Law given by God to the Israelites, and the

New Law of grace in the New Covenant are all species of divine law, since they all come from

the divine mind, but how are they distinguished?[46] In other words, after its legislative point of

origin, what is the feature of law that distinguishes a given type of law from the other species of

law?

In response to this question, Brock argues that the types of law are distinguished by their

respective *modes of promulgation.*[47] With promulgation, one reaches something specific to law

itself, since only law is promulgated and all authentic law must be promulgated to properly

operate as a rule and measure of actions. Thus, there is a two-tiered structure to the classification

of laws, with the ontological pedigree of the legislator providing the first layer of classification

and the respective modes of promulgation giving the final distinctions. In order to grasp

Aquinas's taxonomy of law, we have to keep in mind his preferred method of presenting things

according to what is first in the order of being. One must see the initial ontological distinction

between the legislative points of origin, and then one must identify a given kind of law by

attending to the manner in which the legislator promulgates this law and how this mode is

distinct from other modes of promulgation. Therefore, the distinction between the ontological

origins of law comes first, and then *law is seen as coming from the legislator* in its respective

mode of promulgation. Although Aquinas gives priority to the ontological origin of law and

views law primarily as flowing from the legislator through various channels of promulgation,

---

[45] *St*, I-II, q. 91 begins, "We next have to consider the different kinds of law." In this question, Aquinas discusses the eternal law, the natural law, the human law, the divine law (both the Old Law and the New Law), and the metaphorical law of sin.

[46] See *St*, I-II, q. 97, a. 3, where Aquinas says that the divine and natural laws proceed from the reason and will of God.

[47] Brock, "Legal Character," 65-75.

these two criteria for the classification of law (ontological origin and mode of promulgation)

open up an important avenue for philosophical reflection about how we come to know the law.

In the order of discovery, as distinct from the order of being, the "two-step" sequence of

origin-promulgation is reversed. In the vast majority of cases, citizens do not begin with

knowledge of the legislator (qua legislator) and then move to knowledge of the promulgated law;

rather, the subjects of law come to know the different species of law by attending first to the

content of the law received in its unique mode of promulgation, and they can subsequently

ascertain the ontological legislative origin of the law already announced to them. We can now

see a "two-step" process in the discovery of law: first, the law itself (the directives of reason) is

discovered by those subject to the law under the pressure of a moral situation that calls for a

response from the citizen; second, the subjects who have identified the promulgated law can then

determine the ontological origin of the law. Based on their encounter with the rules and measures

of action, they can then see the law as coming from a particular qualified source. For Aquinas,

these two stages do not necessarily involve a temporal succession, although in the discovery and

assimilation of both human law and natural law there is a process of "education" that will include

a temporal development.

The divisions of law for Aquinas are displayed on the following page. Note that the

adjective "positive" in "Divine Positive Law" refers to law that is divinely revealed and

instituted by God in distinction from the order of nature and creation.

Figure 2.1. Logical Divisions of Law (this schema is not meant to be exhaustive)
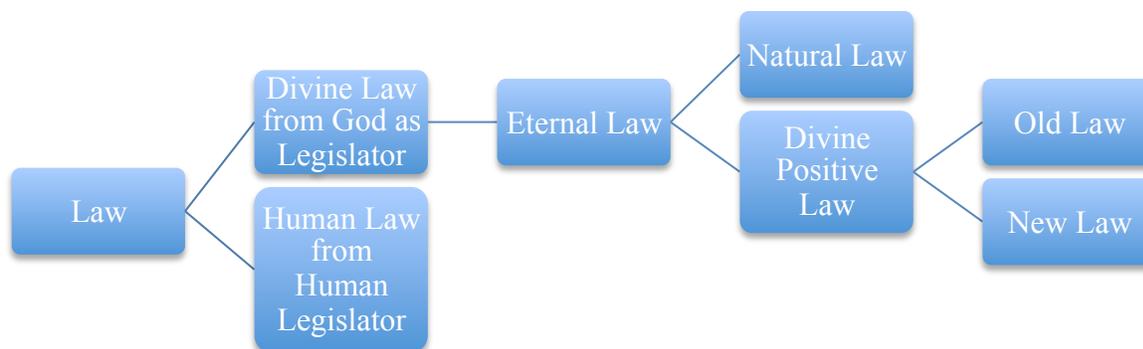
For Aquinas, the natural law is an interesting matrix in which the distinctions between the ontological source of legislation and the mode of promulgation are brought together. Aquinas says, "The rational creature is subject to divine providence in a more excellent manner, because he himself participates in providence, providing for himself and others. Hence, in him, too, there is a participation in eternal reason through which he has a natural inclination to his due act and end. And the rational creature's mode of participation in the eternal law is called natural law."[48] He says that natural law is "nothing other than the rational creature's participation in eternal law. (*lex naturalis nihil aliud est quam participatio legis aeternae in rationali creatura*.)"[49] This definition of natural law ties the human creature to the eternal law in a unique manner. As for the eternal law, Aquinas says, "Divine wisdom's conception has the character of *law* insofar as it moves all things to their appropriate ends. Accordingly, the eternal law is nothing other than the divine wisdom's conception insofar as it directs all acts and movements."[50] As Hittinger points out, Aquinas never deviates from this definition of natural law. We can therefore take Aquinas's

---

[48] *St*, I-II, q. 91, a. 2.

[49] Ibid. (trans. modified).

[50] *St*, I-II, q. 93, a. 1. (Italics original to the translation cited).

phrase "the rational creature's participation in the eternal law" as the "real" definition of natural law in contrast to a nominal definition of natural law.[51] It manifests what is first in the order of being.

Because the natural law is the human participation in the eternal law, the natural law is most properly a *divine law* since it issues forth from the divine mind as its legislative point of origin; for Aquinas, God is the legislator of the natural law. Besides the reference to God as the legislator, the natural law also designates law "as it exists in one ruled and measured by law," and in the case of the natural law the one ruled and measured is man insofar as he is rational and therefore able to be elevated into common actions by legal direction. Thus, we are led to consider how the natural law is "in" us through its promulgation. Concerning the mode of promulgation of the natural law, Brock says, "'Natural law' means law promulgated to man naturally," and therefore "natural law gets its very name from the manner in which its promulgation is accomplished."[52] We can now approach our central question: "How is natural law promulgated?" The observations we have made thus far enable us to refine this topic by asking how a divine law can be promulgated naturally. Aquinas says, "The promulgation of the law of nature consists in God's having instilled it in the minds of men in order that they might know it naturally."[53] Aquinas claims that the natural law is "written in the hearts of men."[54] Aquinas seems to be saying that God promulgates the natural law by inserting it into the human mind so that the natural light of reason naturally apprehends the law. In support of Brock's thesis that the natural

---

[51] See Hittinger, *First Grace*, 8-10.

[52] Brock, "Legal Character," 72.

[53] *St*, I-II, q. 90, a. 4, ad. 1.

[54] *St*, I-II, q. 94, a. 6. See also *St*, I-II, q. 100, a. 3, where Aquinas says that the first and general precepts are made known by being written in natural reason (*scripta in ratione naturali*). Aquinas says the natural law is both instilled in our minds and written on our hearts. These metaphors suggest that the natural law includes both intellectual directives (mind) and natural inclinations toward goods (heart).

law is distinguished by its mode of promulgation, Hittinger says that the word "natural" in

"natural law" does not characterize the law but rather how it is known. He says, "Nature is not

the law but the mode of knowing it. . . . Aquinas frequently uses the same term in order to

emphasize the mode of divine promulgation. Natural law is *lex indita*, instilled in the human

mind by God, moving the creature to its proper acts and ends."[55] Hittinger says the natural law is

called "natural according to the mode of promulgation and reception, not the pedigree of

legislation." Therefore the natural law is "the communication of moral necessities to a created

intellect"[56] in such a manner that the human person naturally apprehends these moral necessities.

In Hittinger's comments, we glimpse a preliminary answer to the question concerning the

relationship between the legislator and the promulgator of the law: Are these the same person?[57]

Aquinas presents God as both the legislator and the promulgator of the natural law. For Aquinas,

God is the legislator of the natural law, which classifies the natural law as a divine law. God also

promulgates the natural law to human agents because he creates them as endowed with the

natural light of reason so that they naturally understand fundamental "moral necessities" based

on the ends sets by their nature as rational animals. Since Aquinas's definition of natural law as

the human participation in the eternal law captures what is *first in the order of being,* as distinct

from what is first in the order of cognition or discovery, he displays the essence of the natural

law by defining it in its ontological existence. Aquinas therefore views the promulgation of

natural law primarily from the legislative side, as the communication initiated by (or from) the

divine mind, since this follows what is first in the order of being.

---

[55] Hittinger, *First Grace*, 10.

[56] Ibid., xxiii.

[57] See the end of section 1.C above.

We have seen that the natural law, the Old Law, and the New Law are all "species" of divine law for Aquinas because they all come from God as their legislative point of origin, but they are distinguished by their respective modes of promulgation. For Aquinas, the promulgation or the public proportionalinzing of the natural law takes place first and foremost in *creation*, which distinguishes the natural law from the other species of divine law. Aquinas clearly does not maintain that the Old Law and the New Law are promulgated in the act of creation. James Reilly says, "Over and above the personal revelation of Himself as providential creator, eternal ruler, and saviour, to which both the Old and the New Testament attest, God provides man with another revelation, accessible to all men, namely, creation."[58] In the next section, we will discuss the manner in which Aquinas portrays the natural law as it comes "from" the divine mind to the human mind in the act of creation. In other words, we will now investigate the manner in which the legislator of the natural law publicly proportionalizes the most fundamental directives for human conduct towards the common good.

3. The Triadic Structure of Creation

As we have seen, Aquinas defines the natural law as the rational creature's participation in the eternal law, and we have shown that he claims the natural law is promulgated naturally. However, in his description of natural law, Aquinas also stresses the role of divine providence; rational creatures have a privileged position as regards God's providence because our participation in the eternal law enables us to be provident for ourselves and for others. To understand how these elements coalesce, we must see how Aquinas conceives of the eternal law in its connection to both creation and providence. Additionally, in the next section we must

---

[58] James P. Reilly, "Saint Thomas on Law," in *The Gilson Lectures on Thomas Aquinas*, ed. James P. Reilly (Toronto: Pontifical Institute of Medieval Studies, 2008), 163.

investigate Aquinas's understanding of primary and secondary causality to provide a basis for the claim that human agents participate in the eternal law by being provident for themselves.

Aquinas says that the natural law is "nothing other than the light of the intellect implanted in us by God, by which we know what should be done and what should be avoided. God gave this light and this law to man in creation."[59] He also says that God "infuses" the law of nature in men in creation.[60] The language of giving or infusing the natural law suggests that creation is the original locus of the promulgation of the natural law. Recently, many Thomists have drawn attention to the importance of the metaphysics of creation for understanding Aquinas's theory of natural law. John Goyette says that Aquinas's natural law "presupposes that God is a creator," and that his natural law theory presupposes a "metaphysics of creation" that would be open to philosophical discovery as opposed to strictly revealed theology.[61] Hittinger says, "The efficacy of natural law depends, in the first place, on the efficacy of creation."[62] Concerning our theme of promulgation, David Oderberg disagrees with certain theorists who claim that metaphysics is merely a speculative appendage to a theory of natural law because he says the metaphysics of creation is essential to understand how the natural law is promulgated.

---

[59] *Coll. de dec. pra*., prooemium. (my translation): "Lex naturae; et haec nihil aliud est nisi lumen intellectus insitum nobis a Deo, per quod cognoscimus quid agendum et quid vitandum. Hoc lumen et hanc legem dedit Deus homini in creatione." In this text, Aquinas identifies a "fourfold law" that instructs human agents in what must be done to enjoy beatitude: the law of nature, the law of concupiscence, the law of Scripture (i.e. the Old Law of Moses), and the New Law of charity and grace, given by Christ. The "law of concupiscence" is not fully a law, but rather has the character of law only insofar as it is a punishment for sin and follows from God's law; see *St,* I-II, q. 91, a. 6. For a discussion of this work of Aquinas on the Ten Commandments, which was a sermon preached in the vernacular Napoletano language in Lent of 1273, see James Weisheipl, *Friar Thomas D'Aquino: His Life, Thought, and Works* (Garden City: Doubleday, 1974), 319-402.

[60] Ibid.

[61] See John Goyette, "Natural Law and the Metaphysics of Creation," in *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, ed. John Goyette, Mark S. Latkovic, and Richard S. Meyers (Washington, DC: The Catholic University of America Press, 2004), 74-78. See also Steven A. Long, "Natural Law or Autonomous Practical Reason: Problems for the New Natural Law Theory," ibid., 165-196; Craig Boyd, "Participation Metaphysics in Aquinas's Theory of Natural Law," *American Catholic Philosophical Quarterly* 79 (2005): 431-445.

[62] Russell Hittinger, "A Response to Commentators," in *Ethics Without God*, 143.

He says that the metaphysics of creation is essential in order to understand "the fundamental role of promulgation in the metaphysics of natural law."[63] He says, "The lawmaker promulgates the natural law by making a world with a certain order and containing natures related in certain ways, including man with his connatural capacities to respond to that order of things."[64] More generally, Helmut Koester claims that the ancient antithesis between *nomos* and *physis* can only be overcome philosophically in any theory of natural law by recourse to a divine creator and lawgiver.[65]

Although passing references to the importance of creation for Thomas's conception of natural law abound, it is difficult to find a detailed analyses of the specific aspects of Aquinas's account of creation as they bear upon his theory of natural law. An examination of Aquinas's understanding of creation will assist our investigation into the manner in which the natural law is promulgated. As we will see, this approach integrates aspects of the three foci of order that we spoke about in the first chapter: order in the divine mind, order in the human mind, and order in nature. Our aim in this section is not to provide an exhaustive discussion of Aquinas's doctrine of creation or even to give a complete "outline" of his teaching. Rather, our aim is focused on highlighting the aspects of creation that are most immediately relevant to our discussion of the promulgation of the natural law.

Aquinas distinguishes between a philosophical understanding of creation, obtainable by means of natural reason, and a Christian theological understanding, available only through God's revelation. Our concern will be with Aquinas's philosophical understanding of creation. Aquinas

---

[63] Oderberg, "Metaphysical Foundations," 73.

[64] Ibid., 74. We should note that this quotation from Oderberg integrates without explicitly acknowledging the three foci of order: order in the divine mind, order in the human mind, and order in nature.

[65] See Helmut Koester, "ΝΟΜΟΣ ΦΥΣΕΩΣ: The Concept of Natural Law in Greek Thought," in *Religions in Antiquity*, ed. Jacob Neusner (Leiden: E.J. Brill, 1968), 521-541.

says that two aspects belong to the idea (*ratio*) of creation, and both of these are available to philosophical reflection.[66] First, creation applies to the total "being" of the subject created, and therefore nothing is presupposed on the side of the subject as the matter "out of which" or "on which" the creator works. Second, for every creature, non-being is "prior" to being, but not in a temporal sense. Rather, the priority of "non-being" in the creature refers to a priority "in nature" such that a creature would not be (or would cease to be) if not for the divine causality bringing it into existence and maintaining it in existence. William Carroll summarizes Aquinas's philosophical notion of creation by showing that, for Thomas, creation refers to the complete metaphysical dependence of all things on God as first cause.[67] As we will see below, the distinction between the form and the "to be" (*esse*) of all things (or between their essence and their existence) is one way in which Aquinas held that a metaphysical analysis can lead to the existence of a first cause and hence to a "creator" upon whom all beings depend and whose essence entails his existence.

For Aquinas, God, who "throughout" creation remains utterly simple and perfect in His being, is the efficient, exemplar, and final cause of all reality "outside" of himself.[68] Rudi Te

---

[66] See Steven E. Baldner and William E. Carroll, *Aquinas on Creation* (Toronto: Pontifical Institute of Mediaeval Studies Press, 1997). A third aspect of creation refers to the temporal finitude of all created reality. This aspect refers to the fact that all created reality is created out of nothing *at the beginning of time*, thus all creaturely being had a beginning in time. Aquinas maintains that this aspect is knowable only through God's revelation and is thus strictly theological. See *In II Sent.*, d. 1, q. 1, a. 2.

[67] See William E. Carroll, "Creation, Evolution, and Thomas Aquinas," *Revue des Questions Scientifiques* 171 (2000): 319-347. Carroll says, "Aquinas saw no contradiction in the notion of an eternal created universe. He thought that it was a matter of biblical revelation that the world is not eternal. He also thought that reason alone could not conclude whether the world had a temporal beginning. But even if the universe were not to have had a temporal beginning, it still would depend upon God for its very being, its existence. The root sense of creation does not concern temporal origination; rather it affirms metaphysical dependence."

[68] See *St,* I, qq. 44-49. The secondary literature on Aquinas's doctrine of creation is vast. See Mark Johnson, "Did St. Thomas Attribute a Doctrine of Creation to Aristotle?" *The New Scholasticism* 63 (1989): 129–55; Mark Johnson, "Aquinas' Changing Evaluation of Plato on Creation," *American Catholic Philosophical Quarterly* 66 (1992): 81–88; Timothy B. Noone, "The Originality of St. Thomas's Position on the Philosophers and Creation," *The Thomist* 60 (1996): 275-300; Lawrence Dewan, "Thomas Aquinas, Creation, and Two Historians," *Laval théologique et philosophique* 50 (1994): 363-387; Lawrence Dewan, "St. Thomas and Creation: Does God Create

Velde identifies a triadic structure in Aquinas's discussion of the causality of creation, in which God is seen "as *making* the world, as introducing the relevant *distinctions* into it by which a good order is established, and as exercising providential *guidance* over the world of creatures."[69] He says that these three aspects should not be understood as a temporal succession, but rather that this triad "concerns three conceptually different aspects of the one single act of creation."[70]

For Thomas, God freely chooses to create all beings other than himself, and thus God "could have been" all that exists. Thomas Prufer says, "God alone, . . . without looking to any other as model, using no material, and not enriched either by achieving the result or by the result achieved, gives others to be."[71] To convey the radical transcendence of God and the unique nature of the divine action in creation, Aquinas says that "creation is not a change"[72] because creation "gives others to be," but a change requires some already existing entity that undergoes a mutation of some sort.

A. Creation as Efficient Causality

Clearly, creation itself is not like anything or any event we experience within the created world. Aquinas says, "Over and above the mode of becoming by which something comes to be through change or motion, there must be a mode of becoming or origin of things without any

---

'Reality'?" *Science et Esprit* 51 (1999): 5–25; John Wippel, "Aquinas on Creation and Preambles of Faith," *The Thomist* 78 (2014): 1-36.

[69] Rudi Te Velde, *Aquinas on God: The 'Divine Science' of the Summa Theologiae* (Burlington: Ashgate Publishing Company, 2006), 125. See also *St*, I, prologue to q. 44. I wish to thank Dr. Herbert Hartmann for philosophical conversations on the issue on creation and for pointing out the work of Te Velde.

[70] Ibid.

[71] Thomas Prufer, *Recapitulations*, 32.

[72] See *De pot.*, q. 3, a. 2. The quotation "creation is not a change (*creatio non est mutatio*)" is taken from this article, where Aquinas asks "Whether creation is a change."

mutation or motion through the influx of being."[73] God creates by giving being (*esse*) to things.

Aquinas says,

> Since it is necessary that the First Principle be most simple, this must of necessity be said to be not as participating in "to be" but as itself being "to be." But because subsistent "to be" can be only one, . . . then necessarily all other things under it must exist as participating in "to be." Therefore there must take place a certain common resolution in all such things according as each of them is reduced by the intellect into that which is and its "to be." Therefore, above the mode of coming to be, by which something becomes when form comes to matter, we must presuppose another origin for things according as "to be" is bestowed upon the whole universe of things by the First Being that is its own "to be."[74]

Aquinas affirms that God, who is his own *esse*, is the efficient cause of all creaturely *esse,* and therefore all creatures have their *esse* by participation.[75] For Aquinas, to participate is to receive in a limited or particular way what belongs to another in a total or universal way. To say that creatures participate in being is to say that creatures receive existence as an "act" with which they are not identical. On the other hand, God, who causes the creaturely act of being, is His own existence. Brock says that Aquinas's statements that all beings other than God "participate" in *esse* should be understood to mean that creaturely *esse* participates "as an effect participates in its cause, especially when the effect is not proportioned to the power of the cause."[76] Brock says, "In the case of *esse*, what the cause must be is clear: It must be the very first cause, the divinity."[77] This mode of participation, as an effect participating in its cause, makes it clear that

---

[73] *De substantiis separatis.,* c. 9, n. 49, taken from *Treatise on Separate Substances*, trans. Francis J. Lescoe (West Hartford: Saint Joseph College Press, 1959). See also, *St,* I, q. 45, a. 1.

[74] Ibid., ch. 9, n. 48.

[75] See the fourth way of demonstrating the existence of God at *St*, I, q. 2, a. 3.

[76] Stephen Brock, "Harmonizing Plato and Aristotle on *Esse*: Thomas Aquinas and the *De hebdomadibus*," *Nova et Vetera* 5 (2007): 482. On participation, see John Wippel, "Thomas Aquinas and Participation," in *Studies in Medieval Philosophy*, ed. John Wippel (Washington, DC: The Catholic University of America Press, 1987), 117-158; Cornelio Fabro, "The Intensive Hermeneutics of Thomistic Philosophy: The Notion of Participation," *The Review of Metaphysics* 27 (1974): 229-487.

[77] Ibid.

"the nature of what is participated remains separate from the participant."[78] Thus, Aquinas

presents creaturely *esse* in such a way that it "participates in a cause, to whose power it is not

proportioned, and whose essence does not enter into composition with it or with anything else."[79]

John Wippel says, "In every finite substantial entity there is a participated likeness or similitude

of the divine *esse,* that is, an intrinsic act of being (*esse*) which is efficiently caused in it by

God."[80] Aquinas's definition of the natural law as the rational creature's participation in the

eternal law must be understood within this metaphysical framework; in acting as the efficient

cause of creaturely, rational nature, God gives human agents a share in his intelligent ordering of

all created reality.

Within this framework, Aquinas often uses the analogy of God acting as a craftsman in

creation, with all of created reality as his handiwork. He says, "God, who is the first principle of

all things, may be compared to created things as the artisan to things artificed (*res creatas ut

artifex ad artificiata*)."[81] This analogy stresses the role of God as *the efficient cause* of being, just

as the human artisan is the efficient cause of his product. However, with such a stress on God as

the efficient cause of nature, on God as the wise craftsman producing entities, have we not de-

natured nature?

St. Augustine shows an awareness of the problem of speaking about God as a

"craftsman" in creation. He says, "How did you (God) make heaven and earth? What was your

engine for doing this mighty work? *You did not work as does the human artist*, who transforms

---

[78] Ibid., 484.

[79] Ibid., 492.

[80] John Wippel, *The Metaphysical Thought of Thomas Aquinas: From Finite Being to Uncreated Being* (Washington, DC: The Catholic University of America Press, 2000), 131.

[81] *St*, I, q. 27, a. 1, ad. 3. (trans. modified). The analogy between God and all of created being on the one hand, and human artisans and their artwork on the other, is a common theme in Aquinas. See also, *St*, I, q. 17, a. 1.

one body into another according to the purposes of a soul able somehow to imprint forms that it perceives by its inner eye."[82] Augustine enables us to see that the understanding of God as efficient cause is an important aspect of a philosophical understanding of creation, but it must be handled delicately. In order to grasp Aquinas's use of efficient causality in creation, we must adjust our language and thinking to explore the meaning of statements such as "God creates the world *ex nihilo*," and "God acts as a wise craftsmen in creation." Sokolowski says,

> The special sense of sameness in God "before" and "after" creation, and the special sense of otherness between God and the world, impose qualifications on whatever we are to say about God and the world, about creation out of nothing, about God's way of being present and interior to things and yet beyond them. All the names and syntax we use for such theological discourse have to be adapted from their normal use in the element of the identities and differences within the world.[83]

Aquinas himself attempts to convey the strangeness of speaking of God as the efficient cause of the *esse* of created realities. He says, "It is clear that nature is nothing but the *ratio* of a certain kind of art (*ratio cuiusdam artis*), i.e., the divine art, impressed upon things, by which these things are moved to a determinate end. It is as if the shipbuilder were able to give to timbers that by which they would move themselves to take the form of a ship."[84] Aquinas presents the natures that we encounter in our everyday experience as natures in a secondary sense; the prime instance of nature is God who chooses to create all secondary natures, which are now seen as the *ratio* of a divine art. However, Aquinas's example of the self-organizing ship illuminates a central tenet of the Christian philosophical understanding of creation. Rather than "de-naturing" nature, Aquinas's doctrine of creation leaves the integrity of natural necessities and excellences in place.

At this point, it is helpful to compare Aquinas's thought with a passage from Aristotle. In

---

[82] St. Augustine, *Confessions*, trans. John K. Ryan (New York: Doubleday, 1960), Book 11, Chapter 5, paragraph 7, p. 246.

[83] Robert Sokolowski, *The God of Faith and Reason: Foundations of Christian Theology* (Washington, DC: The Catholic University of America Press, 1995), 33.

[84] *In Phys.*, liber II, lect. 14, n. 268. (trans. modified).

Book II of the *De Anima*, Aristotle discusses, among other things, the nutritive soul and its functions, and he considers the reproductive function of the nutritive soul in relation to the "final cause" of all of nature. He says, "Its functions are reproduction and the use of food. . . . for it is the most natural work in living things . . . to produce another thing like themselves . . . in order that they may partake of the everlasting and the divine is so far as they can, for all desire that, and for the sake of that they do whatever they do in accordance with nature."[85] Commenting on this passage, Eugene Gendlin says, "Notice that it is the living things themselves which do all they do for the sake of this [partaking of the divine]. They **arrange themselves** in relation to eternity; they are not arranged by it."[86] Gendlin highlights two aspects of nature in Aristotle: (1) natural things *arrange themselves* and their functions through an interior principle of unity, activity, and intelligibility, and (2) things arrange themselves in view of imitating the divine as their "final cause," which moves them by desire; they are not arranged by the divine. In contrast, Aquinas unites both of these aspects in his understanding of creation. For Thomas, God creates by freely bestowing upon natural things the ability to arrange themselves in view of imitating the divine. To use Gendlin's language, God "arranges" natural things by enabling them to arrange themselves in view of partaking of the divine in the manner befitting their nature, just as if a pile of wood could arrange itself into the structure of a ship. God does not do the arranging as a human craftsman might build something and endow it with an end as it is finished. For Aquinas, natures are autonomous because they are created by God and have their ends in themselves, and this insight is crucial for understanding how he can maintain that a divine law (i.e. the natural

---

[85] Aristotle, *De Anima*, Book II, c. 4, 415a22-415b2. I quote from Eugene Gendlin's translation and commentary. See Eugene T. Gendlin, *Line by Line Commentary on Aristotle's De Anima, Books I & II* (Spring Valley: The Focusing Institute, 2012), p. 3 of commentary on Book II, c. 4 of Aristotle's text.

[86] Gendlin, *Line by Line Commentary*, p. 4 of commentary on Book II, c. 4 of Aristotle's text. The emphasis at "**arrange themselves**" reproduces the original form of Gendlin's commentary. The brackets are added.

law) can be promulgated naturally. The natural law, which governs our rational nature and is efficiently caused by God in creation, is one way in which God enables human beings to reflectively and responsibly arrange themselves in view of the divine.

B. Creation and Formal Causality

We will now develop these reflections on God's creative act as enabling things to "arrange themselves" by looking to Aquinas's understanding of the relation between creation and creaturely formal causality. The notion of formal causality relates to the second aspect of creation identified by Te Velde: God's introduction of distinctions among creatures.[87] Aquinas says that created entities have being both from God and "through" their substantial forms. Aquinas says that God is not the formal cause of things; he does not enter into the essence of things.[88] He says, "God causes natural existence in us by creation without the mediation of any agent cause, but nevertheless with the mediation of a formal cause (*nulla causa agente mediante, sed tamen mediante aliqua causa formali*); for natural form is the principle of natural existence."[89] God immediately gives being to things by bestowing *esse* in and through substantial forms.

Aquinas says, "From (God's) intellect *forms flow forth* into all creatures; hence, just as knowledge in us is an impression of things in our souls, so conversely the forms of things are

---

[87] Te Velde, *Aquinas on God*, 125-126. Lawrence Dewan says, "There is a very close connection between the doctrine of creation and that of distinction. By 'distinction' here, I mean that created things exist in numerical, but especially in formal, multiplicity. Thomas devotes much attention to the point that the fundamental variety of things must be from the creator, the cause of being as being." Dewan, "St. Thomas and Creation: Does God Create 'Reality'?" *Science et Esprit* 51 (1999): 16.

[88] See *De pot.,* q. 3, a. 7, taken from *On Creation: Quaestiones Disputatae de Potentia Dei, Q. 3*, trans. S.C. Selner-Wright (Washington, DC: The Catholic University of America Press, 2011). Aquinas says, "And when we add that God is his power and that he is within each thing, not as a part of its essence, but as holding the thing in being (*esse*), it follows that he operates immediately in every operation, without excluding the operation of the will and nature."

[89] *De. ver.*, q. 27, a. 1, ad. 3, taken from *Truth*, trans. R. Schmidt (Chicago: Henry Regnery Press, 1954). (trans. modified).

nothing other than a certain impression of the divine knowledge in things (*ab eius intellectu effluunt formae in omnes creaturas; unde sicut scientia in nobis est sigillatio rerum in animabus nostris, ita e converso formae rerum non sunt nisi quaedam sigillatio divinae scientiae in rebus*)."[90] The language of "impression" of the form in a created thing recalls Aquinas's comments about nature as the divine *ratio* "impressed" in things, such as in Thomas's use of the analogy with the self-organizing ship. For Aquinas, natural forms flow forth from God and give being (*forma dat esse*) by their very nature, but these created forms are not their own being. Aquinas says that a form "has" its *esse*; it gives *esse* to its matter just by the kind of thing that it is.[91] Thomas says, "Being accompanies form through itself (*Esse . . . per se consequitur ad formam*); for by through itself we mean according as that thing is itself (*secundum quod ipsum*); and each and every thing has being according as it has form."[92] Again, he says, "Being belongs to form through [form] itself, which is act (*Esse autem per se convenit formae, quae est actus*)."[93] However, the form is not its own *esse*, it participates in *esse* through God's creative action just as an effect participates in its cause. The substantial form gives being under the influence of an external agent, God.[94] We should note that we are focusing on substantial forms that give *esse simpliciter* to their correlative matter, which is a potency activated by the

---

[90] *De ver.,* q. 2, a. 1, ad 6. (trans. modified).

[91] Aquinas maintains that form "gives" *esse* simply by its nature; that's just what a form does. For the Platonic background to this idea, see Plato, *Phaedo*, 95a-107b.

[92] *SCG,* II, c. 55, trans. J. Anderson (Garden City: Doubleday, 1956). (trans. modified).

[93] *St*, I, q. 75, a. 6. (trans. modified). Stephen Brock recently suggested that Aquinas may have stressed the role of form giving *esse* to entities more than Aristotle. Brock made this point in "La forma tra la potenza e l'atto in Tommaso d'Aquino," Lecture, Potenza e Atto: Declinazione antiche e moderne di una celebre dottrina, Pontifical Lateran University, Rome, Italy, November 18, 2015.

[94] For the Thomistic understanding of form and *esse,* see Lawrence Dewan, *Form and Being: Studies in Thomistic Metaphysics* (Washington, DC: The Catholic University of America Press, 2006), 131-204.

substantial form.[95] However, for Aquinas even purely intellectual substances, the angels, are composed of form and being because their *esse* is participated *esse*.[96] Even for separate forms, their essence does not entail their existence.

Aquinas says that God, who is *ipsum esse subsistens*, is the one being whose essence does entail its existence, while there is a real, i.e. not merely logical, distinction between the essence and the "to be" (*esse*) of every created reality.[97] While all creatures "have" their form and hence their being as flowing from God's creative causality, God is "form by his very own essence (*per essentiam suam forma*)," and he is "form primarily and per se (*primo et per se forma*)."[98] God properly effects created being, and God remains present to his created being as an agent is present to that upon which he works. Aquinas says, "God causes this effect [*esse creatum*] in things not only when they first begin to be, but as long as they are preserved in being; as light is caused in the air by the sun as long as the air remains illuminated. Therefore as long as a thing has being, God must be present to it, according to the mode of being that it has (*secundum modum quo esse habet*)."[99] Thus, all of created reality is (1) given its substantial *esse* through its form, which is created by God, and (2) upheld in being by God's creative act "in and

---

[95] On the difference between substantial forms that give *esse simpliciter* to an entity and accidental forms that give *esse tale*, see *St,* I, q. 5, a. 1, ad. 1; I, q. 76, a. 4; I, q. 77, a. 6.

[96] For the principle *forma dat esse*, see *St*, I, q. 75, a. 5, ad. 4; I, q. 76, a. 7; I, q. 14, a. 2, ad. 1; *Quaes. disp. de an.*, q. *unic.*, a.10. See Lawrence Dewan, *St. Thomas and Form as Something Divine in Things* (Milwaukee: Marquette University Press, 2006). See also Stephen Brock, "How Many Acts of Being Can a Substance Have? An Aristotelian Approach to Aquinas's Real Distinction," *International Philosophical Quarterly* 54 (2014): 317-331.

[97] See *De ente*, c. 4; *St*, I, q. 3, a. 7, ad. 1; *SCG*, II, c. 52.

[98] *St*, I, q. 3, a. 2. (trans. modified).

[99] *St*, I, q. 8, a. 1. (trans. modified). It should be noted that Aquinas also maintains that God creates the essence of the creature, even though a creaturely essence has its exemplar cause in the divine intellect. Creaturely essences are "imitations" of the divine ideas, but they remain creaturely, and thus created, essences. At *De pot*, q. 3, a. 5, ad. 2, Aquinas says, "From the very fact that being (*esse*) is attributed to a quiddity, not only being (*esse*) but the quiddity itself is said to be created, since before it has being (*esse*) it is nothing, except perhaps in the intellect of the creator, where it is not a creature but the creating essence."

through" its form.

These two points show that creation for Aquinas is not a one-time event; God does not create and then leave his creation completely to its own devices. To repeat the analogy used by Aquinas, God continuously causes *esse* to shine existentially through his creation, as the sun continues to shine through the air that it illuminates. William Carroll says, "Creation is not exclusively some distant event; it is the continual, complete causing of the existence of whatever is. In a fundamental sense, creation is not really an event at all."[100] Creation is the continual making present of all entities other than God, and in making entities present with and through their own substantial forms, God "publicizes" his intelligent plan for creatures. Prufer says, "Publicity, choosing to manifest to others and manifesting choices determining others, becomes in the extreme both the gratuitous establishment of the plurality of being (the choice that-others-be) and the gratuitous revelation of the gratuitousness of this establishment."[101] Prufer shows that hiddenness (or solitude) and publicity are two alternatives that can only arise within the context provided by God's freely chosen creative act. Thus, creation, or God's "choice that-others-be," is the extreme case of "making public" by bestowing being and intelligibility on things in and through their forms. These insights show that the promulgation of the natural law, which occurs in creation for Aquinas, is also an ongoing activity that is closely connected to the human form, the intellectual soul, in its encounter with the substantial forms in nature.

C. Creation and Final Causality: Form, Nature, and Inclination

To further explore the connection between creation and the natural law, we must see how Aquinas develops his notion of substantial form in connection with the good or fitting end of each entity. Aquinas says that the substantial form not only gives being to entities, but the form

---

[100] William Carroll, "Creation and Science in the Middle Ages," *New Blackfriars* 88 (2007): 686.

[101] Prufer, *Recapitulations*, 33.

of an entity also gives that entity its characteristic inclinations toward its fitting actions and ends. A substantial form not only energizes its correlative matter and unifies the entity as one reality of a specific kind, it also expresses itself or flows forth into the unique inclinations to the proper end(s) of that entity.[102] Aquinas says, "Every entity is naturally inclined toward operation that is fitting for it according to its form (*operationem sibi convenientem secundum suam formam*)."[103] For Thomas, it is precisely in seeking their own natural ends as a result of their substantial forms that created entities seek God as the final cause of creation. Aquinas says, "It does not belong to the First Agent, Who is agent only, to act for the acquisition of some end; He intends only to communicate His perfection, which is His goodness; while every creature intends to *acquire its own perfection*, which is the likeness of the divine perfection and goodness. Therefore the divine goodness is the end of all things."[104] Aquinas displays God as the end (*finis*) or the final cause (*causa finalis*) of all created entities, but God, who is *ipsum esse subsistens*, does not act so as to achieve an end he does not possess.

Within this setting of final causality and creation, we now need to show how Aquinas links the form-inclination of an entity to his understanding of nature. By showing the form as the energizing source of the inclinations characteristic of an entity, Aquinas intimately links the substantial form with the *nature* of an entity. Commenting on Aristotle, Aquinas says that no natural substance has a nature except insofar as it has a substantial form. He says, "Primarily and properly what is called nature is the substance, that is the form of those things which have within themselves as such the source of their motion (*quod primo et proprie natura dicitur substantia, idest forma rerum habentium in se principium motus inquantum huiusmodi*). For matter is called

---

[102] See *St,* I, q. 80, a. 1. Aquinas says, "Some inclination follows every form."

[103] *St*, I-II, q. 94, a. 3. (trans. modified).

[104] *St*, I, q. 44, a. 4. Emphasis added.

nature because it is receptive of form; and generations (*generationes*) get the name of nature because they are motions proceeding from a form and also toward forms (*et iterum ad formas*)."[105] We should not construe this point in a Cartesian manner; Aquinas says that in natural substances composed of both matter and form, the matter enters into the essence of the thing; the entity is one unified being, and the matter and form are the potency and activity of one unified entity. The matter is the actualized potency, the material cause,[106] and the unity between the matter and form is immediate.[107] However, Aquinas follows Aristotle in saying the form is "more a being" than the matter,[108] and Aquinas concludes that the form is also "more the nature" than the matter.[109]

For Aquinas, the *form* energizes an entity and in so doing acts as a springboard to the operations and perfections characteristic of each entity. Aquinas also understands the *nature* of a thing in a similar way. He follows Aristotle's definition of nature as "a principle or cause of being moved and of being at rest in that to which it belongs primarily, in virtue of itself and not accidentally."[110] In the *De Ente et Essentia*. Aquinas says, "The philosopher too says in *Metaphysics* V that every substance is a nature. But the word nature taken in this way appears to signify the essence of an entity according as it has an ordering to the entity's proper operation,

---

[105] *In Meta.*, liber V, lect. 5, n. 826, taken from *Commentary on Aristotle's Metaphysics*, trans J. P. Rowan (Notre Dame: Dumb Ox Books, 1995). (trans. modified).

[106] See *St*, I, q. 75, a. 4; *In Meta.,* liber VII, lect. 9, n. 1467-1469. See also Aristotle, *Physics*, II.2, 193b31-194a15; *Metaphysics*, VI.1, 1025b28-1026a7.

[107] See *Metaphysics*, VIII.6, 1045a7-1045b23.

[108] Ibid., VII.2, 1029a5-6.

[109] See Aquinas, *In Meta.*, liber VII, lect. 11, n. 1525–27; *In Meta.*, liber V, lect. 5, n. 826; *In Phys.*, liber II, lect. 1525-1557. Here we might recall Aristotle's insistence that form is something divine in things and that matter "desires" the form. See *Physics*, I.9, 192a17-19.

[110] Aristotle, *Physics*, II.1, 192b21-23.

since no entity is deprived of its proper operation."[111] John O'Callaghan highlights this

Thomistic understanding of nature. He says, "A root meaning of 'nature' (in St. Thomas's Latin

'*natura*') is *to be destined by birth toward a goal*."[112] With O'Callaghan's insight, we now have

an important nexus of ideas that cluster around the role of form in Aquinas's metaphysics.

Aquinas places creaturely formal causality within the setting of God's efficient causality of *esse*,

and he stresses the fact that formal causality, itself caused by God, gives rise to the characteristic

operations and movements of an entity. A substantial form energizes, unifies, and specifies an

entity; further, it imparts inclinations to the proper end of the entity. Because the form gives the

entity its inclinations to its proper end, the form is closely connected to the nature of the entity;

the entity is tilted toward certain activities by its form. Thus, by linking the formal cause and the

operations toward the perfection of the entity, we are enabled to see God as the "Creator of

natures." The key is to understand the form of an entity as closely linked with its nature, and then

to see the form-nature as inclining the entity to its fitting end, or its proper perfection. For

Aquinas, the formal cause and the final cause of an entity are inseparable. This structure is

crucial in Aquinas's natural law theory, a point that will be stressed both at the end of this

chapter and in subsequent chapters.

Sean Cunningham identifies the crucial features of Aquinas's understanding of

inclinations that we have discussed. He says,

> Three features of St. Thomas's use of *inclin*-terms, both in connection with *natur*-
> and otherwise, are especially important to grasp: (1) *inclinatio*—whether natural or
> otherwise—is always teleological; (2) *inclin*-terms, although to varying degrees, have

---

[111] *De ente*, c. 1. (my translation): "Et sic etiam philosophus dicit in V metaphysicae quod omnis substantia est natura. Tamen nomen naturae hoc modo sumptae videtur significare essentiam rei, secundum quod habet ordinem ad propriam operationem rei, cum nulla res propria operatione destituatur."

[112] John O'Callaghan, "Creation, Human Dignity, and the Virtues of Acknowledged Dependence," *Nova et Vetera* 1 (2003): 124. O'Callaghan is citing a definition of *natura* given in Roy J. Deferrari, *A Latin English Dictionary of St. Thomas Aquinas* (Boston: Daughters of St. Paul, 1986), 678. See also, C. S. Lewis, *Studies in Words* (Cambridge: Cambridge University Press, 1960), 25.

an extrinsic, "transitive" connotation of one agent inclining another agent, a sense which applies in a special way to natural inclination; and (3) *inclin*-terms nearly always refer (at least implicitly) to an inclination following upon some form and, in the case of NI (natural inclination)-terms used in the natural law context, the inclination follows upon natural form.[113]

In sum, we have highlighted three crucial features of Aquinas's understanding of formal causality. First, form gives being, unity, and intelligibility to an entity (*forma dat esse*). Second, form inclines an entity to its proper actions and perfections (*forma dat inclinatione*); that is, form acts as a springboard to the proper good or perfection of an entity. Thus, the form of an entity inclines the entity to its proper end. Third, Aquinas presents God as the giver of forms or the "Creator of natures," and in virtue of the Divine Wisdom and the Divine Will, each nature is *inclined* to the good in the mode proper to that created nature. Aquinas presents reality as infused with inclination toward the good, and every entity, through its form, has its proper inclination toward its perfection. The inseparability of form and natural end is at the heart of Aquinas's theory of natural law. The "commandments" constitutive of natural law are essentially aids in directing us to our fitting end of happiness in social and political life based upon our human mode of being.

D. Form, Nature, and Inclination in Relation to Providence

The role of form and inclination brings us to Aquinas's presentation all of created reality as governed by God's providence, which refers to the third aspect of creation identified by Te Velde.[114] Thomas links the goodness of created things with both *their being and their order to their proper end* (*quantum ad ordinem earum in finem*), and he says this created order "pre-

---

[113] Sean Cunningham, "Natural Inclination in Aquinas" (PhD diss., The Catholic University of America, 2013), 71.

[114] Te Velde, *Aquinas on God*, 123-126.

exists" in the mind of God.[115] Strictly speaking, providence is precisely this "*ratio* of order of things into their end" as this *ratio* exists in the divine mind.[116] Thus, providence encompasses two aspects of substantial forms that we have identified: (1) forms give being and (2) forms impart an order to the proper end of the entity. However, providence refers to these aspects of created entities as they "pre-exist" in the divine mind; that is, providence is God's knowledge of created realities insofar as this divine knowledge is the source of God's governance of creation.

Aquinas directly links providence, the *ratio* of order pre-existing in the divine mind, to God's *governance* of created reality. Providence therefore stretches from the eternal *ratio* of order in the Divine mind (which is providence strictly speaking) to the *temporal execution* of this order, which Thomas calls governance.[117] The mention of governance suggests a link to our theme of law, especially divine law, but in his treatment of providence/governance in the *Prima pars*, Aquinas does not mention the word law (*lex*). This absence might lead one to conclude that Aquinas sees law and providence as distinct realities. We must therefore ask how law and providence are connected for Aquinas. The diagram on the following page will assist us in grasping the formal structure of Aquinas's argument.

---

[115] See *St*, I, q. 22, a. 1.

[116] Ibid. In this article, Aquinas says that providence is the "*ratio*" of the order of things to their due end that "preexists" in the divine mind.

[117] See *St,* I, q. 22, a. 1, ad. 2. Aquinas specifies that providence as the *ratio ordinis* in the divine mind is eternal, while the execution of this order, or governance, is temporal. See also *St*, I, q. 22, a. 3.

Figure 2.2. Creation, Providence, and Eternal Law
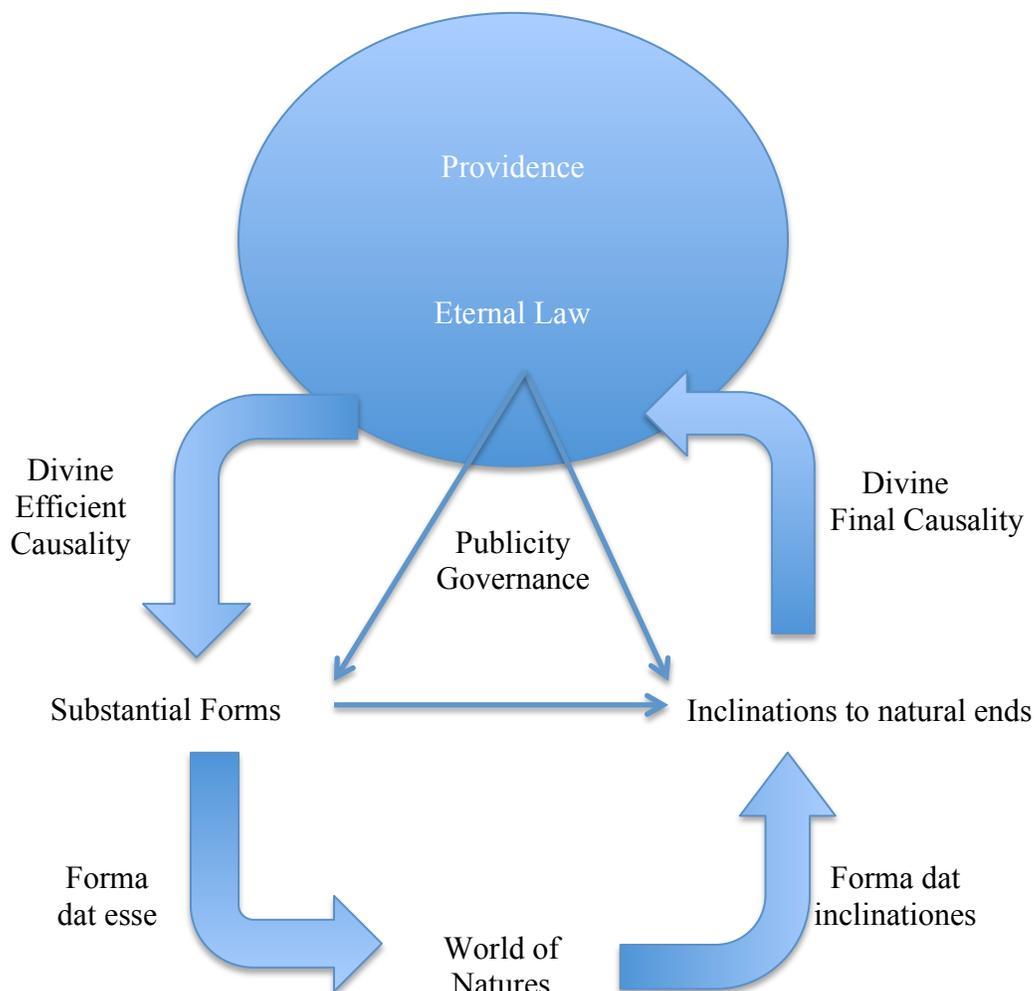
E. Providence, Governance and Eternal Law

In the treatise on law, Aquinas explicitly identifies providence with the eternal law. He

says, "The eternal law is the plan (*ratio*) of divine providence."[118] For Aquinas, God's wisdom in

the creation of a world of natures entails his governance of all things because his governance is

understood in terms of the natural inclinations that flow from substantial forms and enable

---

[118] *St,* I-II, q. 93, a. 5, ad. 3. However, in another text Aquinas says that properly speaking the eternal law is not providence but rather is the principle of providence. See *De Ver.*, q. 5, a. 1, ad. 6.

entities to seek their good, i.e. their proper end.[119] This point entails that God does not just "see"

each form or nature in isolation; he sees them altogether in their harmonious interrelation.

Aquinas says that God's wisdom must be seen as *both creative and governing*:

> It is through his Wisdom that God is the *creator* of the totality of things, and he is related to those things in the way a craftsman is related to his artifacts. . . . God is also the *governor* of all the acts and motions found in each creature. Hence, just as the divine wisdom's conception has the character of an *artistic conception* or *exemplar* because all things are created through it, so too the divine wisdom's conception has the character of *law* insofar as it moves all things to their appropriate ends. Accordingly, the eternal law is nothing other than the divine wisdom's conception insofar as it directs all acts and movements.[120]

When Aquinas comes to his discussion of law, the "order of all things toward their end" that was

said to constitute providence "pre-existing in" the divine mind is now seen from the perspective

of God as ruler of all created reality. Thus, he identifies the eternal law, which governs all

created reality by moving entities to their proper end, with the governing aspect of providence.[121]

For Aquinas, "government is the effect of providence."[122] By linking the governing aspect of

providence to the eternal law, Aquinas is able to show that all law, especially the natural law,

participates in God's providential governance of creation.[123]

Thus, Aquinas displays an intricate lattice of creation, providence, governance, and the

eternal law. What is the implication of these connections for the promulgation of natural law?

---

[119] See *St,* I, q. 16, a. 5 for Aquinas's account of divine truth as God's knowledge of the conformity of His being to His intellect. Also, Aquinas discusses the relation of the being of creatures to the divine art, which is God's ideas of these creatures. See *St*, I, q. 21, a. 2.

[120] *St*, I-II, q. 93, a. 1. Italics original.

[121] See *St,* I-II, q. 91, a. 1. For a helpful discussion of final causality in nature and its connection to providence, see Corey L. Barnes, "Natural Final Causality and Providence in Aquinas," *New Blackfriars* 95 (2014): 349-361.

[122] *De. Ver*., q. 5, a. 1, s.c.

[123] Ulrich Kühn has shown that treating the law within the framework of providence is Thomas's original development of the inherited tradition of natural law. See Ulrich Kühn, *Via caritatis: Theologie des Gesetzes bei Thomas von Aquin* (Gottingen: Vandenhoeck & Ruprecht, 1965), 89.

