

# **The Philosophic Context of the Development of Natural Law**

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In order for there to be natural law jurisprudence, there must be a natural law. Such a law is not considered to be synonymous with a particular religion by those who defend its existence. It is instead the sum of those moral truths which are knowable by all decent men, even those who have not accepted the true religion.

Natural law does not appear this way to everyone. To many, it seems to be code for sneaking certain religious principles into political life while claiming not to be an establishment of religion. Not every religiously serious person adheres to all the principles usually associated with natural law. Attributing opposition to natural law to “secularism” is to tell many people who believe that they are motivated by religion that they are not, and thus to insist that they accept a conception of religious seriousness that they cannot. If only members of a particular religion think that a principle flows from natural reason, that principle begins to look more like the product of special grace or dogmatism rather than a conclusion of natural reason.

Natural law need not be compatible with ecumenicalism in order for it to have binding force, however. The possibility that some religions cannot accept its principles is not a mark against its being natural law. Some beliefs may be so corrupt that one does not need any special communication from God to know that they are false. Socrates could rely upon his own reason to know that the Homeric portrayal of the gods was not true.

Natural law does require, however, that its content be knowable by natural lights, meaning without special revelation. That we could know what is called natural law without special revelation is

doubted, and many scholars consider natural law to be thoroughly refuted. In affirming that natural law has been refuted, many political and ethical philosophers repeat the arguments of David Hume. Defenders of the natural law consequently focus on refuting Hume and his successors. Such arguments did not of course begin with Hume, and to a large extent his discoveries involved stating explicitly what the movers of the Enlightenment revolution had made implicit. In being freer to speak his mind, however, Hume could also state his criticisms with such clarity as to become the center of subsequent debate.

The modern critique of natural law is unpersuasive. The inability to draw norms from facts does not touch natural law theory, which does not affirm that reason reflects upon only those observations that have been shorn of their human significance. The distinction between saying a thing is good and saying that it is obligatory misses the purpose of natural law, which was to bridge the gap between is and ought, not to deny it. In general, the modern critique of natural law systematically distorts natural law theory by failing to address the challenges that gave rise to that theory in the first place. It neglects the philosophic context of the development of natural law. A full engagement with natural law theory requires examining the questions posed by its ancient and medieval precursors.

## **The Modern Critique of Natural Law**

Several problems stand in the way of liberal democrats' believing that there is a natural law. It is said that we can no longer believe that nature is teleological such that we could transform our knowledge of what does happen into knowledge of what we ought to do. We no longer trust that God's existence can be known without special revelation, and *a fortiori* that no special revelation is needed to know that there are punishments for violating the law of nature beyond the penalties that await every fool as the consequence of his foolish deeds. We are also wary that the separation of church and state can be maintained if nature really does provide us with a law, let alone that the absence of an

established religion can be maintained if nature is gives evidence of a divine lawgiver in the manner of general revelation.

The main thrust of the attack on natural law is that natural science cannot provide what a natural law requires. A natural law is useful only regarding things that can happen, since choice concerns only those things that are possible. Natural law would guide us in our choice among various possible outcomes. Yet natural science can tell us only what things are possible. It can tell us that incest both occurs and that it does not always occur. It can tell us some of the consequences of cannibalism or human sacrifice. But it cannot supply the sense of which outcomes are to be preferred that would transform these scientific findings into prudence or moral command. Scholars might claim that this sense of preferable outcomes is obvious, but the fact that debates over the “naturalness” of some supposed natural laws persist suggests that the truth about what is to be preferred is not universally known. That “the good” is to be preferred is universally known, but this statement by itself is so abstract as to be useless in practical reasoning, especially as it seems tautological. Natural science can further document how prevalent various conceptions of the good are within a society and the extent to which the number of people who hold to a particular conception varies across societies, in principle at least if not yet in practice. In this it could claim to identify the *consensus gentium*. But it cannot tell us whether what is normal is a sign of health, mediocrity, or some pandemic social decay, nor whether what is abnormal is a sign of sickness or superiority. A natural scientist who speaks to human ends is abandoning the disciplined rigor which gives him the mien of authority in the first place.

The usual way of expressing this problem is that one cannot draw an “ought” from an “is.” Because John Finnis argues that David Hume meant something different by the is-ought problem, he speaks of norms and facts.<sup>1</sup> The conclusion is the same, however. One cannot examine nature to

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<sup>1</sup> Finnis, *Natural Law and Natural Rights*, 36–42.

discover anything other than what ordinarily occurs, certainly not what one *should* do. The only proper natural law is one that ascribes some regularity to phenomena, such as the inverse-square law describing the force of gravity via-à-vis distance. Put another way, the natural law does exist, but says nothing moral.

Another criticism arises from a problem that John Locke attempted to resolve, unsuccessfully. His lack of success merely drew attention to the problem, which may have been his intention. This was a problem of how the natural law is known. It must be known as law, that is, as command, and this requires that its sanctions be known.<sup>2</sup>

The problem Locke points to regarding sanctions is closer to what Finnis argues that Hume would mean regarding is and ought. Error is unfortunate, but it carries its penalties as its natural consequences. Moreover, we cannot consider these penalties to be punishments: if the imprudent man escapes the consequences of his mistakes it is a cause for celebration, not a miscarriage of justice. One might contest this statement by pointing out that the fortunate fool is harmed by not suffering from his mistakes in that he will never learn from them. This is true, but correction can never be punitive in the way that punishment always is. It is a sign of madness to seek out lucky fools to right nature's failure to do justice upon them or to call their good fortune a mark of nature's pardon. The dictates of prudence, which are as factual as any other theory about the world, do not produce obligation. "Reason, since it is only a faculty of the mind and a part of us, [cannot] give us laws."<sup>3</sup> Prudence ("is") does not lead to obligation ("ought").

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<sup>2</sup> Locke, *Essay Concerning Human Understanding*, ed. Peter Nidditch (Oxford: Clarendon Press, 1975), I.3.6, 13; II.28.8; IV.3.29; see Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 202–6.

<sup>3</sup> Locke, *Questions Concerning the Law of Nature*, ed. Robert Horwitz, Jenny Strauss Clay, and Diskin Clay (Ithaca, NY: Cornell University Press, 1990), folio 12.

The disconnect between prudence and obligation, poor counsel and sin, was addressed by Francisco Suarez and, contrary to what Finnis argues,<sup>4</sup> by Thomas Aquinas before him. Suarez recognized that the law of nature, insofar as it was simply rational, could not be a preceptive divine law and so turned his attention to how it could be obligatory nonetheless.<sup>5</sup> The problem Suarez faced by caused by Aquinas's decision to bridge the gap between prudence and obligation by making God into a legislator. Protestant natural law theorists did the same, and also in order to ensure that what they identified as natural law did possess obligatory force.<sup>6</sup> Violations of the natural law would not just be failures of reason but disobedience, and disobedience deserved punishment, they argued.

If sanction and law were as inextricably linked as natural law theorists' justifications of God's punishments suggested, then knowing the natural law as law required knowledge of its sanctions without the aid of special revelation. As mentioned above, Locke argues that the natural results of our actions do not suffice as sanctions in this sense. Locke does not deny the possibility of natural theology, but he does affirm that the rewards and punishments that occur after death are not a part of natural theology.<sup>7</sup> Regardless of whether he nonetheless believed his assertion that there is a law that is knowable by reason, without the aid of revelation, his arguments instead suggest that there is none. God's commands could be known only by special revelation; what natural reason could know were maxims of prudence, not law, and no study of nature could transform these into law.

This inability of natural science to supply the content of natural law—and hence the impossibility of natural law—is occasionally presented as a conclusion of natural science. Nature would

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<sup>4</sup> Finnis, *Natural Law and Natural Rights*, 36–47.

<sup>5</sup> Suarez, *Tractatus de legibus*, II.6.

<sup>6</sup> See Samuel Pufendorf, *Whole Duty of Man*, I.3.10–12; *De jure naturae et gentium*, II.3.19–21; Locke, *Questions Concerning the Law of Nature*, folios 9–13, 82–90; *Essay Concerning Human Understanding*, I.3.6, 13, II.28.8. Grotius and Hobbes do not say that natural law must be known to have been promulgated by God, but they also do not suggest that it obliges. Barbeyac's systematic misunderstanding of Grotius is instructive in this regard; see Grotius, *The Rights of War and Peace*, 89–93, and Barbeyac's notes. Hobbes, *Leviathan*, XV 41.

<sup>7</sup> Locke, *Essay Concerning Human Understanding*, IV.3.29.

have to be teleological, or have an account of appropriate ends written into it, in order to support a natural law. If there are values built into the very structure of the universe, then the honest examination of the universe would reveal them. This requires that the world have an order that is not mysterious. This order must also be comprehensible as a moral order, otherwise Friedrich Nietzsche's needling of the Stoics would ring all too true.<sup>8</sup> A nature that is teleological does not just have tendencies but humanly meaningful tendencies. There is no teleology to be found in nature, however. There are not even essences or species to be found, in the classical meaning of those terms. The Aristotelian view of the universe has been scientifically refuted, it is often claimed.

The refutation of the natural law is in this way a corollary of the refutation of Aristotelian physics. Aristotle rejected a view that sounds very modern. That view states that natural objects only appear to come about for the sake of something, that is, that motion and change only appear to be teleological, and that in reality things arise of their own accord in all sorts of ways but only those things fitted for survival actually survive.<sup>9</sup> This view, namely, that things only appear to have an end, he rejected. Modern science in turn begins by rejecting Aristotle's contention that motion arises pursuant to some end, or at least by no longer insisting upon it. Motion and change are explicable in terms of what originates the motion, the beginning, not the end. The experiment of explaining the world in this way was tried and it has succeeded. Teleology is superfluous. One might still insist that one's understanding of a thing is deficient if one can only answer the question of what is responsible for it in terms of its origin—that its nature comprises all four "causes"—but to say only this much is already to step away from Aristotelian physics.<sup>10</sup> Aristotle himself might prepare the way for this revision when he says that a thing's nature is determined by when the process of its coming into being is complete and

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<sup>8</sup> Nietzsche, *Beyond Good and Evil*, sec. 9.

<sup>9</sup> Aristotle, *Physics*, 198b10–99b33.

