

# Natural Law and Goodness in Thomistic Ethics

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The purpose of this essay is to recover a correct conception of natural law and goodness in the ethics of St Thomas Aquinas. In the years since the Second Vatican Council, there have been many accounts and reconstructions of Thomistic ethics and natural law. While this profusion of Thomisms testifies to the importance of Aquinas for modern ethics, not only for Catholics but for those of other faiths or none, the present essay will focus on the merits of one reconstruction that has enjoyed unrivalled significance for legal philosophers: the elaborate and painstaking reconstruction of Thomistic natural law theory, in John Finnis's book *Natural Law and Natural Rights*, and subsequently his book *Aquinas: Moral, Political and Legal Theory*. Such is the predominance of this interpretation of Aquinas in legal philosophy that many legal scholars will be perplexed by the stated purpose of this essay: for the reader is instructed in Finnis's work that 'natural law' is a synonym for 'ethics', rather than—as this essay will maintain—a *part* of ethics.<sup>1</sup> At the same time, it might be suspected that this difference is merely a terminological one, upon which nothing of any great importance turns.

As I hope to show, this suspicion is mistaken. The gap between Aquinas's position and Finnis's reconstruction is a radical one. Among the many issues that are affected, I will concentrate on only one: the character of goodness or the good. Finnis's reconstruction leads him to suppose that the heart of Aquinas's concern is with the identification, and subsequently pursuit of, basic human goods [*bona humana*]. These goods, including for example life and knowledge, are not moral goods. Instead, the subject-matter of morality concerns the manner of one's pursuit of these goods, as spelled out in criteria of 'practical reasonableness' (itself one of the human goods). On this view, ethics (i.e., natural law) is concerned with action, that is, with works to be done and actions to be performed—or avoided. The focus is upon the external form of the action, to the detriment of its interior quality except as a subjective intention. A correct interpretation of Thomistic ethics considers goodness and action in a different sense. It considers human ends to consist in virtuous goods, such as friendship, charity and the like, rather than in non-moral goods. Natural law [*ius naturale*] concerns only one aspect of this question, the greater part of which is taken up with moral theology (ethics). Perhaps because Finnis is addressing legal philosophers who are mostly positivists, his work does not give adequate treatment to moral theology.<sup>2</sup> His account of Aquinas's natural law theory is salutary in one important

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1. See John Finnis, *Natural Law and Natural Rights*, 2nd ed (New York: Oxford University Press, 2011) [*NLNR*] at 437: "... simply ethics and political philosophy adequately done". See also *NLNR* 18, 23, 251, 280, 374. See Finnis, 'Natural Law Theory: its Past and its Present' (2012) 57 *Am J Juris* 81 at 92.
  2. Only perhaps, for the philosopher Germain Grisez, the originator of this interpretation of St Thomas, writes in the same vein (sometimes jointly with Finnis). For some references see below.

respect: namely, by making it clear that, as regards Christian ethics, there is a wide variety of different forms of living which count as a good, worthwhile life. But it is seriously mistaken in its sidelining of the virtues as mere ‘ways ... of pursuing the basic values’.<sup>3</sup>

Few modern-day interpreters of Aquinas have sought directly to oppose the fundamental errors of the Finnis reconstruction. In an early review essay, Ernest Fortin undertook perhaps the most famous such effort, but the effort misfired because of a misguided focus on supposed differences between a tradition of natural right and one of natural law.<sup>4</sup> Both Russell Hittinger and Jean Porter have offered salient critiques, but neither expose the fundamental error underlying Finnis’s approach (the prioritisation of non-moral goodness over virtuous goodness).<sup>5</sup> Moreover, virtually all modern Thomists agree in regarding natural law and the ethics of virtue to be alternative terms for the same thing.<sup>6</sup> Due to the influence of Finnis’s writings, seeking to correct errors seems a worthwhile undertaking.

I will therefore begin by discussing the reconstruction of Aquinas’s position by Finnis and his collaborators (Part I). After exposing some of the problems with this interpretation (Part II), I will give an account of Aquinas’s true position (Parts III-V). As stated above, I will confine my arguments to issues concerning the good or goodness, and natural law.

## I. Natural Law Reconstructed

The influential modern-day reconstruction of Thomistic natural law (so-called ‘new natural law theory’)<sup>7</sup> began with a commentary upon Quaestio 94.2 of the *Summa Theologiae*’s prima secundae pars.<sup>8</sup> Here, Aquinas gives his response to the question ‘whether the natural law contains many precepts, or only one.’ In the main reply, he affirms that the natural law contains a variety of precepts, all of which are based on a primary indemonstrable precept, that ‘the good is to be done and pursued, and the bad is to be avoided’. The variety of the other precepts has an order to it which corresponds to the order to be found in natural human

3. Finnis, *NLNR*, *supra* note 1 at 90-91.

4. See Ernest L Fortin, “The New Rights Theory and the Natural Law” (1982) 44:4 *Review of Politics* 590. For Finnis’s belated response, see “Grounding Human Rights in Natural Law” (2015) 60:2 *Am J Juris* 199.

5. See, e.g., Russell Hittinger, *A Critique of the New Natural Law Theory* (Notre Dame: University of Notre Dame Press, 1989) at 50-52; Hittinger, “Natural law as ‘Law’: Reflections on the Occasion of Veritatis Splendor” (1994) 39 *Am J Juris* 1; Jean Porter, *The Recovery of Virtue* (Louisville: Westminster John Knox Press, 1990) at ch 2; Porter, *Nature as Reason* (Grand Rapids: Wm B Eerdmans, 2005); Porter, *Ministers of the Law* (Grand Rapids: Wm B Eerdmans, 2010) at 66-67, 182-84; Tracey Rowland, *Culture and the Thomist Tradition* (New York: Routledge, 2003) at 136-48.

6. The exceptions are Vernon J Bourke, “Is Aquinas a Natural Law Ethicist?” (1974) 58:1 *The Monist* at 52; Servais Pinckaers, *The Sources of Christian Ethics* (Washington, DC: Catholic University of America Press, 1995) at 134-67, 327-53; Thomas S Hibbs, *Virtue’s Splendor* (New York: Fordham University Press, 2001) at 9, ch 2; and (to a point) Terence Irwin, *The Development of Ethics* (New York: Oxford University Press, 2007) at I §§ 301-06, 309.

7. The phrase, due to Hittinger, is not one that its adherents readily accept, for they wish to stress faithfulness and continuity with Aquinas. I use it, with due hesitation, for the sake of convenience.

8. See Germain G Grisez, “The First Principle of Practical Reason” (1965) 10 *Nat L Forum* 168.

inclinations: the most basic inclinations pertain to one's survival, so it belongs to natural law that one ought to pursue one's own life, and avoid threats to life; one's inclinations to beget and educate offspring are similarly reflected in natural law precepts; and the more sophisticated inclinations that are distinctly human, such as the desire to know the truth and to live peacefully in society, are likewise contained in precepts of natural law.<sup>9</sup>

Among the points that the new natural lawyers wish to stress, are the following: 1) Aquinas preserves the practical orientation of moral thinking by founding all natural law precepts upon a primary indemonstrable practical precept: 'ought' is not being derived from 'is', morality is not being derived from 'nature' or any injunction to 'follow nature'; (2) the references to good [*bonum*] and bad [*malum*] in the primary precept do not denote moral ideas; even the very wicked reason on the basis of these precepts for 'end' has the intelligible significance of 'good', and every person who acts, acts for the sake of some end; (3) Aquinas's response sets out the *first* principle of practical reason (i.e., natural law), but there are many others, of the form 'X is a good, to be pursued ...', or 'Y is contrary to good, and so to be avoided ...'; (4) Aquinas does not give an exhaustive list of such goods, although some are mentioned later in the reply; (5) the reply leaves open to question the identity of the *moral* principles which ought to govern the way in which individuals should devote themselves to the fundamental human goods.<sup>10</sup>