Since Aquinas defines the natural law as the rational creature's participation in the eternal law, he places the natural law within the context of God's providential government of all created reality. As Stephen Long says, for Aquinas, "natural law is simply one mode whereby the Divine Mind orders or governs the rational creature toward its end."[124] We can now build on Prufer's comments concerning creation as publicity. For Aquinas, *creation publicizes the providential ordering of the eternal law*. By giving *esse* to entities through their forms with their inclinations to their fitting ends, God in his act of creation makes present and makes intelligible to rational creatures the order that "pre-exists" in the divine mind by "publicizing" his intelligent ordering of all reality. Aquinas's identification of the eternal law with providence means that the eternal law is first publicized, or promulgated, through God's creation of creatures with inclinations to their proper ends.

On this point of creation as publicizing God's providence, we see a stark contrast between Aquinas and modernity. Descartes rejected the notion of final causality at least in part because he claimed that he was not so presumptuous as to think he could understand the mind of God. Descartes says,

> Since I know that my nature is very weak and limited, whereas the nature of God is immense, incomprehensible, and infinite, this is sufficient for me also to know that he can make innumerable things whose causes escape me. For this reason alone the entire class of causes which people customarily derive from a thing's "end," I judge to be utterly useless in physics. It is not without rashness that I think myself capable of inquiring into the ends of God.[125]

Although Aquinas certainly recognizes the infinite power of God, he says that we should not base philosophical positions on what God "could possibly do." Aquinas says, "In the constitution

---

[124] Steven A. Long, "Providence, Freedom, and Natural Law," *Nova et Vetera* 4 (2006): 601.

[125] René Descartes, *Discourse on Method and Meditations on First Philosophy*, trans. Donald A. Cress (Indianapolis: Hackett Publishing Company: 1998), Meditation IV, 55. The quotation comes from page 82 of the Cress translation.

of natural things (*in constitutione rerum naturalium*), we do not consider what God could do (*facere possit*), but what is fitting for the nature of things (*naturae rerum conveniat*)."[126] We must begin with the nature of the things that have been created and that we encounter and what is fitting for the ends of these things. To reject the "ends" of things based on the "infinite" possibilities of the Divine omnipotence, as Descartes does, is excessive to say the least, and it inverts the proper order of human understanding. Philosophically, we must attend to the natures of things as they present themselves to us in experience, and through subsequent reflection we can show how the natural ends of things are expressions of God's providential governance of creation. Although Aquinas frequently structures his thought according to what is first in the order of being, he also gives indications about the order of discovery, which is the proper order of philosophical reflection. Concerning the link between natural ends and God's providence, he says, "Things which do not know the end do not tend toward the end unless they are directed by one who does know [the end], as the arrow is directed by an archer. Hence if nature acts for an end, it is necessary that it be ordered by someone who is intelligent. This is the work of providence."[127] For Thomas, God governs things *suaviter* (sweetly), which means he governs entities in accordance with their nature.[128] Thus, we do not start from God's mind and reason to the ends of things, as Descartes suggests. Rather, we understand the nature of a thing by seeing it function at its best in harmony with the natures around it, and in doing so we grasp something of God's providence at work in his governance. Things are ordered to ends because God so orders them, but we discover God's ordering because the natural ends of things are manifest to us in

---

[126] *St*, I, q. 76, a. 5, ad. 1. (trans. modified). See also *St*, I, q. 7, a. 2, ad. 1.

[127] *In Phys.*, liber II, lect. 12, n. 250. See also the "fifth way" of showing God's existence at *St*, I, q. 2, a. 3.

[128] For Aquinas's use of the word *suaviter* to describe God's governance of created entities, see *SCG* III, c. 97 and *St,* I, q. 22, a.2; I, q.103, a.8; I–II, q.110, a.2; II–II, q.23, a.2; and II-II, q.161, a.1.

experience. The distinction between the order of being and the order of discovery helps us to avoid falling into the Cartesian trap of denying the final causes of natural entities.

We can now see more clearly that *creation serves as the "initial" promulgation of the natural law* precisely by publicizing providence and the eternal law. We must immediately add that creation can only be the promulgation of natural law once human agents are constituted in being, since the natural law is the human participation in the eternal law. Creation is therefore the public proportionalizing of the natural law to the human agent because by creating God gives entities being (*esse*) and inclinations to their ends, and he enables the human agent to participate in the knowledge of this order and to act knowingly and responsibly in accordance with it; this being and inclination is manifested to human beings through God's creative choice "that others be."

In summary, Aquinas gives a theological and ontological definition of the natural law.[129] His discussion of creation and providence shows that *God promulgates the natural law in creation by giving entities being (esse) and inclinations toward their proper ends and by bestowing the natural light of reason on human beings through which they can understand this created order as they actualize their own natural end of happiness.* The natural law is promulgated "naturally" by God's creation of a world of natures. For Aquinas, God is the author of the natural law precisely because he is the "author of nature."[130] However, embedded in this discussion of creation and governance is the distinction between primary and secondary causality. Further, because law is a transitive action, it must be seen both from the side of the

---

[129] By "theological," I do not mean *sacra doctrina* or revealed theology. Rather, I mean that his definition of natural law stresses God as legislator and promulgator; it is "theo-centric." It is theological in the sense of being a "top down" form of argument, again according to what is first in being. One might also see his discussion of creation and natural law along the lines suggested by Prufer, who says, "Creation (*ex nihilo* and *ex liberalitate*) seems in fact to have become known only through *ratio naturalis gratiā sanata." Recapitulations*, 33.

[130] Aquinas describes God as the "*auctor naturae*" at *St*, I, q. 22, a. 2, ad. 3. See also *St,* I, q. 92, a. 1, ad. 1 and *SCG*, I, c. 7.

legislator and from the side of the recipient of the law. To understand how the human agent

functions in the promulgation of the natural law, we will briefly explain Aquinas's distinction

between primary and secondary causality.

4. Primary and Secondary Causality

Aquinas says that the governing aspect of God's providence, with its temporal unfolding,

involves "certain intermediaries of God's providence,"[131] and that these mediators operate

through secondary causality. Thomas says that God "governs things inferior by superior, not on

account of any defect in His power, but by reason of the abundance of His goodness; so that the

dignity of causality is imparted even to creatures."[132] Thus, the distinction between primary and

secondary causality provides a foundation for Aquinas's conception of natural law as an aspect

of God's providence; as secondary causes, human agents can *be measured* by God's governance

and also *measure* their personal, social, and political life in accordance with this divine law. We

will now investigate Aquinas's understanding of primary and secondary causality with a view

toward understanding how the natural law, which is an expression of God's governing

providence, is promulgated through the operation of secondary agents.

As William Carroll says, for Aquinas, "God is the complete cause of the whole reality of

whatever is and yet in the created world there is a rich array of real secondary causes."[133] In fact,

---

[131] *St*, I, q. 22, a. 3.

[132] Ibid.

[133] William E. Carroll, "Divine Agency, Contemporary Physics, and the Autonomy of Nature," *The Heythrop Journal* 49 (2008): 586. To illustrate this point, Aquinas distinguishes between creating and generating. Only God creates, he is the "*causa essendi*" of things, but natural agents are also real causes by generating things; they are not creators or the "*causa essendi*," but they are the cause of the generation or coming-to-be ("*causa fiendi*") of things. For Aquinas, a natural agent generates a new composite substance, not the form itself that gives being to the substance; the natural agent is the cause of this form's being educed from this matter. At *SCG*, III, c. 69, Aquinas says, "Therefore, we do not take away their proper actions from created things, though we attribute all the

it is precisely God's continual creative act that enables the existence of real secondary causes.

Aquinas says that causes in the natural world have their own autonomy in virtue of God's

omnipotence, and thus divine causality and creaturely causality are harmonized with each other.

Aquinas says,

> Some have understood God to work in every agent in such a way that no created power has any effect in things, but that God alone is the immediate (*immediate*) cause of everything brought about (*operaretur*); for example, that it is not fire that gives heat, but God in the fire, and similarly in all other cases (*et similiter de omnibus aliis*). But this is impossible. First, because the order of cause and effect would be taken away from created things, and this would imply lack of power in the creator: for it is due to the power of the agent (*agentis*) that it bestows active power on its effect. Second, the operative powers that are found in things would be attributed to them in vain, if they never acted through those powers (*Secundo, quia virtutes operativae quae in rebus inveniuntur, frustra essent rebus attributae, si per eas nihil operarentur*). Indeed, all created things would seem, in a way, to be in vain (*esse frustra*), if they were stripped (*destituerentur*) of their proper operations, since each thing exists for the sake of its operation (*omnis res sit propter suam operationem*). For the less perfect is always for the sake of the more perfect: and consequently as the matter is for the sake of the form, so the form, which is first act (*actus primus)*, is for the sake of its operation, which is second act (*actus secundus*); and thus operation is the end of the created thing (*rei creatae*). We must therefore understand that God works in things in such a manner that entities have their proper operation.[134]

Again, we see Aquinas's insistence that the form, which is now identified as "first act," is geared

toward the operation or "second act." Through the structure of form and operation, God gives

entities *the ability to be agents* in the world. God ordains not only the effect to be brought about,

but also the manner in which it is to be brought about. As is clear from observing the natural

world, God ordains certain effects to be brought about by secondary causes.

Aquinas says that precisely because God causes the *esse* of entities, it belongs to his

goodness to endow creatures not only with being but also with the ability to be true causes.[135]

---

effects of created things to God, as an agent working in all things." For the relationship between God's creative causality and natural generation, see Gregory T. Doolan, "The Causality of the Divine Ideas in Relation to Natural Agents in Thomas Aquinas," *International Philosophical Quarterly* 44 (2004): 393-409. See also John F. Wippel, "Thomas Aquinas on Creatures as Causes of *Esse*," *International Philosophical Quarterly* 40 (2000): 197-213.

[134] *St,* I, q. 105, a. 5. (trans. modified).

Carroll says, "God causes creatures to exist in such as way that they are the real causes of their own operations. For Thomas, God is at work in every operation of nature, but the autonomy of nature is not an indication of some reduction in God's power or activity; rather, it is an indication of His goodness."[136] For Aquinas, true causality exists in nature as ordained by God. The crucial point is that God's causality does not interfere with or detract from causes in nature; rather, divine causality undergirds and supports secondary causes. Divine causality guarantees the proper autonomy of the secondary causes found in nature because it is their ultimate foundation, and therefore defending the autonomy of creaturely causes does not limit or challenge divine omnipotence, but reveals and confirms it. Aquinas says, "Things created by Him [God] obtain perfection from Him. So, to detract from the perfection of creatures [by denying their ability to be causes] is to detract from the perfection of divine power."[137] Respecting the causality (i.e. secondary causality) observed in our natural interaction with entities in the world leads to and reinforces the metaphysical implications of Aquinas' notion of creation. Simon Tugwell says, "The fact that things exist and act in their own right is the most telling indication that God is existing and acting in them."[138]

For Aquinas, God is not a cause competing with entities in the world. The underlying reason for the distinction and harmony between divine causality and secondary causality is the distinction between divine being and the being of creatures. Sokolowski captures this distinction and the unique transcendence of God that it implies with his description of the "Christian

---

[135] See *SCG*, III, c. 70.

[136] Carroll, "Divine Agency," 591.

[137] *SCG*, III, c. 69, trans. Vernon Bourke (Garden City: Doubleday, 1956).

[138] Simon Tugwell, *Albert and Aquinas: Selected Writings* (New York: The Paulist Press, 1988), 213.

distinction."[139] According to the classical dictum that action must follow upon being, the divine

action in creation (including the supporting and continual upholding of the being of creatures) is

distinct from creaturely action in secondary causality because God is being itself (*ipsum esse*

subsistens) and the cause of the participated being of all creatures. God could have been and

indeed "was" all that exists, without diminishing his goodness or greatness.[140] Therefore, the

world is defined in its relation to and dependence upon God, but God is not defined by his

relation to the world.[141] Harm J.M.J. Goris says, "Aquinas distinguishes the being of the Creator

from the being of the creature not in terms of necessary being versus contingent being but more

radically in terms of being versus non-being, while God causes the either necessary or contingent

being of the creature. Likewise divine causation differs from creaturely causation as being differs

from non-being. Without God's causation there is no creaturely causation at all."[142] There can be

no fundamental conflict between maintaining divine causality and the relative autonomy of

secondary causes because they are operating at different "levels" of being.

Since divine causality and creaturely causality operate at fundamentally different but not

opposed levels, the same effect can be entirely attributed to God, the transcendent cause of all

being, and entirely to creatures, the proximate causes open to scientific and philosophical

interrogation. Aquinas says, "The same effect is not attributed to a natural cause and to divine

power in such a way that it is partly done by God, and partly by the natural agent; rather, it is

---

[139] For the development of the Christian distinction, see Sokolowski, *The God of Faith and Reason*, 1-52.

[140] See *De malo*, q. 5, a. 1, ad. 4. Aquinas says, "Created goods added to the uncreated good do not make good or happiness greater." Later in the same reply, he explains, "Since God is the very essence of goodness . . . and everything else is good by participation, no added good makes God a greater good." This translation is from Aquinas, *On Evil*, trans. Richard Regain (New York: Oxford University Press, 2003).

[141] For Aquinas's claim that God is not related by a real relation to the world, see *St*, I, q. 13, a. 7; q. 28, a. 1, ad. 3; *De Ver.,* q. 4, a. 5; q. 3, a. 3.

[142] Harm J.M.J. Goris, *Free Creatures of an Eternal God: Thomas Aquinas on God's Infallible Foreknowledge and Irresistible Will* (Nijmegan: Stichting Thomasfonds, 1996), 299.

wholly done by both, according to a different way, just as the same effect is wholly attributed to the instrument and also wholly to the principal agent."[143] God and creatures are not competing causes, nor are they partial causes with each contributing some percentage of causality to an effect. Rather, primary and secondary causes operate in unison to bring about the desired effect, and their unified operation is captured by the phrase "concurrent causality," which emphasizes the idea that the primary cause continues "to be at work" in and through the causal actions proper to the secondary agent. Thus, the differing metaphysical levels of essential being and dependent being lead to the differing levels of primary causality and secondary causality in such a way that created affects come completely from God and completely from creatures.

Aquinas's thoughts about primary and secondary causality are crucial for our theme of promulgation. Without the distinction and harmony of primary and secondary causality, we would be forced to decide between two extremes: (1) The first extreme would be a Kantian subject who gives himself the law as separate from God, such that the natural law would no longer be a divine law. In this situation, it would be difficult to maintain the universality and coercive power of the natural law. (2) The second extreme would express a totally passive conception of the human person as merely receiving an influx of moral imperatives from a divine source. On this view, the role of the human subject in discovering and implementing the natural law would be lost or at least denigrated. With the distinction and harmony between primary and secondary causes, Aquinas holds a middle ground between these extremes. We will show that the natural law is promulgated by God and by human agents, but in different ways.

A. Secondary Causality and the "Metaphor" of Light

We have seen creation as the "first step" in God's promulgation of the natural law, and we have explored how the notion of secondary causality is embedded within God's creative act.

---

[143] *SCG*, III, c. 70.

We have also discussed the idea that the dative of the promulgation of the natural law is the human agent, so promulgation is only "completed" with the existence and rational functioning of mankind to receive the law promulgated in God's creative act.

Concerning natural law, Aquinas uses the metaphor of light to develop the idea that human agents operate as secondary causes in the reception and promulgation of natural law. Illustrating the rational creature's participation in the eternal law, Aquinas says, "'The light of your countenance, Lord, is imprinted on us' – as if to say, the light of natural reason, by which we discern what is good and what is evil. This has to do with natural law, which is nothing other than the imprint of God's light within us."[144] Thus, natural human reason is seen as a participated light. Aquinas says, "The light of natural reason itself is a participation of the divine light,"[145] and this participated light is impressed on us from God's own light in creation and governed through providence and the eternal law.[146]

At this point, it is helpful to ask, "What does Aquinas mean by calling natural reason a 'light'?" Is this usage "merely" metaphorical? Aquinas distinguishes between two ways in which a name can be spoken about:

> Any word may be used in two ways, one way, according to its original application; another way, according to the use of the name (*uno modo, secundum primam eius impositionem; alio modo, secundum usum nominis*). This is clearly shown in the name (*nomine*) "sight," originally applied to the act of the sense of sight (*sensus visus*); but because of the dignity and certitude of this sense (*propter dignitatem et certitudinem huius sensus*), the name was extended according to the usage of speakers (*usum loquentium*) to all knowledge obtained through the other senses. . . . Further, sight is applied to knowledge obtained through the intellect, as in those words: "Blessed are the clean of heart, for they shall see God." (Mt. 5:8). And thus it is with the name (*nomine*)

---

[144] *St,* I-II, q. 91, a. 2.

[145] *St*, I, q. 12, a. 11, ad. 3.

[146] On this point, see Matthew Cuddeback, "Thomas Aquinas on Divine Illumination and the Authority of the First Truth," *Nova et Vetera* 7 (2009): 579-602. See also John Rziha, *Perfecting Human Actions: St. Thomas Aquinas on Human Participation in Eternal Law* (Washington, DC: The Catholic University of America Press, 2009), 184-256.

light. Indeed first it was instituted (*primo quidem est institutum*) to signify that which makes manifestation (*manifestationem*) in the sense of sight; afterwards it was extended to signify all that which makes manifestation (*manifestationem*) to cognition of any kind. If, then, the name of light is taken according to its first imposition (*secundum suam primam impositionem*), it is said metaphorically of spiritual things (*metaphorice in spiritualibus dicitur*). . . . But if taken in its common and extended use, as applied to manifestation of every kind, it may properly be applied to spiritual things.[147]

To label natural reason as a "light" is to display the fact that our natural reason, which is a participation in God's uncreated light, is that by which we "manifest" and understand reality. By manifesting reality through the natural light of reason, human agents participate in the eternal law. In other words, the manifestation accomplished by natural human reason enables us to be ruled by the natural law.

Our natural manifestation of the moral order is universal in the sense that all humans have a rudimentary natural knowledge of the eternal law. Aquinas says, "Every rational creature knows the eternal law, either more or less, according to a certain radiation of it (*secundum aliquam eius irradiationem*). For any cognition of the truth is a sort of radiation from and participation in the eternal law, which is unchangeable truth. . . . But everyone knows the truth in some sense, at least with respect to the common principles of the natural law."[148] Aquinas maintains that the natural law is promulgated to all men "through" the manifestation of reality accomplished by the light of natural reason. Through our use of reason we see that we are obliged by the way things are. Through this participation in the divine light given to us in creation and directed in providence, we know at least the "common principles of the natural law."

The natural light of reason enables human agents to participate in the eternal law, and it also endows them with free choice; fully human actions ruled by natural law are free actions.

---

[147] *St*, I, q. 67, a. 1 (trans. modified). See also *In II Sent*., d. 13, q. 1, a. 2.

[148] *St,* I-II, q. 93, a. 2. (trans. modified).

Although every natural entity (including brute animals and even plants) acts for an end based upon its form, only rational agents properly move themselves to their end through free choice (and hence character development). Aquinas says,

> Those things that have reason (*rationem habent*), move themselves to an end; because they have dominion over their actions through their free choice (*liberum arbitrium*), which is the faculty of will and reason. But those things that lack reason tend to an end, by natural inclination, as being moved by another and not by themselves; since they do not know the nature of an end as such, and consequently cannot ordain anything to an end, but can be ordained to an end only by another.[149]

Natural law is the fitting legal direction over subjects who must freely align their actions with a rule that man discovers but does not create. Man is not free to choose to be under the natural law, but he is free to act in accordance with it. Rémi Brague says, "*Law is the form that providence takes in relation to a free being*; the law is to the rational creature what instinct is to the irrational one. Thomas *defines law as the way we act when in full possession of our freedom*."[150] Aquinas's metaphysics of primary and secondary causality enables him to see law as compatible with human free choice; it also allows him, as Brague points out, to see law as enabling human agents to perfect their freedom.

On this point, it is again enlightening to contrast Aquinas with Hobbes. For Hobbes, law and liberty are opposed or inconsistent, and the loss of individual liberty is the price of seeking peace and entering into society governed by laws.[151] However, we do not need to give things up in order to be under law. Aquinas's metaphysics enables us to sidestep this choice between liberty and law. Instead of the strict dichotomy and competition between law and liberty exemplified by Hobbes, Aquinas presents free choice and law as two aspects grounded in our

---

[149] *St*, I-II, q. 1, a. 2. (trans. modified). See also *St*, I, q. 83, aa. 1-3; *In De anima*, lib. III, lect. 16.

[150] Rémi Brague, *The Law of God: The Philosophical History of an Idea*, trans. Lydia G. Cochrane (Chicago: The University of Chicago Press, 2007), 223. Emphasis added.

[151] See Hobbes, *Leviathan*, I, c. 14; II, c. 26. However, see also I, c. 21.

natural knowledge of reality such that law functions as an aid or education for our free choices.

Two important features of Aquinas's account of the natural law have come to light. First, Aquinas seems to give a passive account of the human person in his encounter with the natural law and its promulgation, but the passivity of the human agent must be seen in light of Aquinas's development of the interlocking action of primary and secondary causes. The natural law is "instilled" in our minds by God's radiation of truths of the eternal law though the natural light of human reason, which is a created participation in the divine light "imprinted" upon us by God. Thus, the rational creature participates in the order in the divine mind, and Aquinas emphasizes the ongoing action of God on rational creatures through creation and the governing aspect of providence. Therefore, Aquinas's account stresses order in the divine mind as it governs created reality and gives order to the human mind and to the world of natures. However, Aquinas's development of concurrent causality enables us to balance these passive features with other aspects of Aquinas's thought, as we will show in the following sections.

Second, although Thomas presents every species of law as an exterior principle of human actions, the natural law is presented as an "interior" law; it is instilled "in" the human mind. What is the relationship between the public nature of law, especially the promulgation of law, and the "interior" conception of natural law? Aquinas does not directly address this question, but we will develop an answer in Chapters 3 and 4.

5. The Human Agent as Co-Promulgator of Law

We have explored Aquinas's understanding of creation as God's "initial" promulgation of the natural law, and we have seen that Aquinas presents the natural light of human reason as a participated, created light bestowed on human agents by God. This created, natural light of

reason enables the human agent to be free and provident for himself and others. In this vein, the medieval tradition describes the human agent as a "measured measure." Man does not give himself the natural law; he is "measured" by it as by an extrinsic principle, but the natural law enables him to freely order himself toward happiness. Given the law in God's continual creative act, the human agent goes on to order and regulate himself and others based on the order he encounters in the world of nature, especially his own nature with its inclinations and native excellences. Although Aquinas views the promulgation of the natural law primary from the side of the legislator toward the subjects (from the "top down"), his use of primary and secondary causality coupled with the natural light of reason's function of initiating human beings into the direction of the natural law enables us to ask crucial questions. As secondary agents, what role does the human subject play in the discovery and hence promulgation of the natural law?[152] From the side of the recipient of the natural law, what human abilities and actions are involved in knowing this law? What comes first in the order of discovery or cognition? In this section, we will explore Aquinas's texts on the various modes of promulgation, and we will see that he presents human agents as co-promulgators of the various kinds of law, including human and divine positive law. However, these kinds of promulgation do not exhaust the ways in which human agents are co-promulgators of law. In the next section, we will see more specifically how human beings act as co-promulgators of the natural law.

The promulgation of law primarily forces us to confront the issue of presence and absence. Political philosophers must describe how a member of a community can be expected to know and follow the law in both the presence and the absence of the legislator. We distinguish two modes of presence and absence that are relevant to legislation. First, law engages the

---

[152] As suggested in Chapter 1, this question brings us to the intersection of metaphysics and discovery, that is, the intersection of metaphysics and phenomenology.

citizens' physical presence to or absence from the legislator. If the subjects are not physically present when the law is promulgated, how can they be held accountable for it? How can the reason of the legislator "reach" members of the community when the ruler is not physically present to them? The second mode of presence and absence is temporal. How can future members of a society be held responsible for the laws enacted before they fully enter into the social and political life of a community? These are two distinct senses of presence and absence, but they are intimately linked. Aquinas handles these issues of presence and absence by appealing to secondary causality and the permanence of human language, especially written language.

Concerning the first sense of presence and absence, the physical absence from the legislator of those subject to the law, Aquinas appeals to his doctrine of concurrent causality. He says, "Those who are such that the law is not promulgated in their presence are obligated to follow the law insofar as it is or can be brought to their knowledge through others (*per alios*), once the promulgation has been made."[153] Again, "It is the role of the ruler alone to institute law by his own authority; but he sometimes promulgates an instituted law through others."[154] The "others" are later identified by Aquinas as secondary government agents (and I would add even other citizens), who continue to "spread the word" once the legislator officially promulgates the law. Aquinas says,

> Law implies a certain plan that directs acts to their end. Now in every case involving ordered movers, the power of a secondary mover flows from the power of the first mover, since a secondary mover moves only insofar as it is moved by the first mover. Hence, we see the same thing in the case of all those who govern as well, viz., that the plan of governance flows from the first governor to the secondary governors. For instance, the plan of things to be done in a city flows by way of command (*per praeceptum*) from the king to the lower administrators. In the case of artifacts, too, the

---

[153] *St,* I-II, q. 90, a. 4, ad. 2.

[154] *St*, I-II, q. 98, a. 3, ad. 3.

plan for the acts involved in making the artifacts flows from the architect to the lower craftsmen who work by hand.[155]

The primary leader of a community must govern his subjects via precepts that filter through secondary agents. Thus, Aquinas says that primary and secondary causality obtains not only between God and creatures, but also among creatures themselves. Even within the natural order, there are hierarchies that operate through the concatenation of layers of causality. However, the appeal to secondary causality does not completely answer the question of the law's application to those subject to it. We must also inquire into the manner in which secondary agents of promulgation communicate the law from the ruler.

Aquinas confronts the second aspect of presence and absence, the temporal distance separating the enactments of the leader from his subjects, by appealing directly to language. He says, "A present promulgation extends into the future by reason of the permanence of writing, which in some sense continually promulgates the law. Hence, in *Etymologia* 2 Isidore says, 'Law (*lex*) is derived from reading (*legendo*), because it is written'."[156] For Aquinas, language operating through primary and secondary causality is the feature of human intelligence that enables legislators to overcome the inevitable absences involved in political life. The role of language in legislation and promulgation is a central theme in Aquinas, and it must be explored in more detail.

A. Law, Language, and Secondary Causality

Throughout his corpus, Aquinas says that law is a kind of discourse, or *sermo*.[157] The dictates of reason from the ruler to the common good must be promulgated via language, not

---

[155] *St*, I-II, q. 93, a. 3.

[156] *St,* I-II, q. 90, a. 4, ad. 3.

[157] See *In Ethic*., liber 10, lect. 14, n. 2153. See also *St*, I-II, q. 91, a. 1, where Aquinas says that law is a kind of dictate (*dictamen*) of practical reason.

only to overcome the temporal and spatial absences inherent in political life, but more fundamentally because language is the privileged medium of human communication. Aquinas says, "Just as a spoken proposition (*enunciatio*) is a dictate of reason in the mode of *asserting* (*enuntiandi*), so too a law is a dictate of reason in the mode of *issuing a precept* (*praecipiendi*)."[158] In this text, Aquinas uses the word "*praecipiendi*" to describe the activity of issuing a precept via speech, and he contrasts the speech-activity of issuing a precept with making an assertion (*enunciatio*). Thus, law is an activity of "precepting."[159]

These various linguistic acts are explored in Aquinas's commentary on Aristotle's *Peri Hermeneias.* In this text, Aquinas defines speech (*oratio*) as an "instrument of reason."[160] Following Aristotle, he distinguishes between perfect and imperfect speech. He says that imperfect speech is "incomplete" and does not successfully express a judgment to the listener. By contrast, perfect speech does succeed in expressing a full judgment, and it is divided into five species: enunciative, deprecative, imperative, interrogative, and vocative. Our main concern will be with the relationship between enunciative and imperative speech.

Aquinas defines an *enunciatio* as speech in which there is truth or falsity. Strictly speaking, truth is found only in enunciative speech, since only this mode of speech "signifies the conception of the intellect, in which there is truth or falsity."[161] Aquinas clarifies that truth is most properly found "in" the mind as in a subject. Truth or falsity is "in" the enunciation itself as

---

[158] *St,* I-II, q. 92, a. 2.

[159] Regarding the relationship between the older English verb "to precept" and our understanding of law, the OED gives a helpful definition of "to precept" when it says that the verb precepts means, "To instruct a person by precepts." See *OED*, s.v. "precept," accessed May 30, 2016, http://www.oed.com.proxycu.wrlc.org/view/Entry/149595?rskey=iITHQo&result=2#eid.

[160] See *In Perierm*, liber 1, lect. 7, n. 2.

[161] *In Perierm*., liber 1, lect. 7, n. 4 (my translation): "Significat conceptum intellectus, in quo est verum vel falsum."

in a sign (*signum*) of the true or false thought, and Aquinas adds that truth and falsity are also

"in" the thing thought or spoken about as in a cause, since a statement is true or false based on

the relevant being or non-being of the thing.[162]

Figure 2.3. Types of Speech in Aquinas
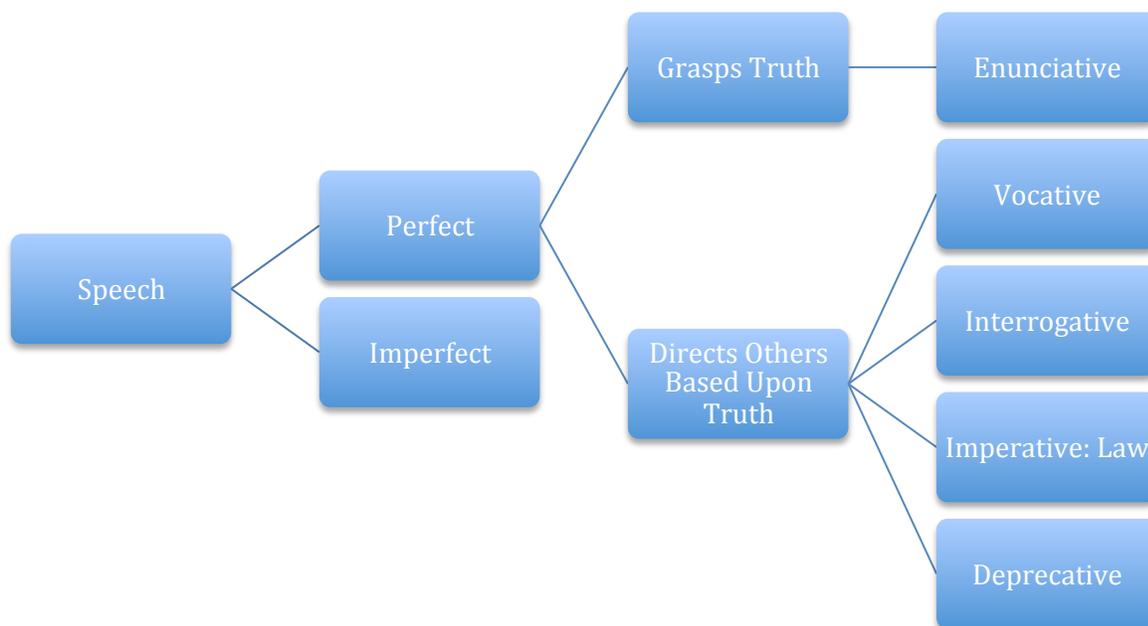
Aquinas says that reason not only conceives "in itself" the truth of things, but also directs

and orders others based upon the truth of things conceived in the mind. The other four modes of

perfect speech direct and order other agents in light of the truth grasped in enunciative speech.

While enunciative speech signifies the concept in the mind, the other modes of speech signify the

order of reason by which others are directed.[163] The most important of these directing and

---

[162] Ibid., n. 3. In the following chapter, we will show that words also enable the thought to take place; words are not simply expressions of thoughts. Words are instruments of thinking, and by manipulating the words we are also arranging our thoughts in accordance with what is.

[163] Ibid., n. 5.

ordering modes of speech for the consideration of law is imperative speech. Aquinas says that

imperative speech refers to the use of language in which an inferior is directed to execute a

"work" by the command of a superior.[164] Since not every superior-inferior relation is properly

political, imperative speech (*imperativa*) can be seen as the genus for the species of issuing a

precept (*praecipiendi*) that takes place in law.

What is the import of these reflections on language, and how do they correlate with

Aquinas's idea that the promulgation of law incorporates secondary agents? Once the legislator

"initially" promulgates a law, the secondary causality of the "other" legal officials operates

through the medium of language, which gives legal enactments a kind of stability. The legislator

implants or expresses his ruling reason in the appropriate words, and once the law is "in" these

linguistic formulations it can be disseminated to everyone subject to the law. Law goes (1)

"from" the mind of the legislator (2) "into" the language that carries the meaning of the law (3)

to the citizens (4) through the operations of secondary agents. Since legislation is promulgated

"in the medium of words," the guiding reason of the ruler is "in" the propositions that serve as a

principle for actions. The ruling reason of the governor animates the words that carry his dictates

of reason to the citizens in view of the common good.

Earlier, we noted that law is a transitive action going from the reason of the legislator to

those subject to the ruler in view of the common good of communal happiness. We now see that

the transitive aspect of law, its "application" from the ruler to the ruled, is accomplished by

secondary agents operating in the medium of language. We also noted that the "pro" in

"*promulgatio*" carries the senses of physically standing "in front of," of prolonging something

into the future, and of proportionalizing the content to suit the recipient. Aquinas captures the

first sense of "pro" with his appeal to concurrent causality, and the second and third senses of

---

[164] Ibid.

"pro" are accomplished through language. The legislator enables secondary agents to place the law before the members of a community through the use of human language, thus stabilizing and prolonging the legal direction of the community. Law is publicly proportionalized through multiple agents collectively engaging in conversation.

B. Language and the Promulgation of Positive Law

To illustrate the connection between language, concurrent causality, and the promulgation of law, we will examine texts from Aquinas concerning *human positive law, the Old Law, and the New Law*. Our focus will not be on the relationship between the philosophical understanding of law and its relation to Aquinas's theological investigations of laws as they are revealed by God. Rather, we are attempting to distill the essential structures of law, wherever those laws may be discovered.

Concerning human positive law, Aquinas says, "Every sort of law proceeds from the lawmaker's reason and will − divine and natural law from God's rational will, and human law from the human will as regulated by reason. Now just as, in practical matters, a man's reason and will are made manifest by what he says, so too they are made manifest by what he does."[165] The human reason of the legislator is "made manifest" or promulgated by speech and deeds. Aquinas further specifies that non-rational agents cannot properly be subjects of human law; human rulers can only legislate for human subjects. Aquinas says a human ruler can "impose law on the rational beings who are subject to him, because by his command or by some other pronouncement he imprints upon their mind a rule that serves as a principle of acting."[166] Again, we see that promulgation must take place through pronouncements made in human language, and

---

[165] *St,* I-II, q. 97, a. 3. Aquinas says that both words and deeds manifest a person's reason and will. We will concentrate on the use of language for the remainder of this chapter, but we will return to the manifestation that occurs in deeds in Chapter 4.

[166] *St,* I-II, q. 93, a. 5. "Command" in this translation renders the Latin "*praecepto*."

we should recall that Aquinas maintains that these pronouncements reach subjects "through others" working on behalf of the legislator. The human potential to be ruled by law is inherent in our ability to share in and be formed by language.

To illustrate the structure of the promulgation of the positive law, we can consider the manner in which someone learns to drive in a contemporary western society. First, the legislator(s) of a given community must enact traffic laws to safely order the movements of the citizens. As a first step in their promulgation, these "rules and measures for human driving" are signed into law, and their promulgation continues as they are disseminated through the necessary government agencies. All of these procedures involve the use of language and secondary causality: the legislator discovers the best manner in which to formulate traffic laws in conversations with experts in the field of motor safety, logistics, etc., and the laws decided upon are spoken and/or written so that they can be further disseminated through the agency of others. The young man learning to drive receives his initial training through a family member or friend who communicates the basic laws and techniques of driving. He may also attend a course or read materials that publish the necessary laws to be learned, and finally the young driver takes a test in order to prove he has the necessary knowledge and skills to be a licensed driver.

Now, who promulgates these traffic laws and how do they accomplish this promulgation? Clearly, the laws are promulgated primarily by the legislator by his signing the laws into act. However, the laws are also promulgated by the parents of the young man who speak to him about these laws, the teachers at the driving school, and the authors of the published materials that help the student prepare for the test. Additionally, the skilled driving of the student's friends or family members illuminates the laws "in action." The skillful drivers that the young man watches and tries to imitate manifest the *telos* of the law by safely and confidently operating the

vehicle within the space opened up by traffic laws. This lattice of language and action overcomes the absences of political life, so the promulgation of traffic laws requires both the primary act of legislation and multiple layers of secondary agents that continue the promulgation of the law in both speech and deeds. The lawgiver's reason as directing to the common good is made present "as the same again" in the speech and deeds of these secondary agents. We do not have to choose between the legislator as promulgator and the secondary agents as promulgators; through language (and actions) they are all promulgators of the identical laws. Thus, the statutes of a legislator can only become principles of human actions once they have been formulated and communicated to citizens via language. The verbal articulations have a kind of controlling authority over all the other actions because they can express and direct what the agents are doing. In this process, the "driving community" is elevated in their interactions and movements. They are disposed to be a unified community that enjoys a higher common good than before the laws were promulgated. We must also note that this process of promulgation is not guaranteed. Deceitful or uninformed language and corrupt driving practices can interfere with the promulgation of the laws. This essential structure of law is also manifest in Aquinas's discussions of the Eternal Law, the Old Law, the New Law, and the natural law.

C. Language and the Promulgation of the Eternal Law

Thomas distinguishes the manner in which the *eternal law* is given to non-rational entities from the manner in which it is promulgated to rational agents. Aquinas says that the eternal law is "imprinted" on non-rational beings through God's creative act of giving them active intrinsic principles of being and movement. Only God "commands" non-rational beings by creating and upholding their natures. However, the eternal law is made known to rational agents through promulgation and human cognition, and Aquinas concludes that only rational

creatures are measured by the eternal law through "an understanding of God's precept."[167] He says, "The imprinting of an active intrinsic principle plays the same role with respect to natural things that the promulgation of the law plays with respect to men. For as has been explained, a principle that directs human acts is imprinted on men through the promulgation of law."[168]

To specify the promulgation of the eternal law to rational agents, Aquinas says, "Promulgation is accomplished by both the spoken word (*verbum*) and the written word (*scriptum*), and the eternal law has both sorts of promulgation on the part of God who promulgates it. For God's Word is eternal, and the writing in the book of life is eternal. On the other hand, as far as the creature who hears or reads is concerned, the promulgation cannot be eternal."[169] In this text, Aquinas identifies God as the promulgator of the eternal law, and he again makes the general claim that all law is promulgated by language, both spoken and written. He says that God utilizes both modes of language to promulgate the eternal law.[170] Further, promulgation entails that the creature understands the precepts of the law by hearing or reading them.

D. Language and the Promulgation of the Old Law

We will now analyze two important texts where Aquinas clearly illustrates the connection between promulgation, language, and concurrent causality. The first text, which we will discuss in this subsection, concerns Aquinas's discussion of the promulgation of the Old Law to the Israelites, and the second text, which we will discuss in the next subsection, describes the promulgation of the New Law.

---

[167] Ibid.

[168] Ibid., ad. 1.

[169] *St*, I-II, q. 91, a. 1, ad. 2.

[170] In the following sections, we will consider how we can speak meaningfully about God's word to us.

In his commentary on the *Letter to the Hebrews*, Aquinas discusses the promulgation of the Old Law. He identifies God as the legislator of the Old Law,[171] and he says that *Moses was the promulgator of the Old Law*.[172] Aquinas says that the Old Law was promulgated "when every commandment of the law had been declared by Moses to all the people, since it was necessary that they be read, *for that reading was the promulgation of the law*. For it was necessary that the law be promulgated."[173] The two aspects of the promulgation of law, concurrent causality and language, are clearly expressed in this text. The Old Law comes from God, who is its sole legislator and the primary cause of its promulgation. Once the initial promulgation of the law happens between God and Moses, the Old Law is "fully" promulgated through Moses, a secondary agent, in the medium of language. Strictly speaking, the reading of the law by Moses was the promulgation of the law, since the law is imbedded in and expressed by the words given by God and read by Moses. The three senses of "pro" (to stand in front of and make something proportionate both now and stretching into the future) identified above are again evident: Moses stands "in front of" the people and "proportionalizes" the reason and will of God (the legislator) by reading human words that enable the subjects of the law to understand the precepts of the law both now and whenever the words are recited. Since promulgation is the material cause of law, the ruling reason of the legislator is found "in" the words spoken by Moses since the words make present the reason of the legislator. Even today when the Torah is read, its language continues to overcome the absence of the initial historical promulgation on Mt. Sinai. The promulgation of

---

[171] See also *St*, I-II, q. 98, a. 2.

[172] *In Heb*., cap. 3, lect. 1. At *St*, I-II, q. 98, a. 3, Aquinas argues that the Old Law was given by God through the Angels. From the perspective of revealed theology, the angelic mediation would add another interesting layer of secondary causality in the promulgation of the Old Law.

[173] *In Heb*., cap. 9, lect. 4. Emphasis added (my translation): "Et ideo dicit lecto enim omni mandato, etc., quia necessarium fuit ut legeretur. Illa enim lectio fuit legis promulgatio. Oportebat enim legem promulgari."

the Old Law raises the practical reason of the Israelites and enables them to calibrate their

actions with the Divine commands. In this process they are elevated as a community and

"formed" in the pursuit of a unique common good.

E. Language and the Promulgation of the New Law

Aquinas evinces the same structure of the promulgation of law when discussing the New

Law. He identifies Jesus Christ as the legislator (*legislatore*) of the New Law.[174] Aquinas says,

"The New Law is principally the grace of the Holy Spirit, which is manifested in faith working

through love. But men attain this grace through the Son of God made man; for grace filled His

humanity in the first instance, and from there it flowed to us."[175] Following Christ's legislation

of the New Law and its initial promulgation in His words and deeds, the Apostles selected by

Christ serve as the promulgators of this New Law. Aquinas says that the doctrine of the New

Law "was to be promulgated" through the Apostles.[176] The promulgation of law "through others"

(*per alios*) in this case comes through the Apostles, "through whom" (*per quos*) the New Law is

to reach all those who become citizens of this kingdom. Although Thomas does not explicitly

mention it in this text, it is clear that the Apostles continue the promulgation of the New Law

through linguistic acts of preaching, teaching, sacramental formulas, and writing as well as

through public actions manifesting the infused virtues. The New Testament itself is an instance

of the promulgation of the New Law. Again, we see the essential structure of promulgation for

Aquinas. The legislator initially promulgates the law, and the law is then publicly

proportionalized through the secondary causality of others who manifest the ruling reason of the

---

[174] See *St*, I-II, q. 108, a. 1.

[175] Ibid.

[176] See *St,* I-II, q. 108, a. 3. Discussing the New Law and Christ's Sermon on the Mount, Aquinas says, "After declaring beatitude to be the end and commending the authority of the apostles, through whom the doctrine of the Gospel was to be promulgated (*per quos erat doctrina evangelica promulganda*), He gives directions for the interior movements of man, first with respect to oneself and then with respect to one's neighbor."

legislator "in" the medium of language. Given the economy of grace, the absence of the historical Christ is overcome in a unique way through the language of Scripture, doctrinal formulae, theological reflection, preaching and sacraments (to name but a few). However, the result of promulgation is an activated community that is now able to pursue "higher" common goods through common actions.

In summary, it is clear that Aquinas must confront the issue of presence and absence in legislation. Once a community reaches a certain size and complexity, the legislator must be able to overcome the inevitable absences that texture his relationship to his subjects. In human positive law, the Old Law, and the New Law, Aquinas resorts to the secondary causality of agents operating in the medium of words to overcome the absences inherent in community life. Secondary agents, operating in virtue of the power of the primary cause of legislation (the legislator), "stand in front of" the subjects of the legislator and proportionalize the dictates of reason directed to the common good by means of a language shared by all. These human agents are "co-promulgators" of the law along with the legislator, whose initial legislative act serves as the initial instance of promulgation. Additionally, Aquinas sporadically mentions the fact that deeds can also manifest the reason and intention of the legislator, but he does not develop this idea in detail.

The structures we have identified in the promulgation of law are essential structures, not limited cultural idiosyncrasies; the promulgation of law must express this essential structure. It can be realized in infinitely different ways, but the same structure will come to light again in new circumstances. Given what human agents are, what human communities are, and what law is, law must be promulgated through the hendiadys of concurrent causality and language. Law cannot be law without this shape. Promulgation is not accomplished until the concatenation of

primary and secondary causes "reaches" the members of a community through language. Thus, promulgation is a continual project that must be completed together; it is a common good achieved in common action continually unfolding over time. Promulgation itself is not just geared toward the common good but is itself a common good, and as such it exhibits common actions for a common end. The common actions in the promulgation of a law include the legislator "precepting" the citizens and the citizens expressing these precepts in variegated conversations with a view toward making the intelligibility of the law manifest to everyone.

6. Language and Concurrent Causality in the Promulgation of Natural Law

We have examined how Aquinas says that positive law, the Old Law, and the New Law are promulgated, and we have noted the role of presence and absence is such promulgation. The interplay of presence and absence in the promulgation of the natural law raises unique and interesting questions. How is the legislator of the natural law present or absent from human agents in creation? How does this structure of promulgation through secondary causality and language function within the absences inherent in the natural law? Is the natural law an aberration in this regard? We will show that the same formal structure of concurrent causality and language holds, but in a unique manner. We will examine Aquinas's texts in this chapter, and we will continue to develop his thought in the following chapters.

This section will unfold in five subsections. First, in order to orient our discussion, we will present a brief overview of Aquinas's organization of the precepts of the natural law and the manner in which those precepts are enshrined in the positive law. Second, we will go into more detail by analyzing three important texts from Thomas that discuss the role of language and secondary causality in the natural law. Third, we will show the role of natural inclinations in the

promulgation of the natural law. Fourth, we will show the role of synderesis in the promulgation

of the natural law. Fifth, we will discuss how the conclusions of the natural law are promulgated.

A. Overview of Aquinas's Organization of the Natural Law Precepts

For Aquinas, the natural law is based upon the structure of human agency with its natural

telos to certain common goods. Given our natural understanding of beings and the natural ends

sought by human agents, certain precepts are implicated in our order to these ends. The law

appears as a way of protecting and promoting the order to our natural ends, but the end and our

natural inclination to it have the priority. The law works as a directive to our end, that is, as an

aid to help the human agent perfect himself. Within this structure, Aquinas distinguishes between

the primary precept, the secondary precepts, the conclusions, and the specifications of the natural

law. The following chart summarizes Aquinas's organization of the natural law precepts.

Figure 2.4. Organization of Natural Law Precepts

Primary Precept of Natural Law	• Good is to be done and pursued and evil avoided
Secondary Precepts of Natural Law	• Seek to preserve one's life as a member of the human species • Seek marital union and the rearing of children • Seek the truth about God and life in society
Conclusions of Natural Law Enshrined in Human Positive Law	• Do not kill • Do not steal • Do not lie, etc
Specifications of Natural Law Determined by Human (and Divine) Positive Law	• Determinations of the severity of penalties for crimes, etc.

Aquinas says that the primary precept of natural law is that good is to be pursued and done and evil avoided. The secondary precepts of the natural law, which are based on our natural inclinations to goods that are perfective of our human nature, are (1) to seek to preserve life as a member of the human species, (2) to seek marital union with a member of the opposite sex and educate children, and (3) to seek the truth about God, to live in society with others, and to avoid ignorance and civil strife.

Third, there are conclusions culled from both the primary and secondary precepts of the natural law, such as the prohibitions against murder, theft, lying, and adultery. These conclusions are derived immediately from the secondary precepts and are laid out in human positive laws. Aquinas says, "Some things stem from the universal principles of the law of nature in the manner of a conclusion; for instance, *One should not kill* can be derived as a conclusion from *One should not do evil to anyone.*"[177] Fourth, Aquinas says that it belongs to the human positive law to further specify the conclusions of the natural law. These specifications would institute, for example, the kind and severity of punishments for criminals who kill or steal.

B. Three Texts Concerning Language, Secondary Causality, and the Natural Law

We will now enter into more detail concerning Aquinas's structure of the natural law by analyzing three important texts that discuss the role of language in natural law. The first text is *St*, I-II, q. 94, a. 1, where Aquinas begins by asking whether the natural law is a habit (*habitus*). In response, Aquinas distinguishes between (1) that which is done (*quod quis agit*) and (2) that by means of which it is done (*quo quis agit*). Properly speaking, a habit is that by means of which something is done, just as it is by means of the habit of grammar that someone makes intelligible statements.[178] He concludes that the natural law is not a habit, but it is that which is

---

[177] *St,* I-II, q. 95, a. 2. See also, *St,* I-II, q. 100, a. 3.

"held" by the habit of synderesis.[179] Interestingly for our purposes, Aquinas says, "It was explained above that the natural law is something constituted by reason, in the same way that a proposition is a work of reason."[180] Aquinas's use of the word "constituted" is important, but we should not misconstrue it in a Kantian manner. We will discuss the issue of constitution more in the following chapter, but here we can indicate its meaning for Thomas. Roy Deferrari lists "to achieve" as one of the meanings of Aquinas's use of the Latin "*constituere*."[181] Aquinas says that the natural law is achieved by human reason, and therefore human intelligence has an active role to play in the achievement of the natural law. Here, Aquinas identifies the role of secondary causality and language in the promulgation of the natural law. The natural law is a work of human reason achieved through the secondary causality of human agents, and the natural law is intimately connected to propositions (language).

In the last quotation concerning natural law as constituted by human reason, Aquinas refers to his earlier remarks ("as stated above"). This reference brings us to the second text that we must investigate, which is *St*, I-II, q. 90, a. 1, ad. 2. There, *the objector* claims that law cannot belong to reason because it is neither a habit of reason, nor is it an act of reason. The objection says that law cannot be an act of reason because, if it were, it would cease to exist when reason ceased to be active (such as when a man sleeps or in young children). Aquinas's response is crucial. He begins by considering the structure of "exterior" actions, such as the building of a

---

[178] See *St,* I-II, q. 94, a. 1. Here, Aquinas says that one may also use the term habit loosely to refer to that which is held by a habit. In this loose sense, the natural law can be called a habit. However, properly speaking, no law can be called a habit.

[179] We will discuss Aquinas's claim that synderesis is the habit that "contains" the propositions of natural law. On synderesis, see *St*, I, q. 79, a. 12; *De Ver*., q. 16.

[180] *St,* I-II, q. 94, a.1.

[181] Roy J. Deferrari and Sister M. Inviolata Barry, *A Lexicon of St. Thomas Aquinas Based on the Summa theologica and Selected Passages of His Other Works* (Washington DC: The Catholic University of America Press, 1948), 221.

house. In such actions, he distinguishes the action itself (*operatio*) and the work that is done (*operatum*); the actions of the house builders produce the house, but those actions are not the house. Aquinas says this distinction between *operatio* and *operatum* holds in both speculative and practical reason.

In speculative reason, Aquinas identifies the things constituted (*operatum*) as definitions, propositions, and syllogisms. Aquinas then says that in speculative reason the propositions in a syllogism lead to the conclusion, and the conclusion depends upon the propositions. Analogously, in practical reason the concrete practical action is the "conclusion" of a practical syllogism;[182] thus, there must be something in practical reason that corresponds to the propositions (*propositio*) that serve as premises in speculative reason. Aquinas says, "In the case of practical reason there is something that is related to the actions (*operationes*) in the same way that the proposition is related to the conclusions in the case of speculative reason. These universal propositions of practical reason, which are ordered toward actions, have the nature (*rationem*) of law."[183] There are *universal propositions of law* that stand to concrete actions as scientific premises stand to speculative conclusions.