<sup>10</sup> See Martin Heidegger's account of Aristotle's "four causes" in *The Question Concerning Technology*, for example.

that this is known, not when change ceases, but when the thing is its best.<sup>11</sup> This would be to reduce Aristotelian physics to humanism, while it is presented as a theory concerning observable phenomena.

## **The Modern Critique's Incompleteness**

For many scholars, the criticisms outlined in the previous section are decisive, so much so that to fail to be persuaded by them is derided as falling prey to the “naturalistic fallacy.” Derision is rarely the sign of a strong argument. The criticisms lodged against natural law are not decisive. This is the fault of the perspective from which those criticisms issue. Some of the criticisms are guilty of overreaching, others of having missed the point of natural law theory. Natural law theory can survive the various aspects of the modern critique of natural law.

The argument that modern science has refuted the view of the cosmos upon which natural law relies is overstated. In order for modern science to have disproven a teleological conception of nature, it would have to have been possible for it to have failed to disprove it. If the motions of natural bodies were to reflect their telos, however, an empiricist scientific method would not discover this. Observations can support the claim that certain phenomena tend to go together. They can support the view that the energy required for one reaction was available because of the presence of another reaction and so discover what was known as efficient causation. But unless we mistakenly conceive of final causation as a kind of efficient causation that could compete against and overwhelm the more ordinary forces of nature, which would be as much as to assert that some effects occur without any efficient cause, we will never witness something that cannot be explained in the terminology of efficient causation. (To be fair, many of Aristotle's “defenders” make precisely this error. It is not Aristotle's error, however.) To say that a thing's end determines its motion is not to deny that a its motion can also be understood in terms of what set it in motion. Modern science does not prove that efficient causation is

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<sup>11</sup> Aristotle, *Physics*, 194a29–33; *Politics*, 1252b31–53a1.

all there is. Rather, it restricts itself to the study of efficient causation. Nor does it prove that teleology is superfluous to the understanding of the world, for it is not concerned with a comprehensive understanding of the world. Rather, modern natural science is able to explain the impetus to motion by examining things that impel motion.

The claim that modern science could do more, and has done more, results from a refusal to submit to the discipline required by modern science. Because the question of whether nature is teleological cannot be settled by observation and the controlled experiment, it is not a scientific question. For some, this is derision enough. Whether the world was miraculously created 5772 years ago or instead arrived at its present condition naturally is similarly not a scientific question. When we say that creationism is not a scientific idea, however, it is actually code for the view that creationism is not an intellectually serious position. The equation of “scientific question” with “intellectually serious question” is an echo of now-defunct epistemological assertion. This derision aimed at “non-scientific questions” would be justified if empiricism were the only intellectually respectable path to knowledge. It would not be justified if one said only that empiricist science produces surer knowledge about readily observable phenomena and so should be preferred where it will yield good results. It is the latter statement, however, that is defensible. Another way of saying that empiricism is the only intellectually respectable path to knowledge is that empirical observations are able to settle any legitimate question that might arise and so any questions that arise that do not seem amenable to empiricist methods deal with non-issues. This thesis is absurd, as is immediately demonstrated by any attempt to argue that it is true. A rigorous science might conclude that a particular thing is ill-suited toward the production of a given end, but it cannot disprove the thesis that it nonetheless serves some as-yet mysterious end. The teleological character of nature is not a scientific question, and so we cannot say that modern science has refuted the conception of nature upon which natural law theory relies. By the same token, the



attempt to say that this or that new scientific theory *does* support a teleological understanding of nature betrays a misunderstanding of what science is.

It is also noteworthy that natural law need not be derived from nature in the way its critics sometimes suppose. Scientific observation can take place only when we abstract from the sense of good or bad, welcome or unwelcome, that accompanies every human experience. Clearly, then, any claim that good and bad are written into these observed facts would be false. Good and bad might be written into our experiences, but science begins by doubting that our experiences reveal the world as it really is. Only observations conducted in such a way as to guard against these experiences are properly scientific. Yet natural law theorizing did not always claim to draw lessons of good and evil solely from such neutered facts.

The cornerstone of the Thomistic edifice is *synderesis*, or the tendency to grasp the first principles of practical reasoning.<sup>12</sup> The musings of conscience in particular cases would be nearly worthless if there were no reason to believe that individuals had some knowledge of the moral standards and dilemmas involved. Modern science forcibly suppresses reporting on the approval or disapproval the researcher feels when observing a phenomenon because it does not consider those judgments to be part of the facts. There is good reason for this mistrust. Yet natural law in the Thomistic sense must fall if our reasons for being warier of our value judgments than of our artificially and inhumanly neutered sense perceptions hold all the way down to the first principles of practical reasoning that we feel within us. I say that we “feel” these principles because, while it is certain that our actions are sensible only upon premises that we do not by and large think about let alone demonstrate, this does not mean that these principles are true or even coherent. What is at issue is the truth of these intimated principles.

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<sup>12</sup> See Aquinas, *Summa Theologica*, I q. 79 a. 12; Finnis, *Natural Law and Natural Rights*, 59–80.

Moral judgments would not be arbitrary on account of synderesis, and so long as there is this capacity to grasp the bases of moral reasoning, natural law is not enervated by modern natural science. This serves to dispose of both versions of the is-ought problem. This has already been recognized by John Finnis.<sup>13</sup> Natural law does not claim to derive values from value-neutral facts. Rather, the sense of right and wrong provided by synderesis transforms what would otherwise be brute sense perceptions into a human experience that has a moral judgment built into it. Because this sense of right and wrong is related to truth, rather than being an idiosyncratic myopia brought about by the accidents of our parents' social standing, our society's laws, and our own physical health, there is not the need to set these principles aside as though they were prejudices when pondering moral action. As regards the second interpretation of the is-ought problem, where the gulf lies between the prudential observation that something is good and the moral precept that it is obligatory, Aquinas held that synderesis bridged the gap with the indemonstrable precept that "good is to be done and pursued, and evil is to be avoided."<sup>14</sup> What Hume said could not be proven and hence was a bad argument, Aquinas said could not be proven but was self-evident. It is synderesis and not scientific observation that does the main labor of natural law reasoning, so the focus on the fact that scientific observation and theorizing alone will not support natural law misses the point.

There are versions of natural law theory that do not rely upon synderesis. Protestant theorists tended to do away with it altogether. Synderesis, after all, is incompatible with total depravity. The core of Locke's assertion that the human mind was a blank slate was his desire to render synderesis impossible, and his *Essay Concerning Human Understanding* is an extended attempt to persuade men that this would not be the end of the world or issue in relativism. Synderesis is so ineffective in Thomas Hobbes's state of nature that we can say that it is absent, while Samuel Pufendorf attempted to render

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<sup>13</sup> Finnis, *Natural Law and Natural Rights*, 33–36.

<sup>14</sup> *Summa Theologica*, I-II q. 94 a. 2.

Hobbes's man more fit for society simply by emphasizing gregarious sociability, not an innate true sense of morality.<sup>15</sup> Hugo Grotius before them also made man more gregarious than intuitively moral in his natural law thinking.<sup>16</sup> A similar movement can be charted in certain Catholic thinkers who focus more on how natural reason can be corrupted than on how synderesis functions to provide true first principles of practical reason. For Aquinas, on the other hand, most people do know the moral law well enough for him to say that sin is an act of rebellion against God's authority.<sup>17</sup> Certain accidents and discoveries seem to have brought about the contrary belief that most parts of the world were ignorant of right and wrong. This opinion would threaten the natural-law style of thinking, so the foundations upon which natural law theory was to be built were altered. These alterations opened the door to the modern critique of natural law in placing greater emphasis upon what could be learned from pre-moral natural facts. We should therefore bear in mind that the modern critique applies mainly to particular and derivative conceptions of natural law and does not get to the heart of natural-law thinking.

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<sup>15</sup> Pufendorf, *Whole Duty of Man*, I.3.1–7; *De jure naturae et gentium*, II.2.3–9, II.3.14–17. Pufendorf does on occasion speak as though everyone has a sense of right and wrong even in the absence of society, especially in his longer *De jure naturae et gentium*, but that this sense is *true* is known without reference to that moral sense.

<sup>16</sup> Grotius, *The Rights of War and Peace*, trans. John Morrice, ed. Richard Tuck, 3 vol. (Indianapolis: Liberty Fund, 2005), 79–89. Grotius went so far as to distinguishing natural law from divine law altogether, whether known naturally or by revelation, 75, 89–93.

<sup>17</sup> Immediately after saying that knowledge of the natural law can be wanting "in rather few cases," Aquinas acknowledges that an entire nation did not think that robbery was wrong; *Summa Theologica*, I-II q.94 a.4. There must be a tension in a natural law theory that claims both that a good law has been sufficiently promulgated and that there is a natural inclination to the good and that people disobey that law, and we see that tension here. I take Aquinas to more regularly side with the view that the natural law has been sufficiently promulgated and is thus known and to more regularly oppose the view that commands that cannot be understood by the commanded do not suffice for promulgation. I base this sense on the fact that he makes sin into an act of punishable rebellion, not pitiable error.

John Finnis argues that Aquinas said that there was universal agreement only on the most basic precepts of the natural law (*Natural Law and Natural Right*, 29–33). His list of these most basic precepts comes from *Summa Theologica* I-II q. 94 a. 2: life, knowledge, fellowship, and offspring are universally acknowledged to be good. Of course, Aquinas says that the natural inclination to preserve human life reveals a precept of the natural law, while it is a commonplace of modern political thought to acknowledge a natural inclination to preserve one's own life. Aquinas adds the commandments to love God and to love one's neighbor as being so obvious as to not require promulgation in the Decalogue (*Summa Theologica*, I-II q. 100 aa. 3, 11), while Finnis drops Aquinas's remark that the goodness of knowledge means that there is a natural inclination to know God.

The modern critique of natural law assaults a redoubt but leaves the keep unmolested. Stoic natural law may have arisen from a reverence for nature and sense that nature must be the guide of one's life. The same cannot be said for Thomistic, post-Thomistic scholastic, and Enlightenment theories of natural law (although one wonders why Aquinas would speak of a *lex naturalis* rather than a *lex rationalis* if he did not draw at all upon the Stoic reverence for nature).<sup>18</sup> The tradition that echoes in the modern West was instead valued for natural law's role in political, ethical, and theological systems. It was valued for the function it filled, not for its foundations. This is clear from the fact that philosophers and theologians were willing to shift foundations when they were undermined, while the function of natural law as a higher law knowable by reason by which human law is to be judged, obedience to which defines a good human being, and which closely matches what God as a good king actually demands has been preserved.