From this it should be noted that the new natural lawyers have succeeded in capturing the eudaimonist orientation of Aquinas's ethics, which is fundamentally concerned with our end and good. In this, they successfully steered natural law theory away from the narrow legalism that had come to dominate in the early twentieth century (points (1)-(3)). The main effort of reconstruction was with points (4) and (5), the moral theory or 'action theory': these concerned matters, to quote Finnis's words, of which Aquinas gives a 'highly elliptical, scattered' and even 'seriously underdeveloped' account.<sup>11</sup>

This effort of reconstruction depended upon premises that seem reasonable enough. In order to grasp even the most basic moral precepts, such as that one must not harm one's neighbour, it is first necessary to understand what is *good* for one's neighbour; and both these goods and the practical principles which identify them, cannot then themselves be moral in character, for they are the necessary prelude to morality. Aquinas calls them *quasi fines praeceptorum*<sup>12</sup> [more akin to the ends of the precepts] and *seminalia virtutum*<sup>13</sup> [roots of the virtues]. The initial work of practical reason is thus with the identification of *basic* human goods, those genuine and self-evident forms of human flourishing, of which Aquinas

9. See Aquinas, *Summa Theologiae* at I-II.94.2c.

10. See, e.g., Grisez, *supra* note 8 at n 4; Finnis, *NLNR*, *supra* note 1 at ch II-V; Grisez, Finnis & Joseph Boyle, "Practical Principles, Moral Truth and Ultimate Ends" (1987) 32 *Am J Juris* 99; Finnis, Grisez & Boyle, "Direct and Indirect: A Reply to Critics of our Action Theory" (2001) 65 *The Thomist* 1; Finnis, *The Collected Essays of John Finnis* (Oxford: Oxford University Press, 2011), vol 1 at ch 9-10; Finnis, *Fundamentals of Ethics* (Washington: Georgetown University Press, 1983) at III.4.

11. Finnis, *NLNR*, *supra* note 1 at 46.

12. Aquinas, *supra* note 9 at I-II.100.11c.

13. See *ibid* at I-II.63.1c.

gives only a few examples (preservation of one's existence, procreative union, knowledge, sociability), and of which perhaps some exhaustive account can be given.<sup>14</sup> Since these goods are incommensurable (in being basic), there is no overall vantage point from which one sort of life is intrinsically better or more morally excellent than another. There are therefore many legitimate and reasonable ways in which persons may devote themselves to the basic human goods. Only circumstances render a given choice between basic goods reasonable or unreasonable (I should not read books as the house burns down around me). Having once elaborated the human goods that it is valuable to pursue, the central and foundational moral questions then become: (i) given the infinite variety of ways in which it is possible to devote oneself and one's life to combinations of these goods, and the very finite time, capacities and opportunities at one's disposal, which goods or which combination of goods ought I to devote myself; and (ii) in what ways must I act so as to ensure that I do not *directly* harm, diminish, or otherwise qualify such goods, or prevent or restrict others' participation in them?

It is with the second question, in particular, that new natural lawyers have been concerned. The end or goal for the human being is 'all-round flourishing' or 'integral human fulfilment', tantamount to Aquinas's notion of *beatitudo imperfecta*.<sup>15</sup> Its achievement is obtained by accordance with the requirements of practical reasonableness, but above all with the 'master' principle of morality, that *one should not directly attack any basic good*. To use the classic example from Catholic moral teaching, a doctor can morally surgically intervene to save the life of a pregnant woman, even if the fully certain and foreseen consequence of the intervention is the termination of the life of the unborn child, i.e., as long as it is not part of the doctor's intention to abort the unborn, which is merely accepted as a foreseeable side-effect. This obviously makes moral demands on two aspects of action: (1) the external form of the act (that it is reasonable, proportionate, etc); and (2) that the interior act of intention is morally licit. This must of course involve more than simply compliance with the above precept, for instance it must involve some notion of distributive fairness and commutative justice, among other things. But there is no present need to spell out these further requirements, for my concern is with the basic form of the theory, and the role of good or goodness within it.

## II. Criticism of this Reconstruction

It is taken for granted by new natural lawyers that Aquinas's purpose in Quaestio 94.2 is to found all of the precepts of natural law upon a first indemonstrable principle. Proceeding from this principle (that the good is to be done...) it is

14. For Finnis's list of seven basic goods, see, e.g., *NLNR*, *supra* note 1 at III-IV.

15. See Finnis, *Aquinas: Moral, Political and Legal Theory* (New York: Oxford University Press, 1998) at 106-07; Finnis, "Direct and Indirect", *supra* note 10; Finnis, *NLNR*, *supra* note 1 at 100-33, 451, 454-56. In *Aquinas*, at 103-31, he discusses integral human fulfilment at length; but note that as a *practical* philosopher, Finnis would regard that notion as ultimately uninformative except insofar as the master moral principle and its derivatives (e.g., no arbitrary priority amongst persons) specify how a person is to attain it.

possible to attain all of the subsequent precepts of natural law, including (eventually) the moral precepts discussed earlier. But there are two puzzling features of Aquinas's thought, if we accept this explanation. The first is that Aquinas does not use the opportunity, either then or subsequently, to spell out these precepts: they remain 'scattered', 'elliptical' and 'underdeveloped'. The second is that this Quaestio sits in the midst of the *Summa*'s 'treatise' on Law; but by this point Aquinas has already given a detailed treatment of ethics in the 'treatise' on Beatitude (i.e., human ends), (QQ.1-5), in that on Human Acts (QQ.7-21), on Passions (QQ.22-48) and on Virtues and Vices (QQ.49-89). If we include the treatise on Grace (QQ.109-114) in an account of Aquinas's moral theology (as we ought to do), it is impossible not to notice that the questions on law (QQ.90-108), in which natural law itself is but one subject, are situated in a far more wide-ranging ethical treatise: one which is taken up immediately again in the *Secunda-secundae*'s detailed discussion of particular virtues (numbering 189 questions). Why should the foundational precepts of Aquinas's ethics (moral theology) be hidden away in his discussion of law?

These mysteries disappear if we accept a different interpretation of Aquinas's purpose: he simply was not looking for a foundation to ethics in Quaestio 94.2. Its question ('whether there are many natural law precepts, or only one') is in fact Aquinas's reworking of a standard topic of scholastic philosophy, whether there are many laws of nature or only one: a question which, despite its contradictory appearance, arose out of the scholastic method of seeking illumination in the writings of opponents by extracting from them what is true, on the basis of which a reply is constructed and mistaken views explained and corrected. In this case, the scholastic writers were faced with numerous divergent conceptions of the natural law. From the stoics they drew the idea of natural law as right reason in accord with nature; from the Roman jurists (in Ulpian's famous definition), that which nature teaches to all animals; from Scripture and patristic sources, a specifically Christian idea; and—in Aquinas's case—Aristotle's ethical philosophy. Aquinas's reply harmonises all of these conceptions by explaining that they all depend upon the ideas of 'good' and 'end'.<sup>16</sup>

Proceeding from this interpretation, it becomes clear that Quaestio 94.2 is not, as modern-day Thomist natural lawyers believe, the cornerstone of Aquinas's entire treatment of ethics. If we want to identify anything as the foundation of Aquinas's ethics, the place to look is in the prologue to his discussion of ultimate end. This comes immediately after the short prologue to the *Prima-secundae* itself, which identifies the subject-matter of the ensuing discussion as human action, 'insofar as the human being is the source of his own actions [*homine ... est suorum operum principium*], in possessing free will and control over his actions.' Aquinas says that the inquiry will be: what is our ultimate end, and by what means

16. I owe the insight concerning the standard topic on laws of nature to Jean Porter, "Does the Natural Law Provide a Universally Valid Morality?" in Lawrence S Cunningham, ed, *Intractable Disputes About the Natural Law: Alasdair MacIntyre and Critics* (Notre Dame: University of Notre Dame Press, 2009) at 53, 62-67. See her text for examples of the discussion of this standard topic.