By taking these two texts together,[184] we see that Aquinas identifies the natural law as universal propositions that are constituted by human reason, that is, by the secondary causality of human agents. Universal in this context means both the most general precepts directing moral action and that these precepts are known by all. Aquinas uses the model of transitive actions to show that natural law operates through the medium of propositions, or judgments performed in

---

[182] See *St,* I-II, q. 90, a. 1, ad. 2. On this point Aquinas refers the reader to Book VII, Chapter 3 of Aristotle's *Nicomachean Ethics*. See also *De Ver.*, q. 5, a. 1, ad. 6.

[183] Ibid. (trans. modified).

[184] Namely, *St*, I-II, q. 94, a. 1 and *St*, I-II, 90, a. 1, ad. 2.

language. The natural law is "constituted by reason"; that is, it is achieved by the operations of free human agents, and the universal propositions that make up the natural law then serve as the fundamental premises for human action. Clearly, *we cannot have a propositional grasp of the good to be done in human action without the use of language.*

The link between natural law and language is also at work in the third text that we will analyze, which is the much-disputed passage of *St*, I-II, q. 94, a. 2.[185] I will outline this text to draw attention to points that are essential to our topic.

In this dense article, Aquinas again compares speculative and practical reason. He specifies that the primary precepts of the natural law are *per se nota*, just as the primary principles of speculative reason are *per se nota*. A *per se notum* proposition is "known in itself." It requires no proof because the predicate belongs "immediately" to the subject; the necessary connection between the subject and predicate does not depend upon a middle term functioning in a syllogism.[186] Aquinas distinguishes two ways in which a proposition can be *per se notum*: (1) in its own right (*secundum se*) and (2) in relation to us (*quoad nos*). A proposition is *per se notum* in its own right if the predicate is in fact included in the notion (*ratio*) of the subject, but a proposition that is *per se notum* in itself may not be immediately known as such to a person who does not understand that the predicate in the proposition belongs to the very *ratio* of the subject. For example, that law must be directed to the common good of communal happiness is *per se notum secundum se*, but it may not be *per se notum* in relation to someone who has lived his entire life under the rule of a tyrant. For this reason, many propositions that are *per se nota* in

---

[185] I will not enter into the details of this dispute. For an overview of the various interpretations, see Cunningham, "Natural Inclination," 13-22. See also, Stephen L. Brock, "Natural Inclination and the Intelligibility of the Good in Thomistic Natural Law," *Vera Lex* 6 (2005): 57-78.

[186] Following Aristotle, Aquinas identifies four modes of "per seity." See *In post. an.*, liber I, lect. 5, 10, 39-40. For a discussion of these four modes, see Jensen, *Knowing the Natural Law*, 26-43.

themselves are known as *per se* only by the "wise" (*sapientibus*), who understand the meaning of the words in the proposition.

However, Aquinas says there are certain fundamental truths and propositions that are *per se nota* both in themselves and to everyone (*dignitates vel propositiones per se notae communiter omnibus*). He says that these propositions "are the ones *whose terms are known to everyone*, e.g. 'Every whole is greater than its part' and 'Things equal to one and the same thing are equal to each other'."[187] Aquinas then presents a tightly ordered structure of the derivation of natural law precepts. We will divide his presentation into four steps.

I) Aquinas says that being (*ens*) is "the first to fall" within human apprehension, therefore the *ratio* of being and non-being is the foundation for the first indemonstrable principle (the so-called principle of non-contradiction, or PNC), which is that the same cannot be affirmed and denied (at the same time and in the same way). Aquinas does not go into detail concerning the PNC in this text, but I will briefly describe Aristotle's discussion of it in *Metaphysics* Γ, which is the *locus classicus* of this idea.[188] Aristotle begins *Metaphysics* Γ with the assertion that "There is a science which investigates being as being and the attributes which belong to it in virtue of its own nature."[189] He argues that it belongs to first philosophy to speak about *ousia* and a unique group of claims, or axioms (*ἀξιώματα*), assumed by every other science. The principle of non-contradiction is among these axioms, and Aristotle says that it is both indemonstrable and yet the firmest of all principles.[190] Importantly for our purposes, Aristotle formulates the principle of

---

[187] *St*, I-II, q. 94, a. 2. Emphasis added.

[188] The following sentences are taken in large part from my article "Speech and Being in Aristotle's *Metaphysics*," *International Philosophical Quarterly* 57 (2017): 31-41.

[189] *Metaphysics,* IV.1, 1003a22.

non-contradiction in slightly different but interconnected ways. Thomas Upton says that Aristotle

describes the principle as "a first principle of being, of thinking about being, and of speaking

about being," and the psychological and linguistic variations "reflect the ontological foundation"

of the principle of non-contradiction.[191] The principle is first an ontological one and then a

logical one; if something is *this* it cannot be *that*. Therefore, Aquinas's discussion of the natural

law begins by focusing on the way being is and how our intellectual activity is formed by the

way things are manifest to us.

II) Although Aquinas does not mention the role of truth explicitly in this article, it is clear

that he sees the role of the intellectual achievement of truth as in some way coming "between"

our grasp of being and our pursuit of the good. Aquinas says that there is a natural order of

"being-true-good" in our interactions with the world. He says, "The intellect apprehends

primarily being itself (*ipsum ens*); second, it apprehends that it understands being (*ens*); and

third, it apprehends that it desires being (*ens*). Hence first is the idea of being (*ratio entis*),

second the idea of truth (*ratio veri*), third the idea of good (*ratio boni*), though good is in

things."[192] As rational agents, we must have some basic insight or understanding of what

something is and how it is fitting for us if we are to desire it as good.[193]

III) Next, Aquinas says that while being is the first to fall within apprehension simply

speaking, good (*bonum*) is the first to fall within the apprehension of practical reason. Thomas

---

[190] Ibid., 1005a19-b8. The following passage is a classic expression of the principle: "'It is impossible that the same thing both belong and not belong to the same thing at the same time and in the same respect, and should we need to make any other qualifications, let them be made as needed to meet dialectical difficulties." 1005b19-22.

[191] See Thomas Upton, "The Law of Non-contradiction and Aristotle's Epistemological Realism," *The Thomist* 66 (2002): 462. The variations of the principle of non-contradiction are enumerated at *Metaphysics*, IV.3-4, 1005b19-1006a5.

[192] *St*, I, q. 16, a. 4, ad. 2. (trans. modified).

[193] See *St,* I, q. 79, a. 11; q. 82, a. 3; I, q. 82, a. 3, ad. 2; I-II, q. 8, a. 1; I-II, q. 9, a.1.

says, "Every agent acts for the sake of an end, which has the character of good (*boni*). And so the first principle in practical reasoning is what is founded on the notion good, which is the notion (*quod fundatur supra rationem boni, quae est*): *The good is what all things desire.* Therefore, the first precept of law is that good ought to be done and pursued and that evil ought to be avoided. And all the other precepts of the law of nature are founded upon this principle."[194] Just as with the principle of non-contradiction, the primary precept of the natural law is based on the ways things are; the good is "in" things, and it is the goodness of things, such as food, family life, virtuous friendships, communities of people searching for the truth about God, that should be intelligently incorporated into our lives. The primary precept of the natural law is to do good and avoid evil, and it is *per se notum* both in itself and to us.

Although Aquinas distinguishes the speculative intellect from the practical intellect and says that "being" is the first to "fall" within reason simply speaking while the "good" is the first to fall within practical reason, it is important to note that Aquinas does not posit two intellects in the human mind; there is not one speculative intellect and one practical intellect. Rather, man has one intellect, or one power of understanding, that can be directed to the speculative work of simply contemplating truth or the practical work of directing action in light of what it apprehends.[195]

Aquinas then goes on to show that the other precepts of the natural law flow from this first practical precept that good ought to be done and evil avoided. He says that whatever (*omnia*) human agents naturally grasp as good (or its contrary evil) pertains to the natural law as

---

[194] *St*, I-II, q. 94, a. 2.

[195] See *St*, I, q. 79, a. 11. Thus, concerning the intellective power as a whole, Aquinas claims that it is accidental whether its object is directed toward the contemplation of truth or toward operation. He says, "To a thing apprehended by the intellect, it is accidental whether it be ordered to operation or not, and according to this the speculative and practical intellects differ. For it is the speculative intellect which orders what it apprehends, not to operation, but to the consideration of truth; while the practical intellect is that which orders what it apprehends to operation." For the distinction between speculative and practical *knowledge*, see *St*, I, q. 14, a. 16.

to be done (or avoided). Since the good has the idea of an end to be pursued, the rational grasp of a good naturally fitting for human beings gives rise to a natural inclination to that good. In turn, the order of the natural law precepts mirrors the order of natural inclinations. Aquinas says, "There is an ordering of the precepts of the natural law that corresponds to the ordering of the natural inclinations."[196] Aquinas enumerates three natural inclinations: (a) the natural inclination to the end of conserving one's life as a member of a species, (b) the natural inclination to the end of the union of man and woman, family life, and the education of children, and (c) the natural inclination to the end of knowing the truth about God and the natural inclination to live as a member of a social and political order. In fact, it would be better to say that the third natural inclination is in fact two natural inclinations that are closely connected. The natural inclination to know the truth about God and the natural inclination to live a social and political life are distinct inclinations, and hence they lead to obligation-networks.

IV) Finally, Aquinas shows that the secondary precepts of the natural law (such as to seek the truth, to do no harm to anyone, etc.) are derived from the natural inclinations to these ends. The precepts are subordinated to the natural ends such that they exist to protect and promote the order to the end, which is set by what it is to be human. These ends of human nature are instantiations of common goods that dictate what shape the precepts must take.

The chart on the following page illustrates the structure of *St*, I-II, q. 94, a. 2.

---

[196] *St*, I-II, q. 94, a. 2.

Figure 2.5. Derivation of the Primary and Secondary Natural Law Precepts[197]
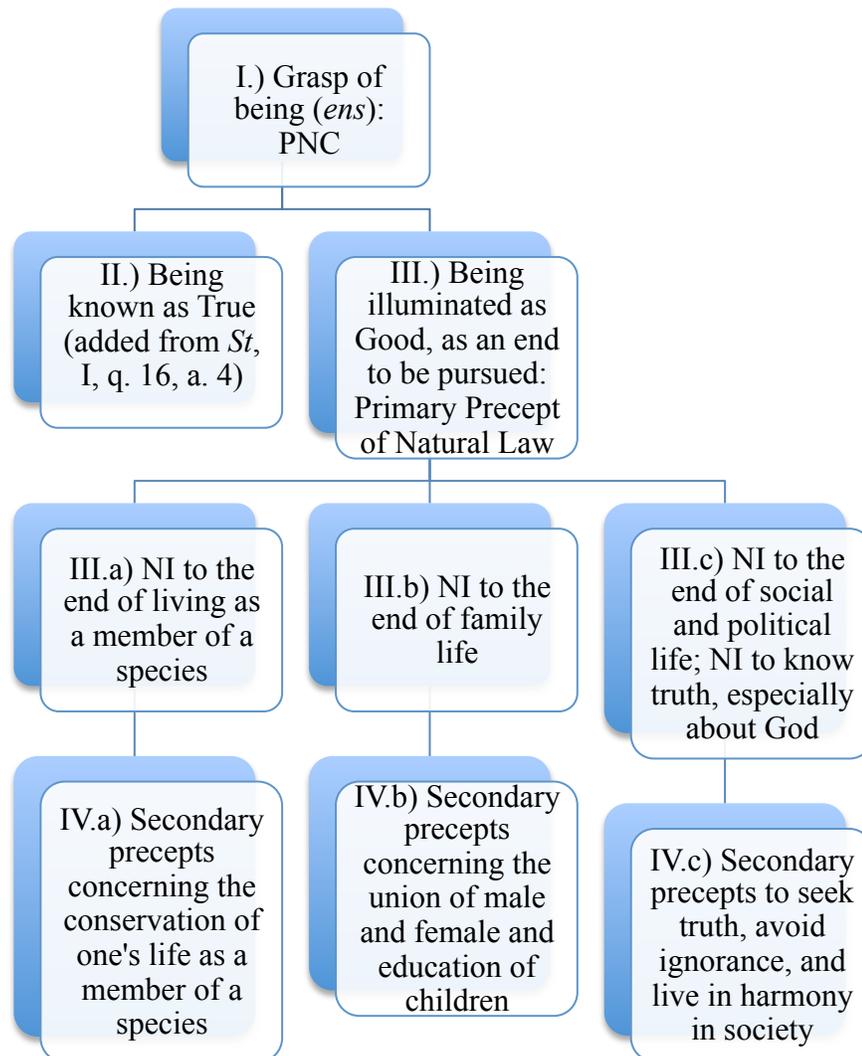
C. Natural Inclinations, Natural Law Precepts, and Promulgation

To understand how the above exegesis of these three texts bears on our topic of promulgation, we must develop several points. To begin with, Aquinas identifies the first principle of practical reason with the first precept of the natural law; that is, the primordial principle of practical thought is the fundamental precept of the natural law. Aquinas says, "The

---

[197] "PNC" refers to the Principle of Non-Contradiction and "NI" refers to natural inclination.

first rule of reason is the law of nature."[198] On this point, Hittinger says, "The legal order of things does not begin with an acquired virtue, possessed by a few; nor does it begin with the offices and statutes of human positive law; nor does it begin with the law revealed at Sinai. God speaks the law, at least in its rudiments, to every intelligent creature."[199] For Aquinas, to act in accordance with reason is to act under the direction of the natural law "spoken" to rational beings. From the "moment" that a person begins to actualize his rational capacities, he is ruled and measured by the natural law. Therefore, at least the rudiments of the natural law must be promulgated from the first instance of free, responsible human action.

Next, Aquinas presents a hierarchical structure in the article. However, the derivations of the primary and secondary precepts are not syllogistic; they are *per se nota*. Dewan says, "Syllogistic inference or demonstration is not the only sort of derivation recognized by St. Thomas."[200] Thus, we have to distinguish between syllogistic inference and natural derivation. Aquinas describes the order of human discovery of moral norms as a process in which *being* is first grasped by the intellect. Then, through a natural reasoning process the human agent gradually activates and directs his own nature as he explores all the contours of the entities that he encounters. This "exploration" of entities activates and brings our own nature to light in such a way that our continual exploration of being is accomplished in tandem with the discovery of the natural law. Dewan notes that although Aquinas does not employ the language of derivation in the text we are analyzing, "the entire discussion concerns primacy, order, and foundation as pertaining to our natural apprehension, that is, to our natural intellectual vision."[201] The precepts

---

[198] *St*, I-II, q. 95, a. 2.

[199] Hittinger, *First Grace*, 98.

[200] Lawrence Dewan, *Wisdom, Law, and Virtue: Essays in Thomistic Ethics* (New York: Fordham University Press, 2008), 203.

of the natural law are "derived" naturally in our experience of entities in the world and our natural inclinations to certain fitting goods, but these precepts are not syllogistically catalogued. Their discovery is both more spontaneous and less scientific than syllogisms.

For Aquinas, the initial rational grasp of the good and the primary precept of the natural law orient us toward our fulfillment as human agents, and thus this incipient perception of the good somehow contains potentially all the more specified precepts that will be actualized in our experience. As T.S. Eliot says, "In my beginning is my end."[202] Aquinas's exposition of the natural inclinations and the derivation of the secondary precepts is formal, and thus an example can help illustrate the structure that Aquinas identifies. We will use the example of a child coming to know moral truth within a family structure. This example is not simply one among many, but paradigmatic, for as Aristotle says, "In the household first we have the sources and springs of friendship, of political organization, and of justice."[203] Upon reaching the age of reason and free moral action, a child will immediately pursue good and avoid evil; that is, he does not need to be taught by those around him to pursue the good or to avoid what is evil. Further, he will "instinctively" understand that it is good for him to continue to exist, and he will see the family unit as a good place for a human being like himself to live. Both of these insights, that to exist and to live as a member of a familial community are fitting for him, are refinements or specifications of his primitive rational grasp of the good. He will also understand that knowing the truth is good and that playing with his siblings, classmates, and friends is good. Thus, he will pursue these things in the manner befitting him at his stage of intellectual development, with all

---

[201] Ibid.

[202] T. S. Eliot, *Four Quartets*, East Coker. I quote from T.S. Eliot, *The Complete Poems and Plays: 1909-1950* (New York: Harcourt Brace and Company, 1980), 123.

[203] *Eudemian Ethics*, VII.10, 1242b1-2.

the tribulations and setbacks such development entails. Even though he will not have to be taught that these things are good the way he will have to be taught that 2+2=4, he will have to be shown the goodness of human life, the goodness of family life, and the splendor of truth as well as the fulfillment that comes from partaking in social and political forms. He must be shown these things by the example of those who have care over him during his entrance into responsible agency, but once he sees them in action he will see them as good, that is, as naturally fitting for who and what he is. Therefore, he will be naturally inclined toward these goods. Further, he will have to learn, which means he will have to be taught, what specific things are good (and evil) and how he should pursue (or avoid) them. He will learn these two latter things by experience and by being taught, but he does not learn by experience nor is he taught that the good should be pursued and the bad avoided. What experience could show him this, and how could it be taught to him? When the child learns from his mother to eat healthy food in the proper amount while he is sitting and talking with his family, he is not learning something that is completely foreign to his own natural inclinations, but rather he is encountering that which is perfective of who and what he is. His initial and nebulous grasp of the good is being further actualized and specified, and he is learning how to intelligently and virtuously pursue the ends that he is geared toward by his own rational nature and the rational inclinations that flow from it.

To return to Aquinas's explicit treatment of these issues, a text from the first part of the *Summa theologiae* illustrates the way in which our nature as intelligent animals is activated and displayed in a natural order when we encounter entities. Aquinas says,

> Although good and true (*bonum et verum*) are convertible with being, as to subject (*supposito*), yet they differ in concept (*ratione)*. And in this manner true (*verum*) is, absolutely speaking, prior to good, as appears from two reasons. First, because true is more closely related to being, which is itself prior to good (*verum propinquius se habet ad ens, quod est prius, quam bonum*). For true regards being itself simply and immediately, but the idea of the good (*ratio boni)* follows upon being (*esse*) insofar as

being (*esse*) is in some way perfect; for thus it is desirable. Secondly, it is evident from the fact that *cognition naturally precedes desire* (*cognitio naturaliter praecedit appetitum*). Hence, since true regards cognition (*cognitionem*), but good regards the appetite, true will be prior in idea to good (*prius erit verum quam bonum secundum rationem*).[204]

As rational agents, our participation in the eternal law entails that we naturally manifest and articulate being in our interactions with the natures that we encounter. We move from an initial grasp of being to a rudimentary notion of the true, and finally we arrive at a foundational, rational grasp of good.[205] Our human reason is a "light" insofar as it illuminates or manifests the truth about entities in the world, and only with this illumination of being can we know, desire, and pursue what is naturally good for us. Dewan says, "The practical intellect views goodness under the aspect of being and truth, sees what goodness is. If goodness were not being viewed under the aspect of being, it would not be being 'understood' at all."[206] These initial insights into being, truth, and goodness are certainly incomplete and nebulous, but they are strong enough to give human agents access to the primary *per se nota* propositions, which in turn issue into the other precepts of natural law. We can now see a connection between (1) the initial, ordered exploration of being-true-good, (2) the advent of free, responsible agency, and (3) the promulgation of natural law. For Aquinas, we become responsible agents through our interactions with the beings we encounter, and therefore the promulgation of the natural law *for us* begins with our initial intelligent engagement with beings in the world. We need to grasp things if we are to be obliged by the way things are.

The human agent's natural exploration of being is a point that we must discuss in more

---

[204] *St,* I, q. 16, a. 4. (trans. modified). Emphasis added.

[205] Aquinas summarizes this natural order of being-true-good at *St*, I, q. 16, a. 4, ad. 2. He says, "The intellect apprehends primarily being itself (*ipsum ens*); secondly, it apprehends that it understands being (*ens*); and thirdly, it apprehends that it desires being (*ens*). Hence first is the idea of being (*ratio entis*), second the idea of truth (*ratio veri*), third the idea of good (*ratio boni*), though good is in things."

[206] Dewan, *Wisdom, Law, and Virtue*, 203-204.

detail. Aquinas presents the articulation of natural law precepts as a development of the

compressed vision of being that human agents naturally obtain. He spells out the sequence of

"being-truth-good," and this series is an essentially ordered group in which the grasp of one item

is founded upon and naturally results from the previous one. Aquinas builds the edifice of natural

law from the initial, confused grasp of being (*ens*), and he then presents the human agent as the

one who engages with being on various levels. Our grasp of being is further articulated in our

knowledge that we have distinguished and understood something of the realities that we

encounter (being as the true), and eventually a certain reality is understood and pursued under the

aspect of good, or as desirable for us "according to our form."[207] That is, some reality manifests

itself as fitting for our human "mode of perfection." This structure should not be construed as a

temporal succession; Aquinas is presenting the formal structure of human thinking and action.

Being, truth, and good are "convertible," but we can still identify a logical order among them.

Being, true, and good are ordered *secundum rationem*; the true "manifests being (*ente*)" in its

relation to our thinking, and "then" the good is the appearance of some reality as desirable, as an

end to pursue.[208]

The natural inclinations to life as a member of a species, to family life, to political life,

and to the pursuit of truth (as well as the secondary precepts that accompany these inclinations)

are the offspring of our initial rational grasp of being, truth, and good. Brock says, "Both the

inclinations and the precepts follow upon the understanding of the objects as good. . . . The

inclinations follow even more immediately than do the precepts. For the inclinations require

---

[207] See *St*, I-II, q. 18, a. 5.

[208] For the language of the true as manifesting being, see *St,* I, q. 16, a. 1; See also *St*, I, q. 16, a. 3, ad. 1, where Aquinas says, "The true resides in things and in the intellect, as said before. But the true that is in things is convertible with being (*ente*) as to substance; while the true that is in the intellect is convertible with being (*ente*), as what manifests is convertible with what is made manifest (*ut manifestativum cum manifestato*)." (trans. modified).

nothing but the consideration of the objects as good, desirable. But the precepts require a consideration of the objects not only as good, but also as matters of action, doable or pursuable."[209] The desire for the ends that are truly perfective of the human agent is the offspring of human intelligence encountering entities through human experience, in which we do not simply encounter something desirable or something good. Rather, we also begin to experience the desirable and the good as such, that is, we experience the desirable as desirable, the good as good. Even if our original interest in the things of the world is based on our desire to satisfy our needs, we can only desire things of which we have some knowledge, since cognition precedes desire. Although in this dissertation we are engaging in metaphysics, what we are calling the human agent's natural "exploration" of being should not be construed as an exercise in metaphysical reflection; rather, obtaining an embryonic understanding of being and truth is the manner in which human reason, and hence human moral action, comes to life and naturally operates. It is the way in which fully human desires and inclinations are set in motion. Michael Oakeshott captures this structure of human intelligence succinctly. He says, "Understanding is not such that we either enjoy it or lack it altogether. To be human and to be aware is to encounter only what is in some manner understood. Thus, it may be said that understanding is an unsought condition; we inexorably inhabit a world of intelligibles."[210] The first precept of the natural law, good ought to be done and evil ought to be avoided, is discovered, and hence promulgated for us, as soon as the "unsought condition" of understanding is activated in human life. For Aquinas, the "world of intelligibles" is a world governed by the natural law.

As we have already glimpsed, language is crucial for enabling our "unsought condition" of understanding. The *per se nota* first precepts of the natural law do not depend upon syllogistic

---

[209] Brock, "Natural Inclination," 65.

[210] Michael Oakeshott, *On Human Conduct* (Oxford: The Clarendon Press, 1975), 1.

reasoning to be known. Rather, they are rooted in our initial insight into the natures that we confront in experience as they are manifested by natural reason and our achievement of truth. To return to our example of the child learning to eat a healthy meal with his family, we see that he must understand something of the natures of food, of health (and the connection between the two), of his parents as authoritative, and of social interaction, in order to actualize his inclinations to the ends of human life in a familial and social setting. However, the precepts of natural law are only discovered when the human agent *understands the meaning of the terms* embedded in the *per se notum* proposition. Dewan says, "Our knowledge of natural law, and our knowledge of the first principles of speculative reason as well, is prior not only to metaphysics but also to ethics. *And prior even to our knowledge of those first principles is our knowledge of their terms.*"[211] Alasdair MacIntyre also highlights the role of language when commenting on Aquinas's text concerning the inclinations that belong to the natural law (q. 94, a. 2). He says, "There are . . . those evident principles, the meaning of whose terms is immediately to be comprehended by every competent language-user, such as 'Every whole is greater than its part,' principles which are, therefore, undeniable by any such language-user."[212] As Dewan and MacIntyre show, the understanding of being, the rational grasp of the good, and the subsequent inclinations to our natural ends that Aquinas describes in the unfolding of natural law is intimately connected to language; indeed, the immediately known principles at the foundation of the natural law are only immediately known to a person who is a competent user of language.

We can therefore say that the natural law is promulgated "for us" only when the truth about being is manifested by the light of natural reason through the use of language. Language is the "instrument of reason" that enables us to manifest being by discovering truth. In this process,

---

[211] Dewan *Wisdom, Law, and Virtue*,199. Emphasis added.

[212] MacIntyre, *First Principles*, 10.

the true ends (common goods) of human life gradually come to light, and therefore the natural law precepts come to be discovered or constituted through our linguistically formed desires for the good according to our nature. In our example, language permeates the scene at the dinner table with the young child and his family; the child at the table comes to learn about the nature of food and family through the use of speech; he must be able to understand the directives he receives through speech and respond through his own use of language in order to rationally act under the direction of the natural law. Therefore, the initial understanding of being and pursuit of the good accomplished via language is the "site" of the promulgation of natural law. To gain a basic understanding of entities, to inhabit a "world of intelligibles" and hence to be directed by natural law is to think with the assistance of language.

Although Hittinger and Dewan rightly stress the fact that God gives the natural law "immediately" to human agents, their claim calls for some refinement.[213] Aquinas says, "But it is evident that human acts can be regulated by the rule of human reason, which is gleaned (*sumitur*) from the created things that man knows naturally."[214] Therefore, the natural law comes to us through the "instrumentality of nature" and the instrumentality of human reason, especially language. Given Aquinas's understanding of concurrent causality, we can now say that God directly "speaks" the natural law to us through our natural understanding of entities and subsequent pursuit of our natural end. That is, the human agent's natural, "unsought condition" of understanding performed in the medium of words is the human agent's co-promulgation of the natural law to one's self and to others. We have noted that God "initially" promulgates the natural law in creation, but the human agent as a secondary cause, as a self-cultivator, must also

---

[213] See Dewan, *Wisdom, Law, and Virtue*, 203-212. Hittinger says, "Natural law is communicated directly, without artifice, and without the mediation of subordinate legal officials." *First Grace*, 293, footnote 51.

[214] *St,* I-II, q. 74, a. 7. (trans. modified).

actualize this initial promulgation.

D. Synderesis and the Promulgation of the Natural Law

For Aquinas, natural law is communicated directly, but its direct communication involves the human agent constituting or achieving a natural rule and measure of human actions through the function of synderesis. Medieval discussion of synderesis, including Aquinas's, take their departure from a text in St. Jerome's early fifth century commentary on the Old Testament book of Ezekiel.[215] The term "synderesis" may even be a corruption of the Greek word for conscience, *syneidēsis*. Among the issues raised by St. Jerome and discussed by medieval thinkers are the following: (1) is synderesis a power (or faculty) of the human soul or a *habitus*? and (2) is synderesis cognitive or affective?[216] According to Aquinas, synderesis is a natural habit or ability of human practical rationality that enables us to recognize (cognitively) the first principles of the moral life, and it is therefore the source of our natural knowledge of the precepts of the natural law.[217] Aquinas says, "The act of the natural habit called synderesis is to warn against evil and to incline to good."[218] Thus, the way in which synderesis is activated is important for our topic.

At the inception of his life, the human agent is only *potentially subject* to the natural law. That is, the young (and the severely mentally handicapped) *are ruled and measured by the natural law only in potency*. By contrast, brute animals are not subject to the natural law. They

---

[215] See Tobias Hoffman, "Conscience and Synderesis," in *The Oxford Handbook of Aquinas*, ed. Brian Davies and Eleonore Stump (Oxford: Oxford University Press, 2012), 255. For the text of St. Jerome, see *Conscience in Medieval Philosophy*, ed. Timothy C. Potts (Cambridge: Cambridge University Press, 1980), 79-80. On the origin of the theme of synderesis, see Alain Le Boulluec, "Recherches sur les orgines du thème de la syndérèse dans la tradition patristique," in *Vers la contemplation: Études sur la syndérèse et les modalités de la contemplation de l'Antiquité à la Renaissance*, ed. Christian Trottmann (Paris: Librairie Honoré Champion, 2007), 61-77.

[216] Aquinas's notion of *habitus* will be discussed below.

[217] See *De Ver.*, q. 16; *St*, I, q. 79, a. 12.

[218] *De Ver.*, q. 16, a. 1, ad. 12.

are not even "potential" subjects of the natural law, properly speaking.[219] Aquinas recognizes

that human agents must actualize the natural law as a *rule and measure for them*. He says,

"Because he is not of the right age, a young child cannot make use of the habit of grasping first

principles (*intellectus principiorum*); nor, again, can he make use of the natural law, which exists

in him habitually."[220] This text must be seen in relation to Aquinas's comments concerning the

promulgation of the eternal law. We have seen that the natural law is the rational creature's

participation in the eternal law. Aquinas says that the eternal law is promulgated by God from

eternity, since the "divine word" is eternal. However, on the part of the subject who receives the

law, Aquinas says, "As far as the creature who hears or reads is concerned, the promulgation

cannot be eternal."[221] From the point of view of the human agent, the promulgation of the natural

law must be constituted for us by our initial actualization of our rational abilities, which takes

place, according to Aquinas, through the natural habit of synderesis.

Although Aquinas says that a child is only "habitually" subject to the natural law, we can

substitute the word potentially for habitually without doing damage to Aquinas's thought, if we

understand our use of potency as a kind of "second-level" capability. The actualization of the

natural law *is not like the development of a virtue*; it is not similar to the actualization of a

potential to become courageous, for example. Rather, the "habit" of synderesis, which enables us

to "see" the primary precepts of the natural law, is naturally given to a human person by dint of

his rational soul. Synderesis is given the way eyes and ears and their ability to see and hear are

given. We do not have to develop the habit of synderesis through repeated actions, but we do

---

[219] See *St*, I-II, q. 91, a. 2, ad. 3.

[220] *St,* I-II, q. 94, a. 1, reply to the *sed contra*.

[221] *St,* I-II, q. 91, a. 1, ad. 2.

have to activate it through experience.[222] Thus, the actualization of natural law is more akin to an already courageous man actually engaging in brave actions on the battlefield rather than to a new recruit attempting to develop the virtue of courage.

The key is to understand a *habitus* as "midway" between mere potency and full actuality.[223] Normally, a *habitus* comes about through the actualization of an ability to develop the *habitus* in question, but the same *habitus* is also a potential in relation to the fully energized activities that flow from the *habitus*. Vernon Bourke says that a *habitus* for Aquinas is "not a mere automatic conditioning of a power as the modern term 'habit' connotes but the metaphysical growth of a basic potency for operation."[224] Simon, for similar reasons, characterizes the Latin word "*habitus*" (Greek "*hexis*") as "existential readiness."[225] Bourke's and Simon's clarification of the meaning of *habitus* reveal the dynamic character of a "habit": it is geared to a certain kind of action, like a coiled spring. In the case of synderesis, this habit is not chosen nor does it need to be developed. It is "bestowed on us by nature" in God's creation of the natural light of human reason.

Aquinas argues that human agents must be able to know some truths, both in the speculative and practical realms, without investigation or argumentation. Further, he says that these naturally knowable (and known) truths serve as the principle of all knowledge resulting from investigation and argumentation. Thus, there is a natural insight into fundamental speculative and practical truths that serves as a foundation for further insights. Aquinas says that,

---

[222] See *St,* I, q. 79, a. 12; *De ver.,* q. 16.

[223] See *St,* I-II, q. 71, a. 3. Aquinas says, "Habit stands midway between potency and act (*Habitus medio modo se habet inter potentiam et actum*)."

[224] Vernon Bourke, "The Role of Habitus in the Thomistic Metaphysics of Potency and Act," in *Essays in Thomism*, ed. Robert E. Brennan (New York: Sheed and Ward, 1942), 106.

[225] See Yves Simon, *The Definition of Moral Virtue*, ed. Vukan Kuic (New York: Fordham University Press, 1986): 71-79.

in the practical realm, it is the work of synderesis to give human agents insight into these

fundamental practical truths. He says,

> Human nature, . . . must both in speculative and practical matters know truth without investigation. And this knowledge must be the principle of all the knowledge which follows, whether speculative or practical, since principles must be more stable and certain. Therefore, this knowledge must be in man naturally, since it is a kind of seed plot containing in germ all the knowledge which follows, and since there pre-exist in all natures certain natural seeds of the activities and effects which follow. Furthermore, this knowledge must be habitual so that it will be ready for use when needed. Thus, just as there is a natural habit of the human soul through which it knows principles of the speculative sciences, which we call understanding of principles, so, too, there is in the soul a natural habit of first principles of action, which are the universal principles of the natural law. This habit pertains to synderesis. This habit exists in no other power than reason.[226]

For Aquinas, the natural habit of synderesis "inclines us exclusively to the good in conformity

with the nature of things."[227] Synderesis is the natural, un-chosen "existential readiness" that

enables human beings to immediately grasp the basic moral truths of the natural law that point us

in the direction of our true happiness. Synderesis ensures that by our nature we are facing the

right direction in our moral life.

Even though synderesis infallibly points us toward the true good for man, it is not

infallible in the sense of guaranteeing that we always identify the real moral good in concrete

actions, since synderesis must be perfected by prudence. Synderesis is the "seedbed" of the

natural law and moral virtue, but it does not ensure that its seeds will grow. Additionally, as

Bourke points out, synderesis is not innate knowledge or a priori reasoning. He says,

> The habit of synderesis enabling man to intuit the first principle of practical reasoning . . . is simply the intellectual skill whereby a person 'sees' that what is really good ought to be done and what is known to be evil ought not. Only after one has experienced something of the world and human life can the knowledge of the SR [the principle that good should be done and evil avoided] be developed. Certainly Aquinas stoutly held that

---

[226] *De Ver.,* q. 16, a. 1, resp.

[227] See Katarzyna Stępień, "Synderesis and the Natural Law," *Studia Gilsoniana* 3 (2014): 378-379.

man has no intellectual knowledge prior to sense experience.[228]

Thus, the full actualization of the naturally given *habitus* of synderesis, which is necessary for a human agent to be fully subject to the natural law, only occurs through human experience enhanced by language. To bolster Bourke's point, we can appeal to the word Aquinas uses for "knowledge" when speaking about synderesis. In the last text quoted from him, Aquinas says that synderesis enables the "knowledge" of the first principles of human action. The Latin word for "knowledge" is *cognitio*. Lewis and Short says that *cognitio* carries the meaning of learning (even learning to know) or acquiring knowledge "as a consequence of perception or of the exercise of our mental powers."[229] Aquinas's treatment of synderesis and natural law open the door for an investigation of the way we constitute or discover the natural moral law in our human interactions with the world, which we will continue to develop in our subsequent chapters.

Finally, synderesis should be seen in the context of our discussion of creation as endowing things with substantial forms and inclinations to the fitting end or good for each nature. Aquinas maintains that nature both sets the proper end-good (*finis*) toward which an entity is directed and provides each nature with the principles or sources of action that order it toward its fitting end. In the case of the human being, the substantial form is the spiritual, intellectual soul, and the proper "work" of the soul is to understand.[230] The natural habit of synderesis is a principle ordering us to our proper good by enabling us to understand basic moral truths, thereby protecting and promoting the natural inclinations to the fitting ends of the human person. Aquinas says, "There is in human nature a certain initial participation of the good which is proportionate to that nature. For self-evident principles of demonstrations, which are seeds of

---

[228] Vernon Bourke, "The Synderesis Rule and Right Reason," *The Monist* 66 (1983): 75.

[229] Lewis and Short, s.v. "cognitio."

[230] See *St*, I, q. 76, a. 1.

the contemplation of wisdom, naturally preexist in that good, as do principles of natural law, which are seeds of the moral virtues."[231] As we have seen, the natural law consists in propositions that flow from our initial grasp of being and direct our subsequent pursuit of the good. These propositions are a work of human reason through the natural *habitus* of synderesis that provide the foundation for moral virtue. The natural law is therefore actualized for us by the natural working of synderesis, an actualization assisted by language.

E. How Are the Conclusions of the Natural Law Promulgated?

At this point we can ask more specifically: do our reflections on speech and concurrent causality apply to the secondary precepts of natural law (such as to avoid ignorance) and the conclusions (such as "do not kill," "do not steal," etc) that stem from them? How are the secondary precepts and conclusions promulgated? There are two points to make in response to these questions. First, Aquinas stresses the unity of the natural law; all the precepts and conclusions derive from the first *per se notum* principle when it is applied to various domains of experience and reality; that is, the secondary precepts and conclusions are rooted in the primary principle, but the derivations of the secondary precepts do not arise by a kind of moral calculation devoid of experience. In all its manifestations, the natural law is unfolded and unpacked from our initial grasp of the primary precept. Thomas says, "Every operation of reason and will in us is derived from what is in accord with nature. For every instance of discursive reasoning stems from principles that are naturally known to us, and every desire for things that are ordered to an end stems from a natural desire for the ultimate end. And so, likewise, the initial ordering of our acts to their end (*prima directio actuum nostrorum ad finem*) must be

---

[231] *De ver.*, q. 14, a. 2., resp. For a discussion of this text and the role of synderesis in natural law and virtue, see Angela McKay, "Synderesis, Law, and Virtue," in *The Normativity of the Natural: Human Goods, Human Virtues, and Human Flourishing*, ed. Mark J. Cherry (Dordrecht: Springer, 2009), 33-44.

brought about through natural law."[232] The various natural inclinations, and hence the secondary precepts and conclusions, share a single "root" in the primary precept of the natural law. The unity of the natural law in the multiplicity of its precepts is precisely the point of *St,* I-II, question 94, article 2. Thus, the articulation of being through responsible thought and language co-promulgates the primary precept of the law and sets the stage for the various secondary precepts and conclusions to make their appearance.

Next, Aquinas's distinctions between the primary precept, the secondary precepts, and the conclusions of the natural law open up space for a gradual discovery of the natural rule and measure for human actions. Aquinas says that all those who actualize their ability to reason know the first universal principles of the natural law immediately.[233] In this context, the Latin word generally translated as "known" or "knowledge" is "*notitia.*" *Notitia* is close in meaning to the definition of promulgation we have given because it carries the idea of a public notice or notification. The English word "knowledge" can mask the essential connection to promulgation that is implied by *notitia.*

In contrast to the universally known primary precept, the conclusions, such as the absolute prohibition against murder, that ultimately flow from the first principles of practical reason are "noticed" only for the most part. A person, or even whole cultures, can be impeded in their knowledge of these conclusions. Aquinas says, "As Julius Caesar reports in *De Bello Gallico,* at one time among the Germans theft was not considered bad, even though it is clearly contrary to the law of nature."[234] Aquinas recognizes that there are certain people who fail to allow basic moral realities to "announce themselves." Thus, each moral agent has to come to

---

[232] *St,* I-II, q. 91, a. 2, ad. 2.

[233] See *St,* I-II, q. 94, a. 4.

[234] *St,* I-II, q. 94, a. 4. See also *St,* I-II, q. 100, a. 1.

understand the truth of these conclusions gradually. Although most moral agents will correctly

discern that murder, theft, and lying should be avoided, this process of discovery can be derailed.

Aquinas concludes that the immediately noticed first principle (do good and avoid evil)

can never be "erased from the heart's of men." However, the conclusions can be erased from the

hearts of men. This moral blindness can occur in individual actions, where reason can be

overcome by passions, and it can obtain more generally in an individual or a culture, as we have

seen. In addition to unruly passions, Aquinas says that a person can fail to know these

fundamental conclusions of the natural law "because of bad arguments (*malas persuasiones*), in

the same mode that errors happen in speculative matters with respect to necessary conclusions,

or due to depraved customs and corrupt habits (*pravas consuetudines et habitus corruptos*) – in

the way that, as the Apostle points out in Romans 1:24ff., theft or even vices contrary to nature

are not thought of as sins among some people."[235] Deceitful or simply erroneous discourse can

actually delete the law of nature "written on the heart," at least regarding the conclusions of the

natural law. Similarly, an individual's moral vices or a toxic culture can interfere with the ability

of human agents to allow moral necessities to announce themselves to us.

If untruthful speech, moral vices, and a corrupt culture can incapacitate one's moral

sensibility, then clearly good arguments and rectified speech, moral virtues, and a healthy culture

can assist in making the secondary precepts and conclusions of the natural law publicly known.

In other words, truthful speech and virtuous actions leading to a healthy culture can serve to

---

[235] *St*, I-II, q. 94, a. 6. See also *St*, I-II, q. 94, a. 4., where Aquinas says a person can fail to know these conclusions of natural law because his faculty of reason "has been perverted . . . by passion or by bad habits or by a bad natural condition." It is interesting to note Aquinas's claim that the knowledge of natural law can be impeded by a "bad natural condition." Such a condition would not be a moral cause of failure to know the natural law, and therefore such a person ought not be held responsible for his failure to know the various precepts of natural law. For a discussion of Aquinas's treatment of *consuetudines* in legal philosophy, see David VanDrunen, *Law and Custom: The Thought of Thomas Aquinas and the Future of the Common Law* (New York: Peter Lang Publishing, 2003).

promulgate the conclusions of the natural law.[236] Aquinas does not explicitly draw this conclusion, but it seems entailed by his own principles. The introduction of language not only assists one in grasping the universal primary precept of the natural law, but truthful speech also serves to clear the air and make manifest the conclusions of natural law. Conversely, sophistic or otherwise corrupted language can conceal the natural law and make it unrecognizable. In itself, human language is geared toward the manifestation of reality and thus the promulgation of the natural law, but free human agents can either manifest the natural law in keeping with the *ergon* of speech or obscure it through sophistry. The role of language and moral virtue in the promulgation of the secondary precepts and conclusions of the natural law will be investigated in the following chapters.

Conclusion

Aquinas presents an interesting connection between the promulgation of law on the one hand and concurrent causality and language on the other hand. For Thomas, the ruling reason of the governor of a community is "in" the modes of speech characteristic of the various forms of law. By being captured and carried in language, the rules and measures of human action are "applied" to the members of various communities. Promulgation also utilizes the conjunction of primary and secondary agents jointly proclaiming the law through concurrent causality. For example, we have seen that the ruling reason of the legislator of the human positive laws is "in" the pronouncements promulgated first by the legislator himself, and the identical laws are presented again in the multifaceted communications that ensue among secondary legal officials and members of the political community.

For Aquinas, God "initially" promulgates the natural law in the creation of the cosmos

---

[236] We will develop this point at length in the final chapter.

and especially the creation of the natural light of reason in human agents, who are the subjects of the natural law. God enables human agents to constitute or achieve the precepts of natural law and to make them known, and in so doing these agents are ruled and measured by divine law. We must note that human agents do not "give themselves the law" in a Kantian sense. Human reason is not the law nor is it the giver of natural law. For Aquinas, only God is the legislator of the natural law. However, through secondary causality we actualize a law that has been given to us, and this actualization is the "making known" or the co-promulgation of that law. Brague says, "Through the law, God 'instructs' (*instruit*) mankind, although that seeming cognate is a mistranslation of the Latin word. Rather, he 'equips' us. It is a question not of teaching man what he must do, but rather of putting in his hands the instruments that permit him to do it."[237] For Aquinas, God governs us by enabling us to discover and "equip" ourselves with the natural law, and he promulgates the natural law by enabling us to constitute it; that is, by enabling us naturally to disclose moral objectivities. Thus, the human agent is a secondary cause of the full promulgation of the natural law.

For Aquinas, the discovery of the natural law takes place through the activity of synderesis and unfolds with the assistance of human language as human agents encounter and engage with the natures around them. We might summarize Aquinas's position as follows: God speaks things into being, and human agents bespeak the being of things. The promulgation of the natural law is accomplished within this setting of ontology and disclosure. Through concurrent causality, God gives the natural law to human agents precisely by enabling them to actualize themselves and constitute the natural law in their encounter with the natural world. In this encounter, we co-promulgate the natural law as the natural ends of human life come to light, and in turn the fitting ends of human nature are protected and promoted by the precepts of natural

---

[237] Brague, *Law of God*, 223.

law.

We have seen the three ways that law is "in" something for Aquinas. Law is "in" the reason of the governor or legislator as in its origin, it is "in" the subjects ruled and measured as a principle to which they must conform their actions, and it is "in" the language proper to the law in question as in its matter. We can now conclude that the natural law is "in" God in the first sense because he is the giver of the natural law, it is "in" human beings in the second sense (either potentially or actually) as those subject to the natural law, and in the third sense it is "in" linguistically formed human thinking (or intelligent speech) stemming from our encounter with natural entities. The promulgation of the natural law elevates the human community by directing our moral transactions to their fitting ends. The natural law made manifest by human language and thinking enables us to intelligently pursue common ends through common actions. As Aquinas says, "The expression of meaning by means of speech is for the sake of a more perfect existence (*ad bene esse*)."[238] For Thomas, language is like a root with two intertwining offshoots. It introduces human agents into the more perfect existence of social and political life, and it enables them to be the co-promulgators of the natural law.[239] Through language, human agents enter into social and political life under the direction of the natural law.

Finally, Aquinas recognizes that the "conclusions" of natural law can be "silenced" in a person or even in whole cultures by sophistic speech, corrupt moral habits, and toxic customs. Conversely, we can add that the conclusions of natural law can be "proclaimed" through thoughtful speech, virtuous actions, and healthy cultures. This point has far-reaching consequences that will be explored in the final chapter of this work.

---

[238] *In De anima*, lib. II, lect. 18, n. 473, taken from *Commentary on Aristotle's De Anima*, trans. Kenelm Foster and SIlvester Humphries (Notre Dame: Dumb Ox Books, 1994) (trans. modified).

[239] On language as the unique property of man that lifts human beings into political life, see Aristotle, *Politics*, I.2, 1253a7-17.

Earlier we compared the transitive nature of "teaching-learning" to the promulgation of law. However, we must now point out an important disanalogy between the promulgation of natural law on one hand and the teacher-student relation on the other. The teacher speaks directly to the student, and while the student must be active in some way to comprehend what he is being taught, the pupil in a classroom is passive (strictly speaking) in his reception of the lessons from the teacher.[240] In the promulgation of natural law, it is the subject of the natural law that learns the law by manifesting what is already "written in his heart." To continue with Aquinas's metaphor, the natural law is written on our hearts, but we have to learn a language in order to "read" the law. That is, we manifest the law that is "within" us through our linguistically formed experience of created realities. Thus, our constitution of the natural law is an achievement in which we make it known to ourselves, or conversely we discover it through its constitution. In constituting the natural law, our natural inclinations to our fitting end are placed under genuinely legal direction. This approach does not reduce natural law to language, but it does show that language is indispensible for the discovery and constitution of natural law. By contrast, the student in a classroom learns the subject being taught to him, but he does not make it known. We can make this distinction between a human teacher-student relationship on the one hand and the discovery of natural law on the other hand because of the space opened up by the Christian distinction. Only a transcendent Creator God, whose "immanence flows from his transcendence,"[241] can instruct us in this way. Only God can teach us by enabling us to discover

---

[240] Aquinas distinguishes between passive potencies and active potencies. For example, air has a passive potency to "become fire," since the nature of air could never suffice to bring about "fire" on its own. The human ability to learn and the body's ability to be healed are examples of active potencies, since the teacher or doctor assists the nature he works on (the mind and the body, respectively) to bring about it's (the mind's or body's) own proper operation. Thus, Aquinas says that the student has an "active potency" to acquire knowledge in two ways: he discovers things on his own or he learns things through the instruction of a teacher. See *De ver.*, q. 11, a. 1, resp.

[241] Dewan, "St. Thomas and the Divine Origin of Law," 129. On this point, Dewan references *St,* I, q. 8, a. 1.

what is fitting for our nature.[242]

Overall, Aquinas's treatment of the natural law stresses the order in the divine mind as it rules and governs rational creatures. His discussion of natural law is strongly metaphysical and theological, and the aspect of promulgation and discovery of the natural law is not given pride of place. Nevertheless, Aquinas gives us an important outline of the human agent's involvement in the discovery and co-promulgation of natural law. In the following chapter, we will attempt to develop this outline, especially concerning the manner in which human agents manifest being through language.

---

[242] On Aquinas's account, human teaching and human discovery would be necessarily distinct. God, who can teach man "interiorly," can teach man by enabling him to discover. See *De Ver.*, q. 11, a. 1.

Chapter 3

The Role of Language in the Constitution of the Natural Law

"When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
"The question is," said Alice, "whether you *can* make words mean so many different things."
"The question is," said Humpty Dumpty, "which is to be master—that's all."

- Lewis Carroll, *Through the Looking-Glass*

"I only wanted to call things by their right names."

- Walker Percy, *Signposts in a Strange Land*

In the first chapter, we distinguished various approaches to our question of how natural law is promulgated. We said that our approach would show that the natural law is promulgated through the "instrumentality of nature" and through the operations of human reason. To this end, we showed that for Aquinas the human agent functions as a co-promulgator of the natural law, and we pointed to the necessity of language in this activity of making the natural law known. We saw that promulgation, in Aquinas's system, is the material cause of law, such that law is always embedded in the use of language. Through language, human agents enter into social and political life under the genuinely legal direction of the natural law. Aquinas also says that the natural law is constituted, or achieved, by human intelligence operating as a secondary cause.

In Chapter Two, we discussed Aquinas's nominal definition of all law. Aquinas says that law is a "rule and measure for human actions." This nominal definition is especially important for our discussion of how we discover the natural law, since it shows what is "first for us" or first in the order of discovery. Unfortunately, there is little scholarly work on the manner in which the nominal definition of law should be understood and developed in regard to natural law.

Therefore, in order to show adequately how the natural law is promulgated, we have to keep two ideas together: (1) the natural law is a rule and measure for human actions, and (2) we discover this rule and measure in the interplay between the subjective operations of human intelligence shaped by language and the entities that we experience. More specifically, we will show how the things we experience provide a measure for our actions, but these measures only come to light gradually through the operations of the human subject. In this chapter, we will turn to a more explicitly phenomenological approach in order to discuss in detail the role of perception, language, and human action in the constitution of the natural law. We will concentrate on how the entities we experience provide a measure for us at the three levels of perception, speech, and action. We will briefly show the proper way to understand the activity named "constitution" in phenomenology, and we will consider how language manifests, to ourselves and to others, the nature of entities that we experience. To this end, we will discuss how language is acquired, what is given to human agents through the use of a word, and how the intelligibility of entities made manifest through language enables human agents to discover the natural law.