This suggests that there is a core of natural-law thinking that is not defined by the desire to draw lessons from nature. Rather, natural-law thinking is instead defined by the desire that political and ethical reasoning conform to a certain style. In that style, a general norm forms a major premise, a circumstance forms a minor premise, and the appropriate action follows as a conclusion. Modern political theory searches for such norms, even if considers itself to have rejected something it calls natural law. Even contemporary virtue ethics tends toward the production of such norms. Utilitarianism is constantly pressed in the direction of rule utilitarianism, as though only the latter counted as a proper moral theory. In this way, the modern critique of natural law attacked one way of finding such norms and made the name "natural law" somewhat disreputable. But what is most crucial about natural law remains as vigorous as ever.

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<sup>18</sup> Mary Keys traces Thomistic natural law to the Stoic, Neo-Platonic, Augustinian, and Patristic traditions more than to Aristotle, but this is due to natural law's transpolitical and religious orientation rather than the idea that a nature is to be revered; *Aquinas, Aristotle, and the Promise of the Common Good* (New York: Cambridge University Press, 2005), 117.

## Natural Law and Statesmanship

If we wish to see a true alternative to natural law thinking that does not champion immorality, we must look to those who impelled the redevelopment of natural law thinking in the Western world. For a time these thinkers were classed among the precursors to natural law, giving the impression of an unbroken tradition that, as with the Bible written prior to the Hasmonean dynasty, would be modified but not rejected with the advent of Christianity. Thomas Aquinas developed his conception of natural law and his interpretation of Aristotle in the context of Latin Averroism, which threatened to sink the study of Aristotle by setting him against orthodoxy and even Christianity altogether. The study of Aristotle was banned several times at the University of Paris. Aquinas did not put an immediate end to doubts over and even hostility toward Aristotle, but his efforts eventually led to the Philosopher's acceptance. For this accomplishment Aquinas certainly deserves our gratitude.

The crisis that prompted the political need for something like Thomism was not the bare emergence of Aristotle's writings. Rather, it was the fact that there was an alternate, older, and more fully developed tradition of Aristotle interpretation that could also boast of a more direct line of transmission. The earliest *falasifa* of the Muslim world could claim to have been instructed by Hellenist teachers. In order for Aquinas to save Aristotle—and Aquinas possessed far too penetrating a mind simply to dismiss what made such powerful sense—he had to assert a fundamental break in that tradition. The challenge he faced was not simply Aristotle, but what seemed to be the best interpretation of Aristotle.<sup>19</sup>

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<sup>19</sup> While several *falasifa* are identified as Platonists, it is not clear that they viewed Platonism and Aristotelianism as incompatible, especially if the most crucial question for them involved the permissibility of philosophy in the first place. Alfarabi, for example, wrote a book arguing that Plato and Aristotle were in substantial agreement on the most important issues, *The Harmonization of the Two Opinions of the Two Sages*. Al-Ghazali lumped Socrates, Hippocrates, Plato, and Aristotle together as the source of the species of unbelief that he wished to combat; *Incoherence of the Philosophers*, trans. Michael Marmura (Provo: Brigham Young University Press, 2000), 2.

Aquinas saved Aristotle by interpreting him. He also altered the way Christian theology was understood. In doing so, he bridged the gulf between the new learning and established tradition. Plato and Aristotle had been driven from the Muslim world when the *falasifa* had put them to the same use there as the Latin Averroists in Western Europe. For political reasons, then, the Thomistic version of Aristotle outlived its rivals as the only version that could survive under Christian predominance. This has colored Aristotle interpretation ever since. Certain translations of Aristotle's *Ethics* go so far as to have him speak of "natural law."<sup>20</sup> A similarly Christianized Plato was preserved, and for the same causes. Yet just as it was the challenge of ancient political philosophy, its incongruity with pre-Thomistic Christian thought, that spurred on Aquinas's reworking of natural law, so too should we look to ancient political philosophy for a more searching analysis of what is at stake regarding natural law.

While certain Arabist scholars have attempted to rehabilitate the *falasifa* as an alternate tradition within Islam, no less related to Muslim thought than Sunni, Shi'a, Ismaeli, Sufi, or any other doctrine within the Quranic tradition, the philosophers of the Muslim world were not viewed this way by their contemporaries.<sup>21</sup> They were treated as though critiquing Islam. In general, their Quranic interpretations took the form, *x must be the correct reading of such and such verse, lest it be shown to*

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We do not feel the same pressure to reconcile Aristotle in particular to our religion as Aquinas did insofar as we no longer recognize in Aristotle the perfection of human reason. Aquinas recognized that *fide et ratio* was a lie if only those with intellects inferior to Aristotle's could be brought inside the faith. If we do not see Aristotle's reasons as compatible with the reasons we have for our beliefs, we unlike Aquinas think so much the worse for Aristotle. We do not experience the same crisis that prompted Aquinas to write because we can no longer conceive of rationally acknowledging an intellectual authority past the age at which we acquire a provisional driver's license.

<sup>20</sup> For example, see the translations of the *Nicomachean Ethics* by Hugh Tredennick and J. A. K. Thompson (New York: Penguin, 1976) and H. Rackham (Cambridge, Mass.: Harvard University Press, 1934) at Book V, chapter 7, and G. Cyril Armstrong's translation of the *Magna Moralia* in *Metaphysics*, trans. Hugh Tredennick, vol. II (Cambridge, Mass.: Harvard University press, 1935). Each produces things like "rules of justice," "law of nature," and "natural law" from words like *physikon*, *ta dikaia*, *ta physei dikaia*, and *ti physei*.

<sup>21</sup> See Al-Ghazali, *The Incoherence of the Philosophers*; Ibn Tufayl, *Hayy Ibn Yaqzān*, trans. Lenn Evan Goodman (Los Angeles: Gee Tee Bee, 1996), 100.

*be absurd*. Some of the readings they proposed were decidedly strained.<sup>22</sup> Those readings were usually Platonic or Aristotelian. One might be forgiven for suspecting that, in a context dominated by orthodoxy of one kind or another, their actual intention was to replace Islam with their synthesis of ancient Greek philosophers and to indicate to whomever was interested the absurdity of the Quran. They themselves defended the idea that communication ought to have different levels of meaning corresponding to different levels of understanding when they justified a departure from the Quran's most literal meaning.<sup>23</sup>

The propositions that most often provoked orthodox resistance fall under the headings of physics and metaphysics. The eternity of the world, the nature of the soul, and God's knowledge of particulars came under particular attack. The various condemnations of Aristotle and Averroism at Paris focused on these themes, as did al-Ghazali's *Incoherence of the Philosophers*. Al-Ghazali advised conceding that eclipses were natural phenomena, as holding on to traditions suggesting that they were supernatural strengthened the forces of disbelief and the Quran itself said only that one should fall down in prayer during them. But almost everything else the philosophers argued had to be rejected, he said. Where absolutely necessary the Quran had to be interpreted in light of physics, since truth does not contradict truth, but he did not acknowledge let alone yield on the question of what can be known regarding wise statesmanship. For al-Ghazali, the physical and metaphysical challenge was more important than the political and ethical, and insofar as he conceded that the Quran must be interpreted in light of physics it seems that he was one of those who could not shake the thought that human beings

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<sup>22</sup> For example, see Avicenna, "On the Proof of the Prophecies and the Interpretation of the Prophets' Symbols and Metaphors," in *Medieval Political Philosophy*, ed. Ralph Lerner and Muhsin Mahdi (Glencoe, Ill.: The Free Press, 1963), 112–21.

<sup>23</sup> See Alfarabi, *Selected Aphorisms*, no. 55, 60; *Book of Religion*, sec. 6; *Harmonization*, sec. 12–16; *Attainment of Happiness*, sec. 40, 50–55, 59; *Political Regime*, sec. 90–91; Avicenna, *Healing: Metaphysics X*, ch. 2; "On the Proof of the Prophecies and the Interpretation of the Prophets' Symbols and Metaphors;" Averroës, *Decisive Treatise*, sec. 11–15, 27–35, 39–51; *Commentary on Plato's Republic*, 60.25–61.25.

could have more certain knowledge regarding what is founded on the senses than the products of the intellect.

The Thomistic doctrine of natural law, by contrast, arose in response to the medieval Islamic *political* interrogation of revealed religion. That interrogation takes the form of an incomplete *reductio ad absurdum*. It goes something like this. One who rules only because he is mightier is a tyrant, while the one who ought to rule is truly king, whether he is acknowledged or not and whether he has the power to compel or not.<sup>24</sup> The Quran represents a law and so its source must be a law-giver.<sup>25</sup> The one who ought to give law is the one who knows what is good for those under the law. Laws give shape to communities, and so a divine law is an act for the government of a community. This divine law-giver is thus the preeminent statesman.<sup>26</sup> While not everyone can tell the difference between a good law and a bad law, the wise human being can.<sup>27</sup> Because certain notions are simply confused,<sup>28</sup> one does not need perfect wisdom in order to identify the law of a confused lawgiver. Therefore, if the Quran was produced by a being whose attributes make it a good lawgiver, its law will conform to what philosophers have said about a good law or at least not a bad law.<sup>29</sup> “The idea of imam, philosopher, and legislator is a single idea,” Alfarabi affirmed.<sup>30</sup> The *falasifa* then set out what the philosophers had said about a good law, interpreting the Quran in that light.

Thomas Aquinas set out to demonstrate that God’s law as understood by the Church did correspond to the work of a wise lawgiver. According to Aquinas, reason provides us with a natural law

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<sup>24</sup> See Alfarabi, *Selected Aphorisms*, no. 30–32, 58; *Enumeration of the Sciences*, ch. 5 sec. 1–3; *Book of Religion*, sec. 1; *Political Regime*, sec. 79–80.

<sup>25</sup> See Alfarabi, *Book of Religion*.

<sup>26</sup> See Alfarabi, *Selected Aphorisms*, no. 3–4, 12, 21, 28, 30–32, 57–58, 86–89, 94–96; *Book of Religion*, sec. 4, 14a–d, 18, 27; Averroës, *Decisive Treatise*, sec. 38–39; *Commentary on Plato’s Republic*, 61.8–20.