do we advance toward the end, or otherwise deviate away from it? At no point in the long discussion of ethics in the *Summa Theologiae* (or elsewhere to my knowledge) does Aquinas ever raise the question of a ‘master moral principle’ or of an ultimate foundation of ethics. The reason is simple: he endorses a eudaimonist ethics, in which the important questions concern the identification of the final end; and it is from an understanding of the end that we, derivatively, come to have a knowledge of the steps we have to take in order to attain it. The term Aquinas uses for this ultimate end is ‘beatitude’ [*beatitudo*]; and the various subordinate goods which we have to realise as steps on the way to it, Aquinas usually describes as ‘imperfect beatitude’ [*beatitudo imperfecta*], or merely ‘happiness’ [*felicitas*]. The nature of these subordinate goods is determined by the nature of the final end: ‘for the end is the rule of whatever is ordered to the end.’<sup>17</sup>

Aquinas’s reference to the means of advancement to the end, and the reference to subordinate (human) goods, is a reference to the virtues: in answer to the question whether imperfect happiness in this life can be lost, he replies that it can, either because extraneous circumstances impede one’s efforts, or because ‘a person degenerates into vice from virtue, in the actions of which this happiness principally consists.’<sup>18</sup> By contrast, the basic human goods which are at the heart of the modern-day reconstruction of Aquinas’s position are not virtuous goods [*bonum honestum*] but natural goods [*bonum naturale*], such as health and knowledge.<sup>19</sup> Moreover, the virtues are relegated to the status of ‘ways ... of pursuing’ the basic natural goods.<sup>20</sup> Yet even here, the virtues are subordinated to moral *principles*, for virtues ‘are a response to reasons, and reasons are propositional’;<sup>21</sup> and ‘the relevant propositions are the first principles of practical reason(ing)’.<sup>22</sup>

Again, it is never explained why such a careful thinker as Aquinas should have failed so entirely to identify the relevant principles, nor why his discussion proceeds through a discussion of mere ‘modes’ of participation in fundamental goods which he nowhere exhaustively describes. The reason is that, for Aquinas, the virtuous goods of friendship, charity, justice and compassion are the fundamental goods in which happiness consists: ‘the virtuous good is the fundamental human good [*honestum sit principale hominis bonum*] ... whereas those goods which pertain to the body or external goods which benefit the body, are secondary goods.’<sup>23</sup> On the subject of natural goods, Aquinas’s standpoint is the same as that of Aristotle: ‘they do not belong to the very essence of happiness, but are necessary instruments in the service of happiness, which consists in the work of

17. Aquinas, *supra* note 9 at I-II.1, prologue.

18. See *ibid* at I-II.5.4c.

19. See, e.g., Francisco Suarez, *De Legibus* at II.7.5, II.15.2; Suarez, *Disputationes Metaphysicae* at X.2.11-13; Aquinas, *supra* note 9 at I-II.98.4, ad 3.

20. Finnis, *NLNR*, *supra* note 1 at 90-91: the sidelining of the virtues is clear from the fact that this is the only sentence in the entire book to mention the virtues directly. Perhaps as a consequence of criticism, Finnis’s later book *Aquinas* gives more explicit treatment to the virtues, but they remain subordinate (see main text above).

21. Finnis, *Aquinas*, *supra* note 15 at 124; also at 107: virtue in action ‘means practical reason in action’. Cf Aquinas, *supra* note 9 at I-II.58.2c, ad 3 for a correction of this picture.

22. Finnis, *NLNR*, *supra* note 1 at 422 (2011 postscript).

23. Aquinas, *supra* note 9 at III.15.6 ad 2.



virtue.<sup>24</sup> Also of relevance is Aquinas's firm reminder that beatitude does not consist in any created good [*bonum creatum*], i.e., those goods which bring to rest man's natural desires.<sup>25</sup> In this he follows St Augustine's teaching that the love of created goods as one's ultimate end is a mortal sin.<sup>26</sup>

Finnis and other new natural lawyers invert this order. For in regarding virtues not as basic values but as ways of pursuing and obtaining basic values (such as knowledge or life), they consider the human good to consist in basic goods that remain incommensurable, in that any hierarchy amongst them could only ever be temporary and for the sake of some specific purpose or ordering. This contradicts Aquinas's own view of the matter, for he regards acquired virtues as the greatest of human goods, though not absolutely speaking: the absolutely greatest good is infused virtue, because it guides us toward our supreme supernatural good.<sup>27</sup> There exists, then, a clear hierarchy in which virtuous goods occupy a higher place than natural goods; indeed the incommensurability of natural goods arises because there are numerous ways of living and pursuing a virtuous life. But in each instance, the basic natural goods assist us in pursuing virtue, not virtue assisting us to obtain natural goods.<sup>28</sup>

The extent to which the new natural law reconstruction severely limits the scope of Aquinas's ethics should begin to become clear. As a first step, it limits the importance of the virtues to aspects of reasonableness in pursuing basic natural goods. In practice, this means that one can inquire into the external form of an act (e.g., whether it is proportionate to the end it aims to achieve), or into the interior quality of the act, in terms of the reasonableness of its intention. As a second step, the reconstruction restricts Aquinas's ethics to his theory of natural law. In consequence, Aquinas's ethics appears to possess at once a legalistic character (in that it concerns a morality of principles to orchestrate the ways in which goods can be legitimately pursued) and a highly analogical conception of natural law (in that natural human goods and modes of pursuit are identified by demands of practical reasonableness that are only roughly akin to laws in the strict sense).<sup>29</sup>

Natural law cannot play this expanded role in Aquinas's ethics, however. This much is apparent from the fact that our ultimate end is not natural but supernatural: the vision of God in the afterlife.<sup>30</sup> The whole of Aquinas's ethics (moral

24. See *ibid* at I-II.4.7c: Aquinas talks of bodily or external good [*bonis corporis; bona exteriora*], but note the reference to that which is needed for contemplative and active virtue, hence e.g., natural goods like bodily health, knowledge, etc. See also Aristotle, *Nicomachean Ethics* at I.5.1095b-1096a, I.8.1099a; Aquinas, *supra* note 9 at I-II.3.5c).

25. See Aquinas, *supra* note 9 at I-II.2.8c, ad 3.

26. See Augustine, *De Civitate Dei* at XIV.28; Aquinas, *supra* note 9 at I-II.108.4c; Aquinas, *De Caritate* VI.

27. See respectively Finnis, *NLNR*, *supra* note 1 at 91-95; Aquinas, *Quaestiones Disputatae de Virtutibus* 9 ad 6 & 7.

28. See Aquinas, *De Perfectione Spiritualis Vitae* at 13.3: we do not love things such as knowledge, virtue and external goods in themselves, but only as an aid to oneself in virtue of the service they render one. (Thus everything is referable to love of God that is necessary for salvation—or—to love of oneself absolutely, leading away from God.)

29. See, e.g., Finnis, *NLNR*, *supra* note 1 at 280-81.

30. See Aquinas, *supra* note 9 at I-II.3.8c.

theology) is centred upon a return to God [*reditus*],<sup>31</sup> a purpose which cannot be gathered from natural instincts alone but requires revelation.<sup>32</sup> In the following two sections, I examine both aspects of Aquinas's ethics: the meaning of its articulation in terms of virtues, and the place of natural law within it. As I shall argue in part IV below, natural law fulfils three functions in Aquinas's ethics: (1) it explains how natural human inclinations are toward the moral virtues, even for people who lived without divine revelation; (2) it explains why universal moral truths are compatible with many different ways of living seen across the world; and (3) it explains the basis upon which unjust state law must be obeyed. These are important matters, but as I will explain later, they are far from being the whole matter of ethics for Aquinas.

First however, I will clarify the importance of the virtues in Aquinas's thinking.