1. Constitution as Activities of Disclosure, Not Creation

We briefly introduced the theme of constitution in the first chapter, and we said that constitution in the phenomenological sense refers to the human subject's achievement of an objectivity. That is, it refers to the activities a human agent must perform in order to manifest objective realities to himself and to others. As Husserl says, the issue of constitution refers to "the relationship between the subjectivity of knowing and the objectivity of the content known."[1] We must avoid misconstruing the meaning of constitution; we should not understand constitution

---

[1] Husserl, *Logical Investigations (LI)*, Vol. 1, trans. J.N. Findlay (New York: Routledge, 2001), 2. This quotation is taken from Husserl's foreword to the first edition.

in such a way that the subject produces, constructs, or "creates" reality out of its own activities. Husserl says, "Between consciousness and reality there yawns a true abyss of sense."[2] However, through the intentional nature of consciousness, reality is related to our conscious life in knowledge, or in constitution. Therefore, constitution does not collapse objectivity into subjectivity, nor does it dissolve subjectivity into objectivity; the senses and distinctions that we encounter in reality are not "made" by human agents, but rather disclosed. Sokolowski says, "Without subjectivity, the real world cannot acquire its sense; however, subjectivity is not a sufficient cause for the meaning of the world. It neither 'forms' nor 'creates' the sense and objectivity which the world has . . . but 'gives' the world its sense by making it possible for this sense to come about."[3] The issue of constitution maintains a dynamic tension between two poles: consciousness and objective reality. Concerning the natural law, we can say that subjectivity makes it possible for the normativity of the natural law to take hold.

By focusing on the issue of constitution, we can see more clearly *the correlation* between the activities of the subject and the objectivities that manifest themselves through these activities.[4] For Husserl, the constitutional character of consciousness implies that human consciousness is a dynamic ability by which the things themselves are given to us; it is not a static box where we encounter ready-made objectivities. John Brough says,

---

[2] *Ideas I*, §36; see also §48.

[3] Robert Sokolowski, *The Formation of Husserl's Concept of Constitution* (The Hague: Martinus Nijhoff, 1970), 197.

[4] Sokolowski says, "Husserl does not reduce reality to consciousness, nor does he dissolve consciousness into the objective world. . . . Husserl states that the structure of intentionality is such that it must constitute an object and, paradoxically, this object has to be constituted as objective and transcendent." Sokolowski, *Formation*, 136. Husserl says that there is a need of constitutional analysis in many different areas. He says, "There is need of a *constitutional theory* of physical Nature (which is 'given' as always existing and, in being so given, is likewise always presupposed), a constitutional theory of man, of human community, of culture, and so forth. Each title of this kind points to a vast discipline with different lines of investigation, corresponding to the naive ontological component concepts . . . Naturally it is everywhere a matter of uncovering the intentionality implicit in the experience itself as a transcendental process." *CM*, III, §29, 62-63. To adopt Husserl's terminology, we could say that in this dissertation we are engaged in a constitutional theory of the natural law.

Objects are constituted by consciousness rather than contained in it. Containment implies that the object or its surrogate is ready-made and dropped into consciousness-the-container, at which point it can be seen. Constitution implies that the object as known is an accomplishment of consciousness and must be brought to consciousness, which, depending on the act, can occur in different ways, presenting objects that are given to consciousness in different ways.[5]

Husserl refers to these subjective activities or accomplishments as performances of "evidencing," of showing what a thing is in itself. He says, "*Evidence . . . designates that performance on the part of intentionality which consists in the giving of something-itself. . . .* it is the universal pre-eminent form of 'intentionality,' of 'consciousness of something,' in which there is consciousness of the intended-to objective affair."[6] Therefore, the subjective activities of evidencing are correlated with objective entities and states of affairs. Husserl says that the "*category of objectivity and [the] category of evidence are perfect correlates. To every fundamental species of objectivities . . . a fundamental species of experience, of evidence, corresponds*, and likewise a fundamental species of intentionally indicated evidential style in the possible enhancement of the perfection of the having of an objectivity itself."[7] Evidence for Husserl is both active and teleological; evidencing must be understood as a verb, as an activity in which we are geared by nature to continue to manifest objectivities until we "have" them more fully by understanding them, that is, by having them "given" to us, more completely.[8]

Sokolowski develops the Husserlian idea of the teleological nature of human "evidencing" in a description of what he calls "veracity," which he says names "the human

---

[5] Brough, "Consciousness Is Not a Bag," 190.

[6] *FTL*, §59, 158.

[7] Ibid., §60, 161.

[8] Ibid. See also *CM*, III, §24, 58. Sokolowski says, "In phenomenology . . . 'evidence' takes on the sense of the verbal form, 'evidencing'. It is the bringing about of truth, the bringing forth of a presence. It is a performance and an achievement." See Sokolowski, *Introduction*, 160. On the teleological nature of human consciousness and evidencing, see Husserl, *FTL*, §60, 160.

inclination to attain the truth of things."[9] Sokolowski says that such veracity should not be taken as a virtue; thus it is not the result of our successful cultivation of certain natural abilities. Rather, veracity "is something more elementary [than a virtue]. It is with us from the beginning. Veracity is the impulse toward truth, and the virtue of truthfulness is its proper cultivation. Veracity is the origin of both truthfulness and the various ways of failing to be truthful."[10] Sokolowski says that veracity "means practically the same thing as *rationality*, but it brings out the aspect of desire that is present in rationality."[11] More specifically, "veracity is the desire for truth; it specifies us as human beings. It is not a passion or an emotion, but the inclination to be truthful."[12] Veracity is the "*eros* involved with rationality," but Sokolowski says that being truthful or being dishonest are not two equivalent ways of developing this inclination toward the truth of things. "We can be happy as human beings only by cultivating our veracity into truthfulness, not by developing it into *either* truthfulness *or* Machiavellian dishonesty. And failing to develop our veracity is not just *one* of the ways we can be unsuccessful as human beings; it is *the* way in which we fail and make ourselves false, that is, unreal as what we are."[13] Veracity is the open-ended, undifferentiated tendency toward truth as such; it is not limited to a particular kind of truth, and it is also not the result of a choice on our part. Veracity is more fundamental than choice itself, and it is part of what makes human choice possible, since it shows that we are geared by nature toward discovering the truth of things.

---

[9] Sokolowski, *Human Person*, 20. Sokolowski's understanding of veracity articulates the natural inclinations not just of any being, but of a *rational* substance, inclinations that Aquinas also describes.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid., 21.

Veracity is therefore a *dunamis*, an ability, and the discovery of truth is an *energeia*, an activation of our ability to find truth. Part of our project is to show how one of the ways that veracity is activated is in the discovery of the truths of natural law, thus showing that the promulgation of the natural law is an issue of the truth of things. To claim that natural law is constituted by human reason means not that the precepts of natural law are dropped into the human intellect as into a box, but that they are disclosed as an objective measure for human action as our desire for truth is successfully cultivated. Additionally, Sokolowski's understanding of veracity could be linked with Aquinas's primary precept of the natural law, which is "good is to be done and pursued and evil avoided." We cannot be taught to pursue good and avoid evil, just as we cannot be taught to desire truth. As soon as we begin to act as responsible agents, we naturally and inevitably tend toward the good and the true in our actions, thinking, and speech. Even when we desire and do something that is truly bad, we seek it under the guise of some good. This inclination is an expression of the dynamism of human nature; it undergirds choice and hence makes moral and political life possible.

A. An Example of Constitution from Ancient Philosophy: Aristotle on Time

Aristotle's understanding of time can serve as an example of what is meant by constitution. Aristotle defines time as the "number of movement in respect of the before and after."[14] He also says that "time is not movement, but only movement in so far as it admits of enumeration."[15] To illustrate the reality of time, Aristotle distinguishes between two ways of speaking about number; number can be spoken of (1) as what is counted or what is countable, and (2) as that with which we count. Time is number in the first sense; it concerns what is counted, or what is countable, so time is the number of things that are counted. In this case, the

---

[14] Aristotle, *Physics* IV.11, 220a25.

[15] Ibid., 219b1-3.

things counted are motions, or changes, especially local motions or changes of place. The movement of entities is a necessary precondition for the existence of time, but it is not sufficient. Movement needs to be related to the human being through counting for time to exist.

Aristotle discusses the manner in which time is related to the human soul, and he asks specifically if time can exist apart from a human being who is there to count the movements of entities in the world. He says, "For if there cannot be some one to count there cannot be anything that can be counted either, so that evidently there cannot be number; for number is either what has been, or what can be, counted. But if nothing but soul, or in soul reason, is qualified to count, it is impossible for there to be time unless there is soul, but only that of which time is an attribute, i.e. if *movement* can exist without soul."[16] Thus, the movements of entities in the world that we experience are necessary but not sufficient for the reality of time. If there were only motions in the world and no "soul to count" these motions, then time would not exist. For time to exist, there must be the activities of human agents, who behold and number movements. For Aristotle, time is an objective reality, but it only comes into being through the correlation between the activities of human reason (counting) and the natural world (motions). Yves Simon says, "When Aristotle defines time as the measure of movement according to the before and the after he is directly defining time as a construct, as a work of the reason, interpretative of something real."[17] For time to exist and to be intelligible, the contributions of the human intellect, just as the movements of natural things, are necessary but not sufficient.

We can adjust Simon's language and say that time, for Aristotle, is not a construct but that it is *constituted* by human reason. By taking this position, we are not reducing time to the

---

[16] Ibid., IV.14, 223a22-28.

[17] Yves Simon, *The Great Dialogue of Nature and Space*, ed. Gerard J. Dalcourt (South Bend: St. Augustine's Press, 2001), 132.

realm of the purely subjective; rather, we are illuminating the way that human agents disclose objectivities in the world and order their lives based upon these disclosures. Once time is constituted, human agents use it to harmonize their lives and common actions. In an analogous fashion, the natural law is an objective moral rule and measure for human actions, but it does not exist for us without our subjective activities that constitute it.[18] We will see that the natural law comes to light in the correlation between human agents who speak and name realities that exhibit an order toward their own ends, or perfections, and, similar to time, the natural law as disclosed enables human agents to pursue common goods through common actions. Just as time for Aristotle depends upon the correlation between the human agent who counts and the natural entities that move, so the natural law depends upon the correlation between the human agent who speaks and natural entities that act for ends. However, in the case of human speech, we ourselves are constituted as responsible agents when mind and world come together through language. As will we discuss throughout the rest of this chapter, human beings are activated toward their natural ends as moral agents when they learn to speak about entities and states of affairs in the world. This activation as human agents only takes place within an intersubjective context, where reason is awakened by others who speak with us and thus introduce us to a common world. In this triangulation between self, other speakers, and the objective world, the natural law comes to light, or is constituted.

B. Genetic Constitution and the Use of Language

Husserl discusses what he calls "genetic constitution" in *Cartesian Meditations* and *Formal and Transcendental Logic*.[19] Genetic constitution enables us to see the progression of

---

[18] We saw in the previous chapters that according to Aquinas, our freely performed actions that constitute the natural law are in fact that way in which God moves us and governs us as secondary agents or co-promulgators.

subjective acts that are necessary to constitute the objective sense of states of affairs and

judgments. Each objective state of affairs manifested through syntactical judgments has its own

"history," its own characteristic way of manifesting itself to human agents in a sequence of steps.

Genetic constitution attempts to uncover the genesis and the process of development that must

unfold for a human being to encounter a given reality, since the senses and meaning of

judgments carry their own "history" within them. Husserl says that "judgments as senses

accordingly have a sense-genesis."[20] He says,

> Uncovering the sense-genesis of judgments signifies . . . an unravelling of the sense-moments that are implicit in, and belong essentially to, the sense that has plainly come to light. Judgments, as the finished products of a 'constitution' or 'genesis,' can and must be asked about this genesis. The essential peculiarity of such products is precisely that they are senses that bear within them, as a sense-implicate of their genesis, a sort of historicalness; that in them, level by level, sense points back to the original sense and to the corresponding noetic intentionality; that therefore each sense-formation can be asked about its essentially necessary sense-history.[21]

Genetic constitution enables us to inquire into "the sources of the contents of consciousness,"

and it also highlights the progression of subjective activities that are necessary for the

achievement of these objectivities. In our discussion, we will use Husserl's understanding of

genetic constitution, but we will focus more explicitly than Husserl does on language and the

intersubjective setting necessary for its development and exercise.

The meaning of a word and the sense of a judgment are constituted genetically in two

interrelated stages: (1) a passive genesis or pre-predicative stage of constitution and (2) an active

genesis or predicative stage of constitution.[22] With this distinction, genetic constitution allows us

---

[19] See Husserl, *FTL*, Part II, Ch. 1-5; *CM*, IV; Sokolowski, *Formation*, 167-194; Daniel Sousa, "Phenomenological Psychology: Husserl's Static and Genetic Methods," *Journal of Phenomenological Psychology* 45 (2014): 27-60.

[20] *FTL*, §85, 207.

[21] Ibid., §85, 207-208.

to see how our achievements of objectivity made through language are rooted in our pre-linguistic encounter with entities such that the objective senses constituted in predicative evidencing are founded upon the bodily perception of things. These two aspects of human involvement with things reveal that human beings are both datives of manifestation and agents of truth; we are both receptive and active. We are agents of truth insofar as we are the datives for the manifestations of entities.

The two stages of passive and active genesis are also mutually dependent upon each other; human beings constantly oscillate between the encounter with objective reality through pre-predicative perception and the achievements of objectivity in judgments that are built upon but transcend these perceptions. Thus, we must investigate "the genetical tracing of predicative evidences back to the non-predicative evidence called experience."[23] Such tracing back to pre-predicative evidence will enable us to see how the use of language and hence the constitution of the natural law are rooted in the natural human perception of the world.

C. Pre-Predicative Experience

As embodied agents, perception is the foundation for all our higher level acts of evidencing. Husserl says, "Evidence has *different* modes of originality. *The primitive mode of the giving of something-itself is perception.* The being-with is for me, as percipient, consciously my now-being-with: I myself with the perceived itself."[24] When we encounter an object in perception, we grasp the thing itself in a continuous flow of sides, aspects, and profiles.[25] We do encounter the thing itself in our experience, but we always encounter it from a certain angle. I

---

[22] See *CM,* IV, §38. See also Husserl, *The Origin of Geometry*, in *Husserl: Shorter Works*, ed. Peter McCormick and Frederick A. Elliston (Notre Dame: University of Notre Dame Press, 1981), 255-270.

[23] *FTL*, §86, 209.

[24] Ibid., §59, 158.

[25] See Sokolowski, *Introduction*, 17-21.

may see the front of the building but not the back, and thus the building itself is given to me in a blend of presences and absences. Looking at the front of the building from a given angle, the front itself (side) is present to me as I look at it "from here" (aspect) within a unique temporal flow (profile), while the back of the building is absent to me.

The back of the building is made "co-present" or "appresented" in my experience of the front, however. I am aware of the back of the building in its absence and of my ability to walk around and make it fully present to myself. Husserl says that the absent side of a given object that we experience is given in "appresentation." He says, "An appresentation occurs even in external experience, since the strictly seen front of a physical thing always and necessarily appresents a rear aspect and prescribes for it a more or less determinate content. . . . Appresentation of this sort involves the possibility of verification by a corresponding fulfilling presentation (the back becomes the front)."[26] Husserl says that appresentation is not inference, but a more immediate awareness of the absence of a side of a given object that we encounter in experience.[27] In Husserl's terminology, the front of the building would be given in a fulfilled intention because we are in the direct presence of this side, but the back of the building would be given in an empty intention since we are aware that the back is absent to us but could become present.

Perception is therefore a blend of presence and absence in which the thing itself is given to us in a manifold of appearances. For its part, the object is the identity "in" and "behind" these presences and absences. Husserl says, "The manifold modes of appearance . . . continue their

---

[26] *CM*, V, §50, 109. The recent work of Alva Noë comes to a similar conclusion. Noë asks, "In what does your perceptual sense of the presence of unseen items consist?" He answers, "It consists in your practical knowledge of how to bring those unperceived items into view by movements of the body; in your skill-based sense of their availability. . . . [Those unperceived items] are present as absent, but as available to perception through appropriate movement." Alva Noë, "Real Presence," *Philosophical Topics* 33 (2005): 243.

[27] Ibid., 111.

flow; and, in their manifestly passive syntheses, the one physical thing, with its one shape and other unitary features, appears."[28] The object is the identity within the manifold of its appearances, so by attending to the appearances of an entity we are attending to the way that entity shows itself. In the *Logical Investigations*, Husserl summarizes his understanding of perception:

> In one percept the object appears from this side, in another from that side; now it appears close, now at a distance etc. In each percept, despite these differences, one and the same object is "there," in each it is intended in the complete range of its familiar and of its perceptually present properties. To this corresponds phenomenologically a continuous flux of fulfillment or identification, in the steady serialization of the percepts "pertaining to the same object." Each individual percept is a mixture of fulfilled and unfulfilled intentions. To the former corresponds that part of the object which is given in more or less perfect projection in this individual percept, to the latter that part of the object that is not yet given, that new percepts would bring to actual, fulfilling presence.[29]

Further, Husserl says that pre-predicative experience is governed by normativity. He says, "Each appearance internally refers to its own optimum," such that a pre-predicative encounter with objects points to an experiential culmination in which the appearing object is manifest with "maximal clarity" and with the "greatest richness of differentiation."[30] Husserl says, "The consciousness of the most proper givenness [of an object] is the goal of the perceptual movement."[31] When we encounter an object in perception, there is a "better" and "worse" way of seeing the object, and we are, as human beings, teleologically ordered toward getting the best view of the thing that we can. Husserl says,

> In the series of possible appearances a certain givenness of the thing is privileged in that with it is given, *of the thing as a whole, what is relatively the best*, and this acquires the

---

[28] Ibid., IV, §38, 79.

[29] *LI*, VI, §14, 221.

[30] These formulations are from Husserl, and I take them from Jooan Taipale, who cites an unpublished manuscript of Husserl. See Joona Taipale, "Twofold Normality: Husserl and the Normative Relevance of Primordial Constitution," *Husserl Studies* 28 (2012): 51.

[31] See Husserl, *Thing and Space: Lectures of 1907*, trans. R. Rojcewicz (Dordrecht: Kluwer, 1997), §36.

character of what is *especially intended*: it is the predominating focus of the "interest," what the *experience is tending toward, terminates in*, is fulfilled in; and the other modes of givenness become intentionally related to this "optimal" one.[32]

For Husserl, the optimally given thing is the thing itself, the thing "as it is." However, the optimal circumstances for the perception of an object are not given in a kind of exacting geometrical abstraction. Joona Taipale says, "Even though there is something like an optimal distance of perceiving something, this should not be understood in terms of exact measuring. However, even if fluid or fluctuating, the parameters of 'normal circumstances' can indeed be exceeded, whereby things no longer reveal themselves to us as they are."[33] The thing that we perceive invites us into a range of optimal conditions in which we can see the thing as it is.

The measure of optimum experience does not spring from a psychological eccentricity on the part of the perceiver; rather, the thing itself acts as a kind of measure. Given what it is and how its shows itself to us, as well as our interest in perceiving the object, there is a better or worse way of seeing it. Maurice Merleau-Ponty illustrates this point using the example of a painting in an art gallery. Given the kind of artwork on display and the lighting in the museum, we naturally move our bodies in order to get the best view of the painting, to see it as it is by perceiving it from a better angle, from an optimal distance, and in the best light possible. Merleau-Ponty says, "For each object, as for each picture in an art gallery, there is an optimum distance from which it requires to be seen, a direction viewed from which it vouchsafes most of itself: at a shorter or greater distance we have merely a perception blurred through excess or deficiency. We therefore tend towards the maximum of visibility, and seek a better focus as with

---

[32] Husserl*, Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy, Second Book: Studies in the Phenomenology of Constitution,* trans. R. Rojcewicz and A. Schuwer (Hague: Nijhoff, 1989), 65; See Joona Taipale, "Twofold Normality," 49-60.

[33] Taipale, 'Twofold Normativity," 53.

a microscope."[34] Even at our most basic level of passive genesis in pre-predicative experience, the thing we encounter in perception serves as a measure for our perceptions and our behavior, since we naturally orient ourselves in relation to the thing in order to see it in the best light possible. This is a kind of truth of manifestation on the perceptual level, with a corresponding falsity and hiddenness.

At the fundamental level of perception, we see an important specification of the correlation between subject and object. The object prescribes how the human agent should relate to it in order to encounter it more fully; the thing invites us to orient ourselves physically in such a way as to see it "as it is" in its best light. Further, it is the thing at its best, at its optimum capacity to be encountered, which is normative for our interactions with it. We are measured by the native excellence of the thing even at the level of pre-predicative experience.

What is it about human consciousness that enables us to orient ourselves in relation to objects in order to achieve this maximally clear perception? In order for us to be able to move ourselves so as to "get the best view," in order for us to respond to the invitation given by things to known them in themselves, we must be aware of two distinct things in perception. We must be aware (1) of the object that we are experiencing and (2) how the object appears to us in the present circumstances.[35] That is, in pre-predicative experience *we must be aware* of the

---

[34] Maurice Merleau-Ponty, *Phenomenology of Perception*, trans. Colin Smith (New York: The Humanities Press, 1962), 302. See Sean Dorrance Kelly, "Seeing Things in Merleau-Ponty," in *The Cambridge Companion to Merleau-Ponty*, ed. Taylor Carman (Cambridge: Cambridge University Press, 2004), 74-110.

[35] We might also add, with Husserl, that we have to be aware of our ability to orient ourselves physically so as to more fully perceive the object. That is, we have to be aware that "we can" move our bodies and adjust our focus so as to get a better view of the object. Maxime Doyon says, "Husserl claims that perception includes a self-reference that contains proprioceptive and kinaesthetic information about my bodily situation that registers self-consciously in the form of the 'I can.' Husserl's basic idea is that the implicit self-awareness of the actual and possible movement of my body contributes to shape perceptual experience by generation expectations, which will then be fulfilled or unfulfilled in experience. In Husserl's view, it is in this horizontal structure that perception acquires its normative character, for it is only against the background of these fulfilled or unfulfilled expectations that perceptual content can be said to be accurate or inaccurate, correct or incorrect, better or worse, just fine or

difference between the thing and how the thing appears to us from our specific vantage point.

This "two-step" structure is part of the "enactive theory of perception" developed by Alva Noë, who says, "The world makes itself available to the perceiver through physical movement and interaction."[36] Noë says that perception is "a dynamic activity of skillful interaction with things around us. Perceiving isn't representing, or even presenting; it is enacting perceptual content – that is to say, making contact with the world through skillful exercise."[37] Using the example of a circular object seen from an angle that makes the object appear elliptical, Noë says, "We see its circularity in the fact that it looks elliptical from here."[38] We need not choose between the thing itself and how the thing appears to us; we need not separate the appearances of the thing from the thing itself. Rather, from the philosophical attitude we can describe being in its appearances while maintaining that appearances are a part of how beings are and how they manifest themselves to us. Noë says, "There is no reason to think that appearances – how things look, sound, feel – are sensations or mental items. How things look . . . is precisely a feature of the way things are,"[39] and he continues, "Experience presents us with how things are – for example, with deer grazing on the meadow – *and* it presents us with the world *as it appears from here*."[40] It is important to note that this two-step structure in perception is the natural mode in which human agents evidence the world in pre-predicative experience; given what we are, we have the capacity to be conscious of objects in this way and we naturally apprehend both the thing we

---

optimal, etc." Maxime Doyon, "Perception and Normative Self-Consciousness," in *Normativity in Perception*, ed. Maxime Doyon and Thiemo Breyer (New York: Palgrave Macmillan, 2015), 39. See Husserl, *Thing and Space*, §3.

[36] Alva Noë, *Action in Perception* (Camridge: MIT Press, 2004), 1.

[37] Noë, "Real Presence," *Philosophical Topics* 33 (2005): 249.

[38] Noë, *Action in Perception*, 84.

[39] Ibid., 164.

[40] Ibid., 205.

experience and the perspectival nature of this experience. Noë says, "We move about in a sea of perspectival properties and are aware of them (usually without thought or notice) whenever we are perceptually conscious."[41]

While Noë is correct to point out that all our experience naturally has this "two-part" structure, we must also add that this natural way of experiencing objects must be developed over time. There is a temporal unfolding of our natural capacities necessary for us to be able to experience objects in the world. Husserl says, "With good reason it is said that in infancy we had to learn to see physical things, and that such modes of consciousness of them had to precede all others genetically. In 'early infancy,' then, the field of perception that gives beforehand does not as yet contain anything that, in a mere look, might be explicated as a physical thing."[42] For our purposes, it is important to see that even this natural mode of human perception with its two-part structure must develop over time.

In the first chapter, we discussed how the issue of the promulgation of the natural law forces us to confront a question more basic than "Why be moral?" We are seeking the human capacities and the correlations of these capacities to objective reality that enable us to be moral at all; we are seeking the sources of human agency that make moral, social, and political life possible. At the level of passive genesis, we can now say that the thing itself is the unity in its appearances, and it prescribes a "measure" for our optimum perceptual contact with it. On the side of the subject, we are conscious of both the thing and of how the thing appears to us from here. It is this dual structure embedded in perceptual consciousness that enables us to respond to the thing so as to perceive it in an optimal way. Without the subjective awareness that the thing itself appears to us from a specific and limited perspective, we could not respond to the

---

[41] Ibid., 167.

[42] *CM*, IV, §38, 79.

normativity of things within our perceptual lives. This understanding of perception also enables us to see veracity at work in our pre-predicative experience. Even "before" human agents are fully capable of intelligently articulating a given situation, they are geared toward the truth of the things encountered in perception, and it is the thing seen at its best that measures the success of their veracity.[43] Pre-predicative experience is imbued with a desire to know the truth of the thing, and so we catch a glimpse of the genesis of truth, including practical truth, even in the perception of objects. Just as there is an anticipation of truth in pre-predicative experience, there is also an anticipation of the morally good. We are more satisfied, as datives of manifestation, by a clear and coherent look of a thing, or something can taste or feel better under certain circumstances. Human beings naturally seek to "know" the thing in perception as it really is, and we will see that the moral life demands that we take the good in itself as good for us. In moral action, a human being has to align himself with the naturally and objectively good by taking it as good for him, and there is an anticipation of this correlation even in perception, where human agents naturally tend to orient themselves so that the thing at its best is seen by them.

D. Active Genesis and Predication

Husserl describes the progression of human agents into logic and syntax by showing how pre-predicative experience is transformed into higher-level achievements of human thinking. He describes how syntactical, categorial acts constitute categorial objects and how these acts are founded upon the more basic perceptions that we just described. By categorial acts, Husserl means "the kind of thinking and experience that goes on in connection with phrases that involve more than simple names. Categorial speech, categorial thinking, and categorial experience is that which involves syntax."[44] On the other hand, categorial objects are not the simple objects

---

[43] The sense of "before" here is not only temporal, but also permanent and ontological.

correlated with simple perceptions, such as a building or a dog; rather, categorial objects are objects "infected with syntax. A fact or state of affairs, a group, a relation with its relata, are categorial objects."[45] A categorial object is one in which parts and wholes have been explicitly identified and differentiated; it is an object for which we have identified its internal and external relations. The house's being red or the dog's being dirty are categorial objects, or states of affairs, and they are constituted or disclosed in higher level, syntactically formed human thinking.

For Husserl, categorial acts are correlated with categorial objects, such that apophantic logic and formal ontology "stand in perfect correlation with each other."[46] He says, "In judging we are *directed*, not to the judgment, but to the '*objects-about-which*' (the substrate objects) currently intended to, to the *predicates* (that is, the objectively determining moments) currently intended to, to the *relational complexes*."[47] Again, he says, "*The judger is directed to something objective and, in being directed to it, he never has it otherwise than in some categorial* (or as we also say, syntactical) *forms or other, which are therefore ontological forms.*"[48] These statements describe the way that we uncover objective states of affairs while operating in the natural attitude as distinct from the philosophical attitude. It is important to keep in mind that the natural law itself is originally promulgated and hence discovered in the natural attitude, so Husserl's description of our intellectual achievements at this level of cognitive life are crucial.

---

[44] Robert Sokolowski, "Husserl's Concept of Categorial Intuition," *Phenomenology and the Human Sciences*, Supplement to *Philosophical Topics* 12 (1981): 128.

[45] Sokolowski, *Husserlian Meditations*, 31.

[46] *FTL*, §42, 111.

[47] Ibid., 112.

[48] Ibid., 115.

Husserl says that in pre-predicative experience human agents are directed toward a thing in a continuous flow of perception, and he describes the emergence of categorial acts and objects from such perception. He asks us to think about the relationships between a whole and its parts, and he invites us to consider a basic case in which some whole, A, is or has α as its part or feature (and thus α is in A). He says,

> An act of perception grasps A as a whole, at one "blow" and in straightforward fashion. A second act of perception is trained upon α, the part or dependent moment, that belongs constitutively to A. These two acts are not merely performed together, or after one another, in the manner of disjointed experiences, rather they are bound together in a single act in whose synthesis A is first given as containing α in itself.[49]

For example, I range over the building and experience it from different sides, aspects, and profiles. My perception is continuous, simple, and non-communicable. However, while I am perceiving the building, I begin to focus my attention on a certain part or aspect of it; I notice that the top level of the building has a large window. I target just this aspect of the building while the overall perception of the building remains in the background. Next, I identify the arresting feature of the whole, the large window, as being a part of the whole building. I see the feature as a latent part of the whole. At this stage, I still have not moved into categorial thinking, and I have not yet constituted a categorial object. This stage is intermediate between continuous perception and categorial intending. Finally, I make a clean break into categorial thinking by establishing a categorial object or a state of affairs. I explicitly distinguish between the part and the whole, and I go back to the whole, the building, and I take it as a whole while simultaneously taking the feature, the large window, as a part of this whole. I make the statement "This building has a large window," and in so doing I use categorial thinking expressed in speech to set up a categorial object. I have now evidenced a discrete state of affairs, and this act of evidence is founded upon but not continuous with my simple perception of the building. Further, because this categorial act

---

[49] *LI*, VI, §48, 287.

elevates me into the domain of syntax and logic, I can communicate this state of affairs to an interlocutor.[50]

In this achievement, the ontological form of *A* having *α* is correlated with the logical form structuring my judgment. Husserl uses the example of a piece of yellow gold, and he says that in categorial evidencing "not only what is meant in the partial meaning gold, nor only what is meant in the partial meaning yellow, appears before us, but also gold-being-yellow thus appears."[51] In syntactic thinking, the same object I have been perceiving is now given to me in a new way; it is now an object of thought that has been manifested through my intelligent engagement with it. Husserl says that through categorial acts "the sensuous content of the apparent content has not been altered. The object does not appear before us with new real (realen) properties; it stands before us as this same object, but in a new manner."[52] He says that categorial acts shape objects for us, but "such shapings . . . do not alter the object itself, we count them only as pertaining to our subjective activity."[53] Husserl says that categorial thinking does not affect the object thought and spoken about in the way that the majority of human activities affect their objects. We pay a bill, cook a meal, or walk to the store, and in all such activities we impact the world around us in ways large and small. However, when we think and speak categorially, Husserl says,

> The new objects [that categorial forms] create are not objects in the primary, original sense. Categorial forms do not glue, tie or put parts together, so that a real, sensuously perceivable whole emerges. They do not form in the sense in which the potter forms.

---

[50] Sokolowski says, "When we enter into reasoning, we lift ourselves beyond our biological and psychological life. We live the life of thinking. . . . One of the requirements for this kind of life is the sameness of a meaning that we communicate among ourselves and come back to repeatedly in our own mental life." *Introduction*, 157. And further: "The identity of meaning makes truth possible" Ibid., 158.

[51] *LI,* §44, 279.

[52] Ibid., §49, 289.

[53] Ibid., 290.

> Otherwise the original datum of sense-perception would be modified in its own objectivity: relational and connective thought and knowledge would not be of what is, but would be a falsifying transformation into something else. Categorial forms leave primary objects untouched: they can do nothing to them, cannot change them in their own being, since the result would otherwise be a new object in the primary, real sense. Evidently the outcome of a categorial act, e.g. one of collection or relation, consists in an objective 'view' (*Fassung*) of what is primarily intuited, a 'view' that can only be given in such a founded act, so that the thought of a straightforward percept of the founded object, or of its presentation through some other straightforward intuition, is a piece of nonsense.[54]

For Husserl, categorial thinking leaves the objects we experience "untouched" while giving us "an objective view" of what we are encountering. It allows the meanings and distinctions among objects and states of affairs to emerge as real for us and as known by us. Emmanuel Levinas says, "A 'categorial objectivity' has a relation to sensible objects as its basis and is inconceivable without them, because such a relation to sensible objects is inherent to its very mode of existing. . . . Although sensible objects include by nature the possibility of those categorial objects which are based on them, they are not themselves affected by these categorial forms the way they would be if we were to modify the pattern of their existence."[55] Thus, categorial thinking allows things to remain what they are, but it gives us the same thing we evidenced in perception in an elevated way. Sokolowski says, "Things are disclosed to us before we talk about them. But the emergence of speech brings these disclosures to a more perfect and reliable state."[56] Our knowledge of objectivity is heightened in categorial thinking, and the relationships among the things we encounter in pre-predicative experience is given to us explicitly in categorial acts.

Since categorial acts (1) are founded upon our perception of the objects that we encounter but (2) do not reshape these objects, we are not free to constitute states of affairs in any way we

---

[54] Ibid., §61, 308. See John McCarthy, "Husserl's Concept of Categorial Form" (PhD diss., The Catholic University of America, 1988), 184-196.

[55] Emmanuel Levinas, *The Theory of Intuition in Husserl's Phenomenology* (Evanston: Northwestern University Press, 1973), 82.

[56] Robert Sokolowski, *Presence and Absence,* 113.

please. Husserl says, "Great, however, as this *freedom of categorial union and formation* may be, it still has its *law-governed limits*. The very fact that categorial forms constitute themselves in founded characters of acts, and in these alone, involves a certain necessity of connection."[57] Because we are measured by the being of entities and state of affairs, "we cannot really carry out 'foundings' on every foundation: we cannot *see* sensuous stuff in any categorial form we like, let alone *perceive* it thus, and above all not perceive it *adequately*."[58] Husserl certainly does not mean that we cannot lie or be wrong in our judgments; the point is rather that our judgments are measured by the "things themselves." Sokolowski says,

> We have to submit to the way things disclose themselves. To submit in this way is not to place limitations on our freedom, but to achieve the perfection of our intelligence, which is geared by nature to disclose the way things are. To submit this way is to bring about the triumph of objectivity, which is what our minds are supposed to do. To "constitute" a state of affairs is to exercise our understanding and to let a thing manifest itself to us.[59]

At the level of categorial thinking, we see again the role of veracity in human achievements. Syntactical thinking is geared by its very nature toward allowing the things themselves to serve as a measure for our categorial acts. Only because our thinking naturally puts us in touch with objectivities can we abuse our language by falsifying the way things are.

2. Three Questions about Words

At this point, we must explicitly distinguish two aspects of language that we have assumed until now. Language is composed of both syntax, which we have highlighted in our discussion of categorial thinking, and lexicon. Syntax concerns the linkage of words into

---

[57] *LI,* §62, 309.

[58] Ibid.

[59] Sokolowski, *Introduction*, 93.

sentences, and lexicon refers to the way that words name things.[60] This distinction allows us to examine three questions that will be important for our discussion of moral thinking: (A) How do we begin to name things? (B) What does a name give us? (C) What is the relationship between propositions and sentences?

According to Josef Pieper, speech is at the basis of existential interactions between human beings. He says, "Word and language form the medium that sustains the common existence of the human spirit as such. The reality of the word in eminent ways makes existential interaction happen. And so, if the word becomes corrupted, human existence itself will not remain unaffected and untainted."[61] Pieper says that speech enables human interaction because words and language are ordered toward a two-fold end. He says, "First, words convey reality. We speak in order to name and identify something that is real, to identify it for someone, of course – and this points to the second aspect in question, the interpersonal character of human speech."[62] According to Pieper, these two aspects of language are distinct but "nevertheless not separated. The one does not exist without the other. . . . In the very attempt to know reality, there already is present the aim of communication."[63] Language introduces us into social life precisely by putting us into contact with the being of things, or, conversely, we come to know and name the realities we encounter by communicating with others. We will see that this understanding of

---

[60] See Sokolowski, *Presence and Absence*, 10-11. We could say, more simplistically, that language is composed of grammar and vocabulary. In any case, this distinction yields two forms of unsuccessful speech: (1) inconsistent speech, in which the rules of syntax are violated and (2) incoherent speech, in which the lexical elements of a sentence do not blend properly with each other. In both cases, we fail to express something meaningful; we fail to articulate a state of affairs, but for different reasons.

[61] Josef Pieper, *Abuse of Language – Abuse of Power*, trans. Lothar Krauth (San Francisco: Ignatius Press, 1992), 15. Pieper makes these comments within the context of explicating Plato's theory of language, which he developed in response to the Sophists.

[62] Ibid.,15-16.

[63] Ibid.

language is necessary for our account of how we encounter the natural law.

A. How Do We Begin to Name Things? Intersubjectivity and Speech

Learning to speak and learning a word are inherently social activities. Paul Bloom says, "Learning a word is a social act. . . . When children learn the meaning of a word, they are – whether people know it or not – learning something about the thoughts of other people."[64] Bloom claims that a child's naïve "theory of mind" underlies word learning. By theory of mind, Bloom means that children use their nascent psychology to "figure out what people are referring to when they use words." Bloom argues that children combine perceptual information about their environment with a basic "understanding of the referential intentions of others" in the acquisition of language. Bloom employs extensive evidence to show that it is not enough for a child to simply see an object and hear a word while the child is looking at the object, as John Locke would have it.[65] Rather, the child must take the sounded words as spoken by another person to name an object, even if the child is not currently intent upon the object named. In fact, Bloom shows that most often language is used and learned in the absence of the thing being referred to by the names employed. Thus, the child learns primarily from the speaker's referential intent, and language acquisition is therefore inherently intersubjective, or social. Sokolowski summarizes Bloom's point as follows: "The decisive element is the interaction between the

---

[64] Paul Bloom, "Word Learning and Theory of Mind," in *Augustine's Confessions: Critical Essays*, ed. William E. Mann (Lanham: Rowman & LittleField Publishers, 2006), 17.

[65] Bloom cites the following remark from John Locke, "For if we observe how children learn languages, we shall find that, to make them understand what the names of simple ideas of substances stand for, people ordinarily show them the thing whereof they would have them have the idea; and then repeat to them the name that stands for it: as white, sweet, mild, sugar, cat, dog." Bloom rejects this theory and cites research showing that most language is used and learned in the absence of the thing being referred to by the name. See Bloom, "Word Learning," 20-25.

persons."[66] Language springs from an intersubjective context, and without the social interactions between persons infants will never actualize their potential for *logos*.[67]

Further, speech is the doorway to human society, and therefore our immersion into language is at the same time our immersion into human social life. Aristotle says,

> That (*dioti*) man is much more a political animal than any kind of bee or any herd animal is clear. For, as we assert, nature does nothing in vain; and man alone among the animals has speech (*logos*). The voice (*phōne*) indeed indicates the painful or pleasant, and hence is present in other animals as well; for their nature has come this far, that they have a perception of the painful and pleasant and signal these things to each other. But speech (*logos*) serves to reveal the advantageous and the harmful, and hence also the just (*dikaion*) and the unjust (*adikon*). For it is peculiar to man as compared to the other animals that he alone has a perception (*aisthēsin*) of good and bad and just and unjust and the other things of this sort; and community (*koinōnian*) in these things is what makes a household (*oikian*) and a city (*polin*).[68]

Language both springs from and leads to life in common with other persons; society is both the alpha and omega of human language. We should also note the connection between speech, *logos*, and the perception of good and bad, just and unjust. Language is the doorway into social life, and precisely as such it enables human agents to "perceive" the morally good and bad in communion with others.

Bloom's introduction of presence and absence into language learning is important and must be further discussed in connection with Aristotle's claim that language is intimately tied to our ability to perceive the good and the bad, the just and the unjust. Within the intersubjective context necessary for the acquisition of names and language, the child learning a name must also

---

[66] Sokolowski, *Human Person*, 64. For Sokolowski's philosophical development of Bloom's work, see p. 58-67.

[67] A fuller account of the intersubjectivity of language would include a reflection on Sokolowski's understanding of grammar as "signaling that" and "signaling to." Building upon Husserl, Sokolowski says that the *grammar* of a spoken sentence is simultaneously a *signal that* the speaker is thinking and a *signal to* the listener to think the same thing as the speaker. See the chapter entitled "Grammar and Thinking" in Sokolowski, *Pictures, Quotations, and Distinctions*, 213-226. For the texts in Husserl that Sokolowski uses to develop this distinction, see *LI,* I, §1-9.

[68] Aristotle, *Politics*, I.2, 1253a7-18.

come to appreciate the presence and absence of the thing named. Better, the child must "see" that the thing is the same, it is the identity in or behind its presence or absence. In order to learn to speak, children need the social nexus of the family, the physical abilities to make sounds and shape them with the lips, tongue, and teeth, and they also need the intellectual capacity to recognize and identify a thing as the same across presence and absence. Sokolowski says, "A vocal response can become a name when I not only have the object before me, but appreciate it as present. I recognize that the object here does not have to be here; it could have been absent instead. I appreciate its presence as contrasted to its absence."[69] When a human agent actualizes his intellectual capacities and comes to appreciate both an entity and its presence (as contrasted to its absence), then he can not only enjoy the object, but "enjoy the object as present." Sokolowski says that this appreciation of the object and its presence gives us a kind of intellectual distance from things. He says that when a speaker appreciates the object as present, "Then I can name it; I am no longer limited to making a voiced response to it. I am said to have acquired some distance toward the object. But the distance in question is not spatial, it involves only the intrusion of the 'as present' between the object and me. This is what makes the object nameable."[70] Thus, we see the special role of names in reaching into the absent. Children learn to name things when they appreciate someone else using a name to refer to a thing that is often absent. When the child himself can appreciate the thing "as present," then he too can join the human conversation, at least in a nascent way. Even in the presence of the thing named, he recognizes the thing as having the possibility of being elsewhere, and thus he also recognizes the thing as actually being present. In naming, "we do not just enjoy the object; 'between' the object and us, 'in addition to' the object, there is the dimension of the thing's ability to be somewhere

---

[69] Sokolowski, *Presence and Absence*, 4.

[70] Ibid.

else now, and also the actuality of its being here. This is the extra element that establishes names."[71] The "extra element" of the thing "as presentable," and thus the couple presence-absence that comes "between" us and the thing, is not a feature of the thing the way its color or texture is a feature of it; rather, the "as presentable" determines the thing in its being there for me as intelligible and hence as nameable.

What gives human animals the capacity of appreciating the presence of things as contrasted with their absence, as well as the ability to identify the thing named as the same across its presence and absence? With Aristotle, we could see this ability as the dividing line between humans and other animals, since they are not capable of such naming, and we can see the appreciation of presence and absence and the consequent ability to name things as a heightened expression of veracity. The human inclination toward truth passes through our ability to span presence and absence in language. We can speak and master presence and absence because we are rational (not vice versa), and our linguistic accomplishments can therefore be seen as an expression of our rationality; it is the unfolding of one of our essential properties, one that flows from and reveals our essence or nature.

When words are used (and things are named), they activate an excellence in things themselves.[72] Words release things from an obscurity in which their intelligibility is not fully appreciated, and therefore words "ennoble" things and allow us to take in their intelligibility. Sokolowski says, "Names bring about a new excellence in things, their truthfulness. This perfection does not compete with any other desirability a thing has, nor is it added to it independently, as something extra; rather, it makes the goodness of the thing become a known

---

[71] Ibid., 27.

[72] Ibid. Sokolowski says, "The object being named and discussed is not chemically or physically affected. Still, a certain excellence is realized in the object when it is named and discussed, if 'being known' is to be considered a kind of perfection in it."

and named goodness, when the thing is named."[73] By opening up a new dimension in things that was only potential before our involvement with them, we as the users of names are lifted into a higher mode of existence. Walker Percy says, "Naming brings about a new orientation toward the world. Prior to naming things, the individual is an organism responding to this environment."[74] Through the use of language, each one of us becomes "a co-celebrant of what is,"[75] and the social life initiated by the use of language enables us to relate to the world and to one another in a new mode. Percy says, "An organism is oriented to the world according to its organismic needs, but a person is oriented to the world in the mode of truth-untruth."[76] Before a human being can name and talk about things, he can only react to their presence or absence in the mode of "stimulus-response," but with the introduction of language the human agent actualizes his potential to be an "agent of truth."

The new dimension opened up for us when we learn to speak can be further illustrated by discussing the role of desire in the acquisition of language. As Augustine says, infants and toddlers are driven to learn the names of things first and foremost by their desire to have the things they want.[77] Pre-linguistic utterances, what Aristotle calls voice (*phōnē*), rest on two supports: the object wanted and the potential speaker's desire to make it present through the sound.[78] Thus, the child feels a need for something, be it food, water, or the presence of his

---

[73] Ibid., 29-30.

[74] Walker Percy, "Naming and Being," *The Personalist* 41 (1960): 153.

[75] Ibid.

[76] Ibid.

[77] See Augustine, *Confessions,* Bk. I, Ch. 8, Paragraph 24.

[78] We should also note that the sound could occur in the presence of the desired object, in which case the sound would be an "expression" of gratification. The main point is that such utterances are immersed in desire or rejection and thus pleasure and pain.

mother, and makes the sound he is learning to associate with the object. This sound is "solicited not simply by the object, but by [the child's] felt desire for it. The sound is part of an attempt to make the object present. . . . The sound is both a call to the object and a symptom of [the child's] desire."[79] At this stage, the child only "knows" the presence of the thing as contrasted to its oblivion; there is only presence or disappearance because he has not yet learned to appreciate the "as presentable" nature of entities. However, once a child gains an appreciation of the object as presentable, as the same across the couple "presence-absence," then he can begin to use words instead of merely making sounds. Sokolowski says, "A desirable or distressing thing becomes a nameable thing when its affective spell is broken and we become indifferent to its gratification or loss, confrontation or release. True, the naming may in fact involve excitement, but it does not as such require it."[80] Language therefore introduces us into a more intelligent realm, which is also a more thoroughly social existence, and therefore "naming opens up a dimension where, in principle, our positive and negative affectivity about something can converge toward zero, even when we have the object in mind."[81]

In order to constitute the natural law, human agents must be measured by the way things are, but we must not allow ourselves to be dominated by the natures of the things we encounter. That is, we must be measured by the natures of things while maintaining a kind of "intellectual distance" from them so that we remain the masters of our own decisions. Sokolowski says,

> Only because our speech allows us to take a cognitive distance to things, to identify and name them as the same across presence and absence, and to articulate things and their aspects and relationships, can we also take categorial distances toward our own performances: we can begin to weigh whether this should be done in preference to that,

---

[79] Sokolowski, *Presence and Absence*, 25.

[80] Ibid., 27.

[81] Ibid.

whether this should be done in view of that, whether this good or bad of yours should be taken as my good or bad.[82]

Naming, and the mastery over the couple presence-absence that it entails, provides us with this "distance" while also presenting us with the "things themselves" as the identities within their presence and absence to us. "Naming gives us a kind of mastery and objectivity over the affective charge things have, but it does not eliminate it. It enhances the desirableness of things by articulating them and making them gratifying in differentiated and subtle ways; it can also articulate what is painful and make possible deeper suffering and anxiety."[83] As we enter more deeply into the social dimensions opened up by naming and language, our desires are transformed. We no longer simply desire food, but rather a meal, not simply shelter from the heat or cold, but a home, not simply stimulation from another being like me, but a family in which to participate. In a Thomistic vein, we can say that language penetrates the more primitive desires of the infant and actualizes them as rational desires under the direction of the natural law; only linguistic, categorial thinking unleashes the natural human inclinations at the root of the natural law.

B. What Does a Name Give Us? Words and Being

We now turn to our second question: what is given in a word? Words reach into the absent, enabling us to "possess" things intellectually even when these things are not present to us. Yet, what do we "have" when we know the meaning of a word? To answer this question, we turn first to a reflection on Aristotle's understanding of speech and being.[84]

---

[82] Robert Sokolowski, *Moral Action: A Phenomenological Study* (Bloomington: Indiana University Press, 1985), 95.

[83] Ibid., 30.

[84] The following two paragraphs are taken from my article, "Speech and Being," 33-34.

Aryeh Kosman says that some approaches to Aristotle's logical works separate too sharply "what we say" and "what is." He says we should avoid presenting the relationship between language and being in such a way that the issue is seen as "whether Aristotle intends to classify reality or discourse." Kosman shows that this way of framing the issue, as a choice between classification of reality or discourse, confuses our understanding of Aristotle's approach. He says,

> A division of the world into its ultimate sorts can be achieved, in a more than accidental fashion, by attending to features of what we say about the world. The question whether language is faithful to the world is a question that can arise (apart from a philosophy class) only in partial and local contexts, not globally (even though philosophy must be periodically called upon to reassure us of the consonance). Worrying about whether Aristotle was concerned with the sorts of things that can be said or with the sorts of things that there are obscures this fact. Aristotle's is ultimately a single concern; it is a concern with the sorts of things that there can be said to be, with, as the Greek philosophical tradition is particularly equipped to say, the *logos* of being.[85]

Kosman goes on to say that "predication is nothing but the logical or discursive face of being,"[86] and he concludes that Aristotle's two lists of categories (in the *Topics* and *Categories*, respectively) have a single purpose, which is "that of classifying the basic types of predicate, that is, the basic types of being. And this singleness mirrors at the simpler ontological level the more complex consonance at the deepest levels of discourse between what is and what can be said."[87] Kosman sees predication as the logical or discursive face of being, and thus he captures Aristotle's understanding of speech as manifesting being as it presents itself to us as the privileged users of *logos*.

---

[85] Aryeh Kosman, *The Activity of Being: An Essay on Aristotle's Ontology* (Cambridge: Harvard University Press, 2013), 127. Joseph Owens makes a similar point. He says, "The natures upon which the categories bear are common to both logic and metaphysics. They are the property of neither, but rather the communal pasture land of both." Joseph Owens, "Aristotle on Categories," in *Aristotle: The Collected Papers of Joseph Owens*, ed. John R. Catan (Albany: State University of New York Press, 1981),18.

[86] Ibid., 127.

[87] Ibid., 128.

Jacob Klein approaches our question in a similar vein. He asks what it is that we "bespeak" when we use *logos*. His response is that we bespeak "everything man is familiar with – the sky and the earth, the rivers and the sea. . . . Speech 'bespeaks' all the things and all the properties of things that abound around us."[88] He says that the world of nature is often viewed as a kind of book that can be read, if only we know how to read. After Galileo and Descartes, many are inclined to see the world of nature as written in mathematical or scientific languages, but the classical Greek approach holds that "the language of all that existed around us was taken much more directly . . . as a *spoken* language, a language not written, yet visible, and if not visible, one to be guessed at. Human speech seems indeed to translate that visible or invisible language of things into the audible language of words."[89] Klein refers to the *eidos* of a thing as its intelligible look, and he shows that Aristotle presents the *eidos* as altogether "at work." Thus, the *eidos* of a thing can be described as *energeia*, "at work," unifying the entity and making it to be at work being the thing that it is.[90] It is precisely the *eidos*, the intelligible look at work giving the thing its characteristic mode of to be, that is spoken and understood in human *logos*. Klein says, "It is the very *eidos* presented to our understanding in speech - *εἶδος τὸ κατὰ τὸν λόγον*."[91] With this Aristotelian approach developed by Kosman and Klein, we can say that the meaning of a word is the being of the thing named insofar as its being is intelligible for us.