<sup>27</sup> See Alfarabi, *Selected Aphorisms*, 11, 37–38, 42–53; *Enumeration of the Sciences*, ch. 5, *Book of Religion*, sec. 11–27.

<sup>28</sup> See Alfarabi, *Selected Aphorisms*, No. 31, 63, 67, 74–87; *Political Regime*, sec. 93–121.

<sup>29</sup> See Alfarabi, *Book of Religion*, sec. 5; *Attainment of Happiness*, sec. 63; Averroës, *Commentary on Plato’s Republic*, 66.10–22.

<sup>30</sup> Alfarabi, *Attainment of Happiness*, sec. 57.



along with an awareness of reason's own limitations. Reason can tell us of man's happiness in this life but must acknowledge that, if there is a further happiness beyond this life, natural law will not be able to lead him to it. The divine law is necessary in addition to natural law, but nothing in God's law is repugnant to natural law.<sup>31</sup> The importance of this near harmony between Aristotle and Christian dogma properly understood is not that it preserves a beloved ancient author or prevents the corrosive relativism of modern science, but that it avoids the unstated alternative to the theologico-political arguments of the *falasifa*: if the proper interpretation of the Quran is not as they say it is, then its author lacks the wisdom attained by Plato and Aristotle. Its law is reflective of one of the ignorant regimes, supported solely by force.<sup>32</sup> Since the *falasifa* believed for whatever reason that a heavenly being must be more perfect than the average human being,<sup>33</sup> such a law would most likely be human in origin. The core of Aquinas's natural law doctrine was not that it had its basis in nature, but that it rendered the Christian religion amenable to reason. It was to prove that the author of the Bible could be conceived on the model of a wise governor of the cosmos.

## Statesmanship and Law

While the modern critique of natural law focused on that law's naturalness, the ancient critique directs us toward its status as law. Thomas Hobbes of course concluded that the natural law was not a law at all, as it was unenforced.<sup>34</sup> Locke said that men had a right to enforce it on the argument that otherwise it would be no law at all.<sup>35</sup> But I do not question here its having sanctions, which would necessarily be either those known to prudence simply or unknowable without some sort of revelation,

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<sup>31</sup> Aquinas, *Summa Theologica*, I-II q. 91 a. 4, q. 100 aa. 1–2, q. 105 a. 1.

<sup>32</sup> See Alfarabi, *Selected Aphorisms*, 90–93; *Book of Religion*, sec. 1, 14a; *Attainment of Happiness*, sec. 60–61; *Political Regime*, sec. 86, 92–121; Averroës, *Commentary on Plato's Republic*, 66.22–67.8.

<sup>33</sup> See Alfarabi, *Selected Aphorisms*, no. 37, 53, 68–73, 94; *Book of Religion*, sec. 19, 26; *Political Regime*, sec. 15, 20–33.

<sup>34</sup> Hobbes, *Leviathan*, XV 41.

<sup>35</sup> Locke, *Second Treatise*, sec. 7, 219.

but instead the idea that one could lead others to happiness by precept alone such that adherence to the rule could count as virtue.

Immediately a problem arises for the line of inquiry this paper now undertakes, for the most prominent defenders of natural law equate it simply with morality. They do not insist that it take the form of law. John Finnis defines natural law as the claims 1) there are practical principles which everyone uses, even if unsoundly, 2) methodological principles that say how to apply the practical principles soundly, and 3) a “set of general moral standards” that arise from applying those methodological principles.<sup>36</sup>

This is a movement away from Aquinas and will not yield the political payoff often sought for from natural law theories. Policies take the form of laws, and so a theoretical argument that immediately resolves a policy dispute must also take the form of a law. The particular challenge Aquinas faced began by considering God as a law-giver, which as a punisher or pardoner of disobedience he must be. A natural law theory that yields on the question of law—a command from a superior to an inferior that the latter can comprehend without ceasing to be an inferior—preserves the name at the expense of the content and function of natural law. Aquinas’s natural law is not so diaphanous as his contemporary defenders make him. He says that anything toward which we have a natural inclination is a precept of natural law, including 1) the preservation of human life, 2) sexual intercourse and the education of offspring, and 3) to know God and live in society.<sup>37</sup>

There are several reasons why one might command, some more admirable than others. Where interest clash, of course, one cannot honestly persuade those whom one would have make sacrifices. One can at most deceive them about what is truly bad and truly good so that they run to their ruin, either to one’s own benefit or that of those whom one loves more. More often, one must simply

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<sup>36</sup> Finnis, *Natural Law and Natural Rights*, 23.

<sup>37</sup> Aquinas, *Summa Theologica*, I-II q. 94 a. 2.

command and back it with sanctions. Still, a neutral observer could hardly blame such a person for disobeying such a command. Where interests align, one might command because the other person does not see what is good for them clearly. One does this with regard to children. Nothing prevents similar inequalities from arising among adults.

Of course, where people are equal or roughly so and one is not looking to exploit the other, command and obedience do not come into play. Commands have no place among friends, for example. One persuades friends, but one cannot claim any standing authority over them without calling into question their possession of the virtues upon which the friendship is founded. Politics comes to the fore where there is also a rough enough kind of equality that who should rule is not clear. Commands, then, would also seem to be out of place in political life. Aristotle does not say that we need politics in addition to friendship because politics involves a clash of interests. Instead, Aristotle says that politics is necessary because not everyone is virtuous.<sup>38</sup> Not everyone does what is most likely to make them happy as they pursue happiness. They deserve compassion and aid, while at the same time they must be restrained from hindering the happiness of others more fortuitously constituted.

Law, at least as the concept appears in the doctrine of natural law, is a particular kind of guidance. It presumes that the legislator is speaking to someone else. This is not to say that a legislator cannot also obey the law, but it does mean that at least some of those who obey the law are not legislators. Those who obey the law do not need to understand its justification or agree with it. In this sense, “do justice” is not much of a law, at least where to do justice really is to act virtuously and so promote one’s own happiness. Legislation could be justified as telling people who do not know what it is they must do in order to make themselves happy or avoid what prevents them from achieving the happiness that is available to them what to do. Aristotle invites us to think that this is what most laws

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<sup>38</sup> Aristotle, *Nicomachean Ethics*, 1179b20-80b28.

actually attempt to do when he says that justice oftentimes appears to be the whole of virtue, insofar as the laws when correctly made command all the virtues. In this context it is clear that he is considering the common opinion that law-abidingness (*to nomimon*) is the whole of justice and virtue.<sup>39</sup> This could be true only if a regime gave expression to a correct understanding of virtue,<sup>40</sup> which could occur only where the simply virtuous ruled and were wholly responsible for the law.

In order for there to be a natural law, it must be the case that the most choiceworthy life could be codified to take the form of prescriptions that would be comprehensible to those who do not see what a choiceworthy life is. These prescriptions could then be promulgated and given sanction such that there was a natural law.

Synderesis, statements about human nature and natural ends, and a natural theology that included knowledge or a high probability of reward and punishment after death all served the purpose of arguing that such a law had indeed been sufficiently promulgated and had sufficient sanctions beyond the ordinary outcome of imprudent actions to count as a law. The modern critique of natural law is restricted to these points. The more crucial question, however, is the potential existence of such a law, promulgated or not, sanctioned or not. Some people are clearly happier than others, and at least some of this difference is attributable to different ways of life. Can rules for living be provided in any meaningful sense?

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<sup>39</sup> Aristotle, *Nicomachean Ethics*, 1130b8-18.

<sup>40</sup> See Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 177–86. Keys prejudices the question too much by saying what is under discussion is “legal justice,” i.e., something that is emphatically a form of justice; 179–80. Aristotle’s words are *nomimos* and *paranomos*, not *dikaiosunē nomikē*. And it is justice that appears to be supreme among the virtues, not law-abidingness *per se*. The law-abiding man is good *only* to the extent that the law is good, while Keys pushes for the un-Aristotelian view that law-abidingness is always a high virtue.

## Aristotle and Law's Perfection

The possibility that such a natural law could exist was explored by Aristotle. It does not occur in his discussion of the best regime in Books VII–VIII of the *Politics*.<sup>41</sup> Those books presuppose the political horizon established in Book III. The discussion of the best regime is limited only by what is possible.<sup>42</sup> Aristotle's discussion of the best regime also requires that it be a regime, that is, the ordering of a particular kind of community. Plato's kallipolis in the *Republic* fails this test because it is the negation of politics and so cannot guide political life.<sup>43</sup> The *Republic* does, however, show us the limits of politics by violating them. No city can make the sorts of claims that would justify the sort of devotion to justice that Glaucon demands. Even if some other form of community were possible, it would not be a city. This would be a decisive objection if political life possessed some form of dignity. Aristotle treats it as a decisive objection in Book II. Book III, I would argue, similarly shows us the limits of politics by violating them. Politics may point beyond itself, a possibility emphasized by those who suggest that its imperfections point toward a city of God. For now I wish to focus on one way in which politics points beyond itself in Aristotle.

No city that does not take claims of justice seriously when it comes to the question of who should rule can be a community in, among other things, opinions regarding the just and unjust. Our possession of speech and the intellectual capabilities that make speech possible and distinct from bare voice direct us toward a community in the just and the unjust, the good and the bad, the advantageous and the disadvantageous, not simply one that provides for preservation and procreation.<sup>44</sup>

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<sup>41</sup> This is contested by Mary Keys, who makes the best regime of Books VII–VIII rather than the discussion of the absolute king in Book III the counterpoint to Plato's *Republic*; Aquinas, *Aristotle, and the Promise of the Common Good*, 117.

<sup>42</sup> Cf. Aristotle, *Politics*, 1325b33–39 with 1295a25–31.

<sup>43</sup> Aristotle, *Politics*, 1263b29–35.

<sup>44</sup> Aristotle, *Politics*, 1253a1–19.