### III. Virtuous Goodness in Aquinas's Ethics

A reader of *Natural Law and Natural Rights* directly encounters virtue only once in the book, for the purpose of being told that virtue is an entirely subordinate concern of natural law: the book itself *seems* to constitute evidence that Thomistic 'ethics' (i.e., natural law) can be presented entirely in other terms in which there is no mention of the virtues. In sharp contrast Finnis's later book *Aquinas* is filled with references to the virtues. A reader of both works may find this change puzzling. But there is no real difference in the *substance* of Finnis's argument, because he continues to treat the virtues as a subordinate issue, for inasmuch as they are rational aspects of moral deliberation, it is thought that they must be a response to reasons that are propositional (see Part II above). In fact, in a recent essay Finnis argues that the virtues are hiding in plain sight in the earlier book: for it treats extensively of two virtues in particular, justice and practical reasonableness. The latter is Finnis's own term for Aquinas's *prudentia*, the guiding virtue of practical reason that is simultaneously intellectual and moral.<sup>33</sup>

The shift is not a mere terminological one, however. For Aquinas is as clear as he can be that the work of practical reason (if we substitute this phrase for prudence) cannot be accomplished without the full range of moral virtues: prudence cannot assist us in judging well unless it is supported by moral virtue.<sup>34</sup> For Aquinas, rightful choosing requires both an inclination to a due end, and the

31. See, e.g., Aquinas, *ibid* at II-II.20.1 ad 3; Aquinas, *Sent* I.14.2.2, II.18.2.2.4, IV.49.1.3.1; Aquinas, *De perfectione spiritualis vitae* IV. It is also implicit at I-II.1.5. See also Porter, *supra* note 5 at 53.

32. See Aquinas, *supra* note 9 at I.2.1 (knowledge of the existence of God is not self-evident); Aquinas, *Summa Contra Gentiles* at III.38.1.2161 [Aquinas, *SCG*] (natural knowledge is insufficient); on the importance of inclinations for natural law, see Aquinas, *supra* note 9 at I-II.94.2c.

33. See Finnis, "Grounding Human Rights in Natural Law" 60 (2015) *Am J Juris* 199; Aquinas, *supra* note 9 at I-II.58.3 ad 1.

34. See Aquinas, *supra* note 9 at I-II.58.5, I-II.60.1c. See also the excellent account of reason's role in moral judgment in Michael S Sherwin, *By Knowledge and By Love* (Washington, DC: Catholic University of America Press, 2005), especially at 23-24.



correct choice of the things conducive to the end. These choices are made by exercising the intellectual virtue of prudence [*prudentia*], i.e., ‘practical reasonableness’. In Aquinas’s classic phrase this is ‘right reason concerning things to be done’.<sup>35</sup> But he clarifies immediately that ‘one cannot have prudence *unless one has the moral virtues*, for ... reason originally proceeds from a grasp of the end of the thing to be done, to which we are rightly orientated by the moral virtues.’<sup>36</sup> Furthermore, Aquinas holds it to be possible to possess the virtue of justice without that of prudence (although it will not be a perfect virtue), and acknowledges that virtues such as temperance and fortitude can exist ‘in some way’ [*aliqua liter esse*] without prudence: the difference is between doing a good work, and doing a good work for the right reasons.<sup>37</sup>

The importance of the virtues in Aquinas’s thought is made clear in his *Disputed Questions on the Virtues*, where in his response to Quaestio 2 he draws attention to the fact that virtue, in disposing us to acts that perfect us, obviates the need to reason our way to goodness from the beginning on each occasion.<sup>38</sup> If reason is the root of all the virtues<sup>39</sup> and is active in fulfilling all of virtue,<sup>40</sup> nevertheless only God can completely align our appetites with reason, by infusing certain virtues into us and by shaping our appetites and inclinations toward the good.<sup>41</sup>

Aquinas also holds that virtues demand a rule or measure, and the new natural lawyers rightly notice that he devotes some effort to state the precepts that correspond to each virtue: for example, in the case of justice, ‘giving to others what is due to them’, or in the case of charity, ‘loving God above all’ and ‘loving one’s neighbour as oneself’. But they are mistaken to think that the precepts suffice to determine virtuous courses of action. On the contrary, Aquinas warns that the precepts are meaningless unless one possesses the corresponding virtue, since moral virtues are rightful *dispositions* of will, whose function is to guide practical reason to the correct objects. For a person who has the corresponding virtue, its precept serves to specify its point or end; yet a theoretical knowledge of the end will not specify (without the corresponding disposition) the thing to be done in a given situation, to progress to the end. This is clearly affirmed in Aquinas’s treatment of charity, where it is said that charity does not govern reason as a rule or precept, but by a kind of affinity.<sup>42</sup>

An example will explain the distinction. In the response to the question, whether beneficence is an act of charity, Aquinas observes that the giving of a gift includes two aspects, the external object that is given, and the inward state of heart associated with delight in riches. The virtue of liberality works upon the inner passion so as to moderate inordinate desire and love of one’s own, and to

35. Aquinas, *supra* note 9 at I-II.65.1c [*recta ratio agibilium*]. Notice that for Aquinas, *prudentia* is the *perfection* of reason, not reason itself: I-II.66.2c.

36. See *ibid.*

37. See *ibid* at I-II.65.4c.

38. See Aquinas, *De Virt* at 1c.

39. See *ibid* at 4 ad 3.

40. See *ibid* at 8c.

41. See *ibid* at 4 ad 8, 9c.

42. See Aquinas, *supra* note 9 at II-II.24.1 ad 2.

make a person more willing to part with one's wealth. Thus, if a person donates a great gift, yet with an excessive desire to retain it for oneself [*concupiscentia retinendi*], this act of giving is not an instance of liberality. But in regard to the outer gift itself, an act of beneficence belongs to friendship or charity, and therefore it does not diminish a person's friendship if one gives to a friend, from love, something which one strongly desires to retain for oneself. Rather this demonstrates the perfection of one's friendship.<sup>43</sup> Neither the interior work, in which one learns to moderate the desire or love of one's own, nor the external act of beneficence, properly involve following a precept. Aquinas is very specific, that an act of beneficence arises 'from love', which is a kind of charity. This does not mean that virtues are, to borrow Finnis's phrase, 'sub-rational': friendship with others, like other virtuous goods, consists in a rational disposition [*habitus*] rather than only an emotion [*passio*]. So, persons who have the proper rational inclinations will spontaneously perform noble acts, even if they do not consciously have the relevant precepts. The precepts merely assist the virtues, by specifying the end (as in love of God and neighbour).

It seems that one reason for the modern-day misconception of Aquinas's teachings on the virtues lies in a narrower idea of reason than that assumed by the scholastics. I refer again to the idea that practical rationality consists in a response to reasons, which are propositional. This idea is not the same as the scholastic idea. As we have seen, Aquinas is concerned with actions that arise from virtuous *dispositions*, which are not mere passions. The new natural lawyers are right to say that a person's interior deliberations are in the form of propositions (it should also be added: as well as questions, doubts and guesses). But it would be wrong to think that virtue is equivalent to any set of propositions. A useful analogy is with a statement of the common law: a rule of the common law is never captured in its entirety by the propositions which try to express it. At most, very classic formulations express something that is timeless in the rule, but there is always an additional need to interpret the rule for the circumstances. This means that a law is always formally distinct from the propositions that interpret it. Similarly, a virtue is not merely another (less useful) way to talk about moral reasons for action. For it is—like a law—a *source* of reasons. Accordingly, much of the treatises on particular virtues in the *Secunda-secundae* are taken up with questions in which Aquinas is obliged to explain and reconcile apparent contradictions between the demands of the different virtues, as with the relationship between liberality and beneficence, above. For this reason, he affirms that, 'since charitable love ought to be extended to all, beneficence should also be extended to all, but according to place and time; *for all acts of virtue are shaped according to their due circumstances.*'<sup>44</sup>

Given the importance of the virtues and virtuous goodness for Aquinas's moral theology, it is necessary to understand the importance and purposes of natural law in his thought. These purposes are limited, but significant as I shall now argue.

43. See *ibid* at II-II.31.1 ad 2, see also II-II.117.2 ad 1, II-II.117.5c ad 3.

44. See *ibid* at II-II.31.2c.

#### IV. The Limited Scope of Natural Law

In the second step of Finnis's approach to Aquinas, he associates natural law [*ius naturale; lex naturalis*] with the whole field of ethics or moral theology. In fact, natural law doctrines occupy only a limited space within Aquinas's ethics. These purposes can be divided into three, as follows.