By taking this approach to language and being, we are still very close to Husserl. Levinas says,

---

[88] Jacob Klein, "Aristotle, an Introduction," in *Lectures and Essays*, ed. Robert B. Williamson and Elliot Zuckerman (Annapolis: St. John's College Press, 1985), 176.

[89] Ibid., 177.

[90] See Aristotle, *Metaphysics,* IX.8, 1050 a 21-23.

[91] Klein, "Aristotle," 184. The passage from Aristotle at the end of this quote comes from *Physics*, II.1, 193a31.

> Husserl's step forward beyond Descartes consists in not separating the knowledge of an object – or, more generally, the mode of appearing of an object in our life – from its being; it consists of seeing the mode of its being known as the expression and the characteristic of its mode of being. This is why, in Husserl's philosophy, there is . . . the possibility of passing from and through the theory of knowledge to the theory of being.[92]

We are stressing the role of language and the meaning of words more than Husserl consistently does, and we also keep in mind the intersubjective context within which language can be acquired and used. However, Husserl overcame the modern separation of appearance from being, and he gives a striking recapitulation of the social and ontological aspects of language that we have highlighted. He says,

> Language, for its part, as function and exercised capacity, is related correlatively to the world, the universe of objects which is linguistically expressible in its being and its being-such. Thus men as men, fellow men, world – the world of which men, of which we, always talk and can talk – and, on the other hand, language, are inseparably intertwined; and one is always certain of their inseparable relational unity, though usually only implicitly, in the manner of a horizon.[93]

Husserl captures the fundamental correlation between subject and object, between language and world held in common with other men, that is the necessary foundation for the promulgation of the natural law as something that occurs in human understanding.

Thus, a word gives us the being, or the intelligibility of the thing named. But can we say more? Precisely because the word gives us the being of the thing, it also gives us the end, or *telos* of the thing. To know a word is to touch the being of the thing named, since words function as labels for things, and to know the thing by means of the word is also to know the thing at its best. The intelligibility of a thing "brings" the good of the thing with it. Sokolowski says, "Names target not just things but the intelligibility of things, which they introduce to be unfolded in our predications and in our conduct. But the intelligibility that we grasp in things is not unrelated to

---

[92] Levinas, *The Theory of Intuition*, 32.

[93] Husserl, *The Origin of Geometry*, 258.

the goodness or the perfection of those things."[94] Whenever we know a thing, we have a sense of its goodness or perfection, and therefore "we never work with things simply as they are; we always see and understand them against the background of what they can be and what they should be."[95] The new dimension that language opens for us enables us to understand entities not only in light of their being, but at the same time in the light of their best way of being. The *eidos* of a thing includes its *telos*, and both show up to us in the name.

Aristotle expresses this connection between the nature of an entity and its *telos* or perfection when discussing a polity. He says, "Every city . . . exists by nature, if such also are the first communities. For the city is their end, and nature is an end; what each thing is – for example, a human being, a horse, or a household – when its coming into being is complete is, we assert, the nature of that thing. Again, that for the sake of which a thing exists, or the end, is what is best; and self-sufficiency is an end and what is best."[96] On the side of the object, the nature of a thing is that thing enjoying its completion; the nature of a thing is its *telos*. The *telos* of a thing is the *eidos* as most fully actualized and thus as most fully itself. Therefore, on the side of the subject, to know a thing is to know how it is at its best. Sokolowski says,

> Only ends bring out the full intelligibility of things. When we name things and thus bring them into language, syntax, and human conversation, we do not introduce them as inert items; they enter into language as intelligible, and their intelligibility involves more than just a mathematical presence, which would be indifferent to the good implied in their being. When they are named, they are profiled against their best, and their best is not just what is good but also what is beautiful or admirable in them, their *kalon*. The Greek *eidos* and the Latin *species*, as well as *forma*, mean not just looks but good looks.[97]

---

[94] Sokolowski, *Human Person*, 186

[95] Ibid.

[96] Aristotle, *Politics*, I, 1252b31-1253a2.

[97] Sokolowski, *Human Person*, 188.

As we acquire our native language through the interactions we have with others, we learn the names for entities, and in this process we are introduced to those entities as they can and should be. Therefore, "a sense for ends is built into human words, but it is not inserted into them by our speech – we and our language do not project the thing into its optimal condition. Rather, the thing itself, insofar as it and its intelligibility are captured into speech by being named, show what it can be: *res ipsa loquitur*."[98]

We can illustrate this point with an example. Imagine two people discussing dogs. The first speaker seems to be saying things about dogs that do not make sense; he is attributing properties to them that are not appropriate for dogs. After an especially confusing comment, the second speaker asks his interlocutor if he knows what the word "dog" means. The first speaker answers affirmatively; he knows what a dog is and knows what the word "dog" means. The second speaker then asks the first if he knows what a good dog is. To this question, the first speaker answers negatively; he says he knows what a dog is and what the word "dog" means, but he does not know what a good dog is. He says that he knows what the word "dog" means and knows something of the essence of dogs, but he does not know what an excellent, healthy dog looks like and cannot distinguish a healthy dog from a sick one.

Such a conversation is incoherent. To know what a dog is, to grasp its *eidos*, is to understand what the dog is at its best. To grasp the *eidos* of the dog includes knowing its *telos*, and we know both aspects of the dog when we understand the meaning of the word "dog." The form and end of an entity are captured and carried by the word as a hendiadys, a one through two. Thus, one cannot claim to know the form of a thing but not its end, or its end but not its form; to know one is necessary to know the other. This point does not entail that we know everything there is to know about an entity as soon as we learn the word for it. Simply learning

---

[98] Ibid.

the word "dog" does not exhaust the intelligibility of dogs. Rather, the point is that our knowledge of the form and the end of an entity, its *eidos* and *telos*, rises and falls together. The more deeply we come to know the essence of a thing, and therefore the more thoroughly we understand the meaning of the word for it, the better we know its perfection.

Aquinas makes a similar point regarding the immediacy with which we come to know a thing together with its perfection. He says, "A thing together with its perfection is understood all at once and by a single act (*simul autem et uno actu intelligitur res cum sua perfectione*)."[99] Again, he says, "A thing together with its perfection (*res cum sua perfectione*) is understood by one act."[100] While Aquinas stresses the fact that a thing and its perfection are understood together in one mental act, we place the emphasis on the spoken word itself, but the important point is that the form and end, or the thing and its perfection, are understood simultaneously. It is not the case that we first come to know the form or *eidos* of a thing and then, in a second step, discover its end or *telos*. It is important to see that we can make this point about language and the *telos* of a thing named only because

> we have come to know that names and language express not a mental copy of the thing, not a representation of the thing, but the thing itself with its potentialities and well as its present actuality, with its full actuality or *telos* as well as the snapshot we might have of it at any given moment. Our words capture the same intelligibility that is embodied in the thing itself and encompasses the thing as it could be at its best. This is what names and speech do: they let things come to light in their completion as well as what they at the moment manifest to us.[101]

Since the word presents the *eidos-telos* of the thing, we are not free to make the word mean anything we want. It is clearly true that language is to a large degree conventional, and it is an obvious fact that different languages use different words to refer to the same thing. However, we

---

[99] *St*, I, q. 87, a. 3. (trans. modified).

[100] *St*, I, q. 87, a. 3, ad. 2. (trans. modified).

[101] Sokolowski, *Human Person*, 188-189.

cannot take the conventionality of language to mean that we have plenary authority over the meanings of words. Because words function as labels for things, we cannot make them mean whatever we would like without doing damage to our understanding of reality.

There is another question we must answer. We have seen that our perceptions are measured by the best view of a thing and that our words are measured by the *eidos-telos* of the thing named. However, can we go beyond simple names and things and say more specifically how our fully formed, syntactically complicated sentences are measured by objective states of affairs? Can we be more specific about how linguistically formed acts of evidence are correlated with and measured by states of affairs? To answer this question, we will appeal to Sokolowski's distinction between a proposition and a sentence.[102]

C. What is the Relationship between Propositions and Sentences?

Clarifying the nature of a proposition is important for our purposes for two reasons. First, our normal interactions with others and our natural way of coming to learn what things are take place within fully propositional speech, not in episodic uses of simple words. Second, the natural law is ultimately formulated in propositions and the sentences that express them, as we discussed in the previous chapter. If we are naturally measured by the being of things and the *telos* of human nature as they are ingredient in judgments and propositions, then we must clarify what a proposition and a sentence are.

In order to understand the relationship between a proposition and a sentence, we have to distinguish between the subjective activities of proposing, or making a proposition, and the proposition itself. The proposition cannot come into being without the intelligent subjective activities that generate it, but once it is made it enjoys its own kind of being. Our spoken or

---

[102] The following paragraphs are based on Sokolowski's discussion of propositions and sentences in *Presence and Absence*, 87-115.

written sentences embody the proposition, but the sentences themselves are fleeting. However, the proposition can be repeated, paraphrased, and translated, and yet it is the same proposition that appears in each new instantiation of it. In this respect, propositions are akin to cultural objects, such as Shakespeare's *Measure for Measure* or Mendelssohn's *Songs Without Words;* these and other cultural objects are the identically same "object" whenever they are performed, yet the acts of performing them are always different. Similarly, the proposition is the result of intelligent activities, and, once it is established, it can be repeated in countless new contexts. Each new utterance of the proposition will present the same "thing," the identical proposition, even though the activities of formulating and expressing it are different (that is, it occurs in different sentences). Further, just as Shakespeare's play only appears in a material performance of it, so each proposition can be achieved and activated only in a given sentence.

Sokolowski says that the proposition can be taken as a "special kind of rule." The proposition can be understood as the rule for the composition of sentences. Each sentence will be subject to many kinds of rules; there are rules of grammar, rules for word construction, and the rules for the achievement of phonemes, but the sentence must also be shaped according to the ruling principle of the thought that is expressed in it. Thus, the proposition puts pressure on the construction of the sentence, since the sentence must be formed in order to express this proposition and not another one.

The proposition is unique as a rule in that it must be expressed in the very activity that it governs. While most rules are expressed in actions different from the actions they govern, "the peculiarity of the proposition as a rule is that it is also expressed in the sentence it governs."[103] For example, the rules for correctly shooting a basketball are expressed in activities different from the activities these rules govern; to formulate and express the rules for shooting the ball is

---

[103] Ibid., 95.

not to shoot the ball according to the rules, but the proposition manifests itself in the very activity it governs: namely the sentence.

In this way, we can see that a proposition, an achievement of thinking, can appear as the identical proposition in countless instantiations; it can be quoted, restated with synonymous vocabulary, translated, and paraphrased, but in each case the rule for the new repetition, restatement, translation, or paraphrase will be the proposition itself, and the proposition can only be expressed in these activities that it governs. When a speaker articulates a point for his listeners, the listeners have the actual sentences that are formed and pass away present to them, but they also have the proposition or idea that rules and animates these sentences present to them. If they are following the point of what is being said, they can cut the proposition away from the sentence in which it is embedded, and they can then restate the proposition or translate it into a new language, if they are able to do so; that is, if they are in control of the thought in the sentence.

Thus, the proposition, an achievement of the speaker that is distinct from the activities that generate it, is the rule for the sentences that express the proposition. In this understanding, have we not lost the objective world? Have we not broken the correlation between subject and object that we have maintained throughout this chapter? We have not. The proposition is the rule for the sentences that embody it, and it is the result of thinking. Yet, what is thought, what is expressed by the proposition is a fact or state of affairs. Or better, the proposition is the state of affairs as proposed, as meant. The proposition itself is *measured* by the objective fact or state of affairs. The intelligent, honest speaker must articulate his proposition in response to what is; his propositions must be measured by the being of things and the objective states of affairs in order to function as rules for sentences. However, the articulation of being by a speaker is necessary;

being discloses itself, but there must be someone there to act as the ruler and governor of these disclosures. "Being and its disclosure measure the proposition, which in turn rules language, but being and its disclosure do not rule the proposition, because they do not work as a ruling power. Only when the disclosure of being, a fact, becomes appropriated and attached to someone as a proposal does it turn into a ruling force over language."[104] The being of things is not a ruler. It is not a someone who is capable of governing, but being is the measure for the someone, the human agent, who can and must rule himself in and through the use of language correlated to the being of things.

We can see this distinction and correlation between the being of things as a measure and the proposition as an achievement of intelligence that rules language as an expression of what it means for the natural law to function as a rule and measure. In order to show how we function as co-promulgators of the natural law, we said that we have to discuss how the natural law is made known to us through both the "instrumentality of the world" and "the instrumentality of human reason." Human reason is the rule of human actions, as Aquinas often says.[105] However, reason itself is measured by things, by the truth of being. According to Aquinas, "Human acts can be regulated by the rule of human reason, which is gleaned (*sumitur*) from the created things that man knows naturally."[106] By focusing on language, we can see that we constitute a rule for our linguistically formed thinking based on the measure of things, especially the ends of things as these are made manifest in words. This approach shows the role of the subject in constituting the natural law while maintaining the correlation between the subjective activities of human agents and the objective realities disclosed by them. In the disclosure of the natural law, to be a rule of

---

[104] Ibid., 107.

[105] See *St*, I-II, q. 90, a. 1; q. 1, a. 1, ad. 3.

[106] *St*, I-II, q. 74, a. 7. (trans. modified). We quoted this text in Ch. 2 on p. 139.

our actions means to be measured by the being and ends of things. We are rulers of our actions, but we are measured rulers.

3. The Nominal Definition of Natural Law: Ends, Purposes, and Customs

We have now seen that in our experience, entities serve as a measure for our subjective understanding and actions, and we are able in various ways to respond to the measure provided by things. At the level of perception, we are measured by the thing and its optimal appearance; as we experience it, we are aware that we are seeing the thing itself from a given perspective, and we can therefore move ourselves into position to get the best view possible. When we learn a word from others, we are measured by the *eidos-telos* of the thing named as it is expressed in the word. Finally, when we enroll words into syntax by achieving propositions, we actualize a rule for our thinking, but this rule is measured by the objective state of affairs that we manifest by means of the sentence and by the natures of the things that comprise the state of affairs. We have thus described in more detailed how human life is ruled and measured by our own nature and by the natures of entities around us. However, we can further specify the nominal definition of natural law. Being a "rule and measure for human actions" is the nominal definition of *all law* according to Aquinas, but we can now show that this definition can be reformulated in the case of natural law.

Francis Slade argues that the natural law can be understood as the "*the ontological priority of ends over purposes*."[107] The end of an entity, understood as the entity being most fully what it is by reaching its perfection, is ontologically prior to our purposes in acting because these purposes can and do fluctuate. The end of a thing is more ontologically solid, more stable and

---

[107] See Robert Sokolowski, "What is Natural Law?" 507-529. See also Francis Slade, "Ends and Purposes," 83-85 and "On the Ontological Priority of Ends and its Relevance to the Narrative Arts," 58-69.

permanent, and hence more "rooted in being" than the purposes of a human agent. As Slade says, by recognizing the ontological priority of ends over purposes, we are arguing that "actuality stands higher than possibility."[108] We can distinguish two ways in which the ends of things exhibit an ontological priority. First, the *eidos-telos* of an entity "governs" the substrate activated and unified by the *eidos*. It is the form of an entity that shapes the matter towards the perfection (end or *telos*) the entity as a unified whole. Second, the ends of things measure the purposes of the agent who must actualize these ends. The second kind of priority is parasitic on the first; ends measure human purposes because they govern the structure and activities of things.

Although this definition of natural law speaks of the *ontological* priority of ends over purposes, we will show that it also manifests what is first in the order of discovery; it is the first way that the natural law is constituted "for us" and has an especially important role in our discussion of how we come to know the natural law. Lawrence Dewan makes a similar point as he says, "Reason puts nature first . . . because reason sees ontological priority. Goodness is seen in ontological order, and reason's giving nature priority is the recognition of that order. The ontologically determinate (i.e., nature) has more of the aspect of being than has the ontologically determinable (the operable or choosable)."[109] Even in the order of discovery, the "ontologically determinate" (the ends of things) functions as a measure for the ontologically determinable (art and human action). Therefore, the "ontological priority of ends over purposes" can be considered the nominal definition specific to the natural law; it is the initial way that we constitute a natural rule and measure for our actions.

In order to discover the natural law as the ontological priority of ends over purposes, we must learn to distinguish between three things: (1) the ends of entities that we use and encounter

---

[108] Francis Slade, "On the Ontological Priority," 58.

[109] Dewan, *Wisdom, Law, and Virtue*, 212.

(including the ends of human nature), (2) the purposes we have in making our decisions, and (3) the laws and customs of our community. As we have seen, the fundamental distinction for the discovery of natural law is between the ends of things and human purposes. Once ends are appreciated as different from and determinative for purposes, the distinction between ends and customs can help reinforce our knowledge of natural law.[110] When we make these distinctions, we can see that we are measured, not by our own purposes nor even, ultimately, by the laws and customs of our community, but first and foremost by the ends of things, in particular the ends of human nature.

In the following sections, we will discuss how the natural law so understood comes to light; in so doing, we will be displaying how it is constituted or co-promulgated. We must remember that we, as we are discussing this issue, are speaking in the philosophical attitude, and as such we are describing what takes place in the natural attitude by rational agents. We ourselves are not engaged in a practical, moral situation; we are describing philosophically what it means for a human agent to be so engaged. We will show the unique way that an obligation surfaces for us when we are acting as moral agents; this obligation is what human agents encounter in the natural attitude, and we, from our detached position, can name it the discovery of the natural law.

Although speaking can and often does function as a moral transaction, not all moral actions are linguistic exchanges. How do our reflections on language and being relate to the practical realm? The first point to make is that our moral actions are only possible within the realm opened to us by language. Our moral actions are essentially rational interactions with

---

[110] As we will see in the next chapter, customs can reinforce the distinction between ends and purposes because customs claim supremacy over purposes within a given social and political context. Since customs have a kind of priority over purposes, if customs are in line with the ends of things, then such customs can shape human purposes to be in accordance with the perfections of human nature.

others, and such interactions are possible only within the social setting opened by language. Further, if we are thoughtlessly engrossed in the presence of things, with no sense of their identity across presence and absence, then we cannot execute moral actions. The ability to handle presence and absence, particularly as regards the present and the future, undergirds the very possibility of moral thinking and prudence.[111] Sokolowski says, "The displays that speech permits are our doings. . . . As displays they also permit . . . our moral doings and our purposeful activities. Thus we can be responsible because we can speak, and we can speak because we can be responsible."[112] It is the realm of linguistic thinking that turns our more primal desire into rational inclinations able to be shaped in responsible actions, so the role of rational desire in action is an important place to begin this discussion.

When we begin to act responsibly, we are already directed by the primary precept of the natural law: do good and avoid evil. We cannot learn or "prove" the existence of this precept anymore than we can learn or "prove" the principle of non-contradiction, but we can show that anyone who denies it contradicts himself in the very act of denying. If we were not so directed toward the good, we would never begin to act in the first place; no one can teach us to desire what seems good to us and to avoid what seems bad. As Aristotle says, "Every art and every enquiry, and similarly every action and choice, is thought to aim at some good: and for this reason the good has rightly been declared to be that at which all things aim."[113] Further, classical philosophy understood that aiming at the good included a natural desire for happiness, or rather the inclination toward good and away from evil is a natural expression of the desire for

---

[111] See Prufer, *Recapitulations*, 82, especially footnote #8. Prufer says that the oscillation between presence and absence central to being human is the "formal ontological structure of *phronēsis*, spanning *hexis* and the possible, with the agent as *archē* 'between' them." Prufer here refers the reader to Aristotle's *Nicomachean Ethics,* 1140b27-30.

[112] Sokolowski, *Moral Action*, 95.

[113] *NE*, I.1, 1094a1-3.

happiness, and we should see this desire for happiness in tandem with the natural desire to know,

what we have called veracity, discussed in the opening lines of Aristotle's *Metaphysics*.[114]

Although we can and do disagree about what makes us happy, there is a common starting point

for ethical deliberation that we all share. It is within this natural pursuit of happiness that we

come to know the natural law.

A. Ends and Purposes: The Discovery of Natural Law at the Level of the Individual

As we have seen, ends are "in" things; the end of a thing is its native excellence, and

these ends are also known to us when we learn to name things. Slade says,

> "End" as a translation of *telos* means what a thing will be that has become fully
> determined in its being; the defined; the complete; a condition of perfection, completion,
> fulfillment. "End" as a translation of *telos* does not mean "termination," as when a road
> ends in a "dead end"; it does not signify that something no longer exists, as when we say
> that "death is the end of life." End, as *telos*, signifies a continuing state of perfectedness;
> it is akin to the meaning of "finish," where we are speaking about what the cabinet maker
> does last in making a piece of furniture: he puts the finish on it, i.e., brings it to perfection
> in completion.[115]

While ends are "in" things independently of our decisions concerning them, our purposes or

intentions are up to us, as Aristotle says. Driven by the desire for happiness that animates our

moral thinking and decision making, we begin to make decisions based upon rational desires, or

what Aristotle calls wishes (*boulēseis*). Aristotle says that we can wish for impossible things, we

can wish for things that are possible but not by our own agency, and finally we can wish for

things that we can bring about by ourselves or with our friends.[116] When this last form of wishing

begins to direct our moral deliberations and conduct, such wishes become purposes. Sokolowski

---

[114] On the natural desire for happiness, see *NE*, I.4, 1095a14-30; Plato, *Symposium*, 204e-205a; Augustine, *De Moribus Ecclesiae Catholicae*, I, iii, 4, in *Opera Omina*, Vol. 1 (Paris: Gaume, 1887), 1312; Aquinas, *St*, I-II, q. 1-5.

[115] Slade, "Ends and Purposes," 83.

[116] See *NE*, III.2, 1111b19-30.

says, "*Purposes* or intentions are wishes that have kicked into action."[117] Purposes are what we set down for ourselves; purposes are our intentions in acting, and they only come about with our thinking and willing. "Purposes, therefore, can exist only in human beings . . . . There are purposes only in the strict sense when there are men."[118] We are the rulers of our purposes and thus free to devise them as we direct our actions.

Although we are free to form and direct our purposes, we cannot change the ends of things. Slade says,

> End, as *telos*, is not synonymous with "purpose," although the words are commonly understood to be, and are used as, synonyms. But *telos* does not mean purpose. Agents and actors have "purposes" by which they determine themselves to certain actions. Purposes are motives, "motors" propelling us toward destinations. Ends (*telos*), on the other hand, are characteristic of all kinds of things; the end of the axe is "cutting," but the axe executes no purpose in its cutting. Those who use axes, the agents, have many purposes: to clear land, to obtain firewood, to blaze trails, to attack someone, etc. Ends are not executed by agents. Purposes require agents. Purposes belong to agents as they determine themselves to actions.[119]

While ends and purposes (or agents with purposes) are always interacting in our moral transactions, ends simply are what they are quite apart from our desires. As MacIntyre says, "Ends are one thing, purposes another," and while both ends and purposes are good "things," they are good things of different ontological orders.[120]

Aquinas argues in a similar way. He distinguishes between the *finis operis* (end of the work) and the *finis operantis* (end of the worker). The *finis operis* for Aquinas is comparable to what we have named ends, in this case the ends of activities, while the *finis operantis* is akin to what we have named purposes. Aquinas says, "It must be observed that sometimes the end of the

---

[117] Sokolowski, "Discovery and Obligation in Natural Law," 31.

[118] Ibid., 32.

[119] Slade, "Ends and Purposes," 83.

[120] Alastair MacIntyre, "Ends and Endings," *American Catholic Philosophical Quarterly* 88 (2014): 808.

worker (*finis operantis*) differs from the end of the work (*finis operis*), thus it is clear that the end of building is a house, whereas sometimes the end of the builder is profit."[121] Aquinas also says that the "right ends (*fines recti*)" of human life are "fixed (*determinati*)," but the means to achieve these ends exhibit great variability.[122] This distinction between the fixed ends of human life and the variable means to achieve those ends fits with our distinction between ends and purposes. Further, Aquinas argues that the ends of things (and activities) are normative for our actions. He says, "It is good for each person to attain his end, whereas it is bad for him to swerve away from his proper end. Now, this should be considered applicable to the parts, just as it is to the whole being; for instance, each and every part of man, and every one of his acts, should attain the required end."[123] Also, he says, "Every human act is said to be disordered that is not proportioned to the proper end."[124] Aquinas says that given what the ends of the body are and given what food is, eating will be disordered if it is not in line with or works against the health of the human body. While our purposes in eating could be varied, we simply cannot make it the case that the end of the body is sickness and that food should serve to make us ill. We can only align our purposes in eating with the end of health. The same line of reasoning can be seen in any area of human activity. For example, a man may intend to use language to lie or mislead others so as to attain his desires, but he simply cannot make the end, or perfection, of speech itself to be

---

[121] *St,* II-II, q. 141, a. 6, ad. 1. See also *St*, II-II, q. 137, a. 1, ad. 2.

[122] See *St,* II-II, q. 47, a. 15. This is not to say that purposes are completely identified with means, but rather human agents choose means by determining their purposes to this mean rather than another in order to actualize (or vitiate) an end that is not instituted by the agent. That is, human agents freely choose from a variety of means that will achieve ends that are fixed by human nature.

[123] *SCG,* III, c. 122.

[124] *De malo*, 15.1. (my translation): "Omnis actus humanus dicitur esse inordinatus qui non est proportionatus debito fini."

deception.[125] Another man may have the purpose of cheating a business partner by manipulating a contract, but he cannot make the end of contracts themselves to be manipulation. These examples manifest what it means to say that the natural law is the "ontological priority of ends over purposes." Our freedom in setting our purposes carries a responsibility to align our intentions with the ends of things.

MacIntyre shows that by measuring our purposes, the ends of things and activities also provide us with a standard of success or completion. He says, "It is . . . the ends of our activities that provide the measure of our purposes—and also of our desires, choices, and intentions—and therefore without reference to ends we would not be able to understand each of our lives as a whole or each of our particular projects either as completed and perfected or as in various ways and from various causes frustrated and imperfect."[126] Without the native excellences of things to give us a standard against which we can judge our actions and projects, we are left with mere purposes, and in such a world achieving common ends through common actions becomes impossible. Slade describes such a "world without ends." He says, "In such a world there cannot be any congruity or incongruity of purposes with ends. There being no ends by which purposes can be measured, all purposes are in themselves incommensurate and incongruous with one another. . . . A world of purposes only is a world of cross-purposes, the definition of fiasco."[127] The ends of things provide the ontological structure within which we can harmonize our actions and pursue common ends through common actions; ends give us a common standard of excellence in human action. What we are describing could be called a cosmos, an ordered and

---

[125] See Plato, *Apology*, 17d-18a. Socrates asks the jury members to "pay no attention to my manner of speech—be it better or worse—but to concentrate your attention on whether what I say is just or not, for the excellence of a judge lies in this, as that of a speaker lies in telling the truth."

[126] MacIntyre, "Ends and Endings," 817-818.

[127] Francis Slade, "On the Ontological Priority of Ends," 67-68.

beautiful whole. Rémi Brague describes this understanding as follows: "The world as cosmos, as beautiful and good order, is a law. The cosmos indicates to us a sort of law that we must follow. It is therefore the rule, it should be the rule of our action."[128] There are various reasons why an individual may not be able to distinguish the proper ends of things from his purposes (and there are various factors that may prohibit him from seeing the world as a cosmos), but the key is that the natural law will begin to "dawn" on him only when he does so distinguish them.

We can successfully pursue our natural ends as human agents, the ends of truth and happiness in familial, social, and political life, only by coming to know the *eidos* and *telos* of things through language. Once we grasp what a thing is, and hence what its perfection is, we are enabled to distinguish it from our own purposes and therefore interact with it properly. Even at the level of artifacts, we see that the being and end of a thing provides us with a measure for how we are to interact with it. We should kick the soccer ball, not the dinner plate. At the level of animate life, we should pet the dog, but not the alligator. As we learn to act in associations with other human persons, we see that given their ends as agents of truth, we must treat them with a certain level of respect. However, we are only able to adapt our behavior adequately to the being and ends of things if we make the distinction between ends and purposes, with the concomitant realization that ends are ontologically prior to purposes.

At this point, we must answer an objection to our view of the natural law as the ontological priority of ends over purposes. One may claim that our view of natural law has the necessary consequence of locking us into a radical, universal form of pacifism. It could be

---

[128] Rémi Brague, "La nature, demeure éthique?" *Économie rurale* 271 (2002): 17 (my translation): "Le monde en tant que cosmos, en tant qu'ordre beau et bon, est une loi. Le cosmos nous indique une sorte de loi que nous devons suivre. Il est donc la règle, il devrait être la règle de notre action." Brague says that such a view of the world as a "cosmonomie" (the cosmos as *nomos* or law) has become impossible in the modern era because of the understanding of the world given by mathematical science. He may be correct as regards the dominant cultural understanding of the rapport between nature and ethics, but our philosophical approach to this issue shows that there are resources within Aristotle, Aquinas, and phenomenology to recapitulate a view of the world as a cosmos that serves as the measure of human action.

objected that our position would entail a complete abstention from killing or harming any living creature for any purpose. However, we can answer such an objection with an appeal to Jacques Maritain's understanding of the "Republic of Natures."

It is not simply that through language human reason beholds individual entities acting in an ordered way toward their own specific ends, as if we encountered entities in a vacuum. According to both Aristotle and Aquinas, a natural agent's movement toward its end propels it into an integrated lattice of interacting natures. That is, the natural entity's order to its perfection is always situated within in a more expansive order of all the "parts" of the natural world to each other. Aristotle says, "And all things are ordered together somehow, but not all alike, both fishes and fowls and plants; and the world is not such that one thing has nothing to do with another, but they are connected. For all are ordered together to one end."[129] Thus, each individual thing is inclined toward its perfection by operating within a wider web of interacting natures.

We can therefore distinguish between two kinds, or two levels, of order in nature: (1) the order of each entity toward its perfection (the order of the part to its perfection within the whole), and (2) the order of all natural things mutually influencing each other and their environment (the order of the whole itself, or the order of all the natures to each other within the whole). Maritain captured the relation of these two levels of order with the phrase "The Republic of Natures."[130] The key is to understand that these kinds of order are not merely unopposed, but rather they are dependent upon each other and complementary; the interaction of different natures on the larger scale is organized harmoniously precisely through each individual nature's operating according

---

[129] *Metaphysics*, XII, 10, 1075a15-19. Aristotle goes on to compare the connection and order among all things in the cosmos to the connection and order found in the household. This text is also the basis for the Thomistic distinction between the intrinsic common good and the extrinsic common good of the cosmos. See Charles de Koninck, *The Primacy of the Common Good Against the Personalists*, as it appears in *The Writings of Charles de Koninck,* Vol. 2, ed. and trans. Ralph McInerny (Notre Dame: University of Notre Dame Press, 2008).

[130] Jacques Maritain, "Réflexions sur la nécessité et la contingence," in *Raison et raisons* (Paris: Egloff, 1947), 62.

to its inherent dynamism for its perfection.[131] Thus, to know an entity is also to know how it interacts with other beings, both as an agent and as a patient. To know a dog is to know how it interacts with cats and with humans; to know a cow is to know that it wanders freely and grazes in a field, and to know a lion is to know that it eats other animals. Knowing an entity means seeing how it achieves its perfection through interactions with others.

This view of the Republic of Natures holds that intellectual creatures occupy a special place in the hierarchy of natural entities. Aquinas argues that non-human entities are "for the sake of" human beings in the sense that we are responsible for using them intelligently. He says,

> We see that things do go on in the course of nature in such a way that intellectual substance uses all others for itself: either for the perfecting of its understanding, since it contemplates the truth in them; or for the exercise of its power and the development of its knowledge, in the fashion of an artist who develops his artistic conception in bodily matter; or even for the support of his body which is united with the intellectual soul, as we see in the case of men.[132]

For Aquinas, the (1) good of the whole is better than the good of the parts and (2) the good of the whole consists in the mutual ordering of the parts. Aquinas says that the good of the whole universe requires that the parts be ordered to the perfection of the whole in so far as one part is

---

[131] We now know that this two-fold order can be glimpsed at the most basic levels of the natural world. Concerning the action (and interaction) of genes in living organisms, Richard Dawkins and others have attempted to justify atheistic, radical Darwinism on the basis of the so-called "selfish gene." Such a gene is said to be the engine of evolution, and it operates simply by "selfishly" competing against all other elements in its environment in order to secure its survival. This is the survival of the fittest on the most fundamental biological level. Without getting into the details of the Creation-Evolution debate, it is interesting for our purposes to note that this idea of the selfish gene would basically oppose the two levels of order in nature; it would in fact eliminate the second level of order by exalting the first.

However, consider the following statement from Francis Collins, the former leader of the Human Genome Project. When asked about the interpretation of evolution only in terms of the survival of the "selfish gene," he responded, "That's much too narrow a view. A gene is just a packet of DNA . . . *say it's a gene that codes for a protein, that protein doesn't operate in a vacuum, it interacts with others. And so evolution actually acts on the organism, or even on a group of organisms.* And so, I don't think one can understand natural selection in anything like its real force by reducing it to something as simple as the selfish gene, as if that's the only unit that's at work there." My point is simply to underline the two-fold ordering of nature that is present even at the most fundamental levels of life, an order that modern science has helped uncover. See Francis Collins as quoted in Conor Cunningham, "Did Darwin Kill God," http://www.bbc.co.uk/programmes/b00jhfwt (accessed October 9, 2016).

[132] *SCG*, III, c. 112. See John McCarthy, "How Knowing the World Completes the World: A Note on Aquinas and Husserl," *Proceedings of the American Catholic Philosophical Association* 57 (1993): 71–86.

made to serve another. Thus, the ordering itself demands that the lower natures be subordinate to the higher, and the human agent is higher than other animals precisely through the operations of thinking and willing, operations which enable him to know the "whole of things," even if not wholly.[133] Aquinas therefore says, "It is not contradictory for some natures to be for the sake of the intellectual ones, and also for the sake of the perfection of the universe. For, in fact, if the things needed for the perfection of intellectual substance were lacking, the universe would not be complete."[134] Thus, the ends of things must be seen within a natural hierarchy with the human agent occupying a unique and important place.

This approach enables us to avoid the extreme of universal pacifism, but it also requires that human agents act as responsible stewards of nature, not as masters and possessors. Thus, the question we must ask is "Why should I be able to kill an animal?" not "Why shouldn't I be able to kill an animal for any reason I like?" We can answer the former question, but our answer demands a kind of sympathetic view of natural entities. Robert Spaemann says that the idea of man's dominion over nature was present in the ancient understanding of nature, "but this dominion was not seen as being despotic, but as a hierarchy whereby the lowest point in each case was in a . . . harmony with the highest point. Other beings, not just man, had ends. But, in the same way, the opposite is also true: human ends are also natural ends."[135] We need not say that the end of an animal is to be food for us, but we do need to recognize that our ends as human beings are higher than the ends of non-rational creatures, enabling us to use other creatures responsibly.

---

[133] See *SCG*, II, c. 46; McCarthy, "How Knowing the World," 73. McCarthy points out that by "parts" of the universe, Aquinas means "primarily the various kinds of beings inhabiting the universe, and only incidentally the particular creatures constituting those kinds at any given time."

[134] *SCG*, III, c. 112.

[135] Robert Spaemann, "The Unrelinquishability of Teleology," in *Contemporary Perspectives on Natural Law: Natural Law as a Limiting Concept,* ed. Ana Marta González (Burlington: Ashgate, 2008), 283.

B. Ends and Customs: The Communitarian Dimension of the Discovery of Natural Law

For the natural law to direct us more efficaciously, a similar distinction must be made between the ends of things and the positive laws or customs of our community (or between *physis* and *nomos*). The ends of entities come into sharper focus for us when we are able to see them as distinct from both our purposes and also the customs of our culture.[136] The laws of a country may respect the ends of things or they may vitiate them, but the discovery of the natural law entails seeing that the natural goodness of things is more fundamental than the laws of a community. This distinction often arises when the positive laws are opposed to some natural end or when these laws are inadequate in some domain of human action. However, the distinction need not manifest itself in a state of conflict between the natural end and the established law of the land. The key is to distinguish what is good by nature, what fits with the ends of the thing in question, and what is good by legal decree or culture. It requires seeing what Aristotle calls the naturally just as the foundation for the legally just.[137] It is simply good to tell the truth to a jury in a legal proceeding, and the goodness of this action is confirmed but not originally established by positive laws forbidding perjury. Also, the goodness of honest speaking is distinct in kind from the goodness of driving on the right side of the road in the United States, although both are in fact good things to do. Distinguishing these dimensions of goodness is an achievement of human intelligence in which the natural law comes to light.

Once we make the distinction between what is good by nature and what is good by

---

[136] It is this distinction between ends and laws or customs that is at the foundation of human rights. Maritain says, "With regard to Human Rights, what matters most to a philosopher is the question of their rational foundations. The philosophical foundation of the Rights of man is Natural Law. Sorry that we cannot find another word!" *Man and the State*, 80. Also, Heinrich Rommen says that whenever a bill or list of human rights appears, there is a "strong presupposition" among those appealing to human rights that the positive laws promulgated by human beings must remain in harmony with the natural law. See Heinrich Rommen, *The Natural Law: A Study in Legal and Social History and Philosophy* (Indianapolis: Liberty Press, 1998), 261.

[137] See Aristotle, *NE*, V.7, 1134b19-1135a15.

custom or legal decree, we can recognize that the goodness of customs and positive laws rest on what is good by nature. Hittinger says, "Human nature is a norm for what can count as rational in the domain of conduct and conventions or contracts. Conventions, it is plain to see, can also be norms, provided that they do not contradict the implicit and discoverable norm of human nature."[138] Customs and human conventions do bind human agents, but these conventions, if they are just, "presuppose the rudiments of a natural human dignity consisting in the form, the ends, and the operations of human nature. Only thus can nature be a norm with respect to convention."[139] Customs are normative only in virtue of being aligned with what is good based on the nature and ends of human agents. As Simon says, "Nothing would be right by enactment if some things were not right by nature."[140] Thus, the source of authority for the obligations imposed by positive laws is deeper than the positive laws themselves. We can see this point if we ask why a positive law should be changed. For example, suppose there is a law that has become outdated but was originally instituted to protect people from dishonest lenders. Since its initial promulgation, technology and economic processes have developed so that loan sharks are now able to prey upon citizens without fear of legal consequences. Surely, such a law should be changed to meet the new situation, but why does this change need to be mandated? We would answer that it is good for people to be protected from theft in any of its forms, and this is something good by nature, a dimension of goodness deeper than the positive law. Thus, the positive law can change if it is adjusted to be in line with what is good by nature.

Even if a piece of legislation is intricate and seemingly at a great distance from any

---

[138] Hittinger, "Natural Law and Public Discourse," 261. We will develop the relationship between customs, positive law, and natural ends in more detail in the next chapter.

[139] Ibid.

[140] Simon, *The Tradition of Natural Law*, 118.

obvious foundation in what is good based on the ends of human nature, such legislation could be traced back to something good by nature. Customs do not have the last word. To illustrate this point, we can return to the example with which we began this work. When Caligula refused to adequately promulgate his new laws, the citizens' argument that his actions (or his failures to act) were wrong was not based on the authority of another established positive law. Their argument would be based on what is fitting for human beings who must live peacefully together in a social order. A positive law should clarify the mechanism by which new laws must be promulgated, and such a mechanism, once defined, would then be binding in that political community. However, the necessity of promulgation itself is not based on the authority of the political leaders or the tradition of a given community; given what human beings are and given the ends they must pursue in order to be happy, any law must be made known in order for it to be binding. Political authority can specify how a law must be promulgated, but it cannot establish the necessity of promulgation. This necessity is rooted in the nature and ends of human agents and human society.

C. Language Enables Us to Make the Distinctions between Ends, Purposes, and Customs

As we begin to make these strategic distinctions, we are able to discover the "prior premises" of positive law discussed in the first chapter; in fact, it is precisely in making these distinctions that we are able to see that there are such prior premises. Originally, ends, purposes, and customs are encountered as a bundle; they are entangled with, or, perhaps better, not yet distinguished from, each other, and it is only when we learn through experience to distinguish the ends of things from our purposes and the customs of our community that we are able to see those ends as normative for our actions. Yet, we must note that in order to be able to make the distinctions between ends, purposes, and customs we must "already" (1) be members of a

community and (2) be intellectually "in touch" with the ends of things. Both of these are possible for us only through the use of language, which provides the social and intellectual setting within which we can come to know the natural law by knowing the ends of things and distinguishing them from our purposes and customs. Language enables us to capture the "value-laden intelligibility" of things in our interactions with others; therefore through language we are able to learn that we are obliged by the native excellences of things, native excellences that we can promote or vitiate but never originally establish by our purposes. If language merely gave us our ideas instead of capturing and carrying the being and ends of entities, or if language were only a tool for domination, as in Machiavelli, then our speech would put us at odds with each other and bury the ends of things, making the natural law undiscoverable by elevating our purposes over all other considerations. The fact that our speech has the natural end of manifesting the world to ourselves and to others enables us to function as co-promulgators of the natural law.

Further, language itself is rooted in pre-predicative experience that is "already" measured by the thing in its optimal condition for being perceived. The pre-predicative dimension occurs also in moral action, and it can be understood as a "moral sense" or sensibility. Shame in the face of the immorality of an action when a human agent goes astray is an expression of this pre-predicative moral sense, as is admiration when a human agent exhibits moral excellence. Such pre-predicative moral sensibility presupposes good habituation, which we will discuss in the next chapter. Thus, at the level of perception, language, and action, human agents are measured by the being of things, but we must also undertake activities and exercise our native capacities to manifest the being of things as a measure for our actions. Although we are originally in touch with the ends of things through language, we come to know these ends better, and to know them as obliging us, when we are able to distinguish them from our purposes and from the conventions

of our country. Through language human agents enter into social and political life under the direction of the natural law, which we gradually discover in our social and political interactions with others. Any codification of natural law precepts, any list or derivation of rights or responsibilities stemming from the natural law, is a further development meant to clarify what we originally discover in the distinctions between ends, purposes, and customs, distinctions made possible by language. We do not originally encounter ready-made propositions that we use to argue about moral conclusions. The truth of disclosure is prior to the truth of correctness.

To conclude this section, we can draw a comparison between two kinds of moral responsibility: (1) the responsibility inherent in being a speaker, a user of language with others, and (2) the responsibility of acting in accordance with the ends of things. These are the moral responsibilities of speech and action. Regarding the first, Bernard Williams identifies sincerity and accuracy as two virtues of truthfulness in the use of language; human agents must tell the truth to others (sincerity) and accept the responsibility of taking the necessary steps to ensure that their speech is as precise as possible (accuracy).[141] Therefore, there are two basic ways that speakers fail in their linguistic interactions: lying and inaccuracy. One can fail, as a user of language with others, by choosing to say what one knows is not the case, and one can also fail as a speaker by neglecting the process by which one can ensure the truthfulness of one's speech. Speaking includes these two intertwined responsibilities; speakers must respect not only the responsibility to manifest what is but also the responsibility to inform themselves properly and to think carefully concerning the things spoken about.

Analogously in the realm of action, we can identify two basic virtues: law-abidingness, by which we mean the willingness to follow the natural law and thus to form one's purposes

---

[141] See Bernard Williams, *Truth and Truthfulness: An Essay in Genealogy* (Princeton: Princeton University Press, 2002), 11, 84-148.

based on the ends of things, and moral "accuracy," the cultivated responsibility to seek the truth about what must be done. We can therefore identify two kinds of moral failure in natural law thinking: vicious action, a failure to heed or follow the natural law, and culpable ignorance, a failure to discover what one can and should know. Aquinas says there are groups of people who think theft and vices against nature are morally acceptable. These examples show a failure to know what one ought to know, a failure of "moral accuracy," and thus a failure to recognize the end of an entity or action as having priority over one's purposes. We can allow that there are cases of "invincible ignorance," but our approach highlights the natural moral responsibility, a responsibility to seek truth in both speculative and practical endeavors, inherent in simply being a human person, an agent of truth.[142] Here again we see the role of veracity in human agency. Because we are naturally ordered to know the truth in both speculative and practical ways, a failure to know what we ought, a failure to distinguish ends from purposes and customs, is a kind of culpable ignorance. If we miss the mark in moral actions because we have failed to manifest the natural law, we are not exculpated because "we didn't know." Failing to discover and hence co-promulgate the natural law is a failure in being human, a way that we vitiate our nature as datives of manifestation and agents of truth.

4. Modern Distortions

In the last section of this chapter, we will draw a contrast between our approach and two strands of thought that have deeply impacted modern philosophy and culture. We have explained at some length the correlation between entities that act for ends and the human subject who must

---

[142] This aspect of our approach fits well with Bernard Lonergan's remarks about the natural law. He says, "The natural law is Be Attentive, Be Intelligent, Be Reasonable, Be Responsible, and any precept you arrive at you arrive at from observing these precepts." He says that these four basic precepts are "independent of cultural differences." He also says that we may add a fifth precept, "Acknowledge your historicity," which also agrees with our approach. See Lonergan, "Questionnaire on Philosophy," *Method: Journal of Lonergan Studies* 2 (1984): 27.

come to know the ends of things, as these are revealed in language, and align his purposes with them. We have therefore clarified what it means to say that the natural law is promulgated through the "instrumentality" of natural entities and human reason. In order to further highlight our approach, we will contrast it with two of the founders of modern philosophy, Descartes and Machiavelli.[143]

As is well-known, René Descartes set the trajectory for modern thought and for the characteristically modern approach to the relationship between human beings and the natural world. Descartes, in his *Discourse on Method*, a book that Allan Bloom calls "that famous fund-raising brochure,"[144] promises new freedoms and possibilities for humanity through the development of medicine and technology. Descartes says that we should replace that "speculative philosophy taught in the schools," and find instead a new practical philosophy "by means of which, knowing the force and actions of fire, water, air, the stars, the heavens, and all the other bodies that surround us, just as distinctly as we know the various skills of our craftsmen, we might be able, in the same way, to use them for all the purposes for which they are appropriate and thus render ourselves, as it were, masters and possessors of nature."[145] To accomplish his project of rendering human beings masters and possessors of nature, Descartes develops his philosophical system by claiming that the classic doctrine of substantial forms is

---

[143] We could also add Hobbes's theory of perception to this modern couple. On Hobbes's view of perception, the appearance of a thing is spatially dislocated from the thing itself; how a thing appears is only in us, not a feature of the thing itself. He radically subjectivizes perception and claims that we are gravely and consistently mistaken to think that the appearances of things belong to the things themselves. See Hobbes*, The Elements of Law, Natural and Politic*, ed. Ferdinand Tönnies (London: Frank Cass, 1969), Part I, Chapter 2; *Leviathan*, Part I, Chapter 1.

[144] Allan Bloom, *Love and Friendship* (New York: Simon and Schuster, 1993), 107.

[145] René Descartes, *Discourse on the Method for Conducting One's Reason Well and for Seeking the Truth in the Sciences,* trans. Donald A. Cress (Cambridge: Hackett Publishing Company, 1998), 35.

simply unnecessary, and he proceeds to eviscerate the notion of final causality so crucial to

classical Aristotelian philosophy.[146]

Thus, Descartes initiates what Dennis Des Chene calls "a world without ends."[147]

Regarding Descartes's vision of a world without ends, Des Chene asks "What becomes of

finality in the new world of *res extensae*. The brief answer is: nothing. . . . Not just final causes,

but the directedness essential to the Aristotelian concept of change, are absent."[148] According to

Des Chene, the loss of finality, which Sokolowski calls "the deletion of the ends of things,"[149] is

inextricably tied to the quantitative understanding of the natural world. Des Chene says, "To hold

that the nature of corporeal substance is constituted by extension is to deny that corporeal

substance could have active powers."[150] The neglect of substantial form and the concomitant

reduction of natural things to *res exstensae* result in the elimination of final causality, or the

"deletion of the ends of things." With Descartes, we can manipulate the corporal world through

the mathematical study of entities considered only as extended things, which leads to an almost

exclusive reliance on efficient causality in our understanding of entities and their characteristic

movements. We can profitably ask: How does this conception of the natural world affect our

---

[146] For Descartes's claim that substantial forms are not necessary to understand the nature of corporal substances, see his comments in *Meteorology,* Discourse I, in *The Philosophical Writings of Descartes*, trans. John Cottingham, Robert Stoothoff, and Dugald Murdoch, with the correspondence translated in part by Anthony Kenny, 3 vols. (Cambridge: Cambridge University Press, 1991), 2:173n2. See also his letter to Henricus Regius, where Descartes says that substantial forms are not needed to explain the causes of natural things and hence can be fruitfully rejected. Ibid., 3:205. See Daniel E. Flage and Clarence A. Bonnen, "Descartes on Causation," *The Review of Metaphysics* 50 (1997): 841-872. We briefly discussed Descartes's rejection of final causality in Chapter 2.

[147] Dennis Des Chene, *Physiologia: Natural Philosophy in Late Aristotelian and Cartesian Thought* (Ithaca, N.Y.: Cornell University Press, 1996), 391.

[148] Des Chene, *Physiologia*, 391.

[149] Sokolowski, "Discovery and Obligation," 34. In this article, Sokolowski uses the work of Des Chene to illustrate the importance of recovering the doctrine of natural ends and distinguishing natural ends from human purposes.

[150] Des Chene, *Physiologia*, 391.

morality? Des Chene says, "The only morality, it would seem, to be gleaned from the natural world so understood consists in the unique admonition: do what you will."[151] Without natural ends to structure our purposes and customs, we are left with a moral universe in which the natural law has no place to operate. All that matters in such a world is human purposes.

Machiavelli's understanding of language can be correlated to the modern deletion of the ends of things, and it is an illuminating contrast to the view we have sketched. Angelo Codevilla discusses Machiavelli's theory of language as it is developed both in *The Prince* and in *The Discourse or Dialogue on Our Language*. Codevilla says, "Language was Machiavelli's weapon"; in fact, language was the "ultimate weapon" for Machiavelli, a "most powerful weapon in the struggle for primacy."[152] Codevilla says, "Language . . . is the timeless equivalent of today's neutron bomb. But it is even more powerful, because it kills only the enemy's inimical *thoughts*."[153] In this view, "Names are nothing but the marks placed on things by those with the power to place them."[154] At the dawn of modern political philosophy, language is portrayed as a mere weapon to extend the dominance of those already in power, or a means for the powerless to obtain control.

For Machiavelli, names and speech are not measured by the being and ends of things, language does not have the function of revealing the states of affairs themselves, but rather names and the meanings of words are "wholly plastic" and are imposed in order to more efficiently accomplish our purposes. For Machiavelli, "Words are plastic tools subordinated to a

---

[151] Ibid., 398.

[152] Angelo M. Codevilla, "Words and Power," translator's introduction to Niccolò Machiavelli, *The Prince*, trans. Angelo M. Codevilla (New Haven: Yale University Press, 1997), xxi.