Yet taking the claims of justice seriously when it comes to who deserves to rule destroys political life. The claims of oligarchs and aristocrats, insofar as they rely upon their relative superiority over the demos rather than the latter's absolute deficiency—those who are incapable of political life are natural slaves, not subordinate members of the city—can be rendered even less narrow without doing any violence to their logic. They actually support kingship of the one best or richest man. The potluck dinner argument that Aristotle invents for democracy—where the many in aggregate have more virtue, taste, and wealth than the few—does not support majority rule in any case where the relevant quality is not equally distributed. Crucially, this pot-luck argument too can justify kingship, if one man is so superior to the rest that his virtue is not commensurable with theirs. It seems that all roads lead to kingship, at least potentially.<sup>45</sup>

Kingship differs from political rule,<sup>46</sup> which seems to encompass oligarchy, democracy, aristocracy, and polity. These forms of government were later called republics in order to distinguish them from principalities or monarchies.<sup>47</sup> The justifications for what we might call republican forms of government leads to a non-republican form of government. Yet to be deprived of political honors, what we might call rights of republican participation, is to be like a foreigner, not a part of the city.<sup>48</sup> This could be satisfying only if being ruled were compatible with our status as political animals, which possibility I will discuss in the next section. One might evade this problem by not granting ultimate authority to anyone in the city, but instead having law rule.<sup>49</sup>

The context in which the discussion of a man whose claim to rule cannot rightly be contested arises is the question of whether the rule of man could be replaced by the rule of law. Law as the ruler is

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<sup>45</sup> Aristotle, *Politics*, 1280a7–84b34.

<sup>46</sup> Aristotle, *Politics*, 1252a7–16.

<sup>47</sup> See Niccolò Machiavelli, *The Prince*, trans. Harvey C. Mansfield, 2nd ed. (Chicago: University of Chicago Press, 1998), ch. I; Montesquieu, *On the Spirit of the Laws*, trans. Anne M. Cohler, Basia C. Miller, and Harold S. Stone (New York: Cambridge University Press, 1989), books II–III..

<sup>48</sup> Aristotle, *Politics*, 1278a34–38.

<sup>49</sup> See Aristotle, *Politics*, 1281a34–38, 1282b1–13.

suggested in response to the unsatisfactory claims of oligarchs and democrats to be the authoritative or lordly element. To be this authoritative element is different from holding an office, since there would still be offices and a hierarchy among those offices under the rule of law. The rule of law seems to mean only that there would be no human lord or authoritative element (*to kurion*). We wonder who could have such a claim to kingship. Aristotle does not count as a valid objection that such virtue is beyond human capacity.<sup>50</sup> He instead examines how such a being would rule. Given the benefits that attend the rule of law, not least of which that it does not arouse envy among the ruled and can be maintained in the ruler's absence or silence, it is telling that Aristotle does not suggest that someone who could be trusted to rule without any partner or need to gain the consent of the ruled would rule by law or could be required to rule by law. The best man is superior to the best laws.<sup>51</sup>

One implication of this argument is that the best man would be harmed by adherence to even the best law. Aristotle had said that a human being can be superior to the laws of lesser men such that it would be an injustice to demand that he follow them. For such a man there is no law. He himself is law.<sup>52</sup> We cannot say that this is restricted to regimes and laws that are good but not the best conceivable. As a result, a wise legislator would have to accept that even the best law could not be applied rigorously and justly. Either there would have to be a tacit permission to violate such a law or for the sake of stability it would have to be applied to the detriment of some of those under it. In such a case, they could hardly be blamed for looking to evade that law. Because no law could command the whole of virtue, the law-abiding man can never be the virtuous man, simply. This applies to law as such, not just the laws that obtain in most communities.

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<sup>50</sup> The only thing Aristotle suggests would exhibit "greater virtue than accords with human nature" is not leaving power to one's children (*Politics*, 1286b22–27); having a claim to rule on his own virtue is not superhuman. This objection drops out of Aristotle's arguments against absolute kingship in the following chapter.

<sup>51</sup> See Corbett, "The Question of Natural Law in Aristotle," *History of Political Thought* 30, no. 2 (Summer 2009): 229–50; Thomas K. Lindsay, "The 'God-Like Man' versus the 'Best Laws'," *Review of Politics* 53, no. 3 (Summer 1991): 488–509.

<sup>52</sup> Aristotle, *Politics*, 1284a3–b34.

There is also the question of whether such a law could lead the less virtuous to virtue. I allow that habituation can transform actions that formerly were motivated externally by the promise of reward and punishment into actions that spring forth from within. This can be the beginning of virtue. In order for natural law to be the universal rule 1) that a wise legislator who saw happiness better than others would enact and 2) actually was enacted, there must be one law which all those who see virtue unclearly ought to obey. The best man, we might assume, may tolerate some inconveniences in obeying a law not applicable to him but useful to those who could one day be like him out of the sort of compassion that even some beasts share.

Aristotle suggests that general rules can be crafted insofar as some vices appear more like virtue than others. Rashness more than cowardice seems akin to courage, for example. The greater proximity of rashness to courage is not a matter of our own defects, however, but is objectively true. Of Aristotle's two examples it is the less problematic, and so I now turn to the other example he provides. Licentiousness is not in itself further from temperance than being insensitive to all pleasures, but seems so because almost everyone is more prone to overindulging than under-indulging.<sup>53</sup> He goes so far as to say that the vice associated with insensibility is so rare as to be inhuman and consequently lacks a name. He nonetheless does not deny that such people arise; he denies only that they are common.<sup>54</sup> There is thus more of a need to guard against pleasure and this makes it reasonable to favor austerity—not as good but as the second best and the lesser of *vices*.<sup>55</sup> Such a rule, however, would lead those inhuman few who actually *are* insensible away from virtue. If applied in all cases, it would be a bad law. To remain a good law, it must not be applied universally. If its universality were restored by having the exceptions written into the law, it would cease to provide the sort of guidance that is required if we are to say that sin is an act of disobedience and hence culpable rather than the result of error in seeking what is good

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<sup>53</sup> Aristotle, *Nicomachean Ethics*, 1108b30–9a19.

<sup>54</sup> Aristotle, *Nicomachean Ethics*, 1107b4–8, 1119a5–11.

<sup>55</sup> Aristotle, *Nicomachean Ethics*, 1109a30–b11.



and hence blameless and even pitiable. So, while Aristotle grants that general rules can be crafted, such rough guidelines cannot be universally applicable.

Such a general rule, moreover, does not lead to virtue. It encourages a special kind of vice. Moreover, it fosters a certain kind of erroneous opinion that Aristotle must overcome if he is to speak sensibly about virtue and lead those of his readers who are capable of a greater happiness than their upbringing would otherwise allow to that happiness. Austerity, in declaring pleasure an evil and something to be fled, promotes the opinion that pleasure is an evil. Aristotle combats this error several times.<sup>56</sup> He says that the deficiency where one feels neither pleasure nor pain does not often arise and so has no name,<sup>57</sup> but this is not to say that the inclination not to take pleasure in a thing that one ought to also lacks a name. Temperance would seem like courage in this regard, a mean between two sets of vices, not just one.<sup>58</sup> The question of continence does not arise, for the continent person presumably knows when he or she should and should not indulge but just has to strain in order to avoid licentiousness. The seemingly nameless vice, on the other hand, is an inclination toward under-indulgence. Aristotle does at one place name the opposite of licentiousness without lamenting that there is no name for such a vice: orderliness, *kosmiotēs*.<sup>59</sup> In polite society this is normally a term of praise. Socrates upbraids Callicles by saying that the wise count orderliness among the things that hold heaven and earth, gods and men together.<sup>60</sup> Rackham is certain, without manuscript support, that the text is corrupt at this point.<sup>61</sup> The text at this point states that adherence to what polite society says about the proper stance toward pleasure is vicious. It is reasonable for a legislator to promote such an error as more people are prone to licentiousness and he cannot communicate where the mean lies to those who do not know where it lies. One might add that licentiousness is a greater threat to society

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<sup>56</sup> Aristotle, *Nicomachean Ethics*, 1099a7–32, 1104b5–16, 1153a17–54a7.

<sup>57</sup> Aristotle, *Nicomachean Ethics*, 1107b4–8, 1119a5–11.

<sup>58</sup> See Aristotle, *Nicomachean Ethics*, 1107a33–b4, 1115a6–16a9.

<sup>59</sup> Aristotle, *Nicomachean Ethics*, 1109a16.

<sup>60</sup> Plato, *Gorgias*, 507e–8a.

<sup>61</sup> Aristotle, *Nicomachean Ethics*, trans. H. Rackham (Cambridge, Mass.: Harvard University Press, 1934).

than refined abstemiousness. Yet the citizen who is serious about virtue must reject this view and not take it seriously beyond the example to others that might be set or the unreasonable (in his case) punishment that might follow. The same cannot be said for any aspect of a natural law.<sup>62</sup>

There is no law which describes the actions of a virtuous man in such detail that deviation from it would be disobedience rather than error. Those lacking in virtue do not know their own good well enough to interpret correctly and follow a command that the perfectly virtuous man would not be justified in violating, nor could they know that the exceptions did not apply to them if those exceptions were written into the law. Any law which the virtuous man could follow—"be magnanimous," for example—would not guide those who were not perfect in respect of virtue. Because virtue is a mean between two vices the location of which is unknown to those who cannot guide their own lives as well as the wise man, pushing them away from the more widespread vice or the more socially or personally disruptive vice is to encourage a different vice, not virtue. As law cannot define the virtuous action, all it can do is encourage the lesser vice. Such a law would be good only for the vicious, and so would not be of universal validity. Consequently, if anyone were so wise and benevolent as to warrant absolute power over those whose own virtues were incomparably insignificant, and at the same time so much more powerful that no persuasion of those by definition unable to understand was necessary to effecting that kingship, there still would not be any law that such a king could enact that would be of universal validity or that would be good for all of those subject to it. Such a king could not legislate and then retire, leaving the subjects to live under law. The demand that an absolute king be subject to law has prudential merit, given the way most human beings are, but to say that *justice* demands this is to err regarding flourishing.

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<sup>62</sup> See Aquinas, *Summa Theologica*, I-II q. 94 aa. 4–5.

## Obedience and Virtue

To criticize natural law is not to criticize morality or to deny natural right. It does not become impossible to say that this or that act was vicious simply because not everyone could competently judge it, that is, simply because there is no rule by which anyone possessing reason could judge. The equitable man's inability to point to a rule in explaining his deviation from conventionally recognized property rights to someone else does not make his judgment arbitrary, although in some cases it certainly must appear to be so to the less virtuous man.<sup>63</sup> To insist otherwise would make the meanest man the measure of all things, which would be like saying that anyone who lacks a spectrograph must admit that red and green are one color because some men cannot discern the difference. One can still speak sensibly about virtue in that not all opinions need be equally valid without recourse to natural law.