##### (a) *Inclination and revelation*

In the first place, the purpose served by natural law in Aquinas's ethics is to explain why individuals or entire peoples who never possessed the revealed truths of Scripture, nonetheless possessed a knowledge of virtue. The pagan philosophers, above all Aristotle and Plato, wrote and taught extensively on ethics, in ways which obviously anticipate Aquinas's own discussions, without the benefit of revelation. As a eudaimonist, Aquinas believes that there are not several ultimate ends but only one. All other goods except the one ultimate end are subordinate to that end, and remain good only insofar as they do not point away from the end.<sup>45</sup> It was therefore necessary to explain how pagan philosophers like Aristotle could possess moral *truths* even though they possessed an incorrect idea of the ultimate end.<sup>46</sup> The explanation required two things: it needed to call attention to the goodness *per se* of the things which derive their goodness from the final end, i.e., that they are genuine goods even when taken on their own terms—Aquinas does this in his treatise on ultimate end, and to a lesser extent in the treatise on law;<sup>47</sup> and it needed to show how pagans could have knowledge of these truths whilst not possessing revealed truth. Aquinas says that there is an exterior (as well as an internal) principle by which God moves human beings to the good, consisting partly in direction through law [*instruit per legem*] and partly in the assistance of Grace.<sup>48</sup> He does this by endowing human beings (and other creatures) with characteristic inclinations by which they naturally incline to their good, and—in the case of human beings—by 'placing [a law, i.e., the natural law] into human minds so that it can be naturally apprehended'.<sup>49</sup> Irrational creatures are subject to eternal law entirely through the operation of their natural instincts, whereas human beings participate in eternal law in a free and self-directed way.

This enables Aquinas to say that the pagan philosophers' conception of our end is not incorrect because it is not our good, but because it is not a complete conception of our good. Their idea of the supreme good represents what can be obtained by the natural power of reason; whereas the true supreme good, the beatific vision in the afterlife, needs the assistance of revelation and grace.<sup>50</sup> Even

45. See *ibid* at I-II.1.5c, I-II.1.6c, I-II.13.3 ad 2, I-II.90.2c, also I-II.12.3 ad 2.

46. See Mary Keys's illuminating discussion of the ways in which Aquinas adds to Aristotle's ethics, so that Thomist natural law is not a mere copy of Aristotle: *Aquinas, Aristotle and the Promise of the Common Good* (New York: Cambridge University Press, 2006) at 23, 67.

47. See Aquinas, *supra* note 9 at I-II.1.5c, I-II.5.3-4, I-II.94.2c.

48. See *ibid* at I-II.90, preamble, but see also especially I-II.63.1c & 63.2 ad 2.

49. See *ibid* at I-II.90.4 ad 1.

50. See, e.g., Aquinas, *supra* note 9 at I.62.1c & ad 3.

natural reason, operating without revelation (but with the assistance of God's law and Grace), can perceive the distinction between what is naturally desired as good for oneself (natural or true good), and what is desired with a 'self-preferring' love as a chosen [*per electio*] good (i.e., apparent or false good).<sup>51</sup> This lies at the core of the first precept of natural law, that the good is to be done and pursued, and the bad avoided.

According to the new natural law reconstruction of Aquinas's ethics, this precept simply affirms an equivalence between the concept of 'good' and 'to be done', for even the very wicked reason from it (with a misguided sense of good).<sup>52</sup> Indeed, such a view is not confined to new natural law philosophers: for example, Sherwin regards the directivity of I-II.94.2 as an orientation toward a 'general notion' of good.<sup>53</sup>

Some passages of Aquinas seem to lend support to this interpretation: at several points he states that derivative principles of natural law (those known only by the wise) can be wiped out from the hearts of sinners, but not the primary (*per se nota*) precepts.<sup>54</sup> In a passage from the *De Veritate*, he also claims that error in practical reason does not arise from first principles *per se*, but from the misuse of principles.<sup>55</sup> The context however makes it clear that Aquinas is referring specifically to the impossibility of wiping out the truth about moral goodness from the human heart. This is evident first of all from the topic under discussion, *synderesis*, i.e., the disposition [*habitus*] by which a person intuitively apprehends the first principles of practical reason. Aquinas affirms the position that sinful desires can overwhelm *synderesis*, but *synderesis* itself cannot fall into error. For there is nothing that is so execrable that no good is admixed with it.<sup>56</sup> This makes it clear that Aquinas is discussing the permanence of *moral* goodness in the human heart. Furthermore, it is clear why this must be Aquinas's meaning: for he thinks that we are assisted in our progress toward the supreme good by means of God's Grace and the instruction of His Law. These are by no means eradicable, even by the very sinful.

But the first precept of natural law (that the good is to be done...) cannot be supposed to refer to the pursuit of *false* goods: a point Aquinas makes specifically in his treatment of virtuous goodness, in which he states that the good of virtue (prudence) is not the goodness that is convertible with being, but moral goodness.<sup>57</sup> It is clear also when he observes that intelligence stands toward knowing the truth (not falsehoods) in the same way that the will stands toward loving the good.<sup>58</sup> One

51. See *ibid* at I.60.3c. For an excellent discussion of good in Aquinas see Porter, *The Recovery of Virtue*, *supra* note 5 at 35-38.

52. See Finnis, *The Collected Essays of John Finnis*, *supra* note 10 at I.9, 149; Finnis, *Aquinas*, *supra* note 15 at 95; Grisez, *supra* note 8 at 179.

53. See Sherwin, *supra* note 34 at 56-57, though he does go on to say that this allows us to apprehend the goods of *human flourishing*, not the widest range of true or false goods. See also his excellent discussion of natural inclination. See 41-118. See also Porter, *Nature as Reason*, *supra* note 5 at 68-125.

54. See, e.g., Aquinas, *supra* note 9 at I-II.100.1c, I-II.94.6c.

55. See Aquinas, *De Veritate* at 16.2 ad 6, relied on by Finnis, *Aquinas*, *supra* note 15 at 87.

56. See Aquinas, *De Ver* at 16.2sc. See also 16.3c, ad 2, ad 5.

57. See Aquinas, *De Virt* at 2c.

58. See Aquinas, *De Car* at 12 arg 16; thus sinners make use of the primary precept only in a defective way, they do not use it perfectly but in relation to a defective good. See also *De Car* at 12c.

could point also to Aquinas's reference to the Gloss on the passage in Romans 2:14 ('When the Gentiles, who have not the law, do naturally the things contained in the law, they are a law to themselves'):

Though [the Gentiles] do not have the written law, they still have the natural law, *in the light of which everyone understands and is directly conscious of [sibi conscius est] what is good and what is evil.*<sup>59</sup>

It can be concluded from this that Aquinas intended the primary precept of natural law as a reference to the virtuous good, and not a mere formal (empty) idea of 'good' to cover alike the possibilities of real and false good.<sup>60</sup>

### **(b) Universal truths and modes of life**

The second purpose fulfilled by natural law in Aquinas's ethics is to explain the relationship between universal moral truth and the many different ways of living in a community seen across the world. The teachings of Christ and the Apostles in the New Testament concern the duties to love God and to love one's neighbours, but they do not prescribe any single form of political society as morally the most excellent. Indeed the Gospels are careful to separate the duties owed to God from those owed to Caesar. Because the perfection of earthly communities is not our last end, moral theology does not specify particular political forms as objects of work to be achieved in this life.