[153] Ibid., xxxvii.

[154] Ibid., xxi.

rhetorical purpose."[155] According to Codevilla, Machiavelli develops his understanding of

language by distinguishing his own view from that of Dante. "For Dante, the function of

language is to describe the nature of things. . . . Words express men's best understanding of how

every piece of reality fits with every other."[156] However, Machiavelli opposes this view of

language, and Codevilla says that for Machiavelli "the things that words express are of little

importance next to the success words have in moving the audience in the desired direction."[157]

Thus, speech is reduced to pure rhetoric and as such "moving men is the prime objective of

speech."[158]

> Codevilla says,

> For Machiavelli, words are means of exercising power. *The Prince* was an attack on a political language. Part of Machiavelli's plan of battle was to capture the word virtue. He did not destroy virtue; he conquered it. First, he disordered the words of which the concept of virtue consisted, then he reorganized them according to his 'new orders' to fight on his side. By doing so, he made it difficult for even the memory of virtue as it was once understood to enter into our political discourse.[159]

In modern thought, initiated by both Machiavelli and Descartes, the natural moral law as we

have described it has no role to play. Machiavelli reduces language to an exercise of power shorn

from the natural ends of things, which are later scientifically deleted from the world by

Descartes. Within this context, any correlation between the human subject with his linguistically

formed thinking and the natural ends of things is impossible, and morality is reduced to a

struggle for primacy in which we are admonished to enhance our power so that we can more

readily "do what we will." If customs must be adjusted or reformed, it is not because they are out

---

[155] Ibid.

[156] Ibid., xxiii.

[157] Ibid., xxiv.

[158] Ibid., xxv.

[159] Ibid.

of line with the ends of things but because those customs no longer serve our purposes or because they are surpassed by history. Purposes reign supreme in a struggle of all against all, and we should further note that moral virtue in such a world is eliminated along with the natural law. If we rid the world of ends and reduce language to rhetorical power plays, then the classical understanding of virtue has no soil in which to take root. Ends, natural law, and virtue rise and fall together.

Conclusion

We have seen that human perception, thinking, language, and action are shot through with normativity. We are successful in ruling our lives only to the extent that we manifest the being and ends of things as normative for our actions, especially the ends of human nature. Further, the normativity of being is gradually discovered as veracity and the desire for happiness unfold in the myriad avenues of human thought and action. In closing this chapter, we can now order the various understandings of natural law that we have discussed. We have worked with four definitions of the natural law: (1) the ontological priority of ends over purposes, (2) a rule and measure of human actions, (3) the prior premises of the positive law, and (4) the rational creature's participation in the eternal law. In the order of discovery, we first encounter the natural law as (1) the ontological priority of ends over purposes, which therefore serves as (2) a rule and measure for our actions that is (3) prior (ontologically) to the positive laws of a community. Finally, upon much metaphysical argumentation, we can see that our natural recognition of the ontological priority of ends over purposes, which serves as a rule and measure for human actions "prior" to the positive laws, is the mode in which we (4) naturally participate in the eternal law by being provident for ourselves and for others. We first discover and co-

promulgate the natural law by distinguishing between ends, purposes, and customs and realizing that ends are normative for both purposes and customs. If we are able to reason to the existence of God as the creator of a world of natures that operate for ends, we will know the natural law more fully and more securely as law, but such knowledge of the divine is not required in order to know what is in fact a law. As Dewan says, "What is *in fact* law is only inferentially grasped by us *as law*. It is first grasped by us in a more immediate way, as the goodness of being."[160] The unique mode of absence of the legislator of the natural law is originally overcome by our ability to handle presence and absence in language, which opens to us the realm of social and moral life.

In the final chapter of this work, we will show that language by itself is not sufficient to manifest and co-promulgate the natural law. We also must respond to the ends of things that come to light through speech by undertaking actions that promote virtue and thereby realize the ends of human nature.

---

[160] Dewan, *Wisdom, Law, and Virtue*, 210.

Chapter 4

The Role of Virtuous Action
in the Promulgation of Natural Law

"Do you compare your conduct with his?"

"No. I compare it with what it ought to have been; I compare it with yours."

- Jane Austen, *Sense and Sensibility*

Jacques Maritain distinguishes between the ontological aspect of the natural law (the "normality of functioning of human nature") and its "gnoseological," or epistemological, aspect (the natural law as known). Regarding the epistemological aspect, he says that human agents know the natural law "with more or less difficulty, and in different degrees, running the risk of error here as elsewhere."[1] With this distinction, Maritain points to the fact that, while the ontological aspect of natural law remains the same, the knowledge of the natural law increases and decreases throughout history, both the personal history of individual persons and the history of cultures and civilizations. In the previous chapter, we detailed the structures of human perception and language that enable this growth and decline in knowledge of the natural law to take place.

In agreement with Maritain's claim that the knowledge of natural law can rise and fall, both for an individual human agent and a culture, Hittinger says, "Appropriation of the 'evidences' of natural law, either by the individual or by a culture, is a slow process requiring *action and reflection*."[2] In this chapter, we will highlight and develop Hittinger's claim that evidencing the natural law requires *action* in addition to the resources provided by linguistically

---

[1] Jacques Maritain, *Man and the State* (Chicago: The University of Chicago Press, 1951), 90.

[2] Hittinger, "Natural Law and Public Discourse," 266.

217

formed thinking. Since our project is to show how natural law is promulgated, we will accent the growth of knowledge of natural law as opposed to its decline. To this end, we will use resources from Aristotle and Aquinas in order to show how the very cultivation of virtue and the virtuous life serve as a promulgation of the natural law because they exhibit the *telos* of human being.

1. Components of Human Agency That Serve to Make Natural Law Known

As we have seen, evidencing the natural law by making distinctions between ends, purposes, and customs is not an automatic operation; human agents can and often do fail to make these key distinctions, and they therefore fail to discover or co-promulgate the natural law, at least its secondary precepts. Our reflection on the natural attitude and the philosophical attitude enables us to see that the natural law is originally discovered in the thick of a situation that calls for a moral response; human beings initially constitute the natural law when they are occupied with the details of a concrete situation within the natural attitude, and the natural law is named and codified in a later reflection on what originally appears to human agents in the heat of action. Furthermore, since not all agents are successful in manifesting the natural law, in order for us to understand how the natural law is made known, we, as philosophers speaking within the philosophical attitude, must locate a trustworthy guide who manifests the ends of human nature through his actions. That is, we must identify a living rule and measure for human action. It is the morally virtuous agent, the *studiosus* or *virtuosus* in Aquinas's Latin, who discovers the truth of things and allows the truth about the good to be normative for his actions. While thinking, speaking, and acting within the natural attitude, he is the one who shows what the natural law is by manifesting the end of the law, which is the development of virtue, and we, speaking from the

philosophical attitude, can identify and name him as the living rule and measure for human action.[3]

A. The Virtuous Person as a Rule and Measure for Human Action

We have seen that Aquinas describes *law* as a rule and measure for human actions, and we discussed in detail how the natural law is discovered as a rule and measure that is in itself prior to the positive laws of any given political community. Additionally, both Aristotle and Aquinas describe *the virtuous person* (in Greek, the *spoudaios* or *phronimos*) as a "rule and measure" for human actions. Aristotle develops the point that the virtuous person is the rule and measure in order to answer a difficulty about how the good appears to human beings.[4] He says that all human agents wish for the good, but if that is correct, then it seems difficult to explain the fact that some people seem to wish for and choose evil things. Aristotle considers two possible responses to this difficulty, both of which he deems unsatisfactory, before putting forth his own answer as a third way. First, if we say that the person who does evil did not really wish for the good, then we have to abandon the primary principle of the moral life, which is that all human action is directed naturally toward the good.[5] Second, if we say that all human action is directed toward merely apparent goods, then there would be no "natural object of wish."[6] On this view, we are left with a moral relativism in which there is no truth of human action, which is a self-defeating position (i.e. it is true that there is no moral truth). Aristotle's own response is that all human beings desire the good, but each human agent has to search for the good according to what *appears* good to him. Human agents must appreciate the good and the appearance of the

---

[3] We will discuss the relationship between law and virtue in more detail below.

[4] See *NE*, III.4, 1113a15-35.

[5] Ibid., 1113a15-20.

[6] Ibid., 1113a20-23.

good, and they must discipline themselves so that the truly good, or what is good in itself, appears as good to them.

Even though all human beings seek the good according to its appearance to them, we are not left with moral relativism. Aristotle shows that the virtuous agent identifies what is good in itself as good for him, and thus he is a guide to the truth about moral action. He says, "That which is in truth an object of wish is an object of wish to the good man, while any chance thing may be so to the bad man."[7] Aristotle likens the virtuous agent to someone who is physically healthy. The soundness of the healthy person's physical condition allows him to have an affinity to wholesome things, for "in the case of bodies also the things that are in truth wholesome are wholesome for bodies which are in good condition."[8] For example, the healthy person is a trustworthy judge of which foods are truly sweet or sour; what is actually sweet appears sweet to him, but the sick man cannot be trusted to identify what is sweet or sour. To the sick man, the sweet may seem bitter. In a similar way, "the good man (*spoudaios*) judges each class of things rightly, and in each the truth appears to him (*ālethēs autōi phaīnetai*). For each state of character (*hexis*) has its own ideas of the noble and the pleasant, and perhaps the good man differs from others most by seeing the truth in each class of things, being as it were the rule and measure (*metron*) of them."[9] The morally virtuous agent enables the good in itself to come forward as good for him precisely because his virtuous character enables him to identify what is truly good as his good. His virtuous character makes him an exemplar of the ends of human nature, and his character enables him to uncover the truth about what is to be done. Thus, he is a guide to the truth in human action in two interconnected ways: (1) his conduct shows clearly the ends of

---

[7] Ibid., 1113a24-25.

[8] Ibid., 1113a26-27.

[9] Ibid., 1113a31-34. (trans. modified).

human nature, which are normative for purposes and customs, and (2) he can reliably identify and act upon the truth of moral matters in concrete situations. He can see what must be done because he is always responsive to the noble. In both these ways, he permits the emergence of the natural law by becoming a living rule and measure.

The virtuous agent enables us to see that the interaction between being and identification is a crucial issue for the promulgation of the natural law. Aristotle says that a virtue is a *hexis*, a settled character trait that we "have," and Aquinas says that a virtue is a *habitus*. As we saw in Chapter 2, Vernon Bourke says that a virtue for Aquinas is "not a mere automatic conditioning . . . but *the metaphysical growth* of a basic potency for action."[10] The development of a virtue is a perfection of a natural ability; virtues "increase" the being of the agents who develop and exhibit them by perfecting their native capacities to act and live well. This perfection of their being is the end of human nature, and such perfection is inextricably linked to the human ability to identify the truth about moral action. Being a good person is *being* the kind of human agent who can *identify* the noble response to a given situation and act accordingly. As we saw, Yves Simon says that a virtue, as a kind of *hexis*, is an "existential readiness" to perform morally good actions. We can add that a virtuous character gives human agents the existential readiness to identify the truth in matters of human action. The virtuous person's existential readiness to identify the truth about moral matters and respond intelligently to situations serve as a rule and measure of human action, a living promulgation of the natural law.

While Aquinas uses the phrase "rule and measure of human actions" to describe both law and the virtuous man, he does not explicitly compare the ways in which both law and the virtuous agent function as rules and measures of human action; that is, he does not tell us the significance of describing both law and the virtuous agent as rules and measures. However, his

---

[10] Bourke, "The Role of Habitus," 106. Emphasis added.

descriptions of law and of the virtuous agent offer us a way to understand their relationship. When describing law, Aquinas generally uses the phrase "*regula et mensura*." However, when describing the virtuous person as the rule and measure, he sometimes adds a phrase to specify the way in which he is a rule and measure. Aquinas says that the virtuous agent is the rule and measure of "*all* human acts," and he says that he is a rule and measure insofar as he sees what must be done in individual, particular circumstances.[11] The law must remain general in its formulation; it is a general or universal rule and measure designed to include as many cases as possible. The virtuous agent, on the other hand, is a rule and measure by showing the look of the general precepts of the law as they are activated in a concrete, particular setting. The fact that both the law and the virtuous agent are rules and measures shows that the law, while retaining a necessary level of generality, applies "all the way down" to specific instances. For Aquinas, law governs even the complexities of particular situations, and the virtuous agent shows that the law does apply and how it can be adhered to and creatively implemented in individual cases.

In order to illustrate this point, we can draw an analogy between virtuous action and the natural law on the one hand and what Aquinas calls "decrees" and positive law on the other. Aquinas says that decrees (*sententiae*) are not positive laws strictly speaking, but decrees are legal insofar as they direct the application of laws to particular situations.[12] As we have seen, positive laws must be formulated so as to apply to the majority of cases and must therefore retain a sufficient level of generality. Decrees manifest how a law should be executed in specific instances by specifying and concretizing the law in a particular setting, and through this function decrees make the law present in a more vivid way. By informing the matter of a particular case, decrees help overcome some of the absences inherent in political life, where the ruling

---

[11] See *In Ethic.*, liber III, lect. 10, n. 494; *Super I Epistolam B. Pauli ad Corinthios lectura*, Ch. 2, n. 118.

[12] See *St*, I-II, q. 96, a. 1, ad. 1.

intelligence of the legislator(s) cannot be constantly present to every citizen in every situation. In an analogous way, the virtuous actions of a good man are not laws, but they manifest how the natural law can be instantiated in a concrete situation. The virtuous man shows how the law can be applied and properly instantiated in the heat of a particular moral setting, thus revealing what the law calls for by showing how a virtuous man perfects the law and applies it in the midst of shifting circumstances. The measured enjoyment of food and drink by the temperate man, the courageous actions of the brave soldier, and the intelligent direction of exchanges by the just man make the natural law present in a particular setting and therefore show what it looks like when a human agent shapes his purposes to align and blend with the ends of things.[13] By their intelligent conduct, these virtuous agents overcome some of the absences unique to the natural law.

Thus, the absences of the ruling intelligence of the legislator(s) from complicated, particular situations, absences that are inherent in political life, are overcome in part by decrees, since they reveal how the positive law must be applied to particular cases. Therefore, decrees function to make the positive law more fully known; that is, decrees aid the promulgation of the positive law. In a similar way, virtuous deeds assist in the promulgation of the natural law by showing what respect for the ends of things looks like in a concrete situation. In this way, the virtuous agent makes the natural law present to himself and others in a more vivid way. While all analogies limp, we can say that in these ways virtuous actions are to the natural law what decrees are to the positive law.

---

[13] We will see below that in a well-ordered political community with good positive laws, the positive law itself will assist citizens in forming these virtues. Thus, in a well-ordered polity the actions of a virtuous agent will manifest both the natural and positive law.

B. Character as a Source of Moral Perception and Action

The constant interplay of being and identification shows that character is a source of

moral perception. All human agents see the world through the prism of their moral character, and

the moral character of the virtuous man enables him to see the world as it truly is. William

Fortenbaugh says, "What courage [and all moral virtue] does is to insure a correct perception of

a particular situation."[14] For this reason, Sokolowski says that the virtuous agent is "himself a

kind of light and measure. Only his character keeps him from the deceptive interpretations of

vice or the sluggish blindness of moral indifference."[15] We must see the natural law and moral

virtue as working in concert; the natural law as known shapes and forms the characters of human

beings, and their character helps them to see the natural law more clearly.[16] "To be able to

respond to natural law – indeed to let it become actual as law, to show by one's actions what can

be done, and thus to make others see what should be done – is to be a certain kind of person; not

one who simply conforms to things set down, but one who lets the good appear, to himself and

others, in what he does."[17] The honest businessman will see and imagine opportunities for

truthful, just, and mutually beneficial collaboration with partners, while the thief will see and

fantasize about chances to cheat people out of their possessions. The generous wealthy man will

see ways to be active philanthropically, while the miserly rich man will see only ways to hoard

and increase his resources. As we are, so the world appears to us because being and identification

---

[14] William Fortenbaugh, "Aristotle's Conception of Moral Virtue and Its Perceptive Role," *Transactions and Proceedings of the American Philological Association* 95 (1964): 78.

[15] Sokolowski, "Knowing Natural Law," in *Pictures, Quotations, and Distinctions*, 291.

[16] We will see that this circularity between natural law and moral character can be "broken" by discussing the importance of a virtuous upbringing and positive laws geared toward the inculcation of virtue.

[17] Sokolowski, "Knowing Natural Law," 291.

always go hand in hand. In these successes and failures of moral actions, human agents are also succeeding or failing to make the natural law known to themselves and to others.

The fact that the world appears to human beings as they are does not permit us to fall into a kind of moral relativism nor does it exculpate despicable behavior. Aristotle says that every individual is responsible for how the world appears to him. He says, "Now some one may say that all men aim at the apparent good, but have no control over how things appear to him; but the end appears to each man in a form answering to his character. We reply that if each man is somehow responsible for the state he is in, he will also be himself somehow responsible for how things appear."[18] Human agents are responsible for the state of their character because their character is the deposit of freely chosen actions, for "not to know that it is from the exercise of activities on particular objects that states of character are produced is the mark of a thoroughly senseless person."[19] Thus, human beings are responsible for how things appear to them because in moral matters the world appears to each person in a manner that is correlated to his characteristic ways of being and acting with others. At the level of moral action, being an agent of truth means that human agents are responsible for the kind of dative of manifestation that they have become.

However, if the virtuous agent functions as the living rule and measure, then there must be a way to recognize him as such, and this recognition must be open to all human agents, who must be able to see a manifestation of his virtuous character. We can therefore ask: if everyone seeks the good according to how it appears to him, will the vicious person fail to see the virtuous agent as a rule and measure? To the coward, the brave man appears rash, so how does the coward

---

[18] *NE*, III.5, 1114a30-1114b4.

[19] Ibid., 1114a 8-10.

come to see the brave person as a rule and measure of what must be done?[20] We will discuss

some essential aspects of character development later in this chapter, but for now we can make

two points in response to these questions. First, the moral corruption of vicious agents will

indeed inhibit their ability to recognize the virtuous person as the rule and measure. Their

passions or settled moral character impede their ability to recognize the good in itself as good for

them, and thus they may see the virtuous man, who acts in accordance with the ends of human

nature, as a fool. However, second, in the majority of cases even the vicious agent is not totally

without the ability to recognize virtue in action. Simon says that "dependability" is a mark of the

virtuous person.[21] Even the coward, who may think the brave man rash in difficult situations,

will be able to recognize the dependability of the brave person, who will consistently respond to

situations in a way that shows he is not dominated by the emotion of fear. One can always count

on the brave soldier to stand his post no matter how dangerous the fighting gets; the timely and

conscientious person consistently meets deadlines and respects the schedules of his colleagues.

His dependability is a signal that he can be trusted in moral matters.

The dependability of the virtuous agent must be distinguished from the consistently

erratic behavior of the vicious man. The virtuous man can be counted on to act in an upright way,

and this dependability is fundamentally different from the consistent behavior of the vicious

person. Dependability means that a person can be trusted. The vicious agent may be consistent,

but his consistency vitiates the possibility of trusting him. Trustworthiness is not mere

consistency.

Just as a written and promulgated positive law must be secure and dependable so citizens

can know what is expected of them, so too the living rule and measure, the agent who manifests

---

[20] For Aristotle's claim that the brave man shows up as rash to the coward, see *NE*, II.8.

[21] See Simon, *The Definition of Moral Virtue*, 8-16; 47; 86.

the natural law in action, must be dependable and trustworthy. As Aquinas says, "A measure should be as permanent as possible."[22] It is this dependability, trustworthiness, or "moral permanence" that is the first sign of the virtuous agent, and it is also the feature of his character that is manifest even to those who would find his actions misguided or naive.

C. Virtue as Truthfulness

Aquinas provides a summary of the points we have made in the above sections, and he also highlights the importance of truth in moral action. He says,

> The virtuous person correctly passes judgment on individual things that pertain to human activity. In each case that which is truly good (*vere est bonum*) seems to him to be good. This happens because things seem naturally pleasurable to each habit that are proper to it, that is, agree with it. Those things are agreeable to the habit of virtue that are in truth good (*veritatem bona*) because the habit of moral virtue is defined by what is in accord with right reason. Thus the things in accord with right reason, things of themselves good, seem good to it. Here the good man (*studiosus*) differs very much indeed from others, for he sees what is truly good in individual practicable matters, being as it were the rule and measure (*regula et mensura*) of all that is to be done.[23]

We can connect Aristotle and Aquinas's stress on the virtuous man's ability to recognize the true good with our discussion of veracity in the preceding chapter. The exercise of virtuous action is a further perfection of human veracity; it is an actualization of the natural human potency for truthfulness and happiness, and therefore it can help human agents see the natural law, which is based on the truth of human nature.

Kevin Flannery identifies truthfulness as one of the essential features of the virtuous agent, and this truthfulness refers to practical truth, the truth involved in virtuous action when reason is correct and desire is well formed. This notion of truthfulness is broader than simply the stable disposition to always tell the truth to others, although it includes such a disposition.[24]

---

[22] *St*, I-II, q. 97, a. 1, ad. 2.

[23] *In Ethic.*, liber III, lect. 10, n. 494. (trans. modified).

Flannery says that the truth associated with the virtuous and practically wise person is "practical truth or truth bound up with getting *to* things."[25] To say that the good agent gets to the truth of things means that he not only says and thinks what they are but brings them to activation and manifestation. The virtuous person is a rule and measure because he knows what should be done in each situation, and, as Simon says, this knowledge "is plainly related to reality and to the finalities of things. To know what to do, one must consider the nature of things."[26] We can now say that the practically wise person gets "to the truth of things" by identifying and respecting the ends or perfections of entities. He responds quickly and intelligently to these ends while allowing them to form his purposes in acting, thus witnessing to the ends of things by shaping his purposes to be in line with or to bring about the native excellences of entities. However, he is not slavish in his response to the ends of things; rather, the necessity imposed by recognizing the ontological priority of ends over purposes (and customs) spurs him to higher levels of creativity and imagination. Because his passions do not cloud his thinking and judgments and because he will not be tempted to take the easy way out of difficult situations, he is free to imagine new ways of responding to the perplexities of social and political life.

Thus, the moral transactions of the virtuous man show what the natural law is by revealing that it is meant to shape a virtuous human character. Above all, the practically wise person loves and actualizes *the ends of human nature* in the exercise of virtue. Because the natural law involves the ontological priority of ends over purposes and customs, we can conclude that the better a human agent knows the ends of human nature, then the better he will know the natural law. That is, a fuller manifestation of the ends of human nature serves as a fuller

---

[24] Kevin Flannery, *Action and Character According to Aristotle*, 234-239.

[25] Ibid., 229.

[26] Simon, *The Definition of Moral Virtue*, 107.

promulgation of the natural law. We discussed how language enables human beings to encounter the ends of things by distinguishing them from their purposes and customs, and the virtuous person continues the manifestation of the natural law begun in the use of language by providing a vivid example of the ends of human nature in action; his successful cultivation of veracity into intellectual and moral truthfulness shows what human nature is and what human action can be when it is perfected. Thus, to know the natural law, individuals must make strategic distinctions between ends, purposes, and customs, but they must also see the ends of human nature on full display in intelligent actions. Such a virtuous display of human action will better enable human agents in the natural attitude to make those key distinctions, and therefore we in the philosophical attitude can identify virtuous action as a fuller promulgation of the natural law.

Plato's portrayal of Socrates can help illuminate these points. In the *Apology*, Socrates refuses to lie or act in an undignified way in order to avoid a harsh sentence from the jury. In his speech and actions, he shows that truth and virtue are the perfection of the human being, and this end of truthfulness in speech and action provides the measure for his purposes.[27] He also rejects the custom of shamelessly appealing to the sentimentality of the jury members by crying or bringing in his family to convince the jurors to mete out a soft sentence; he will only speak the truth because the end of truth has priority over his purposes and the customs in Athens at the time. Further, he appeals explicitly to both his language and deeds as witnesses to the truth.

---

[27] Socrates says that his words and deeds reveal the virtue of justice. In the *Apology*, 32a, he says, "I shall give you great proofs of this, not words but what you esteem, deeds." At 32d, he says, "Then I displayed again, not in words but in action, that, if it were not rather vulgar to say so, death is something I couldn't care less about, but that my whole concern is not to do anything unjust or impious." See also 40b, where Socrates mentions both "word and deed." The example of Socrates is somewhat complex if we hold that he, as a philosopher, speaks in the philosophical attitude in his defense before the jury. Normally, the natural law as a formulated obligation is initially discovered in the natural attitude. If Plato (or Plato's Socrates) identifies moral virtue with philosophical wisdom, or if he thinks that philosophical wisdom is necessary for moral virtue, then moral virtue is only truly possible for a philosopher. In that case what we are calling the natural law could not be adequately promulgated in the natural attitude. Thus, the distinction between philosophical wisdom and moral virtue, together with the claim that moral virtue can be achieved independently of philosophical wisdom, is crucial for our account of the promulgation of the natural law.

However, he is only able to act in a manner befitting the end of human nature because he has cultivated the virtues and pursued wisdom throughout his life. As the example of Socrates shows, the virtuous agent moves from *discovering and responding to* a natural rule and measure for human action to *being* a rule and measure for human action.

Language introduces human agents into social and political life and puts a kind of metaphysical "pressure" on them to see things as they are, or rather being itself exercises a kind of pressure on human agents through the use of language. However, language by itself is not enough. Each person must respond to the "reality conveyed by words" with actions that develop the moral and intellectual virtues, and the stable virtuous character in turn ensures that they recognize and respond to the ends of things because they have appropriately shaped their passions and intentions. When linguistic, intellectual and moral honesty come together in virtuous human beings, then the natural law more readily comes to light.[28] Thus, natural law and virtue mutually influence each other; the natural law as discovered leads us to virtue, and virtue in turn perfects the law and makes it more widely known.

2. The Role of Moral Education in the Promulgation of Natural Law

In Chapter two, we discussed Aquinas's argument that the secondary precepts and conclusions of the natural law can be erased from the human mind and heart by three causes: (1) corrupt personal habits, (2) vicious customs in a community, and (3) sophistical language.[29] He says that among some people, "theft or even vices contrary to nature" are not regarded as

---

[28] Bernard Lonergan says, "Man is not only a knower but also a doer; the same intelligent and rational consciousness grounds the doing as well as the knowing; and from the identity of consciousness there springs inevitably an exigency for self-consistency in knowing and doing." *Insight* (New York: Philosophical Library, 1956), 599. This self-consistency of knowing and doing could be seen as the perfection of the natural law.

[29] See *St,* I-II, q. 94, a. 6.

morally depraved actions because of such deficiencies. Additionally, he says that the natural law can be "deleted" in the case of a particular action due to strong and unruly passions. Human agents often fail to recognize or apply the law in a concrete situation because their emotions are not well formed, and if these unruly emotions settle into stable habits, then such agents can completely lose sight of the secondary precepts of the natural law. Consequently, we, operating in the philosophical attitude, can identify three remedies for these defects, or three essential factors for discovering and promulgating the natural law: (1) each individual's cultivation of stable emotions regulated by reason and virtue, (2) the formation of a healthy culture shaped by customs that are in line with the ends of human nature, and (3) truthful speech. It is interesting to note that Aquinas himself does not make this point. He says that bad habits, bad culture, and bad speech can "delete" the secondary precepts of the natural law, but he does not develop the point that we are now discussing, namely that good habits, good customs, and good speech can function to make the natural law known. While these three factors are distinct, they are also deeply interwoven with each other, such that each one depends upon and modifies the others.

We will use the three points made by Aquinas to structure the next three sections of this chapter. In this section, Section 2, we will develop an approach to the first of these three factors, the cultivation of virtuous passions or emotions. In Section 3, we will discuss the manner in which the customs of a culture can assist the promulgation of the natural law. In Section 4, we will look at various instances of truthful language as promulgations of what is good by nature. We will elucidate these points by highlighting Aristotle's understanding of the pedagogical importance of imitation.

By drawing upon aspects of Aristotle's (and Plato's) philosophy, we are not claiming or implying that Aristotle himself has a full and clear account of natural law. Aristotle's remarks

concerning the natural law are sparse.[30] However, our approach to the promulgation of the

natural law is to trace all the ways in which natural rules and measures for human action are

made known through the operations of human nature, speech, and virtue. Within this approach,

the thought of Aristotle is of great assistance; he helps us see how the being and ends of things

manifest themselves to human agents because he discusses both being and its manifestation. As

Thomas Prufer says, "Philosophy for the Greeks is phenomenological ontology: speaking about

the totality of being and the fundamental sense of being by speaking about being in so far as it is

a phenomenon, in so far as it shows itself – and being shows itself to man primarily through man

himself."[31] This "phenomenological ontology" exemplified by Aristotle assists us in our

discussion of the ways in which the being of the natural law manifests itself.

A. How Imitation Shapes Moral Virtue in Individuals

As we have argued, it is the virtuous agent who has formed his passions to be in

accordance with reason, and he reveals the natural law by showing what is possible for human

action when desires are in harmony with right reason. Therefore, in order to see how we come to

constitute the natural law, we must, as Aristotle says, consider "how a man becomes excellent

(*spoudaios*)."[32] The gradual formation of virtue enables human agents to clear the fog of unruly

---

[30] For a discussion of the extent to which a coherent account of natural law can be found in the writings of Aristotle, see Fred Miller, "Aristotle on Natural Law and Justice," in *A Companion to Aristotle's Politics,* ed. David Keyt and Fred Miller (Cambridge: Basil Blackwell, 1991), 279-306. On p. 305, Miller says that all of Aristotle's discussions of natural law and justice "recognize a distinction between . . . common (natural) law or natural justice which has an objective basis and applies to all persons, and . . . particular law or political justice which depends upon local agreement and consequently differs for different localities. Moreover, natural law or justice serves as a standard by which the laws of different localities may be compared and evaluated." Miller says that Aristotle's account of natural law depends upon his "teleological account of nature," and Miller points out the fact that Aristotle's theory of natural law differs in important respects from later natural law thinkers, such as Aquinas. On p. 306, Miller says, "Aristotle does offer a distinctive theory of natural law and justice which has important implications for his political philosophy. . . . Given [Aristotle's] teleological view, his account of natural law and justice is coherent and plausible."

[31] Prufer, "A Protreptic: What Is Philosophy?" in *Studies in Philosophy and the History of Philosophy*, vol. 2, ed. John K. Ryan (Washington, DC: The Catholic University of America Press, 1963), 2-3.

desires, and therefore facilitates a better grasp of the secondary precepts of natural law. Aristotle says that there are three things necessary for a man to become good (*agathos*) and virtuous (*spoudaios*): nature (*physis*), character (*ēthos*), and speech (*logos*).[33] We can add that a man becomes the rule and measure for human actions, and therefore an effective co-promulgator of the natural law, through the correct cultivation and integration of these three elements.

For Aristotle, human nature can be articulated by looking to the human "function" (*ergon)* and the human *telos*.[34] Because human agents are the kind of animals that they are, with the "function" or "work" of conducting a life according to the activities of reason, they have as their natural end happiness that can only be achieved through virtuous activity. Aristotle says, "The same amount of happiness falls to each person as of virtue and prudence and action in accordance with these."[35] We can say that the perfection afforded by the cultivation of virtue is its own reward because the activities of virtue constitute the essence of a happy life, or the perfection of the natural human "function," while the disruption of human nature entailed by vice is its own punishment because morally depraved actions corrupt the human function and vitiate the end of happiness. Therefore, although human beings are not born with virtues, human nature is completed or perfected by them; virtues are natural to human agents in the sense that they complete and perfect human nature, while vice is unnatural to human beings; it is not the case that human nature is equally geared toward virtue and vice, although individuals can in fact develop either one.

---

[32] *Politics*, VII.13, 1332a36.

[33] Ibid., 1332a39-40. See also VII.15, 1334b7-8. I leave *logos* untranslated throughout most of this chapter. For an interesting discussion of the senses that coalesce around this Greek word, see Husserl, *FTL*, §§1-2.

[34] For Aristotle, an entity's *ergon, aretē*, and *telos* are inseparably linked; what a thing is determines its end and perfection. See Aristotle, *NE*, I.7, 1097b21-1098a21.

[35] Aristotle, *Politics,* VII.1, 1323b21-23.

Aristotle says that these three aspects of human life (*physis*, *ethos*, and *logos*) must be educated in the correct way from birth if one is to achieve the end of human nature by becoming virtuous. He says, "It makes no small difference, then, whether we form habits of one kind or of another from our very youth; it makes a very great difference, or rather all the difference,"[36] and again he says, "We ought to have been brought up in a particular way from our very youth, as Plato says, so as both to delight in and to be pained by the things that we ought; for this is the right education."[37] Further, Aristotle says that the order of education corresponds to the "order" of the body to the soul and of the two parts of the soul to each other. For Aristotle, the ontology of the human being, who is a union of body and soul or an animated body, determines not only the function and ethical perfection of a human agent, but it also prescribes the correct structure of education, such that education and moral training must be based on what human beings are by nature. Just as the body is distinct from the soul, so the part of the soul without *logos* (*to alogon*) is distinct from the part of the soul with *logos* (*to logon echon*). The part of the soul without *logos* is the seat of desires, emotions and appetites, and this desiderative part of the soul is not opposed to reason but must be habituated to accord with right reason.[38]

Aristotle says that the body is ordered to the soul as its perfection, and the lower part of the soul is ordered to the higher. "Reason (*logos*) and intellect (*nous*) are the end (*telos*) of our nature, so that it is with a view to these that birth and the concern with habits should be handled."[39] The body and the desiderative part of the soul function from the very beginning of

---

[36] *NE*, II.1, 1103b22-25.

[37] *NE*, II.3, 1104b12-13.

[38] Aristotle says that the part of the soul without reason is itself divided into two: (1) the vegetative part common to all animals and responsible for nutrition and growth and (2) the desiderative part that "participates" in reason by being able to obey reason. Our discussion concerns the desiderative and appetitive part of the soul that participates in reason. For these distinctions, see *NE*, I.13.

our existence, and in human beings they are ordered to their perfection and completion in

linguistically formed thinking and intelligence. Therefore, the virtues that perfect the body and

the desiderative part of the soul, such as temperance and courage, must be inculcated prior to the

virtues of thought, such as practical wisdom and philosophy. Aristotle says,

> Spiritedness and will, and furthermore desire, are present in children immediately on their being born, while reasoning and intellect develop naturally in them as they go along. Hence in the first instance the superintendence of the body must necessarily precede that of the soul; next comes that of appetite; but that of appetite is for the sake of intellect, and that of the body for the sake of the soul.[40]

Thus, Aristotle shows that the development of character (*ethos*), especially the virtues that

perfect bodily desires, is the foundation for a harmonious civil life as well as the higher virtues of

prudence and the theoretical contemplation of truth. He says that, in order for *logos* and teaching

to be effective,

> the soul of the student must first have been cultivated by means of habits for noble joy and noble hatred, like earth which is to nourish the seed. For he who lives as passion directs will not hear argument that dissuades him, nor understand it if he does; and how can we persuade one in such a state to change his ways? And in general passion seems to yield not to *logos* but to force. The character, then, must somehow be there already with a kinship to excellence (*aretē*), loving what is noble (*kalon*) and hating what is base.[41]

The ability of a human agent to constitute the natural law depends in large part on the moral

character he has cultivated, or rather that others have helped him cultivate from his youth. If

human agents are raised in an environment that induces them to love the noble, then they are in

fact being introduced to what is good by nature and are more likely to continue to respond to it

when they are morally mature. In the absence of an education in virtue, it will be more difficult

for an individual to know the natural law.

---

[39] *Politics*, VII.15, 1334b15-18.

[40] Ibid., 1334b24-29.

[41] *NE*, X.9, 1179b25-31.

We can now ask how a young child is enabled to develop the proper character that will eventually allow him to live by *logos* and identify the true good as his own good. That is, we must ask how morally immature agents are enabled to identify what is good by nature as their own good. On this point, the role of the virtuous agent as the living rule and measure is crucial. The virtuous agent effectively co-promulgates the natural law by functioning as the "object" that others encounter and from whom they learn. Since the virtuous agent is now the living, objective rule and measure precisely because he shows the look of a human being who is measured by the ends of things, we have to identify the structure of subjective activities that enables others to learn from his behavior. It is the natural human activity of imitation (*mimesis*) that enables others to learn from the virtuous agent. Aristotle says, "Imitation is natural to man from childhood, one of his advantages over the lower animals being this, that he is the most imitative creature in the world, and learns first by imitation. And it is also natural for all to delight in works of imitation."[42] The virtuous agent co-promulgates the natural law by being a worthy object of imitation. When his family, friends, and fellow citizens see his excellence in action, they naturally tend to emulate his patience, generosity, respect, and truthfulness, but he can only serve as a rule and measure if others have the natural ability to imitate his intelligence in action.

Imitation is essential to understand how morally immature agents are habituated for good or for ill and therefore how they come to be responsive to the natural law. Hallvard Fossheim says that for Aristotle "*Mimesis* in habituation is about forming a character. And this requires both that the subject of the character-formation be exposed to some model or example, and also that he use this model – as material for a *mimesis* wherein he stages or re-enacts one or several of

---

[42] *Poetics,* 1448b6-10.

its manners or actions."[43] Children do not merely respond to the verbal directions of those charged with their upbringing, although we have seen that such linguistic education is indispensible. In order to develop a character that is responsive to the noble, they must also have examples of virtuous behavior to imitate. Fossheim says, "Children and young people develop their character by actively engaging in *mimesis* of others who function as models for them. The child does as others do, and learns to become a certain sort of person by emulating the actions and manners of others."[44] Imitation is an interesting expression of the social and political nature of human beings. Since imitation is the natural and primordial way children learn from others, the role models that children are brought up with will have a tremendous impact on their ability to constitute and respond to the natural law because they will have a profound influence on the kind of character the child develops.

Since all human beings will naturally imitate the people around them, the models for imitation, whether good or ill, available from a young age will inevitably shape the way the good appears to each person. Fossheim says, "Exposure to the wrong models can easily lead a person down a false path that he does not yet even know he has taken. His environment, and what it offers to him for emulation, gradually forms him into something the full meaning of which will become clear to him, if ever, then only later."[45] A virtuous parent or teacher will function as an effective co-promulgator of the natural law, while a selfish or vicious person will make it more difficult for those in his charge to know the law of nature. Aristotle is certainly correct that we

---

[43] Hallvard Fossheim, "Habituation as Mimesis," in *Values and Virtues: Aristotelianism in Contemporary Ethics*, ed. Timothy Chappell (New York: Oxford University Press, 2006), 111. See also Hallvard Fossheim, "Mimesis in Aristotle's Ethics," in *Making Sense of Aristotle: Essays in Poetics*, ed. Oivind Anderson and Jon Haarberg (London: Duckworth, 2001), 73-86. Additionally, Andreas Vakirtzis says that imitation plays an important role among virtuous friends, who tend to emulate each other's goodness. See Vakirtzis, "Mimesis, Friendship, and Moral Development in Aristotle's Ethics," *Rhizomata* 3 (2015): 125-142.

[44] Ibid.

[45] Ibid., 115.

become virtuous by doing morally upright actions, just as someone becomes a skilled piano

player by practicing the correct way to play music, but the actions that build virtue are originally

mimetic performances in which another human agent serves as the rule and measure.[46] Fossheim

says, "We have to think of the [natural] desire to perform *mimesis* of a certain sort of action as

gradually giving way to a stable, character-determined desire to perform the action."[47] Just as a

young piano student becomes a master in part by imitating the movements and mannerisms of

his teacher, so a young boy becomes a just man by imitating the actions of his just family

members and teachers. These mimetic shadowings are meant to give way to mature

performances of justice that spring from the stable character of the just man. We must specify,

however, that the key to mimesis is its interpersonal nature. It is true that the imitator emulates

the behavior of the model, but what the imitator really desires is to become like the one imitated.

That is, the action is imitated as a means of becoming similar to the person who serves as the role

model. The key in mimesis, as in language, is the relation between the persons.

B. How Imitation Shapes the Emotional Life of Individuals

Because the presence of a virtuous model of human action and the imitation of virtuous

individuals are crucial for the formation of each person's emotional life and thus for the

constitution of the natural law, it is important to discuss in more detail how human agents are

able to form their emotions even before they shape their actions and character. As Aristotle says,

it is natural to human beings that we learn first by imitation. At the level of each individual,

imitation is the primordial form of education in the formation of moral character, which consists

largely in having well-formed passions that are permeated and guided by reason. Importantly for

---

[46] For Aristotle's claim that we become virtuous by doing morally upright actions, see *NE*, II.1, 1103a20-35.

[47] Fossheim, "Habituation as Mimesis," 115.

our purposes, researchers in the psychological sciences have highlighted the importance of mimesis and intersubjectivity in the formation of the emotional lives of human beings, and they show in more detail that human beings learn from birth (and even before) how to respond emotionally to people and situations through imitating those around them.

We must use a nuanced understanding of imitation; it is not simply copying or reproducing the actions of another. Giannis Kugiumutzakis and his colleagues show that the older understanding of mimesis as the "reproduction of a model's action" is insufficient. According to them, the word "sharing" better captures and carries the reality of imitation than does "reproduction." They say, "Sharing in human evolution and development is as fundamental as the air we breathe. We suggest defining mimesis in early infancy as 'the sharing of more or less the same actions, intention, motivation and emotions between two communicating partners.'"[48] This sharing is like co-performing while being led, and it is similar to the activity of learning to speak. They conclude, "Infants are not apathetic copy machines. Most of the time early mimesis is a pleasurable experience, but often infants experience moments of sympathetic imitation."[49] They say that every human being naturally identifies and "shares" in the emotions of those around them, and "this sharing of transient emotions is an ever-present element preceding imitation and cognition," such that "mimesis itself 'swims' in emotions."[50] That is, human beings naturally participate in the emotions of others, and this participation itself is prior to explicit imitation and cognition. Thus, human beings naturally share and imitate the emotions of others, as well as their facial expressions, words, and actions; such emotional sharing is at the

---

[48] Giannis Kugiumutzakis, Theano Kokkinaki, Maria Makrodimitrake, and Elena Vitalaki, "Emotions in Early Mimesis" in *Emotional Development: Recent Research Advances,* ed. Jacqueline Nadel and Darwin Muir (Oxford: Oxford University Press, 2005), 176.

[49] Ibid., 177-178.

[50] Ibid., 175.

basis of language learning.[51] Further, their research was carried out in divergent cultures with nearly identical results, so they argue that their work "provides cross-cultural evidence for the universality of the inter-subjective nature of imitation during early human infancy."[52] They suggest that there is "a common, unlearned origin and natural foundation for emotions during mimesis."[53] We can summarize their findings with the following statement: "Imitation seems to be a very ancient inter-subjective mode of 'transference' of actions, knowledge, and emotions at intra-species [and] inter-generational . . . levels."[54] Through mimetic "sharing," our emotional life is in large part a reflection of the emotional stability (or instability) of those who have raised us.

We can build upon these reflections on mimesis and the formation of our emotional stability by utilizing the work of Thomas Lewis, Fari Amini, and Richard Lannon. They say that human physiology and emotional states should be understood, at least in part, as "open-loop" arrangements, meaning that human beings are constantly being formed emotionally by those around them. Lewis, Amini, and Lannon identify three features of the shared emotional life of human agents that affect their ability to make morally honorable choices: (1) emotional resonance, (2) emotional regulation, and (3) emotional revision.[55] They also say that these three

---

[51] Ibid., 173.

[52] Ibid.

[53] Ibid., 178.

[54] Ibid., 170.

[55] See Thomas Lewis, Fari Amini, and Richard Lannon, *A General Theory of Love* (NewYork: Vintage Books, 2001), 63, 85, and 144. They describe these features as "limbic" resonance, regulation, and revision, but we follow Michael Sherwin in replacing "limbic" with "emotional." This substitution is warranted given the fact that "limbic" for Lewis, Amini, and Lannon refers to the part of the brain that controls emotion. See Michael Sherwin, "If Love It Is: Chaucer, Aquinas and Love's Fidelity," *New Blackfriars* 94 (2013): 466-471.

factors are not merely aspects of human infancy or childhood; rather, they are present throughout the adult lives of human agents.

First, emotional resonance refers to the natural ability of human beings to identify and share the emotions of others, and therefore it can be seen as a development of the work on imitation and emotion discussed above. Lewis and his colleagues describe emotional resonance as the "symphony of mutual exchange and internal adaptation"[56] that enables each person to be attuned to the emotions of those around him. They say, "Feelings are contagious, . . . the [emotional] activity of those around us draws our emotions into almost immediate congruence."[57] This point shows that human communication with others is not limited to the realm of language, since human agents naturally attune their emotional states with those around them, and such congruence happens at the pre-predicative level. Emotional resonance underlies "the wordless harmony" that human beings naturally experience with others, and even in the absence of speech "another world expands and comes alive to your senses – a world governed by forces that were old before humanity began."[58] Further, emotional resonance does not just "teach" human agents about the emotions of others, but also about entities in the world. For example, a parent's emotions, which are elicited by things and events, "teach" children how to respond to the world. "Whether they realize it or not, mothers use the universal signals of emotion to teach their babies about the world. . . . Emotionality gives [a mother and her child] a common language years before the infant will acquire speech."[59] If a mother is afraid to go to the dentist, then her child will tend to be as well.

---

[56] Ibid., 63.

[57] Ibid., 64.

[58] Ibid., 65.

[59] Ibid., 61.

The fact that emotions resonate with others leads to the second aspect of the intersubjectivity of emotions, which is emotional regulation. The emotions of a human agent do not simply "register" with others; his emotions also serve to regulate the emotional lives of the people around him, even while his emotions themselves are being shaped by the people he interacts with. Lewis and his colleagues say,

> The human body constantly fine-tunes many thousands of physiologic parameters. . . . But because human physiology is (at least in part) an open-loop arrangement, an individual does not direct all of his own functions. A second person transmits regulatory information that can alter hormone levels, cardiovascular function, sleep rhythms, immune function, and more – inside the body of the first. The reciprocal process occurs simultaneously: the first person regulates the physiology of the second, even as he himself is regulated. Neither is a functioning whole on his own; each has open loops that only somebody else can complete.[60]

The emotional attachments of human agents and the patterns of behavior based on their emotional lives are naturally regulated by those around them; therefore, the emotional stability of others has a great impact on each person's ability to constitute the natural law. The virtuous person will serve as the rule and measure for human action in large part because he has well formed emotions and desires, and this harmonious emotional life will naturally regulate the emotions of his family members, colleagues, and friends.

Emotional resonance and regulation manifest again the social and political nature of human beings and show that human agents can only perfect their native capacities for virtue in communion with others. "Adults remain social animals: they continue to require a source of stabilization outside themselves. That open-loop design means that in some important ways, people cannot be stable on their own – not should or shouldn't be, but *can't* be."[61] The development of virtue requires the stable regulation of emotions and desires, and for this stability

---

[60] Ibid., 85.

[61] Ibid., 86. Emphasis original.

each person needs the presence of others. Michael Sherwin says, "It is not just their opinions that we need: we need the influence of their healthy emotional lives."[62] For our purposes, we can say that the promulgation of the natural law is a common project; promulgation itself is a common good that must be achieved through actions that impact the community of which the agent is a part. Each person is responsible for constituting the natural law by making strategic distinctions and by performing moral actions that respond appropriately to the ends of human nature and the ends of things, but an individual person naturally constitutes the law in communities with others, where the presence of their emotional lives has an impact on how the individual is and thus how he sees the world.

Finally, we can briefly describe the third feature of the intersubjectivity of human emotion: emotional revision. Although the emotional lives of those who raise, nurture, and educate human beings in their infancy and childhood leave an indelible mark on the emotional stability of those in their care, the emotional lives of human beings are not fixed in stone after childhood. The fact that emotions constantly resonate and regulate with others also enables human agents to "revise" their emotions throughout their lives. Thus, in new relationships, or in old ones that have taken a new turn, each person has the ability to reshape his emotional life for better or worse.[63] The ability to revise emotions shows that human agents can perfect or dissipate their ability to perceive and act on the natural law.

These valuable psychological studies show in great detail how the emotional lives of human beings are embedded within intersubjective and interdependent social contexts. However, as psychologists, these scholars assume a crucial philosophical point: manifestation.[64] They

---

[62] Sherwin, "If Love It Is," 469.

[63] See Lewis, *General Theory of Love*, 140-145.

discuss the various ways that emotions are manifest and the effect of these manifestations of

emotion, but they miss manifestation as such. Human emotions are not merely private affairs

closed off to the world; rather, emotions naturally show or express themselves. J. L. Austin says

that emotions naturally display themselves, and therefore manifestation or display belongs to the

very structure of emotion. He says, "It is then, clear, that more is involved in being, for example,

angry than simply showing the symptoms and feeling the feeling. For there is also the display or

manifestation."[65] Austin says that being angry includes "a whole pattern of events, including

occasion, symptoms, feeling and *manifestation*."[66] Not only is it natural for emotions to manifest

themselves generally, but also each emotion exhibits characteristic ways of manifesting itself.

These typical modes of manifestation are natural to each emotion. Austin says, "There is a

peculiar and intimate relationship between the emotion and the natural manner of venting it. . . .

The ways in which anger is normally manifested are *natural* to anger just as there are tones

naturally expressive of various emotions."[67] The manifestation of emotion enables human agents

to know and engage with the emotions of those around them, even on a pre-linguistic level;

knowing the emotions of another does not entail that we have the ability to "introspect" the

---

[64] Interestingly, Lewis and his colleagues fail when they attempt to handle the issue of manifestation and appearance. For example, they say that "limbic states can leap between minds." When they attempt to discuss how our emotions color the way we see the world, they say that it is a "rare" and "wise" person who realizes that "everything before his mind's eye is the Hindu's *maya* – an elaborate dream of the world." Further, they generally tend toward a reductionist, materialist view of what a human person is. These failures to adequately handle being and appearance, or ontology and manifestation, are interesting and instructive. They show the difference between a philosophical (and phenomenological) discussion and a psychological one. Being *qua* being and appearance *qua* appearance can only be treated adequately from the philosophical perspective. The comments just cited are from *General Theory of Love,* 64 and 120.

[65] See J. L. Austin, "Other Minds," in *Philosophical Papers*, ed. John Langshaw (Oxford: Clarendon Press, 1961), 76.

[66] Ibid., 77. Emphasis added.

[67] Ibid., 76-77. Emphasis original.

feelings of another person because no such introspection is necessary.[68] Emotions naturally

display themselves such that there is a kind of public intelligibility to emotion as such. Thus,

emotional resonance, regulation, and revision, as well as the imitation based on emotion, are

possible because emotions manifest themselves in such a way that the appearance of an emotion

cannot be separated from the emotion itself. The red, snarled face of a man is anger as displayed.

Each emotion has is characteristic ways of manifesting itself, and such manifestation has an

impact on those with whom a person is interacting. Additionally, displays of emotion show

something of the moral character of the agents and thus something of how he perceives the world

and the moral possibilities in it. If Aquinas is correct that the emotional lives of human beings

have a profound influence on how successful they are at constituting and hence promulgating the

natural law, then the manifestation of emotion and its impact on others must be taken into

account.