There is another view that uses natural law and natural right synonymously and proposes natural law as *the* alternative to moral relativism. This view is fair insofar as an "alternate conception" of virtue, differing from true virtue, is in reality a species of vice. To refrain from a vice out of a sense of pride or a desire for self-sufficiency, says Augustine, is not to overcome that vice at all, and the supposed virtue one thereby attains is only a hidden vice.<sup>64</sup> Aristotelian virtue cannot be the source of or conform to a rule of universal validity to be obeyed by the less virtuous because it conceives of virtue differently from the natural law tradition. Incompatible perspectives can frequently be reversed to reveal the antagonistic viewpoint. The reverse of the Augustinian perspective is that the natural law tradition exhibits vice from the Aristotelian perspective, not virtue. "The challenge posed to Judeo-Christian ethics by elements of Aristotelian magnanimity," says Mary Keys, "explains much of the structure and content of Thomas's analyses of gratitude and humility."<sup>65</sup>

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<sup>63</sup> See Aristotle, *Nicomachean Ethics*, 1137a31–38a3.

<sup>64</sup> Augustine, *City of God*, 21.16; see also 19.4.

<sup>65</sup> Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 144.

The possibility of natural law explored in the previous section, where that law mandates the actions of a virtuous man, nonetheless differs significantly from the vision of righteousness at the root of the natural law tradition. Aristotle's virtuous man would conform to such a law, were that law possible, only incidentally. It would not guide his decisions or even have to enter into his consciousness. If a law is obligatory when its command or prohibition is enough to direct the will,<sup>66</sup> then Aristotle's virtuous man does not find such a law obligatory. Only those capable of being persuaded that they were vicious regarding ethics might look to natural law.

This self-assuredness on the virtuous man's part and Aristotle's suggestion that nothing in human nature prevents one from attaining real virtue, even if not an insubstantial amount of equipment is also required, has been assailed as pride. Augustine, as mentioned already, claimed that pagan virtue was really just the triumph of one vice over the others. Modern defenders of natural law acknowledge that Aristotle must be purged of certain pagan errors, knowable by reason to be errors, before he can be made conformable to the moral perspective at the root of natural law theology. Keys identifies pride as what must be purged in order for an Aristotelian to discover "magnanimous humility."<sup>67</sup>

It is certain that Aristotle occasionally appeals to pride in making an argument. For example, man is a political animal as a result of his possession of speech, and we know that this possession is the most important thing about human nature because it is what makes human beings special. It is also something human beings take pride in. Humans are also the only animals likely known to Aristotle that sweat profusely from their chests. The absurdity of suggesting that man is by nature the sweaty-chested animal, far more sweaty-chested than any horse or primate, whatever natural telos that might suggest, reveals how dependent Aristotle's rhetoric here is upon the sense that what is special should flatter

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<sup>66</sup> See Pufendorf, *Whole Duty of Man*, 1.2.2–4.

<sup>67</sup> Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 144–68.

one's pride. Man also blushes. If one were not aware that other animals make tools, one might think that instrumental reason was the most important thing about human beings.

There is a parallel argument to the one based on pride, however. Aristotle says voice "signals" pleasure and pain, but that speech "reveals" the advantageous and the harmful along with the just and the unjust, and that human beings alone "perceive" the good and the bad, the just and the unjust, and similar things; human communities are structured around these things, not the needs we share with animals.<sup>68</sup> Our possession of speech is important, not because it is unique to mankind, but it constitutes the world we live in. This argument defends the importance of speech without an appeal to pride. Similarly, whether the man Aristotle describes as magnanimous is actually characterized by vanity or boastfulness is decided by whether virtue is possible, not by examining whether Aristotle actually praises these vices.

Mary Keys identifies Aristotle's pride in the love of dominion to which he gives his approval.<sup>69</sup> She sees this in the argument that the virtues of the good man and of the serious citizen coincide only in the case of a ruler in the best regime. It is critical that she rebut Aristotle's argument here, since that argument enervates her claims that our political nature directs us toward total service to the common good and hence that natural law is primarily about promoting the common good. The gulf between the virtues of the good man and the serious citizen would mean that the city could not be the true home of a human being, contrary to what our possession of reason suggests a city could be as described in Book I of the *Politics*. Consequently, demands that the individual's telos be located in service to the common good would be unreasonable. There would be no common good, properly speaking, since preeminence cannot be shared. When citizens rotate ruling and being ruled, those out of office are still deprived of a full measure of flourishing for at least part of the time, and no argument exists why this would be ideal

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<sup>68</sup> Aristotle, *Politics*, 1253a10–18.

<sup>69</sup> See Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 87–102, 144–52.

from their perspective. Even in the best regime most citizens would have reason to grumble, meaning that even the best regime would not pursue the common good in its fullest expression. It could still seek to distribute petty goods to all the citizens. The receipt of petty benefits does not of course obligate one to forgo greater benefits in the name of the “common good.” Aristotle therefore justifies seeking power even at the expense of others who could also find satisfaction in ruling well. The best man, the one who saw most clearly where human happiness truly lies and possessed the faculties and external equipment to pursue it, would not rule for the fullest good of the ruled, even as he worked to ensure that they had a variety of quotidian goods. Insofar as the best man has compassion for those like him and those who may become like him, we may go beyond Aristotle’s explicit point in Book III of the *Politics* and conclude that ruling is ultimately unsatisfying. No one finds the fulfillment in political life which political life promises. These are not flaws arising from human cupidity, concupiscence, pride, or ignorance, but contradictions arising from an examination into the nature of rule itself. These are not the problems of human, all-too-human politics. They would arise also in a politics of beings greater than man. Keys must negate the premises that lead to these conclusions if there is to be a natural law.<sup>70</sup> She identifies the flaw in Aristotle’s argument as arising from a love of dominion.

Aristotle does not justify his conclusion that the good man is identical with the serious citizen only when ruling in the best regime by averring that to be first is best. Strictly speaking, he is examining the virtues of each. One who is ruled guides their life by another’s prudence. Only the ruler is able to

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<sup>70</sup> John Finnis defends taking the common good rather than an individual’s good as the starting point for natural law reasoning in a manner more redolent of Kant and analytical philosophy than Keys’ Thomistic argument. Again, by “common good” he means something that can call for real individual sacrifice rather than the good of every individual in common. He claims that we cannot prefer our good to that of others simply because it is our own, for there is no reason to: the good of A and B are of equal worth, whichever I happen to be. See *Natural Law and Natural Rights*, 106–9. This is as much as to say that reason involves treating myself as a stranger in a quest that is motivated by my natural inclination to seek my own happiness.

Both Finnis and Keys recognize that something more than Samuel Pufendorf’s defense of total devotion to the common good is needed, where we must be public-spirited to the point of our own destruction because we need society and are too weak to reap the benefits of society without submitting entirely to it; *De jure naturae et gentium*, II.3.15. Pufendorf is, of course, laughably wrong in thinking that no one can exploit others and get away with it.

exercise prudence.<sup>71</sup> The happiness associated with the virtues comes from their exercise, not in their possession.<sup>72</sup> Nor is prudence good only in an instrumental way, the external goods which prudence acquires being the real things to be desired.<sup>73</sup> Ruling calls for the exercise of all of one's virtues and for that reason is more satisfying than being ruled. There is no love of dominion in Aristotle's argument, only the assertion that the prudent man is happier than the one whose potential for prudence or imprudence is irrelevant because he is obedient.

This is not to say that Aristotle advises everyone to rely upon their own judgment of things, disdaining any authority simply because it is an authority. He does recognize that some individuals are better off being ruled by another. These individuals understand reason well enough to obey the one who looks out for them but do not possess it so much that they can take part in political life or a community held together by the things revealed by reason. One gets the impression that such people are very rare. In any case, they do not represent the whole of humanity, let alone its height. The virtuous man is prudent. There are reasons to be obedient when one does not rule, but they do not militate against achieving a position where one is no longer commanded but commander.

It should go without saying that prudence does not involve examining particulars and identifying the universal rule under which they are subsumed. That form of reasoning is demonstrative, while we deliberate only where things can be otherwise.<sup>74</sup> The things Aristotle says can be otherwise, that is, the things that are not fixed, are the principles, *archai*.<sup>75</sup> Aquinas says prudence is not a science because the actions, *agibilia*, about which one deliberates are contingent.<sup>76</sup> There is a gulf between the view of

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<sup>71</sup> Aristotle, *Politics*, 1276b16–77b32, 1278a40–b5.

<sup>72</sup> If possession of the virtues were enough, no equipment would be needed, but one cannot be courageous if one is unarmed; see Aristotle, *Nicomachean Ethics*, 1098b29–99a7, 1099a31–b6, 1099b32–1100a5.

<sup>73</sup> Aristotle, *Nicomachean Ethics*, 1140b4–7.

<sup>74</sup> Aristotle, *Nicomachean Ethics*, 1140a31–b7.

<sup>75</sup> Aristotle, *Nicomachean Ethics*, 1140a34.

<sup>76</sup> Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, §1165; he correctly quotes Aristotle in §1164, *principia*. See also Aquinas's misrendering of Aristotle's statement that natural justice differs from place to place

practical reasoning in Aristotle and that commended to those seeking to discern natural law. Immanuel Kant's autonomy is closer to Aquinas in its view of practical reason, even if the source of Kant's categorical imperative is different.<sup>77</sup>

I hasten to add that the justification for seeking political power just described is not Aristotle's final word, especially as it, too, would seem to be unsatisfying insofar as it pits one against good men whose good one is competing to secure. Book III of the *Politics* as a whole ought to make one hope for a way of life outside of politics that allows us to satisfy the cravings that our possession of reason engenders. Whatever this way of life is, the suggestion that politics points beyond itself, or as Keys puts it, that the virtues of justice and magnanimity point beyond themselves, not to a more perfect politics, but toward a fulfilling apolitical life,<sup>78</sup> erases the link between a natural law that is intended to govern a good community and a concern for human happiness.

## Law and the Simplicity of Justice

The problem explored two sections ago could be contested with the assertion that, while we might have difficulty articulating what justice demands in the abstract, why it demands one thing and not another, and how we know this, everyone does indeed know the difference between right and wrong. Everyone who has any experience working with wood knows that the inability to articulate what you know is no proof that you do not know it. Not every great general writes great books. The paradoxes of philosophers might be interesting, but are ultimately just word games that obscure the

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just as much as legal justice; cf. Aristotle, *Nicomachean Ethics*, 1134b30 with Aquinas, *Commentary on Aristotle's Nicomachean Ethics*, §1029; see Jaffe, *Thomism and Aristotelianism*, 179–81.