Natural law—i.e., that part of Aquinas's ethics which deals with our natural ends—pertains to matters of virtuous actions ordered to the common good of the community.<sup>61</sup> First among all the matters essential to the common good is peace [*pax*], consisting of sociable or benevolent dispositions to one's fellow citizens [*harmonia, concordia*],<sup>62</sup> tranquility of internal order within the state [*temporalis tranquillitas civitatis*], as well as justice [*iustum*] and prosperity [*affluentia*].<sup>63</sup> The attainment of these ends also demands the good of a stable legal order,<sup>64</sup> proportionate government and impartiality in settling disputes,<sup>65</sup> enforcement of bargains and remuneration for work, as well as the restraint of negligent acts [*reparatio*]<sup>66</sup> and punishment of crimes [*retributio*].<sup>67</sup> These are necessary goods for all societies. Without them, there is anarchy rather than society.

One aspect of these goods (or equivalently, ends) looks towards the responsibilities of state government in securing them for its citizens. I will deal with this in subsection (c) on unjust law, below. But it would be a mistake to regard them only as duties of the state, for they are also responsibilities for every citizen. All

59. Aquinas, *supra* note 9 at I-II.91.2sc [emphasis added]. See also I-II.94.1 ad 2.

60. Further evidence of this is provided by Aquinas, *ibid* at II-II.79.1.

61. See *ibid* at I-II.90.2c, I-II.94.2c.

62. See Finnis, *Aquinas, supra* note 15, References at notes 85, 227; Aquinas, *supra* note 9 at I-II.94.2c.

63. See Aquinas, *supra* note 9 at I-II.96.3, I-II.98.1, II-II.77.4; Aquinas, *De Regno* at I.2-3.

64. See Aquinas, *supra* note 9 at I-II.90.4, I-II.95.3, I-II.96.1.

65. See *ibid* at I-II.97.2, I-II.97.4, II-II.120.1.

66. See *ibid* at II-II.62.4, I-II.105.2 ad 9.

67. See *ibid* at I-II.87.6.

except the most wicked can agree on the need to maintain peaceful and just relations with one's fellow citizens (e.g., to refrain from inflammatory behaviour, to perform one's contractual duties, render what is owed etc). Even people with highly divergent views of our ultimate end can agree on them, just because they are not the ultimate end but subordinate ends that must be obtained no matter what one's individual conception of the ultimate end. Of course for the Christian, it is necessary not only to deal justly with one's neighbours but also to love them: to exhibit not only the virtue of *iustitia*, but also of *caritas*. But natural law—the part of ethics divested of moral theology—also indicates why it is important to acquire *iustitia*. Most societies (unless they are deficient or very wicked) place citizens under positive *legal* duties of justice, like the observance of contracts, payment of taxes, compensation for harms etc. It is possible for the citizen to perform these duties very unwillingly, under protest or through enforcement by the courts. Such persons will not have happiness, because they act against their will, and in spite of their inmost wishes. It was clear even to pagan philosophers therefore that a prerequisite for a happy life was the acquisition of virtuous habits.

Modern legal philosophers are aware that effective legal order needs the voluntary compliance of a majority of citizens, who willingly carry out their legal duties of justice. Likewise, Aquinas noted the natural propensity of human beings to a life of peace in society.<sup>68</sup> But although all societies are founded upon natural law precepts of peace and justice, there will be a wide variety in the specific laws and arrangements by which each society pursues these ends. He acknowledges this for example in the *De Regno*, '[i]t is clear that a people can only be considered as one community [*multitudine*] if they are under the same laws and the same government....'<sup>69</sup> Some requirements of justice, such as the restraint of murder and fraud, or acts of restitution or compensation, are directly spelled out in the positive state law of all communities, and this common content was hence often referred to in classic writings as the law of peoples [*ius gentium*] or the European common (civil) law [*ius commune*]. But many other matters concerning, e.g., the specification of punishments, the method of determining title to property rights, distribution of risk in contract, the form of pleading in litigation, the constitutional powers of the prime minister or the president, and so forth, are all more or less matters for reasonable determination [*determinatio*] rather than direct derivation from moral precepts.<sup>70</sup> In the most extreme cases, on morally indifferent matters, positive state laws derive all of their authority from their enactment (e.g., whether to drive on the right or the left).<sup>71</sup>

This leads naturally on to the third purpose that is served by natural law in Aquinas's ethics, its explanation of when one should obey even an unjust enactment of the positive state law.

68. See *ibid* at I-II.94.2c. Aquinas agrees with Aristotle on the naturally political nature of human beings: I-II.96.2c, I-II.99.2c, II-II.26.3c, II-II.29.1 ad 1, II-II.47.10 ad 2, II-II.58.8c, II-II.58.9 ad 3.

69. Aquinas, *De Regno*, *supra* note 63 at I.15.106 (Aquinas adds, '... being directed to live well'). See also *De Reg* at I.2.10-15; *supra* note 9 at I-II.95.4c.

70. See especially Aquinas, *supra* note 9 at I-II.104.1c: they get their force not from reason alone but (also) from their enactment [*non habeant vim obligandi ex sola ratio sed ex institutione*].

71. See *ibid* at I-II.95.2c.



*(c) Unjust enactments*

Natural law explains the basis for obeying positive state law: since positive law is enacted for the common good of the community [*bonum civile*], it would be unjust to prioritise one's private interests over one's legal duties of justice. The basis of positive state law consists in the necessity to safeguard the common good. Private individuals do not possess the detachment or the coercive authority that is necessary to protect or oversee the common good. Only a ruling authority [*princeps*] governing through law can hope to secure internal order [*ordo per legem*] and the organised defence of the community against external enemies.<sup>72</sup> All political forms of government are rooted in these necessities, which explain the citizen's obligation to obey the state laws.

But natural law also gives reasons for disobedience to positive law, which are not political reasons. Political disagreement is not a sufficient basis for disobeying the positive law of the state. A person may conscientiously disobey the law only in the gravest circumstances: Aquinas remarks that it may often be necessary to give up one's just rights by offering obedience to an unjust law, in order to avoid disrupting civil order [*turbatio*] or occasioning public outcry [*scandalum*].<sup>73</sup> This is a reference to unjust provisions that might exist in a legal system which commands willing obedience due to being orientated to the common good. The loss to one's rights does not permit illegal resistance which endangers the broader common goods of peace, harmony, concord and the like.

But there are other kinds of unjust law which are not conscientiously binding. An example would be a law which commands the performance of an immoral act: such as murder, or taking more than one's proper share. In this case, one denies another's right as a means of unjustly extending one's own right. Acts of this kind damage an important component of the common good: justice (the virtue which ensures that all persons will obtain what is theirs by right).

This encompasses another possibility, i.e., laws that are unjustly burdensome to all subjects, or laws that are orientated away from the common good of the community and instead towards the lawgiver. Laws of these kinds are not conscientiously binding upon the subject, because their enactment exceeds the authority of the lawgiver [*ultra vires*], which is restricted to upholding the common good.<sup>74</sup> They are not 'licitly laws' but more like violent interventions.<sup>75</sup> They retain a resemblance to law in the proper sense only because they carry out a similar social function, but in a perverted way: they direct citizens to goodness, though not simply but relative to that particular government.<sup>76</sup>

All of these matters are available to careful ethical reflection, without the need of revealed truths (e.g., the outlines can be found in Books V and IX of Aristotle's *Ethics*). The treatment given to these issues by Aquinas, particularly in the 'treatise'

72. See *ibid* at I-II.104.1 ad 1 (detachment), I-II.90.3 ad 2 (authority); Aquinas, *De Virtutibus Cardinalibus* 4.4.

73. See *ibid* at I-II.96.4c & ad 3, I-II.97.1 ad 2, II-II.117.6c.

74. See *ibid* at I-II.96.4c.

75. See *ibid*.

76. See *ibid* at I-II.92.1 ad 4.

on Law, makes clear that human beings have every reason to accept and practise the virtues, even if they reject the truth of revelation. In the light of the range of issues, it may seem odd to claim that natural law is only a part of ethics, for Aquinas. I will therefore now turn to the question of Aquinas's moral theology.