3. The Role of Good Customs and Culture in the Promulgation of Natural Law

The importance of imitation and the virtuous agent as the living rule and measure is not

limited to each individual's formation of a virtuous emotional life and moral character. The

natural inclinations to family, society, truth, and virtue lead human agents toward finding models

of moral excellence to imitate, but these natural inclinations must be cultivated within a morally

upright social and political community if the natural law is to be successfully made known. In

this section, we will show how various customs shape a polity and a culture. We are developing

the second factor for the promulgation of the natural law identified above: the formation of good

customs and a healthy culture.

---

[68] Ibid., 83-84.

A. How Good Customs Are Engendered and How They Influence Human Agents

In discussing the formation of customs and culture among a people, we are not giving a historical genesis of a particular custom, but rather a philosophical account of the nature of customs, how they are engendered, and how they shape the characters of individuals and societies. It is inevitable that human beings will develop customs that structure their interactions because human agents are not self-sufficient. Human beings have needs that can only be met through cooperation with others. Needs should not be taken in a merely biological sense, although human agents obviously do have biological needs. MacIntyre says, "What individuals need is that without which they will be unable in adult life to engage in those activities and to discharge those responsibilities that are the mark of a fully participant member of their society."[69] Human needs are linked not only to human biological nature, but first and foremost to the social and political nature, activated by reason and speech, of human agents. Consequently, human needs are numerous and specific to our nature as rational animals; human beings have need of food and shelter, family and social interactions, education in virtue, and above all friendship and truth.[70] Such human needs can only be satisfied in and through cooperative endeavors, and these cooperative actions undertaken originally to satisfy needs eventually settle into the customs of a community. Aquinas says, "Acts . . . , especially when they are multiplied, engender customs."[71] Customs, therefore, are the deposit of the common actions undertaken by members of a community for common ends. Further, there is an ontological weight to the customs of a people analogous to the ontological weight of an individual's habits. Just as an

---

[69] Alasdair MacIntyre, *Ethics in the Conflicts of Modernity: An Essay on Desire, Practical Reasoning, and Narrative* (Cambridge: Cambridge University Press, 2016), 129.

[70] The needs of human agents are therefore closely linked with the goods to which, according to Aquinas, we are naturally inclined.

[71] *St,* I-II, q. 97, a. 3.

individual develops certain habits through repeated actions and then acts "from" or "by" the habits he has developed, so too a community acts "from" or "by" their settled, characteristic ways of interacting with each other and structuring their common pursuits in order to satisfy their human needs.

Customs, however, do not spring merely from a collection of individual actions; rather, they are formed by actions insofar as such actions are expressions of a community's dominant understanding of what constitutes human excellence. According to Leon Kass, customs must be seen in connection with a society's view of human flourishing. Kass says, "A view of human flourishing . . . informs, even if only tacitly, all the particular customs."[72] Kass says that customs, as the habits of a community expressing that community's understanding of human flourishing, "shape and clothe" human nature.[73] How do customs "shape" human nature? Just as categorial speech does not shape the things spoken about, but rather the use of speech shapes the character of the speaker, so too customs do not shape the natural ends of human beings, but they do shape the character of human agents as they pursue these ends. Human nature is activated in and through customs. Further, although the content of cultural forms is conventional (that is, a product of human agreement), there are in fact better or worse customs. From the conventionality of customs one cannot legitimately conclude that all customs are equal and on the same moral footing. Kass says, "Some customs . . . might be more conducive than others to human flourishing. Some customs might be more fitting to the truth about the world."[74] Good customs clothe human nature in a way that manifests what is naturally fitting for human agents and

---

[72] Leon Kass, *The Hungry Soul: Eating and the Perfecting of Our Nature* (Chicago: The University of Chicago Press, 1994), 98.

[73] Ibid., 99.

[74] Ibid., 98.

shapes individuals towards the naturally good, just as a truthful linguistic expression shows the nature of an entity because the expression "seems to be applied to the thing and to clothe it like a garment."[75]

Concerning customs and the promulgation of natural law, we can say that virtuous actions that respect the ends of things and reveal the ends of human nature lead to virtuous customs that continue the disclosure of the natural law begun by virtuous agents, but vicious actions performed repeatedly coalesce into customs that occlude the natural law. When virtuous agents repeatedly perform virtuous deeds and a sufficient number of people imitate their example, then the way of life exemplified by virtuous men and women, who are the rules and measures of human action, is lifted into the more expansive social form of customs. In and through the customs based on virtuous actions, human agents are in touch with what is good by nature in a mode of living in common with others, and, through the development of such customs, virtuous actions can promulgate the natural law in a way that touches more people. Good customs, just as the good actions that engender them, are in line with the ends of things and therefore enable human agents to "see" the ends of things more easily and more vividly, and in this way they make the natural law present in a community, just as the virtuous actions of a morally good man make the natural law present in a particular situation. Such customs, once appropriated by individual members of a community, will assist those members in making the distinction between ends and purposes and seeing the priority that ends have over purposes. These virtuous actions and customs will also be expressions of a view of human excellence that is not limited to material considerations of pleasure, wealth, or power.

In the last chapter, we discussed the distinction between natural ends and customs, and we said that this distinction is crucial for the discovery of the natural law. We can now see that,

---

[75] Husserl, *LI*, VI, §6.

although they are distinct from natural ends, customs can assist in the promulgation of what is

good by nature by giving communities a kind of inclination that is in line with the ends of things.

Customs give a community an affective inclination to a certain mode of life, and a good custom

resulting from virtuous actions gives a community an inclination toward things that are in

keeping with the natural law. Thus, we should not take the distinction between ends and customs

to be a strict dichotomy.[76] Customs and ends are distinct, but customs can serve to put us in

touch with the ends of things. As we have seen, Aquinas uses the example of the Germanic

tribes, whose repeated raiding of other groups engendered a vicious custom that caused them to

fail to promulgate the natural law precept against theft.[77] We can use a counter example to

illustrate our point. In a community in which virtuous agents regularly give a portion of their

income to those in need of material assistance, a custom could develop that would incline the

members of that community toward consistently helping the poorer members of the polity.

Within such a culture shaped by generosity, the ends of human life, which need social virtues

that enable people to live together in harmony in order to be achieved, would be more fully

manifest. A custom of generosity would highlight, or properly "clothe," the ends of human

nature, of property, and of social life. The members of such a community, shaped by a custom of

generosity, would be less inclined to see the goods of others as possible targets of theft; they

would more readily see the natural good as their own good. Such a custom would help educate

individuals by showing that their purposes should not be given priority over the ends made

---

[76] In the next section, we will make a similar point in greater detail regarding natural ends and the positive law.

[77] For a discussion of the case of the Germanic tribes mentioned by Aquinas and its importance for natural law thinking, see E.A. Goerner, "On Thomistic Natural Law: The Bad Man's View of Thomistic Natural Right," *Political Theory* 7 (1979): 101-122.

manifest by the communal habit of generous giving. Therefore, such a custom would assist in the promulgation of natural law.

Customs should therefore be seen in relation to the moral training discussed in the previous section. As human agents mature into fully responsible adults, and when they pursue goods and make decisions as adults, they must do so within and in constant conversation with the customs of their community. MacIntyre says that every human agent must ask himself questions about which goods to pursue, how to pursue them, what kind of person he must become in order to pursue those goods well, and how those goods fit into his life as a whole. MacIntyre says, "The terms in which they ask and answer these questions will be . . . the terms of their own culture, designed to capture the particularities of activity in the social and cultural order that they inhabit."[78] There are perennial truths discovered in the natural law, but the appropriation of these moral truths will always involve a "work of cultural translation."[79] It is a perennial truth that adultery, theft, and murder are always wrong, always destructive of human nature and human communities; as Aristotle says, their very names imply moral decrepitude, but these proscriptions must be implemented within a particular community with its characteristic habits of living.[80]

We can now see that customs and the individuals that live by them exhibit a mutual influence on each other. Just as cultures and customs influence individuals, so too individuals influence customs. MacIntyre says that in every culture human agents will inevitably be introduced to, and in some cases be forced to accept, roles and statuses within that culture. These

---

[78] MacIntyre, *Ethics in the Conflicts of Modernity*, 87.

[79] Ibid.

[80] For Aristotle's claim that certain actions, such as theft, adultery, and murder, as well as certain emotions, such as malice and envy, are always wrong that that their names imply evil, see *NE*, II.6, 1107a 18-23.

roles will be exercised within families, schools, jobs, and social and political organizations. MacIntyre says that it is a truth of all cultures that "roles shape individuals, but individuals also shape roles."[81] Individual actions, repeated often enough, engender customs, which shape the character and vision of individuals within that culture, and in turn individuals can gradually reform the customs they have inherited. In terms of parts and wholes, the whole (the political community with its customs) exercises a downward influence on the part (the individual human agent), but it is also true that the parts can readjust and restructure layers within the whole. The natural law is discovered (or occluded) and implemented (or rejected) in this interplay between parts and whole, individuals and customs.

MacIntyre says that the cultures of advanced modernity exhibit certain customs or factors that make it difficult for human agents to discover the natural law. We will briefly discuss three of these factors. Concerning the first factor, MacIntyre says, "We inhabit a social order in which a will to satisfy those desires that enable the economy to work as effectively as possible has become central to our way of life, a way of life for which it is crucial that human beings desire what the economy needs them to desire."[82] Concerning the second, MacIntyre identifies the premium placed on success, or at least what is taken to be success by economic, financial, and political elites, as an influential aspect of the contemporary culture. This success is only attainable through competition between and among peers, and such competition is linked to economic factors. He says, "To be successful is to compete in such a way that it is one's own preferences that are satisfied rather than those of others. So individuals learn to deal with each other as rational agents concerned to maximize their own preference satisfaction competitively,

---

[81] Ibid., 134.

[82] Alasdair MacIntyre, "How Aristotelianism Can Become Revolutionary: Ethics, Resistance, and Utopia," in *Virtue and Politics: Alasdair MacIntyre's Revolutionary Aristotelianism*, ed. Paul Blackledge and Kelvin Knight (Notre Dame: University of Notre Dame Press, 2011), 13.

whether in market transactions, or in the arenas of politics, or even in the relationships and activities of their private lives."[83] Finally, concerning the third factor, MacIntyre says that in modern cultures liberty is understood as individual choice elevated above moral principles. He says that individual choice has become "morally sovereign" and that liberty is identified with "the exercise of individual choice thus understood . . . not choice as governed by principles but choice as prior to and determining our principles."[84] He says, "Liberty is therefore thought to be threatened whenever it is suggested that the principles that ought to govern our actions are not in fact principles that are up to us to choose, but principles that we need to discover."[85]

Our concern is not to evaluate the legitimacy of MacIntyre's descriptions of the cultures of advanced modernity. Our point is that these three cultural factors, assuming for the sake of argument the accuracy of MacIntyre's diagnoses, have the effect of elevating individual purposes over natural ends. The engorging of frivolous desire by modern marketing and economic strategies, the premium placed on success understood as the maximization of "preference satisfaction competitively," and the elevation of individual choice above moral principles all tend to make purposes sovereign over the natural ends of human life. Therefore, these aspects of modern culture impede individual human agents from discovering and hence co-promulgating the natural law.

B. How Customs Influence the Positive Law

Aquinas says that when repeated actions between and among citizens settle into customs, these customs themselves can acquire the force of positive law. Aquinas says, "Custom has the

---

[83] MacIntyre, *Ethics in the Conflicts of Modernity*, 135.

[84] Aladair MacIntyre, "Theories of Natural Law in the Culture of Advanced Modernity," 112.

[85] Ibid.

force of [positive] law, nullifies law, and serves to interpret law."[86] Customs can perform this

threefold function because the speech and actions of human agents, which engender customs,

manifest some reality, a point that Aquinas says holds at the level of both the individual human

agent and at the level of fully political action in legislation. Regarding the level of an individual

human agent, Aquinas says, "In practical matters, a man's reason and will are made manifest by

what he says . . . [and] by what he does."[87] This manifestation through human speech and action

also influences the institution and variation of positive law. Concerning the level of political

action, Aquinas says that "it is manifest that the [positive] law can be both explained and

changed by human words,"[88] thus showing that the ruling intelligence of a legislator is displayed

and clarified by human *words*. Aquinas says that *actions* can also perform the function of

manifesting the ruling intelligence of a legislator. He says, "[Positive] law can also be explained

and changed through acts which, especially when they are multiplied, engender customs;

moreover, these acts can cause something that acquires the force of law."[89] Part of the way in

---

[86] *St*, I-II, q. 97, a. 3.

[87] Ibid. We will develop the public nature of both language and action in the final section of this chapter. However, this text reveals the difference in accent between our discussion of the publicity of language and action and that of Aquinas. In *St*, I-II, q. 97, a. 3, Aquinas says speech manifests "human reason's interior movement and conception" and actions exhibit "the will's interior motion and reason's concepts." Aquinas says that our knowledge is about things, and the "*species intelligibilis*" is that through which we know things. The concept is not the thing known, nor is the *species intelligibilis*, but rather the concept is, as Lawrence Dewan says, "a product flowing from the understanding of the thing, and used by the mind with a view to making judgments about the thing." Lawrence Dewan, "St. Thomas and Pre-Conceptual Intellection," *Etudes maritainiennes* 11 (1995): 228. For Aquinas, spoken words refer to our concepts, which are products "flowing from the understanding of the thing" understood, and such understanding takes place in the "possible intellect" through the *species intelligibiles*, which are abstracted by the agent intellect from the phantasms. Thus, spoken words can be said to refer to things through the mediation of the mental concept and the *species intelligibiles* abstracted from the phantasms. See *St,* I, q. 85, especially a. 2, both the body of the article and the reply to the third objection. However, the main point is that for Aquinas spoken words and actions manifest mental concepts, and through these concepts refer to things. As we will discuss in the final section, our approach shows that speech manifests the being and ends of things and actions manifest the good as perceived by the acting person. Our approach is more thoroughly "public" and thus more fitting for the publicity necessary for natural law to be promulgated.

[88] Ibid.

[89] Ibid.

which customs can influence human agents and their ability to discover the natural law is by obtaining the force of the positive law. In this process, violating a custom would shift from being rude or inappropriate to being illegal.

In these descriptions of social and political life, Aquinas shows that the customs of a people and the positive law of their community mutually influence each other. The positive law must be formed so as to gradually shape the customs of a community and lead its citizens to virtue, and for this task the legislators must take into account the existent customs of the citizens (among other factors).[90] A good legislator must understand what is possible for a community given their habits of living. Additionally, the customs of a community can eventually obtain the force of positive law and thus become legally binding for citizens. In describing the mutual influence between customs and positive law, Aquinas says that there are times when a positive law prevails over a custom, but there are other times when a custom prevails over an existing law.[91] Even if all the conditions for a just positive law are met, there is still a question of the law's usefulness and expediency for the polity.[92] Laws fail to be effective at times because laws must be formulated generally so as to cover as many cases as possible, a point we discussed above. In such cases, acting outside the law is permitted and may even be required to achieve what the law intends, namely the common good. Aquinas says, "It is sometimes possible to act outside the law without the act's being bad, viz., in a case where the law fails. And when such cases are multiplied because of some change in men, then it becomes manifest through custom

---

[90] See *St*, I-II, q. 95, a. 3; q. 96, a. 2; q. 96, a. 2, ad. 2.

[91] See *St*, I-II, q. 97, a. 3, ad. 2.

[92] For Aquinas's discussion of the factors that must be in place for a positive law to be just, see *St*, I-II, q. 95, a. 2-3; q. 96, a. 4.

that the standing law is not advantageous."[93] If a law is properly crafted and enacted but no longer useful, then it can be changed based on a more effective custom.

Even though customs can change or interpret positive law, Aquinas says that customs can never change or alter the natural law. Customs can only acquire the force of positive law if they are in accord with the natural law.[94] He says, "No custom contrary to the divine law or natural law can acquire the force of law."[95] Within a particular community, only customs that develop, extend, and specify what is good by nature can attain the force of positive law. To return to our example, a custom of generous giving could eventually be enshrined in the positive law of a polity, thereby elevating what is good by nature into a positive law. However, a custom of taking what belongs to another cannot be elevated into a positive law. Thus, customs can serve as a guide to changes in positive laws because customs can manifest the ends of human social and political life.[96] Positive laws are changed to be more closely aligned with the natural law, and good customs, which are the social crystallization of virtuous actions, can help manifest what is fitting for human nature, what is naturally good. In sum, although customs cannot alter the natural law, they can function to promulgate the law of nature or occlude it insofar as they are consonant with or in opposition to the ends of human nature. Customs not only exert a downward influence on individuals, but they also exercise an upward pressure on the positive laws of a polity. Customs and culture reside "in between" the individual human agent and the political leadership responsible for enacting and revising legislation.

---

[93] *St*, I-II, q. 97, a. 3, ad. 2.

[94] See *St,* I-II, q. 95, a. 2.

[95] *St,* I-II, q. 97, a. 3, ad. 1.

[96] On the natural law as the foundation for changes in the positive law, see Ch. 3, section 3.B above.

4. The Role of Truthful *Logos* in the Promulgation of Natural Law

In this section, we will discuss the third factor for the promulgation of the natural law: truthful speech. As we will see, language is intimately tied to the health of a culture and polity. By adverting to the various uses of *logos* within social and political life we are showing how language shapes a given polity and culture, and thus how speech and customs can aid or inhibit the promulgation of the natural law. In the previous chapter, we discussed the importance of language for each individual, and we saw that the ability to handle presence and absence in speech is acquired in conversation with others and functions to lift us into moral and political life. At the level of the individual human agent, truthful speech in conversation with others respects the ends of language itself, which are to manifest the *eidos* and *telos* of entities and states of affairs and thereby to bring human agents into deeper communion with each other. Therefore, truthful language aids in the promulgation of the natural law by giving human agents an objective view of the ends of things. Additionally, language lifts us into social and political life and therefore enables us to pursue our end as political animals.

Aristotle says that because human beings are by nature political animals, we can only achieve our end of happiness in the activities of virtue if we live and act together in a variegated social and political setting in which we pursue common ends through common actions.[97] Aristotle says,

> The city is a community of similar persons, for the sake of a life that is the best possible. Since happiness (*eudaimonia)* is best thing, and this is the actualization of virtue and a certain complete practice of it, and since it happens that some persons are able to partake of it while others are able to do so only to a small degree or not at all, it is clear that this is the cause of there being several kinds and varieties of city and several sorts of regime. For it is through hunting for [happiness] in a different manner and by means of different things that individuals create ways of life and regimes that differ.[98]

---

[97] For the claim that we are naturally political animals, see *Politics*, I.1, 1253a2-4.

[98] *Politics*, VII.7, 1328a35-b1.

Aristotle shows that political life is based on the natural human inclination toward (desire for)

happiness (*eudaimonia*); people look for happiness in different things, and these differences then

yield the different political forms, as different kinds of people – the wealthy, the free, the

virtuous – come to dominate the city and give it its shape or form. For Aristotle, the

differentiated human inclination toward *eudaimonia* gives rise to different lives and to different

cities, so we see a synthesis of ethics, politics, and the human *telos*. This integration of ethics,

politics, and the search for happiness is very different from the modern theory of a social

contract as the basis of a state, which represses aggression among its subjects and leaves them

free to pursue their own purposes and satisfactions.[99] As we have seen, the natural law comes

more fully to light when the ends of human nature are most vividly displayed, and as political

animals, human beings are only perfected within a well-functioning polity. As Aristotle says, a

man who by nature does not belong to a city is either a beast or a god.[100] Thus, the promulgation

of the natural law must filter through the channels of social and political life natural to human

beings. We have discussed the familial and social levels of human life and how the natural law

can be made known in them, and we now turn to the role of language in shaping the political life

of human agents, thereby perfecting (or hindering) the promulgation of the natural law.

A. Positive Law as Political Logos

We can now discuss more specifically "political" forms of speech to show how such uses

of language assist in the promulgation of the natural law. First, we will look at the positive law

itself as a form of *logos* that structures the political and cultural life of a people.[101] For Aristotle,

---

[99] I take this commentary on the last cited text of Aristotle's *Politics* from an unpublished lecture by Sokolowski. I use this formulation with his permission.

[100] See *Politics*, I.2, 1253a3-4, 27-29.

law (*nomos*) is kind of *logos* that has coercive power and proceeds from practical wisdom and intellect;[102] law is intellect (*nous*) without desire.[103] Thus, law is literally a form of speech, and it is the architectonic form of political speech. As we have seen, Aristotle says it is crucial that human beings acquire the correct moral "habits" from their youth,[104] but the resources of the family and local customs of a community are not enough to render individuals virtuous. He says that "it is difficult to get from youth up a right training for excellence if one has not been brought up under right laws; for to live temperately and hardily is not pleasant to most people, especially when they are young. For this reason their nurture and occupations should be fixed by law; for they will not be painful when they have become customary."[105] For Aristotle, well-framed positive laws are necessary for the development of virtues, so in a well-ordered political community legislators must urge citizens toward virtue by crafting the legal system in such a way that the laws prescribe that the citizens, "from their very youth," live according to virtues and flee vices. Aristotle also says that the necessity of laws orienting people toward virtue is not imposed solely on account of the youth and their need to be brought up correctly; the laws will also preserve the habits and practices of mature men and women who must continue to live in an upright manner.[106] Here we see Aristotle's pedagogical understanding of law; positive law as political *logos* inevitably shapes a culture and a people. At the same time, the positive law must

---

[101] For the relationship between the positive law and the characteristic ways of life of a polity, see Aquinas, *St*, I-II, q. 97.

[102] See *NE*, X.9, 1180a21-22.

[103] See *Politics*, III.16, 1287a28-32.

[104] See *NE*, II.1, 1103b22-25.

[105] *NE,* X.9, 1179b32-1180a1.

[106] See *NE*, X.9, 1180a1-5.

be made to correspond to the characteristic ways of life of the citizens; there is a constant and mutual influence between culture and law.

Aristotle says that the *telos* of law is the inculcation of virtue among the citizens, and he argues that the *telos* of political life is friendship and the works that bring about the harmony and well-wishing characteristic of friends.[107] Political life exists in order for human beings to live a happy life in the activities of virtuous friendships, as Aristotle says, "Friendship seems too to hold cities together, and lawgivers to care more for it than for justice."[108] As happiness cannot be enjoyed without the development of virtue made possible by a prudent legal order, so too happiness cannot be reached without the friendships that consist in the shared activities of virtue. We can see now that virtue is in some sense a "middle term" between law and happiness. Law aims to foster virtue so that citizens can enjoy civic and virtuous friendships with each other, and such a life in harmony with right reason and enjoyed in common with friends who are similarly formed in virtue constitutes human happiness, at least insofar as it is possible for finite human beings.[109] This structure is social and political from start to finish; it is not as if human agents must steal away to some private space until they are sufficiently virtuous to engage properly with others. Rather, virtue, and in many ways reason itself, is an accomplishment one achieves individually but with the constant assistance of others who share one's political and cultural life.

---

[107] For Aristotle's claim that the works of friendship are the *telos* of the city, see *Politics*, III.9, 1280b30-1281a3. Aristotle says that a city is "is a community of families and aggregations of families in well-being, for the sake of a perfect and self-sufficing life. Such a community can only be established among those who live in the same place and intermarry. Hence there arise in cities family connexions, brotherhoods, common sacrifices, amusements which draw men together. But these are created by friendship, for to choose to live together is friendship. The end of the city is the good life, and these are the means towards it. And the city is the union of families and villages in a perfect and self-sufficing life, by which we mean a happy and honourable life. Our conclusion, then, is that political society exists for the sake of noble actions, and not of living together." I take this translation from the Barnes edition, and I substitute "city" for their use of "state."

[108] *NE*, VIII.1, 1155a24-25.

[109] The law may aim to foster virtue, but Aristotle recognizes that virtue is rare. Thus, most citizens will not become "perfect" in virtue, but the end of law remains to lead its subjects to virtue and friendship to the extent possible. Virtue is rare, but it leavens the community.

Because virtue is most vividly seen in the activity of friends, and because human nature is perfected in the life of virtuous friendship, the natural law is also most manifest in friendship.

Following Aristotle, Aquinas says that there is a natural necessity for human agents to live under positive law in political societies.[110] He also says that the end, or *finis,* of all law is the establishment of "friendship either of men with one another or of man with God."[111] He says the law is ordered toward the "common happiness" (*felicitatem communem*) of the community it directs and that it is formulated so as to render its subjects virtuous.[112] Thus, Aquinas, following Aristotle, presents law, virtue, and friendship as inseparable aspects of human happiness within social and political life. Further, Aquinas distinguishes between the objects in which the activity of the legislator terminates (*terminus*) and the end of the legislator in his legislative activity (*finis*).[113] The objects (*terminus*) of the law, or those things in which the action of the legislator terminates, are certain coercive inducements, prohibitions, permissions, or punishments enacted in view of regulating or resolving a particular situation. However, the *finis* of the law is to make the citizens flourish in virtue, thus enabling them to enter into friendships that constitute the common good of the political body. For example, Aquinas says that the safety of the peasants (*rustici*) in a community represents the object (*terminus*) of a particular piece of legislation, but the end (*finis*) of the governor is the common good understood as the common happiness of the community.[114] This distinction between the object and the end of law shows that law functions to order concrete situations with a view to forming virtuous friendships among citizens.

---

[110] See *St*, I-II, q. 95, a. 1; q. 72, a. 4.

[111] *St*, I-II, q. 99, a. 1, ad. 2.

[112] See respectively *St,* I-II, q. 90, a. 2 and I-II, q. 92, a. 1.

[113] See *De potentia*, q. 5, a. 5.

[114] Ibid.

In sum, Aristotle and Aquinas present the *telos* of human life in political society as happiness in the activities of virtuous friendship, and the laws of a community are structured so as to enable citizens to realize this natural end. We can say that for Aristotle civic and virtuous friendship is the fulfillment of the positive law, and therefore positive law shapes culture and human life in part by encouraging practices that tend toward the development of civic friendship and forbidding practices that lead toward vice and enmities amongst the citizens. Within this structure of moral, social, and political life, we see the interplay between language, law, and natural ends. To manifest the natural law, human agents have to develop virtues and enter into friendships within a political body formed by laws; virtuous friends in a morally good polity show the natural law in action by embodying and exemplifying the *telos* of the precepts of natural law. To the extent that the positive law assists human agents in this endeavor, it can also assist in the promulgation of natural law.

As we discussed in the previous chapter, to know the natural law human agents must be able to distinguish between different dimensions of goodness; laws and customary modes of living may be good, but that which is good by nature is a deeper level of goodness. Because natural law is involved with this deeper level of truth and goodness, it is often seen as a tool to evaluate or criticize the laws and customs of a given political community; natural law is used as a kind of arbiter of cultural and political practices. However, these two levels of goodness, what is good by nature and what is good by positive law, need not conflict with each other. Just as the natural law gives a normative foundation to positive law and provides a basis from which citizens can reform a culture, it is equally true that positive laws, and the habits of a culture that they shape, serve as a vehicle for the promulgation of the natural law. However, positive law can perform this work only insofar as it is geared toward virtue and friendship.

When we recognize this point, we can see the nuanced relationship between the positive law and the natural law, between *physis* and *nomos*. Positive law is normative and binding, and, as Aryeh Kosman says, *nomos* acquires its "prescriptive force only by virtue of its grounding in and accordance with nature; it shines (to use Parmenides's phrase) with a moonlike, . . . a borrowed normative light."[115] Since *nomos*, understood as both law and custom, borrows its normative light from what is good by nature, Kosman says, "*Nomos* [is] per accidens normative; it is per se conventional and it is only nature that has an original force of normativity."[116] On this point, V. Bradley Lewis says that there are limits to (positive) law, and that these limits "are imposed by nature, by the human situation in its fullness. Law is a tool, an art, with which human beings create a world within the world that they do not create, the world given by nature."[117] Additionally, Kosman shows that there is a mutual co-dependence between *nomos* and *physis*, or between what we are calling the positive law and the natural law. It is not merely that the positive law depends upon the natural law for its normative foundations; we must also see that the positive law, if it aims at habituating the citizens to virtue and friendship, has an essential role in making known the normativity rooted in what is good by nature.

Kosman draws a helpful analogy between being and appearance on the one hand and *physis* and *nomos* on the other. He says, "Despite the priority of being to appearance, being and

---

[115] Aryeh Kosman, "Nature's Law and Second Nature: Philosophers on *Nomos* and *Physis*," *Proceedings of the Symposium Philosophiae Antiquae Quartum Atheniense*, ed. Apostolos Pierris (Athens: Institute for Philosophical Research, 2010). With Kosman's permission, I quote from a manuscript version of this essay available at: https://haverford.academia.edu/AryehKosman. This text is taken from p. 9 of the manuscript version. In the following footnotes, the page numbers will also refer to the manuscript version.

[116] Ibid.

[117] V. Bradley Lewis, "Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right," *The Review of Metaphysics* 60 (2006): 35. Lewis shows that in the *Minos*, Socrates presents law as "wishing to discover what is (*tou ontos*)." When law is at variance with "what is," then law is actually "lawless" and loses its claim on our obedience. See p. 27-37.

appearance are interdependent, mutually required in the subtle economy of mind and world."[118] In the interplay of ontology and cognition, we must attend not only to what a thing is but also with how it presents itself to us; appearances are a part of being because they show how entities manifest themselves to human beings, datives of manifestation. "Appearance . . . is the language in which being speaks to us as subject[s]."[119] In a similar way, we should understand that "*nomos* and *physis* . . . cohabit the space of the normative in a way parallel to that in which appearance and being cohabit the space of ontology and cognition."[120] Just as appearances are rooted in being, so too the positive law is rooted in the natural law. However, just as appearances are a part of what is and make known to us the being of things, so too positive law is a part of the normative and makes known the natural law. According to Kosman, we can see "*nomos* as mediating nature and practical reason. *Nomos* is the face by which *physis* can present itself to us normatively."[121] Since human beings are naturally political animals, the positive law is part of the language in which the natural law speaks to them as moral and political subjects. Kosman says, "Nature is only able to ground law insofar as law is able to give normativity to nature. *Nomos* here is figured as the art by which nature is enabled to reveal the structures of normativity required for nature to perform its grounding office."[122] Kosman's insight shows that there is an ontology and *telos* to positive law as such, as there is an ontology and *telos* to the art of medicine. By its very being, the positive law tends to manifest, reinforce, and extend what is naturally good.

---

[118] Kosman, "Nature's Law," 11.

[119] Ibid., 13.

[120] Ibid.

[121] Ibid., 15.

[122] Ibid., 19.

There are obviously individual cases in which the positive law deviates from the law of nature, but Kosman's work helps us to see that a split between what is good by nature and what is good by legal decree can only happen in isolated cases. There can be no "global version" of the split between *nomos* and *physis*. Just as appearances can only deviate from the truth of being in isolated cases, so too positive laws can only clash with the natural law in isolated cases. By its nature, the positive law functions to make known what is good by nature and to extend such natural normativity to the myriad aspects of political life. The positive law performs this task in part by helping citizens to understand that their purposes are not the final arbiter of moral and political decisions. A citizen cannot be excused from respecting the speed limit because he has the purpose of getting to work on time. Positive laws with the end of creating friendships among citizens reinforce the point that purposes must be made to reflect some objective reality, which functions as the rule and measure for human actions in view of a noble communion between persons. The positive law elevates human interactions and functions to mold moral character as a "second nature, nature shaped and determined by moral action, which action is in turn chosen and determined in relation to the demands of *nomos*."[123] Concerning the promulgation of the natural law, we can say that a typical mode of discovering what is good by nature is coming to see that what is good by legal decree carries within it and extends what is good by nature. Human agents see the natural shining through the law, even if, as we discussed, the natural law will be more fully known when we distinguish what is naturally good from what is good by positive law and custom. If legislators remain true to the natural *telos* of positive law, which is the development of virtue and friendship, then the positive law itself will serve to make the natural law more widely and easily known.

---

[123] Ibid., 17.

We should not, therefore, take the distinction between the positive and natural laws to be a strict dichotomy. As Hittinger says, "[Aquinas's] doctrine of natural law ought not to be separated from the political level of life."[124] The influence between the natural and positive law is mutual; the natural law grounds the positive law, which in turn manifests what is good by nature. We can make this point because, as Aquinas says, it pertains to the natural law itself that human agents, as social and political animals by nature, develop and live by positive law.[125] By making and respecting positive laws with the end of virtue, human beings are fulfilling, and hence making known, a demand of the natural law. Therefore, in a healthy polity with good laws shaping culture and individuals through inculcating virtue and friendship, the natural law will be promulgated more effectively.

B. Specific Instances of Logos and Imitation in Political Life

We can now discuss particular uses of *logos* within political life, and we will first show the importance of public honors and approbations for the formation of a culture and hence for the formation of the character of each individual. Lewis describes the centrality of praise (and blame) for the ancient Greek understanding of law and political life. He says, "The city aims to produce education/true opinion (at least) and virtue/prudence (where it can), through the law's distribution of praise and blame. So one might say that the thing distributed by the lawgiver is law aiming for virtue, although what is literally being distributed is praise and blame, that is, the law distributes opinion about what is praiseworthy and blameworthy."[126] In addition to the praise inherent in the law itself, the persons upon whom politicians, legislators, and cultural leaders

---

[124] Russell Hittinger, "Natural Law and the Human City," in *Contemporary Perspectives on Natural Law: Natural Law as a Limiting Concept*, ed. Ana Marta González (New York: Ashgate Publishing, 2008), 40.

[125] See *St*, I-II, q. 94, a. 5; I-II, q. 96, a. 4, ad. 1; I-II, q. 96, a. 5, ad. 2.

[126] Lewis, "Plato's *Minos*," 50. Lewis refers to Plato's *Laws*, 631d-632b.

bestow honor and recognition are implicitly but necessarily put forward as models worthy of imitation. As Aristotle says, "Praise is speech (*logos*) manifesting greatness of virtue."[127] Praise, especially public acclaim given by cultural, religious, or political leaders, is an urging to the citizens to be like the one praised, since "to praise a man is in one respect akin to urging a course of action."[128] Praise sets up models for imitation by urging others to perform similar actions and hence to be like the virtuous person who is praised. Aquinas also shows the importance of using language to put forward the virtuous person as a model to be imitated. He says, "Wherefore we praise a man with our lips, in order that he or others may learn that we have a good opinion of him: so that in consequence we may incite him to yet better things; and that we may induce others, who hear him praised, to think well of him, to reverence him, and to imitate him."[129] We should note the indispensable role of language in this process; categorial thinking and speech do not create instances of virtue, but they manifest and present the objective state of affairs, in this case the actions of a virtuous person, to ourselves and to others. In the case of praise, such manifestation accomplished through language is equivalent to directing others to imitate the virtues of the person being honored and to confirm the virtuous themselves in their virtue.

We can now see another instance of how a virtuous polity and culture can assist in the promulgation of what is good by nature through the rectified use of language. When a soldier is given public praise for his courageous actions in battle, or when a philanthropist is honored for donating money to schools and orphanages, the mechanisms of language, culture, and politics are used to highlight something that is good by nature and hence serves as worthy object of imitation. In this way, the virtuous actions of an individual become magnified by a cultural

---

[127] *Rhetoric,* I.9, 1367b27. (trans. modified).

[128] Ibid., 1368a1.

[129] *St*, II-II, q. 91, a. 1.

process so that his actions have a wider effect. When the leaders of a culture and polity successfully identify virtuous individuals to praise, then the natural law is promulgated on a wider scale if and when citizens imitate his noble actions. Language, and the praise and honors it makes possible, enable the virtuous agent to be a rule and measure for an entire polity, not only for his more intimate associates. Only categorial speech permits these expansive displays of virtue and imitation to take place, and thus language overcomes special forms of absence in political life. The virtuous actions of a soldier, doctor, or teacher are originally present only to a few select individuals, but through language these virtuous deeds and the natural law they manifest can be made present to large portions of a population.

It is not merely public praise and honors that put forth models of virtue to imitate. The literature, history, films, music, games, and religious traditions of a culture also put forward models to be imitated, for good or ill. Aristotle says that those people who are responsible for the education of the youth must especially attend to the kinds of games and stories told to the morally immature. He says, "Concerning the quality of the stories and tales [children] should hear . . . all such things [games, stories, tales] should prepare the road for their later pursuits. Hence most sorts of play should be imitations of the things they give serious attention to later."[130] Aristotle was particularly concerned with the use of language around the youth because he recognized that there is but a small step between hearing about something, especially from someone in authority, and doing the action described. He says, "Generally . . . the legislator should banish foul speech from the city more than anything else (for by speaking readily about some foul matter one comes closer to doing it), and particularly among the young, so that they

---

[130] *Politics,* VII.17, 1336a30-35. We should also note the role of music in the formation of character. See *Politics*, VIII.5-7, 1339a13-1342b35.

neither say nor hear anything of this sort."[131] Plato's Socrates also understood well the importance of literature and religion for putting forward models for imitation. In both the *Euthypro* and the *Republic*, Socrates is concerned that the citizens of Athens are imitating examples of vicious moral action from the literary/religious traditions they had inherited.[132] Conversely, when the religious writings of a culture and polity articulate an understanding of the divine as a creator of natures with their own integrity, causality, and autonomy, natures that seek their perfections by interacting with other natural kinds, then the natural law is more fully promulgated.

In our contemporary setting, the use of language by the media is especially influential. The language and words used by members of the press, as well as television and film personalities, shape people's perception of reality and have a large impact on the formation of character of human agents.[133] When public personalities, including but not limited to politicians, use words as if they have no relation to the being and ends of things, then the ability of human agents to constitute the natural law is dissipated. These points show that sophistry is a perennial problem for the promulgation of natural law. Stanley Rosen says, "The sophistical thesis is . . . the assertion that man produces being in his capacity as talking animal."[134] A society in which influential human agents attempt to use language to "produce being" will inevitably find it

---

[131] Ibid., 1336b3-9. At 1336b13-15, Aristotle says that the legislator should banish "unseemly paintings or stories." See also Plato, *Republic*, Book III, 401a-d.

[132] See *Euthyphro*, 5d-6d; *Republic*, Book II, 376d-383c.

[133] Joseph Höffner, former Archbishop of Cologne, says, "The astounding development of the modern means of communication has led to the fact that, today especially, the importance of the 'word' and of the 'image' for the formation of public opinion can hardly be overestimated. The influence of a few thousand opinion-makers in the key positions of the press, radio, and television is in many respects greater than the power of parliaments." Joseph Cardinal Höffner, *Christian Social Teaching*, trans. Stephan Wentworth-Arndt (Cologne: Ordo Socialis, 1997), 23.

[134] Stanley Rosen, *Plato's Sophist: The Drama of Original and Image* (New Haven: Yale University Press, 1983), 14.

difficult to know and promulgate the natural law because human purposes will be given priority over the ends of things, which will be understood, if at all, only as the products of individual desires and choices. Sophistical language inevitably collapses the distinction between ends and purposes precisely by claiming that words can mean whatever anyone wishes. Conversely, when human agents use language in accordance with its natural function, which is to manifest the truth of being with and to others, then the natural ends of things come to light in words, thus enabling human agents to constitute and promulgate the natural law. In sum, we can build on our earlier definition of mimesis as "sharing" and say that the members of a given polity share in the exploits of the cultural, religious, and political leaders of their community through common speech and actions.[135]

5. Recapitulations: Three Consequences of the Relation between Law and Virtue

The arguments we have put forward so far in this chapter, especially the argument that the virtuous agent serves as a living promulgation of the natural law, enable us to discuss in more depth the connection between law and virtue. We can now identify three fundamental aspects of the relationship between law and virtue that will allow us to develop the points we have put forward. First, we must show the "publicity" of both mind and virtuous action in order to show how they make the natural law known. Second, we must discuss Aquinas's idea that both law and virtue are perfections of reason. Third, we must show that Aquinas, building upon Aristotle, presents the ends of law as virtue and friendship, such that virtue and friendship are understood as the perfection of a moral pedagogy begun with the law.

---

[135] For the definition of mimesis as "sharing," see footnote #48 above.

A. The Public Nature of Mind and Virtuous Action

As we saw in the last chapter, mind is the ability to manifest being to ourselves and to others through language; it is not a private container into which we place concepts.[136] Thus, the distinctions between ends, purposes, and customs are not private events in the mind of the human agent; rather, they are public phenomena that unfold in conversation and interactions with others. Sokolowski says, "There is an ontological force to distinctions as such. When we make distinctions we are not just determining language in isolation from being. In determining language we are also articulating being, not as two activities that only happen to be conjoined, but as a single activity that has two aspects."[137] Clearly, there are occasions, such as mistaken speech or outright lying, in which language and being may be separated. However, they could only be separated if they are ontologically correlated with each other in the first place. A lie is only possible because speech has the natural function of manifesting being to another speaker. As Sokolowski says, "Determining language and articulating being is a hendiadys."[138] Further, human agents articulate being within an intersubjective context. The reason of an individual person awakens naturally, but it only awakens through the assistance of others who introduce him more fully into responsible human agency by speaking with him and providing models for his emulation. Once human agents mature and take responsibility for their speech and actions, the paradigmatic use of language is still public and intersubjective. "Speakers . . . do not operate on their private mental representations, but on the thing they present to one another, the thing they have in common."[139] Our phenomenological approach shows how the mind, through

---

[136] On the "publicity" of mind, see Sokolowski, *Human Person*, 59-79.

[137] Sokolowski, "Making Distinctions," in *Pictures, Quotations, and Distinctions*, 74.

[138] Ibid.

[139] Sokolowski, *Human Person*, 68.

interactions with others, manifests the natural law because we see that "the mind is a public thing, that it acts and manifests itself out in the open, not just inside its own confines."[140] Human beings certainly do sometimes engage in private thinking and speech, but such thinking is parasitic on the public, conversational mode of human interactions. The natural law may be instilled into the minds of human agents, but the human mind is a "public thing." To say that the law is "instilled in" the mind is to say that human agents manifest it through their exercise of intelligence, which is public by its very nature.

In a similar way, we cannot understand virtuous action as the mere rectification of internal acts of willing. Even if virtuous action necessarily includes such "private" acts of thinking and willing, virtuous action, like speech, is a "public" phenomenon. It is excellence in action that manifests what it is to be human. Moral actions "crease the world," since the substance of moral action lies in the thoughtful "public" behavior, the embodied performances, that consolidate character, affect those around the agent of the action, and rearrange the way things are.[141] The public nature of moral performances in turn makes it possible for moral behavior to be known and imitated by others. One cannot learn from or emulate the virtuous intentions of a man unless those intentions are embodied in his public performances that crease the world. Elizabeth Anscombe says, "If you want to say at least some true things about a man's intentions, you will have a strong chance of success if you mention what he actually did or is doing."[142] To take a famous example, Mother Teresa's generosity was manifest in the public ways she attended to the poor. Her generosity was displayed, and thus was able to function as a

---

[140] Sokolowski, *Introduction*, 12.

[141] The phrase "crease the world" comes from Thomas Prufer and is used by Sokolowski. See *Moral Action*, 41-76; "What Is Moral Action," in *Pictures, Quotations, and Distinctions*, 261-276.

[142] G.E.M. Anscombe, *Intention* (Ithaca: Cornell University Press, 1969), sec. 4.

rule and measure for others, in the movements of her body, the giving of food and water, and the attentive listening that all could see. Certainly, a given moral performance may be undertaken with the purpose of deceiving those who witness it. A vainglorious person may give a large sum of money to the poor, not because he cares for them, but because he wants the praise he will receive from others. However, this deception can only occur because moral action naturally manifests the intentions of human agents. Just as speech can come apart from being only because it originally functions to manifest being, so too certain actions can be misleading only because they naturally function to crease the world, embody intentions, and manifest the character of the agent performing them. Thus, to say the natural law is written on human hearts means that we naturally tend toward public, common goods perfective of human nature, and these tendencies themselves are perfected in the public, virtuous actions that create harmony between individuals and groups.

As we have seen, Aquinas makes a similar point about the way in which actions naturally manifest the character of human agents when he says that a man's "reason and will" are "made manifest by what he does."[143] Aquinas also says that even the acts of self-referring virtues, such as temperance, are referable to the common good. In answer to an objection that not all good or evil actions are related to another person, since some are related only to the person of the agent, Aquinas says, "A man's good or evil actions, although not ordained to the good or evil of another individual, are nevertheless ordained to the good or evil of another, i.e. the community."[144] The community in which human agents live is harmed or ameliorated by all the moral performances of its members. We could add that part of the reason that even self-referring virtues like temperance refer to the common good is that they can serve as examples to others.

---

[143] *St*, I-II, q. 97, a. 3.

[144] *St,* I-II, q. 21, a. 3, ad. 1. See also *St*, I-II, q. 94, a. 3, ad. 1.

Thus, the Thomistic theory of natural law that we have been discussing, as well as the phenomenological "theory of mind" and virtue that we have used to develop it, does not correspond to the modern liberal notions of public and private. Hittinger says, "For Thomas, what is most primitive or private in practical reason is the precept of 'law.' . . . Natural law is not a piece of merely private moral information which has to go in search of warrants of authority before it can enter the human city."[145] When we make such remarks, our use of the word "public" is carried out from within the philosophical attitude, and it shows that we are evidencing evidence itself. Natural law is a public phenomenon because it is made manifest through speech and deeds, and it is the public nature of both mind and virtue that enables human beings to co-promulgate the natural law.

B. Law and Virtue as Perfections of Reason

The virtuous agent can serve as a living promulgation of the natural law because both law and virtue are expressions of human reason; they are both perfections of human veracity. As we have seen, the essence of law, its formal cause for Aquinas, is to be a work of reason. The essence of law is not willpower, brute force, or even punishment. Since law is a dictate of reason or an achievement of intelligence that directs human action, the virtuous person can be understood to be the perfection of the law because virtue is also a perfection of human reason. That is, the virtuous person can be seen as the rule and measure for human action precisely because he exhibits the perfection of human reason as applied to the field of action. Aquinas says,

> Everything toward which man is inclined in accord with his nature belongs to the law of nature. But every entity is naturally inclined toward action that is appropriate for it in light of its form, in the way that fire is naturally inclined to give warmth. Hence, since the rational soul is the proper form of man, every man has a natural inclination toward acting in accord with reason – which is just to act in accord with virtue. Hence, in this sense all

---

[145] Hittinger, "Natural Law and the Human City," 41.

the acts of the virtues belong to the natural law, since the faculty of reason proper to each man dictates by nature that he act virtuously.[146]

For Aquinas, human beings are inclined by nature to truth and to the common goods made manifest by truth. Therefore, both virtuous moral action and law are perfections of reason because they are both perfections of the natural rational inclinations to truth and happiness exhibited by human agents. Even for virtues that perfect the bodily appetites, such as temperance, the essence of virtuous action for Aquinas is to be in line with right reason. Aquinas says that in the virtues of temperance and courage "there is a formal element, and a quasi-material element. The material element in these virtues is a certain inclination of the appetitive part to the passions and operations according to a certain mode: and since this mode is determined by reason (*determinatur a ratione*), the formal element is precisely this order of reason."[147] While law of its very nature must remain a more general rule for actions, the achievements of the virtuous person are made in concrete, particular settings. Thus, the virtuous person extends and completes the intelligence at work in the natural law and thereby serves to further its promulgation.

C. Virtue as the Telos of Natural Law

Finally, in keeping with Aristotle and Aquinas, we must see that law, virtue, and friendship are interconnected, a point which we developed throughout this chapter. We can maintain that the practically wise person can serve as a promulgator of the natural law only if we recognize that virtue is the natural perfection of the law. However, in modern thought, law and virtue are often understood as opposed, or at least unconnected with each other. For example, Anscombe, in a landmark essay, presents a strict dichotomy between a "law conception of

---

[146] *St*, I-II, q. 94, a. 3.

[147] *St*, I-II, q. 67, a. 1. (trans. modified).

ethics," which she associates with Judeo-Christian and Stoic ethical theories, and a "virtue conception of ethics" as exemplified by Aristotle.[148] Since the publication of this essay, analytic virtue ethicists have struggled to see the connection between natural law and virtue. On their view, one must pick either a law based ethical theory or an ethical theory founded on virtue.[149] However, our discussion of Aristotle and Aquinas shows that the ancient and medieval tradition largely held that law is enacted in order to inculcate virtue among the citizens of a given community. Both positive law and natural law are understood as foundations for virtue or even training in virtue, and virtues in turn bring out the full dynamism and intelligibility of law. On our view, there can be no virtue ethics without a law-based ethics; better, a virtue ethics necessarily includes natural law as its foundation and positive law as a dictate of the natural law. Law as a general rule and measure is naturally geared toward enabling human agents to become living rules and measures of human action.

We can see this connection between law and virtue by appealing to the analogy between the moral life and the practice of skills.[150] Each skill has its own end, or *telos*, and it is in view of

---

[148] See G.E.M. Anscombe, "Modern Moral Philosophy," in *Ethics, Religion, and Politics: The Collected Philosophical Papers of G.E.M. Anscombe,* Vol. III (Oxford: Basil Blackwell, 1981), 26-42. The essay was originally published in 1958. Anscombe also says that one cannot accept a natural law ethics unless one accepts the idea of God as a lawgiver. This point is controversial, and a detailed response to Anscombe's position is beyond the scope of this work. However, in Chapters 3 and 4 we have shown how human agents discover the natural law without explicit recognition of God as a lawgiver. In the order of discovery, we first know the naturally good as distinct from purposes and customs, and we can later reason to the existence of God as a lawgiver. Knowing God as creator and lawgiver does not enable us to recognize a new thing (i.e. the natural law); rather, such knowledge of God manifests a deeper dimension of what we have already known about the natural law. The legality of natural law is sharpened when God enters the conceptual picture, but we need not say that we only know the natural law itself when we acknowledge God as a legislator.

[149] For a discussion of this separation between virtue ethics and natural law ethics, see Jonathan J. Sanford, *Before Virtue: Assessing Contemporary Virtue Ethics* (Washington, DC: The Catholic University of America Press, 2015), 227-254. On the connection between law and virtue, see Ralph McInerny, *Art and Prudence: Studies in the Thought of Jacques Maritain* (Notre Dame: University of Notre Dame Press, 1988), 103-122.

[150] For discussions of the "craft" analogy to virtue, see Christopher Kaczor, *Proportionalism and the Natural Law Tradition* (Washington, DC: The Catholic University of America Press, 2002), 141-170; Julia Annas, "Virtue as a Skill," *International Journal of Philosophical Studies* 3 (1995): 227-243 and "Phenomenology of Virtue," *Phenomenology and Cognitive Sciences* 7 (2008): 21-34.

this end that certain rules are formulated and must be followed in order to achieve and enjoy the perfection of the skill. Following the rules does not exhaust the goodness of the skill, but the rules give structure to the practice of the skill, and following the rules is the first step in becoming a master. More detailed knowledge based on experience will eventually develop and perfect the initial general knowledge grasped by learning the rules, but without knowing and following certain basic rules the protégé simply never begins to acquire the skill. Further, there is a natural level of human abilities that functions as the ultimate foundation for the exercise of the skill as well as the rules that guide it. Human agents have capacities for perception, purposeful movement, and coordination with others, and the skill manifests itself in the perfection of these capacities to perform complex physical movements with precision, strength and elegance, all in relation to changing circumstances.