<sup>77</sup> Samuel Pufendorf, too, shows his legalist hand in this regard when he proclaims the Aristotelian view of practical reason grotesque and beneath the dignity of man. "The dignity of human nature, and the preeminence that distinguishes it from the rest of the animals, made it requisite that its actions should be regulated by some definite rule, without which no order, no decorum, no beauty can be conceived;" *De jure naturae et gentium*, II.1.5. We cannot be different from the beasts without a natural law; *ibid.*, I.3.11. No actions are good or evil until a law declares them so; *ibid.*, II.3.4; see also I.2.6.

<sup>78</sup> Keys, *Aquinas, Aristotle, and the Promise of the Common Good*, 155.



obvious. More often they are tedious. In the end, for all the seriousness with which these questions are posed, there is never any real doubt about what justice is.

The problem of expressing the whole of virtue or even natural right in the form of law arises because “do justice” lacks enough specificity to direct the will. This is the case only if justice is not as simply as some people assert it is. It is widely accepted that the application of justice in particular cases is difficult and that one might err in everyday life, yet this is not to admit the principles of justice are themselves complicated. The beginning of political philosophy in Athens, by contrast, was prompted by an awareness that justice is not simple.

The complexity of justice arises from the sense that justice is to be done. The just man is not a fool. He does not buy the self-serving lies of others. This is a part of his being admirable and a clear-sighted object of emulation. Those who suggest that the just man is a sucker, like Thrasymachus or Glaucon in the *Republic*, distort the phenomena, it is suggested.

When commanded or chastising others we often emphasize another aspect of justice, namely that it is good *not only* for the just man but also for others. There is a common good that the just man pursues, a common good with which his own highest good is integrated, so that pursuing it really is the best thing he can do for himself. He seems to forget himself only in the eyes of those who mistakenly believe secondary goods to be best. The blame of injustice more often focuses on the harm done to others rather than the greater benefits the unjust man forgoes in obtaining the bare foundations of a good life. This blame obscures the fact that justice is supposed to be choiceworthy, and when chastising others we often forget entirely about their good and condemn them for failing to prefer us over themselves. Unjust men have an obvious reason to desire that they be surrounded by those who equate justice with self-sacrifice and can feel a genuine gratitude toward them. They can actually value what they call justice and become confused by their own failure to abide by it. The conception of goodness

this confusion fosters might cause some minority to compel themselves to avoid what they condemn in others. One can of course devise simple rules when you do not wish to be troubled with whether the one who obeys them will be made happy. To the unjust, these rules might conform to what they think justice looks like.

By the same token, we could identify rules without which a community could not survive. These rules are good, although in a different manner from those things that are good for one's private interest. If we say these rules conduce to the common good, we can speak of a common good that is not actually shared equally by all of the community and thus a common good that might differ from, even as it stands over, the individual good of everyone in common. If one is a disfavored member of a community, however, it is difficult to see why one should sacrifice for this common good, especially if it is simply a sacrifice for one's oppressors' wellbeing which they call the common good or the greater good or whatnot. The core premise of Thrasymachus' definition of justice is that there is no common good and so the ruler who serves the ruled harms himself, just like the man who obeys the ruler when the ruler understands that there is no common good.<sup>79</sup> Slaves are technically in a community with their masters,<sup>80</sup> and one wonders why the extension of the right to sue and be sued, or the peaceable enjoyment of what property the dominant element grants so long as one obeys and accepts the distribution of property that it decides upon, or to cast a dissenting vote, would fundamentally alter affairs. If one has reason to serve the community only if the community serves the common good, then identifying rules the violation of which would undermine society does not yield rules of justice, however simple and easy to obey such rules may be.

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<sup>79</sup> See Plato, *Republic*, 340d–41a, 343b–44c.

<sup>80</sup> Aristotle says that slaves are in the city but not a part of it; *Politics*, 1328a21–b2, 1328b33–29a2. This might suggest that slaves are not in community with their masters, despite master and slave being one of the primordial communities; cf. *Politics*, 1252a31–4. I think Aristotle makes this distinction in order to preserve the idea that the good of the city is the good of its parts in the face of the unpalatable necessity that somebody do work that forms no part of the good life and thus conceal the limit to which any city can be satisfyingly just.

This is not to deny that a common good is possible, only that the rules that sustain even deviant regimes have a necessary relation to it. I also deny that the question of a common good is simple, so simple that one either has a will to serve it or a will set against it. Most regimes are deviant, serving either the rich or the poor but not the whole citizen body, but Aristotle attributes claims of justice to them. The oligarchs claim that they contribute more to the common good and, being more meritorious, deserve more by the principles of distributive justice which none can deny. Democrats claim that true merit is distributed equally.<sup>81</sup> These claims may be self-serving, but Aristotle does not suggest that they are disingenuous. Nor is it the case that self-interest obscures everyone's awareness of justice. Oligarchs and democrats may mistake their private advantage for real merit, but the private interest of those who are best would also be served by a system that recognized true merit. Nor do oligarchs and democrats give in to an evil principle in assuming that what they possess must be true merit. Justice is good for the just man, and the goods they value most would accrue to them were their merit true merit.

The vision of justice at the root of natural law denies that what one should do is in principle and not just in practice difficult to discern. While vice is not sin, it can be transformed into sin. Vice is not error. When explaining why a failure to achieve happiness warrants even further punishment, Aquinas says only that every order punishes those who disobey.<sup>82</sup> Sin is disobedience.<sup>83</sup> He makes justice a matter of having the right kind of will, not of knowing what is due to each.<sup>84</sup> Imprudence is a sin insofar as some people not only lack prudence but do not have sufficient care to be prudent and spurn counsel they are capable of recognizing as good, which would be possible only as rebellion against the rules of

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<sup>81</sup> Aristotle, *Nicomachean Ethics*, 1131a24–29; *Politics*, 1280a7–25.

<sup>82</sup> Aquinas, *Summa Theologica*, I-II q. 87 a. 1. His argument here relies on every order's needing to preserve itself. This would not be true of an order that was not subject to necessity, that is, subject to an order greater than itself.

<sup>83</sup> Aquinas, *Summa Theologica*, I-II q. 71 a. 6.

<sup>84</sup> Aquinas, *Summa Theologica*, II-II q. 58 a.1.

right reason.<sup>85</sup> Whatever else Aquinas might have picked up from Aristotle, there is a strain in his argument that suggests men actually seek what is bad for themselves and seek it voluntarily.<sup>86</sup>

The political problem as conceived by the natural law perspective is primarily one of sin, and the problem of sin is primarily one of disobedience. Right and wrong, both personally and for the entire community, are simple enough that we can say that people know the difference. What a good ruler does is simple enough. The problem is just that many rulers do not do it. Human beings as they are prevent them from enjoying the full benefits of community. Rulers are bad, subjects are rebellious, and society is cruel. Laws favor some in society over others, but no law truly looks after the common good. Yet human nature and in particular our rational faculties produce a longing for a communal life that secures the common good. The combination of this yearning with actual human politics leaves men dissatisfied while providing them with an intuition of what a good society would look like. We know what is right but cannot do it. Those whose vision is not clouded by the self-interest of the powerful lack the power to improve the world, while if they come to power they are corrupted by it. God resolves this problem, a superhuman legislator free from human failings and able to instruct those who might forget their duties to their fellow man. God can play this role precisely because all that is needed is a superhuman governor.

Those who rejected Aquinas also exhibit this belief. John Locke did not suggest that men had immediate access to principles of right and wrong via *synderesis*. He did however think that they could come to such principles by meditating upon their desires and how to achieve them. In explaining why those who fail to satisfy their desires deserve punishment, Locke, too, attributes imprudence to a

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<sup>85</sup> Aquinas, *Summa Theologica*, II-II q. 53 a.1.

<sup>86</sup> *Pace* Keys, what is unique or novel about Aquinas is not the positing of a natural inclination to the good. Rather, it is that this inclination can be corrupted to seek what is evil/bad and that establishing the existence of an inclination to the good suffices for a proof that *virtue*, and specifically Christian virtue, is already planted in us as a seed. See *Aquinas, Aristotle, and the Promise of the Common Good*, 102–117.

blameworthy will to neglect being prudent.<sup>87</sup> The bare disarmament of criminals rarely satisfies even those who think that it is bad to be unjust, and repentance without tears and self-flagellation is often rejected as disingenuous. Forgiveness does not erase the taint of the crime that must be forgiven.

Hugo Grotius similarly claimed that the principles of the law of nature are “manifest and self-evident, almost after the same manner as those things are that we perceive with our outward senses.”<sup>88</sup> Grotius starts with human gregariousness and it seems that the Dutch jurist did not see any complexity in what our gregariousness points toward. Justice is simple because it simply involves siding with public needs against private interest and blind passion. Our desire for society apparently does not manifest also as a demand that we be treated well, or it does not demand the reconciliation of various individual goods. Or, if sociability does demand that we be done justice, it is not difficult for a society to do justice to all. It is not difficult for a society to recognize real merit, such that only the vicious find their desires thwarted, and then only in favor of those more virtuous than themselves.

Samuel Pufendorf adopted the same basic view of the political problem. He recognizes the need for “certain rules for the true interpretation of rules,” which he then lays out.<sup>89</sup> He discusses how to interpret ordinary words, terms of art, ambiguous words, seemingly contradictory words, etc. He says we should look to the subject under discussion, the avoidance of absurd effects, the circumstances in which the rule was stated, and the reason for the law in interpreting law. He omits, however, one thing that makes interpreting natural law difficult, namely, how one who does not know the reason for the law can interpret it well enough to follow it and not conclude that an exception to the law is needed. This is because, for Pufendorf, law is needed only to bring order, not to have the wise aid the foolish.

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<sup>87</sup> Locke, *Essay Concerning Human Understanding*, III.21.56. Similarly, the only reason Locke gives in the *Second Treatise* why a ruler should respect the limits of legitimate government is the ability to conquer his neighbors and the threat of revolution; see sec. 42, 168, 175–242. Locke elides the rationality of an act into its being obligatory, deviation from it warranting punishment; see Corbett, *The Lockean Commonwealth* (Albany: State University of New York Press, 2009), 19–20.