## V. Moral Theology

The subject of ethics, for Aquinas, is concerned with the qualities of heart and mind that lead to God. As a eudaimonist, Aquinas conceives ethics to be the study of ends as well as means. In a way that is not open to natural intellect without revelation, the whole of ethics concerns the human being's return to God, who is the first beginning and the last end of all things.<sup>77</sup> This does not mean that natural law itself is entirely 'secular': Aquinas concedes that human beings have a natural inclination to 'know the truth concerning God.'<sup>78</sup> In all things that act for the sake of an end, there must be an inclination toward that end. This means that there must be an inchoate presence of the end [*inchoationem finis*] in the thing acting, without which it would not act for the sake of that end.<sup>79</sup> But in the case of the ultimate end, enjoyment of the vision of God is elevated entirely beyond the power of created natures. Consequently we human beings do not of our own capacity have a sufficient inclination to the ultimate end, and need God to infuse into us the virtues that lead to Him.<sup>80</sup> These include the theological virtues of faith, hope and charity, but charity (Christian love, in Latin *caritas*) infuses all of the other virtues, in order to direct them toward the correct ultimate end.<sup>81</sup>

It would not be practical to give a full account here of Aquinas's moral theology. I will instead discuss only a few matters which demonstrate how the subject of ethics in Aquinas goes beyond the more limited purposes of natural law. These examples will also serve to show the extent to which the ends and goods at the heart of Aquinas's ethics are virtuous goods rather than non-moral goods. The examples will mostly concern the workings of charity, but I will begin with a point concerning the virtue of hope [*spes*].

The virtue of hope concerns the eternal happiness of the beatific vision, and not the glory of worldly states.<sup>82</sup> It represents the Christian person's devotion to God and 'hatred' (i.e., disregard) of earthly things. Aquinas's discussion of natural law, like Aristotle's *Ethics*, makes clear that suffering and misfortune affect the virtuous person so that pre-moral goods such as health are necessary instruments in the effort to attain happiness. A person who lacks these goods

77. See *ibid* at I-II.62.1, I-II.91.4c; Aquinas, *SCG*, *supra* note 32 at III.37, III.151; Aquinas, *De Caritate* 8c, 9 ad 12 & 14 (on *ordo caritatis*), *De Perfectione Spiritualis Vitae* at 2.1.

78. See *ibid* at I-II.94.2c.

79. See Aquinas, *Sent* at III.23.1.4.3c, ad 1 (this is a very important *quaestio* for an understanding of Aquinas's moral theology). See also Aquinas, *Sent* I.17.1.1, IV.49.1.3.1 ad 2.

80. See Aquinas, *supra* note 9 at I-II.62.1c, I-II.63.3c, I-II.65.3c; Aquinas, *De Virt* at 10c, ad 4 & 8.

81. See Aquinas, *supra* note 9 at I-II.65.2c, I-II.63.3 ad 2, I-II.65.3c, II-II.23.7c; Aquinas, *Sent* at III.23.3.1.1 ad 2.

82. See Aquinas, *supra* note 9 at II-II.18.2 ad 4; Aquinas, *SCG*, *supra* note 32 at III.27-37.

cannot truly be happy.<sup>83</sup> Aquinas is able to surpass Aristotle's rather bleak conclusion, for Aristotle did not possess the theological concept of hope in eternal rest. Aquinas points out that the reference to happiness must be understood as a reference to natural happiness, in other words to the works of the virtues. For persons who possess hope, suffering and misfortune do not threaten their progress toward the ultimate end. Rather they will interpret their suffering as an opportunity to exhibit virtuous patience and fortitude, and to dedicate their efforts to God's glory. In the absence of hope, life's sorrows are merely what Aristotle says they are: potentially depriving the virtuous person of happiness, or even of opportunities to exercise virtue.<sup>84</sup>

I will now turn to the infused virtue of charity. The requirements of charity are in addition to natural law, for natural law is a type of *ius*, whereas charity is concerned with Christian moral obligations that extend beyond what is due to one. It consists of the love of neighbours and enemies, and the forgiveness of wrongs for which it would not be unjust to seek recompense (the imitation of Christ). Charity is not simply an additional virtue to the theory of natural law, because it infuses all of the virtuous goods that are the subject of natural law. It does this by directing the works of all the virtues to the ultimate end of friendship with God. To do so it not only transforms the end, but also the very basis of virtues such as justice, compassion, prudence and so on.<sup>85</sup> This clearly shows the importance of charity for Aquinas's ethics. Natural law directs us to be just in our dealings toward others: we should give to every person what is rightfully theirs, and refrain from that which belongs to another.<sup>86</sup> As we have seen, natural law also directs that virtuous persons should sometimes forego their right in order to avoid public scandal or disturbance. In addition to this, natural law specifies that one should exercise one's rights compassionately: sometimes one will be guilty of a lack of compassion [*immisericordia*] unless one refrains from one's right, for example, where an insolvent debtor's other creditors are in greater need. Compassion is exercised on the basis of the harm caused to another by the exercise of one's rights. Christian charity goes beyond this because the love of one's neighbours and enemies may sometimes necessitate relinquishing one's rights even where there would be no harm in asserting them: this is clearest in the case of forgiving one's enemies instead of prosecuting them.<sup>87</sup>

It is plain to see how Aquinas's ethics goes beyond the natural law in this instance. By refraining from one's right, the exercise of charity results in a harm

83. See the texts accompanying note 23; also Julia Annas, *The Morality of Happiness* (New York: Oxford University Press, 1993) at 329-33.

84. See Aquinas, *De Spe* 4 (NB the tenuous reference to Aristotle).

85. See Aquinas, *Sent* III.27.2.4.3c: charity is the mover, form and end of every virtue; Aquinas, *supra* note 9 at II-II.117.6.

86. See Aquinas, *supra* note 9 at II-II.57.1c. For a classic discussion see Gérard Gilleman, *The Primacy of Charity in Moral Theology* (Westminster: Newman Press, 1959) Parts II-III.

87. See Aquinas, *Sent* at III.30.2c: this question discusses two aspects of forgiveness, one pertaining to the necessity of wishing eternal good to one's enemies as their ultimate end, the other with the perfection of wishing temporal goods for one's enemies (but the necessity of not wishing them temporal evils). See also *Sent* III.30.1c & ad 1; Aquinas, *supra* note 9 at II-II.23.1 ad 2, II-II.79.3c; Aquinas, *De Car* at 8c.

to oneself: one does not get what was justly (naturally) due to one. But this does not mean that the workings of charity are unjust, because charity infuses the natural moral virtues, including justice. One's charitable works are therefore (supernaturally) just.<sup>88</sup>

The needs of Christian charity inform not only justice, but all the other virtues as well. Charity is the true measure of all acts of virtue, because (in Aquinas's example) a person is not just merely by performing acts of justice, but by performing acts of justice with a just heart and will.<sup>89</sup> Indeed, acts of other virtues do not contain merit except insofar as they are informed by charity.<sup>90</sup> As a theological virtue, charity directs all works to the final end of friendship with God, but it also includes the love of other people because God created them and exists in them.<sup>91</sup> Accordingly charity motivates a person to assist others and display benevolence towards them according to the love that is due to those with whom we share in Christ's love, not the 'natural affection' that exists between family members and friends.<sup>92</sup> A person with charity does not only withdraw from sin but exerts herself to good works, i.e., to acts of virtues plus Christian beatitudes and the promptings of the Holy Spirit.<sup>93</sup> There are many possible examples of such good works, such as putting oneself at risk in order to save another's life, doing good to an enemy, or donating to public causes. But a very obvious case is giving alms to the poor, an act which has become synonymous with 'charity' in modern times. At the same time, it should be remembered that Christian charity involves much more than 'charity' in the narrow sense.

The requirement to love one's neighbour from charity involves many outward acts as well as inward states.<sup>94</sup> Being 'well-disposed' to others involves not only peaceful intentions but also concord, i.e., a positive willingness to assist others and join with them as a single community. It involves the readiness to interpret the motives and actions of others in the best light (the benefit of doubt), and a readiness to forgive others for their faults. But it also calls for the defence of the poor, which concerns the hunger and thirst for justice, and the courage to oppose injustices even when one is not personally affected by them. A benevolent disposition toward others also demands that one control one's own inward states, by refraining from anger and restraining oneself from looking at others with lust or envy.