For example, hitting a baseball is a complex skill that requires the integration of intellectual and physical components. Becoming a skilled hitter takes time, practice, and knowledge of the rules and techniques of hitting a baseball well. At the genesis of one's baseball career, the first aspects of the game that must be learned and followed are the basic rules of the game. A young athlete must learn that a hitter only gets three strikes, that the ball must be hit between the white lines, that you cannot run to first base whenever you want to, etc. He must also learn how to hold the bat, how to recognize certain pitches as good or bad to hit, and how to shift his weight during the swing. Without learning and following these rules, a young athlete simply is not playing the game of baseball. He may be exercising, having fun, twirling a bat, but he is not playing baseball. Given the end of the skill, which is nested within the end of the game itself, the rules make both the skill and the game possible, and they make the perfection of the skill of hitting possible. He must also actualize his native abilities to perceive the movement of

the ball, to rotate his body and arms quickly in view of a target, and to maintain his balance throughout these activities.

Further, no matter how well an athlete eventually plays the game, he must still play within the rules. He will always be out after getting three strikes, no matter how skilled he becomes, and he will always have to perceive the ball and rotate his body powerfully while maintaining his balance. The best hitters do not need to keep the rules at the forefront of their thoughts, nor do they constantly need to verify their ability to see the ball and move their bodies appropriately, but this "oversight" is due to the fact that they have mastered the skills of the game within the rules. Following the rules quickly, creatively, and with excellence has become like a second nature to them. In their skillful performances, we see the rules, as well as the native human abilities they are founded upon, in action; the excellent hitter manifests the end of the rules of hitting. He shows the rules in action by showing the excellence made possible by the rules of the skill, which are in place to protect and promote the end of the skill. The great hitter is the exemplar that must be imitated; he is the rule and measure of hitting.

The development of virtues evidences an analogous structure. The positive law functions as the "rules of the game," while the natural law refers to the deeper level of native human capacities that must be activated in order to achieve and enjoy the natural end of those capacities; natural law gets to the substance of what is done. In view of the end of human happiness through virtue and friendship within social and political life, there are certain "rules," i.e. positive laws, that must be obeyed, and these rules are in turn based upon a deeper level of goodness that is the perfection of human nature in its personal and social dimensions. In skills, the rules must be learned via instruction and study, and the natural capacities for skilled movement must be activated through training. Throughout the last two chapters we have discussed the ways in

which the natural law comes to be actively known through the perfection of our natural capacities of speech and through training in virtue. Most importantly, just as the excellent hitter perfects and hence manifests the abilities involved in hitting, as well as the rules for hitting, so too the virtuous man perfects and manifests the natural law as well as the just positive laws of his community; he is the living rule and measure for human action.

Conclusion

Knowing how the natural law is promulgated entails knowing how we become virtuous, which in turn requires a discussion of moral education. Children entering the world of moral responsibility will naturally imitate the members of their family and community. The same people who introduce human beings into the realm of language and hence social life will also help them shape their emotional lives and serve as their first models of moral action. This natural pedagogy shows that parents and others who work with young children have a natural responsibility to act as promulgators of the natural law by exemplifying virtuous conduct. The activation of the human ability to know and respond to the natural law depends in part on the ways in which others have helped (or failed to help) young men and women become lovers of the noble, to adopt Aristotle's phrase.

Our reflections show that the natural law is manifest when language, emotions, and action are harmonized in view of what is good by nature, what is fitting for the natural ends of human beings. It is the virtuous agent who manifests the natural law by becoming a living rule and measure for human action. He enables others to see the ends of human nature as perfected and thus assists them in distinguishing ends from purposes. In this way, he makes the natural law vividly present to himself and others in his truthful actions. We can also see in more detail all the

ways that human agents are social and political animals by nature, and thus all the ways that the personal responsibility of each individual to constitute the natural law and develop virtue is rooted in and shaped by the family, community, and political life into which he is born. Aristotle provides a succinct summary of these factors that shape moral character as he says, "For as in cities laws and character have force, so in households do the words (*logoi*) and the habits of the father, and these have even more because of the tie of blood and the benefits he confers; for the children start with a natural affection and disposition to obey."[151] We must not set up a false dichotomy between social influence on the one hand and free-choice and personal responsibility on the other; the key is to understand how the free-choice of an individual is rooted in and influenced by those around him and hence how personal responsibility to constitute the natural law is set within a given culture, which will aid or hinder an individual's ability to see what is good by nature. Thus, co-promulgating the natural law is a common good achieved in common actions.

We have concentrated on how the natural law is made known, and we have looked at the natural channels through which human agents come to know the natural law. We have therefore focused on the progression of knowledge of the natural law when human agents and polities are successful in perfecting human nature. However, even in a brutal polity in which individuals are inculcated in vice, the natural human inclinations to truth, virtue, and happiness in social and political life will not be obliterated, and language will retain its natural function of manifesting the being and ends of things. Nature and virtuous agents provide an ontologically permanent basis for reforming a polity. As Horace says, "You can throw nature out with a pitchfork, but she always comes back, and breaking in unexpectedly is victorious over your perverse contempt

---

[151] *NE*, X.9, 1180b4-7. I substitute "words" for the translator's use of "injunctions" to more literally render the Greek "*logoi*."

(*Naturam expelles furca, tamen usque recurret, et mala perrumpet furtim fastidia victrix*)."[152] In

closing, knowing the natural law means attending to all the ways that what is good by nature

comes to light in both words and deeds.

---

[152] Horace, *Epistles,* I.10, 24-25, trans. H. Rushton Faifclough, Loeb Classical Library, vol. 194 (Cambridge, MA: Harvard University Press, 1926). (trans. modified).

Conclusion

"If, however, [the meanings of words] were not limited but one were to say that the word has an infinite number of meanings, obviously reasoning would be impossible; for not to have one meaning is to have no meaning, and if words have no meaning reasoning with other people, and indeed with oneself has been annihilated."

- Aristotle, *Metaphysics*, 1006b5-9

"Man is the only animal that blushes. Or needs to."

- Mark Twain

In the first chapter of this dissertation, we distinguished between three foci of order: (1) order in the divine mind, (2) order in the human mind, and (3) order in nature. We said that in our study of the promulgation of natural law we would discuss all three foci of order and how they are integrated. We also said that our phenomenological approach would help us understand what it means to say there is order "in" the divine mind, the human mind, and nature. At the close of our reflections, we can add to these earlier descriptions of the three foci of order. Developing insights from Rémi Brague, we can now say that the promulgation of the natural law takes place in and through three integrated sets of conversations: (1a) the conversation between God and man, (2a) the conversation among men themselves, and (3a) the conversation between man and nature.[1] To speak philosophically of the promulgation of natural law means describing how human agents, operating in the natural attitude, discover moral precepts that assist them in achieving what is naturally good and avoiding what is evil, and this philosophical endeavor demands showing how human agents make the order "in" these three foci manifest by engaging

---

[1] Brague distinguished and developed these three conversations as part of an explanation of the essence of civilization. These comments were given in a lecture at the School of Philosophy at The Catholic University of America on Monday, October 19, 2015. The lecture was entitled, "Civilization as Conservation and Conversation." I wish to thank Prof. Brague for sending me an unpublished version of this excellent lecture.

in conversations made possible by God's creative act and intersubjective categorial speech, which activates human reason and brings the ends of entities to light. Divine "speech" in creation makes the human conversation possible, in which natural entities "speak" to us by displaying their forms, their "thinkable looks."[2] Order in is made manifest by conversations between, and it is through this interplay of ontology, teleology, and appearance that human agents constitute the natural law for themselves and others.

The philosophical understanding of creation is central to our account, but it is central to our account as philosophers speaking from the philosophical perspective. In the natural attitude, human agents need not advert to God as creator and law-giver to discover what is in fact the natural law. Certainly, they will know the natural law better, and know it more fully as law, when they are able, through natural reason or revelation, to see the law of nature as coming forth from God and leading human creatures back to God. Interestingly, Aquinas says that there is a kind of pre-philosophical, unrevealed knowledge of God open to human agents operating in what we have named the natural attitude. He says that human agents quickly reach some nebulous knowledge of God, "for, when men see that things in nature run according to a definite order, and that ordering does not occur without an orderer, they perceive in most cases that there is some orderer of the things that we see. But who or what kind of being, or whether there is but one orderer of nature, is not yet grasped immediately in this general consideration."[3] This nascent and often confused knowledge of God is not innate, nor is it the fruit of polished metaphysical argument achieved within the philosophical attitude, but nevertheless Aquinas sees the teleological order of the natural world as educating the human agent about the existence of

---

[2] For the phrase "thinkable look" as a translation of *eidos* or *forma*, see Sokolowski, *Human Person*, 287.

[3] *SCG,* III, c. 38. See also Aquinas's *Commentary on Psalm 8*. For discussion of these texts, see Lawrence Dewan, review of Kevin Flannery, S.J., *Acts Amid Precepts: The Aristotelian Logical Structure of Thomas Aquinas's Moral Theory*, in *Nova et Vetera* 5 (2007): 431-444.

God. Through the experience of nature, human beings can behold some truth, albeit nebulous, about the existence of God understood as the source of cosmic order and being.

Some may object that our discussion of creation has taken us out of the philosophical realm and flattened the distinction between nature and convention. If natural entities are made when they are created, then it seems that nature has been de-natured. However, this objection fails to appreciate the special sense of Divine "making" in creation. Even if our ability to think philosophically about creation is only possible after God's revelation, such philosophical thinking shows itself to be fitting to human reason. Creation is knowable by natural reason as purified by divine faith. Prufer says,

> Taking creation to be true is for philosophy not a repudiation of the primacy of nature over convention; much less is it a fall back from the difference between nature and convention into the ways prior to the differentiation of nature and convention. Philosophy, as eros for nature and for the whole, is not less itself (a) for moving from a less primary sense of nature, nature$_2$ [creaturely natures], to the most primary sense of nature, nature $_1$ [divine nature], most primary because of its eternity and necessity, self-sufficiency and intelligibility, and (b) for moving from the whole to the principle of the whole, the principle that is not itself a part of the whole.[4]

The "conversation" begun by God in the creation of natures, operating for their proper ends with real autonomy, is immediately tied to Aquinas's notion of the Eternal law by which God moves entities to their proper ends. The eternal law shows that entities acting for their perfection according to their nature and from their own intrinsic principles of action are the expression of God's governing providence, and our participation in this Eternal law is the natural law.

The connection between creation and animate beings that operate for their natural perfections within an ordered whole, a cosmos, provides the necessary metaphysical framework for an account of the promulgation of natural law. It is also a development of Aristotle's understanding of the unity of being, about which Prufer says, "For Aristotle being is not

---

[4] Prufer, *Recapitulations,* 42.

episodic, like a poorly constructed tragedy; being is not helter-skelter, not one thing after another without being because of another; being is not a mere heap (*sōros*). The unifying plot of being, so to speak, is the eros by which that which is less than excellent or not most excellent is drawn toward the most excellent."[5] We can distinguish three levels of the *eros* of being identified by Prufer. The first concerns the relation between matter and form. Aristotle says, "The truth is that what desires the form is matter, as the female desires the male and the ugly the beautiful."[6] Matter "desires" its correlative form, and the "in"-formed, ensouled whole, the animated entity, "desires" its perfection, its *telos*, which is achieved through interactions with others. This desire of the ensouled entity for its perfection through interactions with other entities is the second level of the *eros* of being, and it leads to the third. The cosmic level of the *eros* of being is apparent in the way all things "desire" to imitate the first mover and final cause of the whole; it is the love for and imitation of the divine mind that unifies the whole of things.[7] All three levels are interconnected, with the first leading to the second and the first and second culminating in the third, and in natural law thinking this *eros* of being is seen as the effect of God's creative act, which gives all beings not only their to be but also their respective levels of secondary causality.

This metaphysical framework provides a foundation for our understanding of the natural law as the ontological priority of ends over purposes. To speak of the natural law as the ontological priority of ends over purposes is to see how metaphysics is at work in human affairs; it is to recognize that actuality is greater than potentiality and to manifest how the connection between the human *eidos* and *telos*, set within the causality of the natural world as a whole, explains principles of moral philosophy. Within this understanding of natural law, becoming

---

[5] Prufer, *Recapitulations*, 17.

[6] *Physics*, I.9, 192a23-24.

[7] See Aristotle, *Metaphysics,* XII.7.

more, i.e. developing virtue and achieving our natural *telos* as activated and enjoyed, is accomplished by identifying and respecting what is more, what has more the nature of being, i.e. by seeing that ends have priority over purposes. This is what it means to say activity is greater than potency in the realm of ethics. Ends are prior ontologically to purposes, just as the natural law is prior ontologically to the positive law.

The issue of creation and metaphysics is necessary not only as the framework within which we can understand the human agent's discovery of natural law; it also shows what is at stake in natural law thinking. Natural law is often portrayed (or caricatured) as being obsessed with prohibitions and limitations of human liberty and autonomy. However, the metaphysics we have discussed shows that the natural law concerns the dignity and nobility of human action, political life, and friendship. Because of this metaphysical framework, natural law is understood to have an important role to play in the best human life, which is the closest imitation of and assimilation to the life of the divine. Prufer says,

> That activity (*energeia*) is best which is the blessed life of the gods, the divine, or God; and the best human life is assimilation to this exemplary activity. If the divine has knowledge of and care for human affairs, if providence can be said of it, if it minds the whole, if it is artificer and governor of the world, giver of laws and judge, then the best life is not without action, which implies the presence of others and concern for their good. The double or mixed life is best, imitating both divine knowledge of the world and divine action (*praxis*) toward the world.[8]

The metaphysics that enables us to see God as separate from and creator of a cosmos elevates the discovery of natural law into the realm of the best human life; it ennobles human action and manifests that the best life, as imitation of the divine, is a life of contemplation and action, where action is guided by law and perfected in virtuous friendships. If God is creator and law-giver,

---

[8] Prufer, *Recapitulations,* 22.

then law and action are essential parts of human happiness, which culminates in contemplative

friendship.[9]

Finally, discussing the promulgation and discovery of natural law as an integration of

three conversations, between God and man, men with each other, and man with nature, entails

recognizing the importance of words and language as the activation and expression of human

reason. Language, as the essential instrument of human reason, will have the last word. Aquinas

says that we know the natural law because God gives us an imprint of the divine light. Our

natural reason is the light by which we know truth itself and the truth about the good that must be

done, but reason must speak in order to activate itself and illuminate the being of things. In

closing, we can specify Aquinas's comments on human reason as a light; we can now say that it

is the use of language, and the intellectual grasp of identity between presence and absence that

language gives, which enables human agents to live in the light. Sokolowski says,

> [Words] capture and carry the intelligibility of things, permitting us to make distinctions
> and to see that this is not that, and that therefore this has a necessity and substantiality, an
> entity, in itself. Through words we enjoy an articulated world in common and engage in
> reciprocal exchanges, whether moral, commercial, or political, in both friendship and,
> alas, enmity. By using them we take a stand among others, across space and time, and
> exercise and declare our own agency. Words allow us to live involved in light.[10]

This light reflected in and shining forth from words activates human intelligence and enables us

to discover what is good for us as human beings; it enables us to discover and live by the natural

law.

---

[9] Prufer says, "Contemplative friendship or the sharing of speech in the knowledge of what is primary . . . is the highest form of the specifically human imitation of separate entity: science is of the necessary and eternal; and because the friend is another self, contemplation of a friend's contemplation is self-contemplation." *Recapitulations,* 9.

[10] Sokolowski, *Human Person*, 324.

Bibliography

Primary Sources

Aristotle. *The Complete Works of Aristotle*. Revised Oxford Translation. Edited by Jonathan Barnes. 2 volumes. Princeton: Princeton University Press, 1984.

———. *Politics*. Translated by Carnes Lord. Chicago: The University of Chicago Press, 2013.

Augustine. *Confessions*. Edited by James J. O'Donnell. Oxford: Clarendon Press, 1992.

———. *On Free Choice of the Will.* Translated by Thomas Williams. Indianapolis: Hackett Publishing Company, 1993.

Descartes, René. *Discourse on Method and Meditations on First Philosophy*. Translated by Donald A. Cress. Indianapolis: Hackett Publishing Company, 1998.

———. *The Philosophical Writings of Descartes*. Translated by John Cottingham, Robert Stoothoff, and Dugald Murdoch. 3 volumes. New York: Cambridge University Press, 1991.

Hobbes, Thomas. *The Elements of Law, Natural and Politic*. Edited by Ferdinand Tönnies. London: Frank Cass, 1969.

———. *Leviathan*. Edited by Richard Tuck. New York: Cambridge University Press, 1996.

Horace. *The Epistles of Horace.* Translated by David Ferry. New York: Farrar, Straus, and Giroux, 2001.

Husserl, Edmund. *Cartesian Meditations: An Introduction to Phenomenology.* Translated by Dorion Cairns. Boston: Kluwer Academic Publishers, 1999.

———. *Crisis of European Sciences and Transcendental Phenomenology*. Translated by David Carr. Evanston: Northwestern University Press, 1970.

———. *Formal and Transcendental Logic.* Translated by Dorion Cairns. The Hague: Martius Nijhoff, 1969.

———. *The Idea of Phenomenology*. Translated by L. Hardy. Boston: Kluwer Academic Publishers, 1990.

———. *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy: First Book, General Introduction to a Pure Phenomenology*. Translated by F. Kersten. Boston: Kluwer Academic Publishers, 1982.

———. *Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy, Second Book: Studies in the Phenomenology of Constitution.* Translated by R. Rojcewicz and A. Schuwer. The Hague: Nijhoff, 1989.

———. *Logical Investigations*. 2 volumes. Translated by J. N. Findlay. New York: Routledge, 2001.

———. "The Origin of Geometry." In *Husserl: Shorter Works*, edited by Peter McCormick and Frederick A. Elliston, 255-270. Notre Dame: University of Notre Dame Press, 1981.

———. *Thing and Space: Lectures of 1907*. Translated by R. Rojcewicz. Boston: Kluwer, 1997.

Locke, John. *Second Treatise of Government*. Indianapolis: Hackett Publishing Company, 1980.

Marcus Tullius Cicero. *On the Republic. On the Laws*. Translated by Clinton W. Keyes. Loeb Classical Library. Cambridge, MA: Harvard University Press, 1928.

Plato. *Plato: Complete Works*. Edited by John M. Cooper and D.S. Hutchinson. Indianapolis: Hackett Publishing Company, 1997.

Rousseau, Jean Jacques. *Discourse on the Origin of Inequality*. Translated by Donald A. Cress. Indianapolis: Hackett Publishing Company, 1992.

Suetonius. *De vita Caesarum*. Translated by J. C. Rolfe. Loeb Classical Library. Cambridge, MA: Harvard University Press, 1913.

Thomas Aquinas. *Sancti Thomae Aquinatis opera omnia*. Leonine edition. Rome: Ex Typographia Polyglotta S.C. de Propaganda Fide, 1882–.

———. *In Aristotelis librum De Anima Commentarium*. Edited by A. Pirotta. Turin: Marietti, 1948.

———. *In Aristotelis libros Peri Hermeneias et Posteriorum Analyticorum Expositio*. Edited by R. M. Spiazzi. Turin: Marietti, 1955.

———. *In octo libros Physicorum Aristotelis Commentarium*. Edited by M. Maggiolo. Turin: Marietti, 1954.

———. *In decem libros Ethicorum Aristotelis ad Nicomachum Expositio*. Edited by M. R. Cathala. Turin: Marietti, 1949.

———. *In duodecem libros Metaphysicorum Aristotelis Expositio*. Edited by M. R. Cathala and R. M. Spiazzi. Turin: Marietti, 1964.

———. *Super librum De Causis Expositio*. Edited by H. D. Saffrey. Fribourg: Societé Philosophique, 1954.

———. *Super epistolas Sancti Pauli Lectura*. 2 volumes. Edited by P. Cai. Turin: Marietti, 1953.

———. *Summa contra Gentiles*. Editio Manualis Leonina. Rome: Marietti, 1946.

———. *Summa theologiae*. Turin: San Paolo, 1988.

———. *Opusculum De Ente et Essentia*. Edited by I. Sestili. Turin: Marietti, 1948.

———. *Quaestiones disputatae*. Edited by Spiazzi, Pession, Calcaterra, Centi, Bazzi, Odetto. Volume 1. *De Veritate*. Turin: Marietti, 1949.

———. *Quaestiones disputatae*. Volume 2. *De Potentia Dei. De Anima. De Spiritualibus Creaturis. De unione Verbi Incarnati. De Malo. Et alia*. Turin, Marietti, 1949.

———. *Treatise on law: The Complete Text (Summa Theologiae I-II, Questions 90-108)*. Translated by Alfred J. Freddoso. South Bend, IN: St. Augustine's Press, 2009.

———. *The Summa Theologiæ of St. Thomas Aquinas*. Translated by the Fathers of the English Dominican Province. New York: Benzinger Brothers, 1948.

———. *Commentary on Aristotle's Physics*. Translated by Richard Blackwell, Richard Spath, and Edmund Thirlkel. Notre Dame, IN: Dumb Ox Books, 1995.

———. *Treatise on Separate Substances*. Translated by Francis J. Lescoe. West Hartford, CT: Saint Joseph College Press, 1959.

———. *On Creation: Quaestiones Disputatae de Potentia Dei, Q. 3*. Translated by S.C. Selner-Wright. Washington, DC: The Catholic University of America Press, 2011.

———. *On Truth*. Translated by R. Mulligan, B. McGlynn, R. Schmidt. 3 volumes. Chicago: Regnery, 1952-1954.

———. *On the Truth of the Catholic Faith (Summa Contra Gentiles)*. Translated by A. Pegis, J. F. Anderson, V. Bourke, C. O'Neil. Garden City, NJ: Doubleday, 1956.

———. *Commentary on Aristotle's Metaphysics*. Translated by J. P. Rowan. Notre Dame, IN: Dumb Ox Books, 1995.

———. *Commentary on Aristotle's De Anima*. Translated by Kenelm Foster and Silvester Humphries. Notre Dame, IN: Dumb Ox Books, 1994.

———. *Commentary on Aristotle's Nicomachean Ethics*. Translated by C. I. Litzinger. Notre Dame, IN: Dumb Ox Books, 1993.

Secondary Sources

Adler, Mortimer. "The Doctrine of Natural Law in Philosophy." *Natural Law Institute Proceedings* 1 (1949): 65-84.

———. "A Question about Law." In *Essays in Thomism*, edited by Robert E. Brennan, 205-236. New York: Sheed and Ward, 1942.

Annas, Julia. "Phenomenology of Virtue." *Phenomenology and Cognitive Sciences* 7 (2008): 21-34.

———. "Virtue as a Skill." *International Journal of Philosophical Studies* 3 (1995): 227-243.

Anscombe, G.E.M. *Ethics, Religion, and Politics: The Collected Philosophical Papers of G.E.M. Anscombe.* Volume 3. Oxford: Basil Blackwell, 1981.

———. *Intention*. Ithaca: Cornell University Press, 1969.

Ashley, Benedict, O.P. "The Anthropological Foundations of the Natural Law: A Thomistic Engagement with Modern Science." In *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, edited by John Goyette, Mark S. Latkovic, and Richard S. Meyers, 3-16. Washington, DC: The Catholic University of America Press, 2004.

Austin, J.L. "Other Minds." In *Philosophical Papers*, edited by John Langshaw, 76-116. Oxford: Clarendon Press, 1961.

Baldner, Steven E. and William E. Carroll. *Aquinas on Creation*. Toronto: Pontifical Institute of Mediaeval Studies Press, 1997.

Barnes, Corey L. "Natural Final Causality and Providence in Aquinas." *New Blackfriars* 95 (2014): 349-361.

Bloom, Allan. *Love and Friendship*. New York: Simon and Schuster, 1993.

Bloom, Paul. *How Children Learn the Meaning of Words.* Cambridge, MA: MIT Press, 2000.

———. "Word Learning and Theory of Mind." In *Augustine's Confessions: Critical Essays*, edited by William E. Mann, 17-29. New York: Rowman & Littlefield Publishers, 2006.

Bourke, Vernon. "The Role of Habitus in the Thomistic Metaphysics of Potency and Act." In *Essays in Thomism*, edited by Robert E. Brennan, 101-110. New York: Sheed and Ward, 1942.

———. "The Synderesis Rule and Right Reason." *The Monist* 66 (1983): 71-82.

Boyd, Craig. "Participation Metaphysics in Aquinas's Theory of Natural Law." *American Catholic Philosophical Quarterly* 79 (2005): 431-445.

Brague, Rémi. "Civilization as Conservation and Conversation." Lecture at the School of Philosophy at The Catholic University of America, October 19, 2015.

———. *The Law of God: The Philosophical History of an Idea.* Translated by Lydia G. Cochrane. Chicago: University of Chicago Press, 2007.

———. "La nature, demeure éthique?" *Économie rurale* 271 (2002): 9-20.

Brock, Stephen. *Action and Conduct: A Thomistic Study*. Edinburgh: T. & T. Clark, 1998.

———. "The Distinctiveness of the Natural Inclinations Proper to Man in *Summa theologiae* 1-2.94.2." *Doctor Communis: Review of the Pontifical Academy of St. Thomas Aquinas* (2012): 36-53.

———. "Harmonizing Plato and Aristotle on *Esse*: Thomas Aquinas and the *De hebdomadibus*." *Nova et Vetera* 5 (2007): 465-494.

———. "How Many Acts of Being Can a Substance Have? An Aristotelian Approach to Aquinas's Real Distinction." *International Philosophical Quarterly* 54 (2014): 317-331.

———. "The Legal Character of Natural Law According to St Thomas Aquinas." PhD diss., University of Toronto, 1988.

———. "Natural Inclinations and the Intelligibility of the Good in Thomistic Natural Law." *Vera Lex* 6 (2005): 57-78.

———. "Natural Law, the Understanding of Principles, and Universal Good." *Nova et Vetera* 9 (2011): 671-706

———. "L'obbligo per legge, il governo e il bene comune: considerazioni metafisiche in Tommaso d'Aquino.*" Con-tratto: rivista di filosofia tomista e filosofia contemporanea,* III, 1-2 (1994): 7-30.

Brough, John B. "Consciousness Is Not a Bag: Immanence, Transcendence, and Constitution in *The Idea of Phenomenology*." *Husserl Studies* 24 (2008): 177-191.

Carroll, William E. "Creation, Evolution, and Thomas Aquinas." *Revue des Questions Scientifiques* 171 (2000): 319-347.

———. "Creation and Science in the Middle Ages." *New Blackfriars* 88 (2007): 678-689.

———. "Divine Agency, Contemporary Physics, and the Autonomy of Nature." *The Heythrop Journal* 49 (2008): 582-602.

Codevilla, Angelo M. "Words and Power." Translator's introduction to Niccolò Machiavelli. *The Prince*. Translated by Angelo M. Codevilla. New Haven, CT: Yale University Press, 1997.

Copleston, Frederick, S.J. *Aquinas*. London: Penguin Books, 1955.

Cottone, Michael. "Rethinking Presumed Knowledge of the Law in the Regulatory Age." *Tennessee Law Review* 82 (2014): 137-166.

Cuddeback, Matthew. "Thomas Aquinas on Divine Illumination and the Authority of the First Truth." *Nova et Vetera* 7 (2009): 579-602.

Cunningham, Sean. "Natural Inclination in Aquinas." PhD diss., The Catholic University of America, 2013.

Deferrari, Roy J. *A Latin English Dictionary of St. Thomas Aquinas.* Boston: Daughters of St. Paul, 1986.

Deferrari, Roy J. and Sister M. Inviolata Barry. *A Lexicon of St. Thomas Aquinas Based on the Summa theologica and Selected Passages of His Other Works.* Washington, DC: The Catholic University of America Press, 1948.

De Koninck, Charles. *The Writings of Charles De Koninck*. 2 Volumes. Edited and Translated by Ralph McInerny. Notre Dame: University of Notre Dame Press, 2009.

de Raeymaeker, Louis. "What St. Thomas Means Today." *Review of Politics* 20 (1958): 3-20.

Des Chene, Dennis. *Physiologia: Natural Philosophy in Late Aristotelian and Cartesian Thought*. Ithaca, N.Y.: Cornell University Press, 1996.

Dewan, Lawrence, O.P. *Form and Being: Studies in Thomistic Metaphysics*. Washington, DC: The Catholic University of America Press, 2006.

———. "The Foundations of Human Rights." *Science et Espirit* 62 (2010): 227-236.

———. Review of *Acts Amid Precepts: The Aristotelian Logical Structure of Thomas Aquinas's Moral Theory*, Kevin Flannery, S.J. *Nova et Vetera* 5 (2007): 431-444.

———. "St. Thomas and Creation: Does God Create 'Reality'?" *Science et Esprit* 51 (1999): 5-25.

———. "St Thomas and the Divine Origin of Law: Some Notes." *Civilizar Ciencias Sociales y Humanas* 15 (2008): 123-134.

———. *St. Thomas and Form as Something Divine in Things*. Milwaukee: Marquette University Press, 2006.

———. "St. Thomas, Natural Law, and Universal Ethics." *Nova et Vetera* 9 (2011): 737-762.

———. "St. Thomas and Pre-Conceptual Intellection." *Etudes maritainiennes* 11 (1995): 220-233.

———. "Thomas Aquinas, Creation, and Two Historians." *Laval théologique et philosophique* 50 (1994): 363-387.

———. *Wisdom, Law, and Virtue: Essays in Thomistic Ethics*. New York: Fordham University Press, 2008.

Di Blasi, Fulvio. *God and the Natural Law: A Rereading of Thomas Aquinas*. South Bend, IN: St. Augustine's Press, 2006.

Doolan, Gregory T. "The Causality of the Divine Ideas in Relation to Natural Agents in Thomas Aquinas." *International Philosophical Quarterly* 44 (2004): 393-409.

Doyon, Maxime. "Perception and Normative Self-Consciousness." In *Normativity in Perception*, edited by Maxime Doyon and Thiemo Breyer, 38-55. New York: Palgrave Macmillan, 2015.

Eliot, T. S. *The Complete Poems and Plays: 1909-1950*. New York: Harcourt Brace and Company, 1980.

Fabro, Cornelio. "The Intensive Hermeneutics of Thomistic Philosophy: The Notion of Participation." *The Review of Metaphysics* 27 (1974): 449-491.

Finnis, John. *Natural Law and Natural Rights*. Oxford: Clarendon Press, 1980.

———. "Natural Law and Unnatural Acts." *The Heythrop Journal* 11 (1970): 365-387.

Flage, Daniel E. and Clarence A. Bonnen. "Descartes on Causation." *The Review of Metaphysics* 50 (1997): 841-872.

Flannery, Kevin, S.J. *Action and Character According to Aristotle: The Logic of the Moral Life*. Washington, DC: The Catholic University of America Press, 2013.

Flynn, Molly. Review of *The Geography of Good and Evil: Philosophical Investigations*, by Andreas Kinneging. *Society* 48 (2011): 186-188.

Fortenbaugh, William. "Aristotle's Conception of Moral Virtue and Its Perceptive Role." *Transactions and Proceedings of the American Philological Association* 95 (1964): 77-87.

Fossheim, Hallvard. "Habituation as Mimesis." In *Values and Virtues: Aristotelianism in Contemporary Ethics*, edited by Timothy Chappell, 105-117. New York: Oxford University Press, 2006.

———. "Mimesis in Aristotle's Ethics." In *Making Sense of Aristotle: Essays in Poetics*, edited by Oivind Anderson and Jon Haarberg, 73-86. London: Duckworth, 2001.

Gendlin, Eugene T. *Line by Line Commentary on Aristotle's De Anima, Books I & II*. Spring Valley, NY: The Focusing Institute, 2012.

Goerner, E. A. "On Thomistic Natural Law: The Bad Man's View of Thomistic Natural Right." *Political Theory* 7 (1979): 101-122.

Goris, Harm J. M. J. *Free Creatures of an Eternal God: Thomas Aquinas on God's Infallible Foreknowledge and Irresistible Will*. Nijmegen: Stichting Thomasfonds, 1996.

Goyette, John. "Natural Law and the Metaphysics of Creation." In *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, edited by John Goyette, Mark S. Latkovic, and Richard S. Meyers, 74-78. Washington, DC: The Catholic University of America Press, 2004.

Hall, Pamela. *Narrative and the Natural Law: An Interpretation of Thomistic Ethics*. Notre Dame: University of Notre Dame Press, 1994.

Hittinger, Russell. *A Critique of the New Natural Law Theory*. Notre Dame, IN: University of Notre Dame Press, 1987.

———. *The First Grace: Rediscovering the Natural Law in a Post-Christian World*. Wilmington: ISI Books, 2002.

———. "Natural Law and the Human City." In *Contemporary Perspectives on Natural Law: Natural Law as a Limiting Concept*, edited by Ana Marta González, 29-42. New York: Ashgate Publishing, 2008.

———. "Natural Law and Public Discourse: The Legacies of Joseph Ratzinger." *Loyola Law Review* 60 (2014): 241-271.

———. "A Response to Commentators." In *Ethics Without God? The Divine in Contemporary Moral and Political Thought*, edited by Fulvio Di Blasi, 136-146. South Bend, IN: St. Augustine's Press, 2008.

———. "The Situation of Natural Law in Catholic Theology." *Nova et Vetera* 9 (2011): 657-670.

———. "Yves R. Simon on Natural Law and Reason." In *Acquaintance with the Absolute: The Philosophy of Yves R. Simon*, edited by Anthony O. Simon, 101-127. New York: Fordham University Press, 1998.

Hoffman, Tobias. "Conscience and Synderesis." In *The Oxford Handbook of Aquinas*, edited by Brian Davies and Eleonore Stump, 255-264. Oxford: Oxford University Press, 2012.

Höffner, Joseph Cardinal. *Christian Social Teaching*. Translated by Stephan Wentworth-Arndt. Cologne: Ordo Socialis, 1997.

International Theological Commission. *In Search of a Universal Ethic: A New Look at the Natural Law*. 2009. Accessed May 19, 2016. http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html.

Jaffa, Harry. *Thomism and Aristotelianism: A Study of the Commentary by Thomas Aquinas on the Nicomachean Ethics*. Chicago: The University of Chicago Press, 1952.

Jensen, Steven. *Knowing the Natural Law: From Precepts and Inclinations to Deriving Oughts*. Washington, DC: The Catholic University of America Press, 2015.

Johnson, Mark. "Aquinas's Changing Evaluation of Plato on Creation." *American Catholic Philosophical Quarterly* 66 (1992): 81–88.

———. "Did St. Thomas Attribute a Doctrine of Creation to Aristotle?" *The New Scholasticism* 63 (1989): 129-155.

Kaczor, Christopher. *Proportionalism and the Natural Law Tradition*. Washington, DC: The Catholic University of America Press, 2002.

Kainz, Howard P. *Natural Law: An Introduction and Re-examination*. Chicago: Open Court, 2004.

Kass, Leon. *The Hungry Soul: Eating and the Perfecting of Our Nature*. Chicago: The University of Chicago Press, 1994.

Kelly, Sean Dorrance. "Seeing Things in Merleau-Ponty." In *The Cambridge Companion to Merleau-Ponty*, edited by Taylor Carman, 74-110. Cambridge: Cambridge University Press, 2004.

Klein, Jacob. *Lectures and Essays*. Edited by Robert B. Williamson and Elliot Zuckerman. Annapolis: St. John's College Press, 1985.

Koester, Helmut. "ΝΟΜΟΣ ΦΥΣΕΩΣ: The Concept of Natural Law in Greek Thought." In *Religions in Antiquity*, edited by Jacob Neusner, 521-541. Leiden: E. J. Brill, 1968.

Kosman, Aryeh. *The Activity of Being: An Essay on Aristotle's Ontology*. Cambridge, MA: Harvard University Press, 2013.

———. "Nature's Law and Second Nature: Philosophers on *Nomos* and *Physis*." *Proceedings of the Symposium Philosophiae Antiquae Quartum Atheniense*, edited by Apostolos Pierris. Athens: Institute for Philosophical Research, 2010.

Kossell, Clifford G. "Natural Law and Human Law (Ia IIae qq. 90-97)." In *The Ethics of Aquinas*, edited by Stephen Pope, 169-193. Washington, DC: Georgetown University Press, 2002.

Kugiumutzakis, Giannis, Theano Kokkinaki, Maria Makrodimitrake, and Elena Vitalaki. "Emotions in Early Mimesis." In *Emotional Development: Recent Research Advances,* edited by Jacqueline Nadel and Darwin Muir, 161-182. Oxford: Oxford University Press, 2005.

Kühn, Ulrich. *Via caritatis: Theologie des Gesetzes bei Thomas von Aquin*. Gottingen: Vandenhoeck & Ruprecht, 1965.

Le Boulluec, Alain. "Recherches sur les orgines du thème de la syndérèse dans la tradition patristique." In *Vers la contemplation: Études sur la syndérèse et les modalités de la contemplation de l'Antiquité à la Renaissance*, edited by Christian Trottmann, 61-77. Paris: Librairie Honoré Champion, 2007.

Levinas, Emmanuel. *The Theory of Intuition in Husserl's Phenomenology*. Evanston: Northwestern University Press, 1973.

Lewis, Charlton T. and Charles Short. *A Latin Dictionary*. Oxford: Clarendon Press, 1879.

Lewis, C. S. *The Abolition of Man*. New York: HarperCollins Publishers, 1974.

———. *Studies in Words*. Cambridge: Cambridge University Press, 1960.

Lewis, Thomas, Fari Amini, and Richard Lannon. *A General Theory of Love*. NewYork: Vintage Books, 2001.

Lewis, V. Bradley. "Plato's *Minos*: The Political and Philosophical Context of the Problem of Natural Right." *The Review of Metaphysics* 60 (2006): 17-54.

Lonergan, Bernard, S.J. *Insight*. New York: Philosophical Library, 1956.

———. "Questionnaire on Philosophy." *Method: Journal of Lonergan Studies* 2 (1984): 1-35.

Long, Steven A. "Natural Law or Autonomous Practical Reason: Problems for the New Natural Law Theory." In *St. Thomas Aquinas and the Natural Law Tradition: Contemporary Perspectives*, edited by John Goyette, Mark S. Latkovic, and Richard S. Meyers, 165-196. Washington, DC: The Catholic University of America Press, 2004.

———. "Providence, Freedom, and Natural Law." *Nova et Vetera* 4 (2006): 557-606.

Lottin, Dom Odon, O.S.B. "La définition classique de la loi." *Revue Néo-Scolastique de Philosophie* (1925): 129-145.

———. "La valeur des formules de Saint Thomas d'Aquin concernant la loi naturelle." In *Mélanges Joseph Maréchal*, edited by L. Noël, 345-377. Paris: Desclée de Brouwer, 1950.

Luft, Sebastian. "Husserl's Phenomenological Discovery of the Natural Attitude." *Continental Philosophy Review* 31 (1998): 153-170.

Luijpen, William. *Phenomenology of Natural Law*. Pittsburgh, PA: Duquesne University Press, 1967.

MacIntyre, Alasdair. *After Virtue*. Notre Dame: University of Notre Dame Press, 1984.

———. *Dependent Rational Animals: Why Human Beings Need the Virtues*. Chicago: Open Court Press, 1999.

———. "Ends and Endings." *American Catholic Philosophical Quarterly* 88 (2014): 807-821.

———. *Ethics in the Conflicts of Modernity: An Essay on Desire, Practical Reasoning, and Narrative*. Cambridge: Cambridge University Press, 2016.

———. *Ethics and Politics: Selected Essays*. Volume 2. Cambridge: Cambridge University Press, 2006.

———. *First Principles, Final Ends and Contemporary Philosophical Issues*. Milwaukee: Marquette University Press, 1990.

———. "How Aristotelianism Can Become Revolutionary: Ethics, Resistance, and Utopia." In *Virtue and Politics: Alasdair MacIntyre's Revolutionary Aristotelianism*, edited by Paul Blackledge and Kelvin Knight, 11-19. Notre Dame: University of Notre Dame Press, 2011.

———. "Intractable Moral Disagreements." In *Intractable Disputes about the Natural Law*, edited by Lawrence S. Cunnigham, 1-52. Notre Dame, IN: University of Notre Dame Press, 2009.

———. "Theories of Natural Law in the Cultures of Advanced Modernity." In *Common Truths: New Perspectives on Natural Law*, edited by Edward B. McLean, 91-118. Wilmington: ISI Books, 2000.

Maritain, Jacques. *Man and the State*. Chicago: University of Chicago Press, 1951.

———. *Raison et raisons.* Paris: Egloff, 1947.

McCarthy, John. "How Knowing the World Completes the World: A Note on Aquinas and Husserl." *Proceedings of the American Catholic Philosophical Association* 57 (1993): 71–86.

———. "Husserl's Concept of Categorial Form." PhD diss., The Catholic University of America, 1988.

McInerny, Ralph. *Art and Prudence: Studies in the Thought of Jacques Maritain.* Notre Dame: University of Notre Dame Press, 1988.

———. "Natural Law and Human Rights." *American Journal of Jurisprudence* 36 (1991): 1-14.

———. "The Principles of Natural Law." *The American Journal of Jurisprudence* 25 (1980): 1-15.

McKay, Angela. "Synderesis, Law, and Virtue." In *The Normativity of the Natural: Human Goods, Human Virtues, and Human Flourishing*, edited by Mark J. Cherry, 33-44. Boston: Springer, 2009.

Merleau-Ponty, Maurice. *Phenomenology of Perception*. Translated by Colin Smith. New York: The Humanities Press, 1962.

Miller, Fred. "Aristotle on Natural Law and Justice." In *A Companion to Aristotle's Politics,* edited by David Keyt and Fred Miller, 279-306. Cambridge: Basil Blackwell, 1991.

Moran, Dermot. "Husserl's Transcendental Philosophy and the Critique of Naturalism." *Continental Philosophy Review* 12 (2008): 401-425.

Noë, Alva. *Action in Perception*. Cambridge, MA: MIT Press, 2004.

———. "Real Presence." *Philosophical Topics* 33 (2005): 235-264.

Noone, Timothy B. "The Originality of St. Thomas's Position on the Philosophers and Creation." *The Thomist* 60 (1996): 275-300.

O'Callaghan, John. "Creation, Human Dignity, and the Virtues of Acknowledged Dependence." *Nova et Vetera* 1 (2003): 109-140.

Oakeshott, Michael. *On Human Conduct*. Oxford: The Clarendon Press, 1975.

Oderberg, David. "The Metaphysical Foundations of Natural Law." In *Natural Law in Contemporary Society*, edited by Holger Zaborowski, 44-75. Washington, DC: The Catholic University of America Press, 2010.

Owens, Joseph. *Aristotle: The Collected Papers of Joseph Owens*. Edited by John R. Catan. Albany: State University of New York Press, 1981.

Percy, Walker. "Naming and Being." *The Personalist* 41 (1960): 148-157.

Pieper, Josef. *Abuse of Language – Abuse of Power*. Translated by Lothar Krauth. San Francisco: Ignatius Press, 1992.

Potts, Timothy C., ed. *Conscience in Medieval Philosophy*. Cambridge: Cambridge University Press, 1980.

Pritzl, Kurt, O.P. "Aristotle's Door." In *Truth: Studies of a Robust Presence*, edited by Kurt Pritzl, 15-39. Washington, DC: The Catholic University of America Press, 2010.

Prufer, Thomas. "A Protreptic: What Is Philosophy?" In *Studies in Philosophy and the History of Philosophy*, edited by John K. Ryan, 1-19. Washington, DC: The Catholic University of America Press, 1963.

———. *Recapitulations: Essays in Philosophy*. Washington, DC: The Catholic University of America Press, 1993.

Reilly, James P. "Saint Thomas on Law." In *The Gilson Lectures on Thomas Aquinas*, edited by James P. Reilly, 163-178. Toronto: Pontifical Institute of Medieval Studies, 2008.

Reynolds, Glenn Harlan. "Ham Sandwich Nation: Due Process When Everything Is a Crime." *Columbia Law Review: Sidebar* 113 (2013): 102-108.

Rhonheimer, Martin. *Natural Law and Practical Reason: A Thomist View of Moral Autonomy*. New York: Fordham University Press, 2000.

———. "Natural Law as a 'Work of Reason': Understanding the Metaphysics of Participated Theonomy." *The American Journal of Jurisprudence* 55 (2010): 41-77.

Rommen, Heinrich. *The Natural Law: A Study in Legal and Social History and Philosophy*. Translated by Thomas R. Hanley. London: B. Herder Book Co., 1947.

Roniger, Scott. "Speech and Being in Aristotle's *Metaphysics*." *International Philosophical Quarterly* 57 (2017): 31-41.

Rosen, Stanley. *Plato's Sophist: The Drama of Original and Image*. New Haven: Yale University Press, 1983.

Rziha, John. *Perfecting Human Actions: St. Thomas Aquinas on Human Participation in Eternal Law*. Washington, DC: The Catholic University of America Press, 2009.

Sanford, Jonathan J. *Before Virtue: Assessing Contemporary Virtue Ethics*. Washington, DC: The Catholic University of America Press, 2015.

Sexti Pompei Festi. *De verborum significatione quae supersunt cum Pauli Epitome*. Lipsiae: Sumptibus Simmelii eiusque socii. 1880.

Sherwin, Michael. "If Love It Is: Chaucer, Aquinas and Love's Fidelity." *New Blackfriars* 94 (2013): 456-474.

Simon, Yves. *The Definition of Moral Virtue*. Edited by Vukan Kuic. New York: Fordham University Press, 1986.

———. *A General Theory of Authority*. Notre Dame, IN: University of Notre Dame Press, 1980.

———. *The Great Dialogue of Nature and Space*. Edited by Gerard J. Dalcourt. South Bend, IN: St. Augustine's Press, 2001.

———. *Tradition of Natural Law*. Edited by Vukan Kuic. New York: Fordham University Press, 1992.

Slade, Francis. "Ends and Purposes." In *Final Causality in Nature and Human Affairs*, edited by Richard Hassing, 83-85. Washington, DC: The Catholic University of America Press, 1997.

———. "On the Ontological Priority of Ends and Its Relevance to the Narrative Arts." In *Beauty, Art, and the Polis*, edited by Alice Ramos, 58-69. Washington, DC: The Catholic University of America Press, 2000.

———. "Two Versions of Political Philosophy: Teleology and the Conceptual Genesis of the Modern State." In *Natural Law in Contemporary Society,* edited by Holger Zaborowski, 235-263. Washington, DC: The Catholic University of America Press, 2010.

Smith, Thomas. "The Order of Presentation and the Order of Understanding in Aquinas's Account of Law." *The Review of Politics* 57 (1995): 607-640.

Sokolowski, Robert. "Discovery and Obligation in Natural Law." In *Natural Moral Law in Contemporary Society,* edited by Holger Zaborowski, 24-43. Washington, DC: The Catholic University of America Press, 2010.

———. "Exact Science and The World in Which We Live." In *Lebenswelt und Wissenschaft in der Philosophie Husserls*, edited by Elizabeth Ströker, 92-106. Frankfurt: Klostermann, 1979.

———. *The Formation of Husserl's Concept of Constitution*. The Hague: Martinus Nijhoff, 1970.

———. *The God of Faith and Reason: Foundations of Christian Theology*. Washington, DC: The Catholic University of America Press, 1995.

———. "Husserl's Concept of Categorial Intuition." *Phenomenology and the Human Sciences*, Supplement to *Philosophical Topics* 12 (1981): 127-141.

———. "Husserl and Frege." *The Journal of Philosophy* 84 (1987): 521-528.

———. "Husserl's Discovery of Philosophical Discourse." *Husserl Studies* 24 (2008): 167-175.

———. *Husserlian Meditations: How Words Present Things*. Evanston: Northwestern University Press, 1974.

———. *Introduction to Phenomenology*. Cambridge: Cambridge University Press, 2000.

———. *Moral Action: A Phenomenological Study*. Bloomington: Indiana University Press, 1985.

———. "Phenomenology of Friendship." *Review of Metaphysics* 55 (2002): 451-470.

———. *Phenomenology of the Human Person*. Cambridge: Cambridge University Press, 2008.

———. *Pictures, Quotations, and Distinctions: Fourteen Essays in Phenomenology*. Notre Dame, IN: University of Notre Dame Press, 1992.

———. *Presence and Absence: A Philosophical Investigation of Language and Being*. Bloomington: Indiana University Press, 1978.

———. "The Relation of Phenomenology and Thomistic Metaphysics to Religion: A Study of Patrick Masterson's *Approaching God: Between Phenomenology and Theology*." *The Review of Metaphysics* 67 (2014): 603-626.

———. "What Is Natural Law? Human Purposes and Natural Ends." *The Thomist* 68 (2004): 507-529.

Sousa, Daniel. "Phenomenological Psychology: Husserl's Static and Genetic Methods." *Journal of Phenomenological Psychology* 45 (2014): 27-60.

Spaemann, Robert. "The Unrelinquishability of Teleology." In *Contemporary Perspectives on Natural Law: Natural Law as a Limiting Concept,* edited by Ana Marta González, 281-296. Burlington: Ashgate, 2008.

Stępień, Katarzyna. "Synderesis and the Natural Law." *Studia Gilsoniana* 3 (2014): 377-398.

Taipale, Joona."Twofold Normality: Husserl and the Normative Relevance of Primordial Constitution." *Husserl Studies* 28 (2012): 49-60.

Te Velde, Rudi. *Aquinas on God: The 'Divine Science' of the Summa Theologiae*. Burlington: Ashgate Publishing Company, 2006.

Tugwell, Simon, ed. and trans. *Albert and Aquinas: Selected Writings*. New York: The Paulist Press, 1988.

Upton, Thomas. "The Law of Non-contradiction and Aristotle's Epistemological Realism." *The Thomist* 66 (2002): 457-471.

Vakirtzis, Andreas. "Mimesis, Friendship, and Moral Development in Aristotle's Ethics." *Rhizomata* 3 (2015): 125-142.

VanDrunen, David. *Law and Custom: The Thought of Thomas Aquinas and the Future of the Common Law*. New York: Peter Lang Publishing, 2003.

Vogler, Candace. "Modern Moral Philosophy Again: Isolating the Promulgation Problem." *Proceedings of the Aristotelian Society* 106 (2006): 347-364.

von Hildebrand, Dietrich. *What Is Philosophy*? Milwaukee: The Bruce Publishing Company, 1960.

Weisheipl, James, O.P. *Friar Thomas D'Aquino: His Life, Thought, and Works*. Garden City: Doubleday, 1974.

White, Kevin. "Friendship Degree Zero: Aquinas on Good Will." *Nova et Vetera* 9 (2011): 479-518.

White, Thomas Joseph, O.P. *Wisdom in the Face of Modernity: A Study of Thomistic Natural Theology*. Ave Maria: Sapientia Press, 2009.

Williams, Bernard. *Truth and Truthfulness: An Essay in Genealogy*. Princeton: Princeton University Press, 2002.

Wippel, John. "Aquinas on Creation and Preambles of Faith." *The Thomist* 78 (2014): 1-36.

———. *The Metaphysical Thought of Thomas Aquinas: From Finite Being to Uncreated Being*. Washington DC: The Catholic University of America Press, 2000.

———. "Thomas Aquinas on Creatures as Causes of *Esse*." *International Philosophical Quarterly* 40 (2000): 197-213.

———. "Thomas Aquinas and Participation." In *Studies in Medieval Philosophy*, edited by John Wippel, 117-158. Washington, DC: The Catholic University of America Press, 1987.