<sup>88</sup> Grotius, *Rights of War and Peace*, 111.

<sup>89</sup> Pufendorf, *Whole Duty of Man*, I.17.1–12.

Pufendorf lacked the sophistication to conceal the source of his belief that everyone knows enough of the natural law in order to obey it well enough for human purposes. "For if this, at least, be not admitted within the Bounds of the *Forum Humanum*, Men might pretend an invincible Ignorance for all their Miscarriages."<sup>90</sup> The reason for asserting that justice is simple is that otherwise we could not condemn, something which human courts must do.

It is easily accepted that this is not the Socratic teaching. Plato has Socrates explicitly argue that no one does injustice willingly.<sup>91</sup> This is not to say that everything that might be regretted is the result of ignorance, but rather that the psychology of evil-doing is not a human psychology. If the good is what is choiceworthy and evil is not what is best, then evils must result from not knowing the good or involuntary action, neither of which is evil.

Aristotle is said to teach differently. He notes how one might commit injustice voluntarily, which is to say, without being ignorant.<sup>92</sup> The only voluntary act of injustice he names is cheating in commerce. One might object that such a person seems motivated by a desire for petty gains, given wealth's true value, and so acts out of ignorance of what is good. When defining the ignorance that excuses, Aristotle limits it to ignorance of the person affected, the instrument used, or the what would result, not what one ought to seek. At the same time, he does not suggest that one voluntarily deceives oneself about what is good or that one's vision of what is good is the result of choice. He is describing what can be pardoned. Nor does he say that punishment is linked with voluntary action, for involuntary actions that result from inhuman passions nonetheless cannot be pardoned. Their unpardonability does not result from the harm they cause, since passions arising from spiritedness can also end in death but are to be pardoned as human and even necessary. Nor does it result from the moral turpitude of inhuman

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<sup>90</sup> Pufendorf, *The Whole Duty of Man According to the Law of Nature*, trans. Andrew Tooke, ed. Ian Hunter and David Saunders (Indianapolis: Liberty Fund, 2003), I.1.4; see also I.3.1.

<sup>91</sup> See, for example, Plato, *Apology of Socrates*, 25c–26a.

<sup>92</sup> Aristotle, *Nicomachean Ethics*, 1135a15–36a9.

passions, since bestiality and disease lie entirely beyond the limits of vice.<sup>93</sup> Rather, those with inhuman passions are not tolerated simply because they can have no part of a human community. Whether one is pardonable or not seems determined by whether the community must punish, not by whether one deserves punishment for having voluntarily chosen evil (though one may choose the means to an unchosen conception of what is good). The main thrust of Aristotle's discussion of voluntary and involuntary injustice is to reveal how most acts that are normally punished are in fact involuntary and thus not a sign of vice. Those who think that injustice is up to them, by contrast, are mistaken, as are those who think that doing injustice is easy, that justice is easy to know, or that justice does not require a great deal of wisdom.<sup>94</sup>

Aristotle's difference from Socrates lies in his greater emphasis upon the irrational antecedents of evil-doing, such that evil does not result simply from ignorance but also from disordered passions. But wrongdoing arising from the passions is not evil, either. Aristotle does not affirm that, contrary to Socrates, evil is done with full awareness and a turning away from what is good.

Aquinas draws his definition of justice from the Roman jurists, not from Aristotle.<sup>95</sup> Aristotle also ascribes this view of justice to legislators.<sup>96</sup> It arises from the needs of the community, not from an analysis of what is best for the one who would be virtuous. It is not clear that communities need the truth about human beings in order to be effective. Legislators must work within certain boundaries not set by them.

That the perspective of the legislator rather than that of one seeking the fullest measure of happiness should inform perspectives on what happiness is should not be surprising. Laws educate. The particular conception of virtue that informs the laws of a community will always color if not entirely

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<sup>93</sup> Aristotle, *Nicomachean Ethics*, 1148b15–49a12, 1149b27–50a8.

<sup>94</sup> Aristotle, *Nicomachean Ethics*, 1137a4–17.

<sup>95</sup> Aquinas, *Summa Theologica*, II-II q.58 a.1.

<sup>96</sup> Aristotle, *Nicomachean Ethics*, 1113b21–14a3.

determine that community's citizens' ideas about the good life. Insofar as the application of law always rewards and praises law-abidingness, every community would instill a prejudice in favor of the equation of law-abidingness and virtue. The power of this education relies upon the effective enforcement of laws, not upon its veracity. The limitations of this law-bred perspective appear to the extent that one is compelled to exercise prudence rather than obey the prudence of another, that is, to the extent that one rules in some fashion. We would expect, then, that the perspective of the legislator would take hold most firmly among those whose own actions share least in the authority of legislation, those without individual political power. Those who have power as individuals rather than as part of a class tend to be wealthy rather than poor. Aristotle associates the arguments in favor of the rule of law, the existence of a perfect or natural law, and the simplicity of justice with a prejudice in favor of democracy.<sup>97</sup>

Problematically for my thesis, Aristotle defends the view that legislators and democrats take. He does not say that everyone who makes themselves into a worse human being does so knowingly, but he does suggest that some do.<sup>98</sup> He concludes that vice is voluntary and denies that no one is to be held responsible for erring in the understanding of what is good because it is not up to them to decide how things appear to them.<sup>99</sup> His argument here is based upon the idea that the virtuous are responsible for their being virtuous, and one cannot ascribe the success of the successful to the successful without doing the same for the failings of the failures. This argument begs the question in a rather obvious manner. If Aristotle repeated this line of reasoning whenever the question of responsibility arose, we would be on strong ground in saying that he was confused. Yet he denies the consequence of this argument in affirming that injustice is not up to the just man and he denies its premises in affirming that everyone does everything for the sake of what appears good. He affirms that the vicious are the cause of their being vicious only where decorum makes it necessary to do so.

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<sup>97</sup> See Corbett, "The Question of Natural Law in Aristotle," 244–46.

<sup>98</sup> Aristotle, *Nicomachean Ethics*, 1114a4–31.

<sup>99</sup> Aristotle, *Nicomachean Ethics*, 1114a31–b25.



One can obey or one can disobey, and disobedience is the opposite of obedience. This would make the opposite of vice seem to be virtue rather than just another vice. Indeed, this seems to be the perspective of justice itself. Aristotle famously has difficulty fitting justice in as a mean between two vices. His various attempts are all unsatisfying insofar as they do not relate to the virtuous man's passions, while ethical virtue deals with the passions.<sup>100</sup> Aquinas flatly states that justice does not involve the passions.<sup>101</sup> This would mean that a properly ordered soul with respect to its passions can be described without reference to its justness. It would of course be a scandal not to include justice among the virtues, but a justice that is not simply a synonym for the whole of virtue seems something less than a virtue.

Aristotle does narrow the discussion of justice down to a particular virtue. It can plausibly pass for the whole of virtue. Aristotle suggests this is so because people equate law-abidingness with the whole of virtue. In this view, it is even the highest virtue.<sup>102</sup> That law-abidingness cannot be the whole of virtue, even if we ignore the limitations of human law, has already been discussed. A faithful account of what people mean by the virtue of justice cannot sever it from law. An emphasis on justice represents a challenge to Aristotle's conception of virtue in that it posits an alternate vision of the highest human type, a type that ultimately is submissive to external commands and looks to define vice as willful rebellion. One wonders what one must think truly good in life such that gluttony, licentiousness, and murder result from knowing disobedience rather than confusion about what brings happiness. People who think doing injustice is up to us and hence refraining from it is a mere matter of the will, who suggest that wisdom is not necessary to justice because the laws speak clearly and hence one must

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<sup>100</sup> Aristotle, *Nicomachean Ethics*, 1102b14–3a10, 1109b30, 1131a9–14, 1132a14–24, 1132b18–20, 1133b30–34a16.

<sup>101</sup> Aquinas, *Summa Theologica*, II-II q. 58 aa. 9–10, q. 59 a. 4.

<sup>102</sup> Aristotle, *Nicomachean Ethics*, 1129b11–30a16.

simply obey, or who think the just man capable of injustice because justice lies in the actions, reject the Aristotelian elevation of the intellectual virtues that lies at the heart of his teaching on ethics.<sup>103</sup>

A natural law provides a decisive reason in determining the will. It is an interesting concept only if our deliberations might be different if we fail to consider it. To take it as a decisive reason for acting is to obey it, and insofar as no one is above it, natural law means that everyone, even the best man, ought to be obedient. Aquinas affirms that obedience is a virtue.<sup>104</sup> What stands in the way of obedience, however, is not a love of dominion but instead its incompatibility with the full exercise of prudence. Natural law presupposes an un-Aristotelian conception of what is choiceworthy that does not begin from human happiness.

## Conclusion

A belief in natural law is not the same as a belief in natural right. Aristotle is incompatible with the natural law tradition, not because he believes all statements about justice to be relative, but precisely on account of what he says about natural right. To distinguish between natural law and natural justice, however, is already to reject natural law, and so it should not be surprising if those who cleave to the natural law tradition see with its demise the demise of decency altogether.

Modern critics of natural law might be better classed as opponents of certain theories about the content of natural law. For them, ethical action still involves adhering to norms, ethical theory, the discovery or clarification of those norms. What they object to is some of the norms advanced by those who called natural law theorists. Since they themselves hold to the core of natural law reasoning in their view of what ethical action entails, they predictably focus on what I have described as peripheral issues. At bottom, the question of whether we can draw moral conclusions from amoral facts distorts the

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<sup>103</sup> See Aristotle, *Nicomachean Ethics*, 1137a4–26.

<sup>104</sup> Aquinas, *Summa Theologica*, II-II q. 104 a. 2.

natural law tradition. They are not entirely to blame for this, as the distorted view of natural law has been adopted by many proponents of the natural law, and so it is left to the more sophisticated defenders of natural law to argue that Aquinas did not argue from physics to ethics. To those ignorant of the history of political philosophy, this correction no doubt seems like revisionism.

Attention to the true history of natural law thinking and the intellectual crisis that spawned it brings us to the political thought of Plato and Aristotle and its application to the question of divine government by their students in the middle ages. These ancient and medieval precursors to Thomistic natural law take the questions at its heart more seriously and so treat it more respectfully by meeting it on its own terms rather than understanding it poorly, simplifying it, and then rejecting it because their own simplifications do not make sense.