Aquinas makes explicit in his treatment of law, that these requirements are *in addition to* lawful obligations for the Christian. Interpreters have invoked

88. See, e.g., Aquinas, *De Car* at 10 ad 9.

89. See Aquinas, *Sent* at III.29.1.

90. See *ibid* at III.30.5 ad 3; Aquinas, *supra* note 9 at I-II.114.4; *cf* II-II.23.7c.

91. See Aquinas, *supra* note 9 at II-II.25.1c & ad 1; Aquinas, *De Car* 8 ad 14.

92. See Aquinas, *supra* note 9 at II-II.31.2; Aquinas, *Sent* III.29.6: sharing in Christ's love is a form of friendship that is more noble than familial or political friendship (i.e., between fellow citizens); but it is admixed with these other loves in the mortal world; though NB *supra* note 9 at II-II.31.3c.

93. See Aquinas, *Sent* at III.29.8c, III.27.2.2c; Aquinas, *supra* note 9 at I-II.108.1 (on the importance of the Holy Spirit), I-II.108.3 (on the beatitudes).

94. See Aquinas, *De Perfectione Spiritualis Vitae* 13.9: charity must be practical and fruitful [*efficax et operosa*].

Aquinas's distinction between lawful precepts and 'counsels of perfection' in order to be dismissive of counsels, as optional additional obligations that a person may *choose* to obey (supererogation).<sup>95</sup> They have not fully understood that counsels form part of ethics, i.e., that ethics for Aquinas goes beyond the matter of one's lawful obligations.<sup>96</sup> Virtuous goods such as charity do not lie above or beyond the scope of duty, but they *perfect* one's duty. This can be clearly seen in the Sermon on the Mount, where Christ's statement of the beatitudes is linked with injunctions against retaliation and impurity of thought (uncharitable thoughts) and duties of mercy, beneficence, etc.<sup>97</sup> Aquinas follows Augustine in regarding the Sermon on the Mount as the crowning pinnacle of Christian moral teaching.<sup>98</sup> This confirms that for Aquinas, ethics is concerned centrally with virtuous goods: Christ first enumerates the beatitudes, the true forms of happiness for which humans should strive, and then warns against inferior or mistaken impressions of goodness which humans find attractive, i.e., inward states or exterior acts which destroy beatitude rather than fulfil them. The virtues of penitence and humility are therefore a necessary foundation of one's effort to perfect the virtues.<sup>99</sup> All of the *Prima-secundae* is structured after the Lord's Prayer which Christ teaches as the correct order of petitions for which human beings should hope: it begins with the identity of the ultimate end (Thy Kingdom come), then discusses human habits and passions (Thy will be done on earth as it is in heaven) and ends with the treatise on Grace (deliver us from evil).

The importance of charity in Aquinas's ethics shows us that human loves are supposed to be ordered to the love of God. If persons disconnect their love of earthly goods, such as knowledge, wealth or play, from the ultimate source of goodness (cupidity), they are really acting in hatred of God: 'Love is naturally the first act of will and appetite; therefore all other movements of appetite presuppose love as their root and origin. For nobody desires anything nor rejoices in anything, except as a good that is loved; nor is anything an object of hate except in being opposed to the object of love.'<sup>100</sup> The true goods of human life, as this shows, must be the virtuous goods that are connected with charity: joy and peace, mercy and beneficence, the giving of alms and correction of one's

95. See Finnis, *Aquinas*, *supra* note 15 at 192: "I have a duty of strict justice (not merely 'charity') to relieve [the *in extremis* needs of others]"; and the accompanying footnote: "Misleadingly (in some respects), Aquinas's main treatment of the duty [to the poor] is under the heading of 'charity'...." Cf Aquinas, *De Car* 8c: charity consists of both precepts and counsels of perfection: both operate in relation to loving one's enemies, but only the latter demands "active" love (e.g., showing generosity to an enemy when there is no duty of assistance).

96. See, e.g., Aquinas, *supra* note 9 at I-II.108.4c, ad 4; II-II.59.3 ad 1.

97. For an account of the importance of the Sermon on the Mount for ethics, particularly in Aquinas's ethics, see Pinckaers, *supra* note 6 at 134-78; also Tobias Schaffner, "Is Francisco Suarez a Natural Law Ethicist?" in Kirstin Bunge et al, eds, *The Concept of Law (Lex) in the Moral, Legal and Political Thought of the School of Salamanca* (Stuttgart: Frommann-Holzboog Verlag, 2015).

98. See especially Aquinas, *supra* note 9 at I-II.107.2-108.4.

99. See *ibid* at II-II.151.5c & ad 2, III.84.5 ad 2.

100. See *ibid* at I.20.1c. Aquinas makes the point explicit in relation to charity at II-II.24.8c, which speaks of the love of 'divine things, whilst scorning all else except as demanded by the needs of present life.' See also II-II.24.9 (on charity's progress), II-II.24.10c & ad 2; Aquinas, *De Car* 8c.

brothers; and a rejection of the contrary vices of hatred and contentiousness, intolerance and envy, luxury and seduction.<sup>101</sup> Aquinas speaks of this as the order of charity [*ordo caritatis*]. By contrast, the fundamental human *natural* goods mentioned by Finnis and other modern Thomists do not conform to any order, for they are irreducibly distinct from one another: even in a life of ‘integral human fulfilment’, one’s enjoyment of play or aesthetic enjoyment is not an aspect of ‘religion’.<sup>102</sup> In fact a careful reading of Aquinas’s treatments of the progress of charity and its decrease, reveal that progress in morality is only made by detaching oneself from the love of created (natural) goods.<sup>103</sup>

When it is viewed in the terms suggested here, Aquinas’s ethics accomplishes two things. First, through the virtues, it establishes common ground between Aquinas’s and Aristotle’s ethics—between Christian and non-Christian modes of life. Second, through the theological virtues, it explains how ethics for the Christian preserves personal freedom, because it does not require that everybody adopt the same way of living in respect of human *natural* goods, whilst describing the highly exacting moral standards to which all persons must conform themselves. Just because it is agnostic about which *natural* goods a person should prioritise, the proper concern of ethics is with the demand for each person to devote oneself to the moral good—the perfection of charity.<sup>104</sup>

## VI. Conclusion

It would clearly be possible to say a lot more about all of the foregoing issues. Nonetheless, the above survey allows us to conclude that new natural law Thomists such as Finnis seriously misrepresent Aquinas’s ethics. They do this first of all by marginalising the virtues in the study of natural law, and subsequently by identifying the whole of Aquinas’s ethics with natural law. On the contrary, I have argued that the natural law plays a more limited role in Aquinas’s ethics, which is properly concerned with the ordering of virtue toward the perfection of charity. Thus, modern Thomist philosophers should (i) differentiate between natural law and ethics in the full sense of moral theology, and (ii) interpret goodness and the good as a reference to virtuous goodness rather than non-moral goodness.

101. This roughly summarises Aquinas, *supra* note 9 at II-II.28-43. See further Eberhard Schockenhoff, ‘The Theological Virtue of Charity’ in S. Pope, ed, *The Ethics of Aquinas* (Washington: Georgetown University Press, 2002) 244 at 244-58.

102. See Finnis, *NLNR*, *supra* note 1 at 92: “none [of the goods is] merely an aspect of any of the others ... [each one] can reasonably be regarded as the most important. Hence there is no objective hierarchy amongst them; cf 450: “no single, objective hierarchy”. Contrast Aquinas, *supra* note 9 at II-II.26.1, II-II.26.5-7, II-II.27.6; Aquinas, *Sent* at III.29.1.1; Aquinas, *De Caritate* IX.

103. See especially Aquinas, *supra* note 9 at II-II.24.8c, II-II.26.5c & ad 2, II-II.24.10.

104. On charity’s perfection see Aquinas, *supra* note 9 at II-II.24.8, II-II.184.2; Aquinas, *Sent* III.27.3.4; Aquinas, *De Caritate* X-XI.