

CONTEMPORARY CHALLENGES TO NATURAL LAW THEORIES

Kevin Lee
Ave Maria School of Law

J. Budziszewski has been a leading advocate for natural law theory over the past twenty years. His numerous works focus on articulating a conception of natural law rooted in the obviousness of some moral principles: "What we can't not know" as he memorably titles one of his books. This essay points out how Catholic philosophers and theologians have questioned whether faith and reason can be properly balanced in modern thought. It suggests that a Catholic natural law theory must also seek to balance faith and reason, but this poses a challenge to the obviousness of the moral principles that approaches like Budziszewski's seek.

I should begin by saying that I too am familiar with the letter from Pope Benedict XVI to Catholic University to which Professor Budziszewski referred.¹ The letter was sent to three law schools in the United States as well as other institutions throughout the world. In addition to Catholic University, it went to Notre Dame Law School and to Ave Maria, where I teach. At our school, it set off quite a buzz for awhile. Many faculty members debated the meaning of the letter, its purpose, and the best way to respond to it. It is a lengthy letter. To me it seems to ramble a bit, as though it might have been written by a committee, or at least written with multiple constituencies in mind. I don't detect any coyness in the letter. It seems to me to be a sincere and honest questioning of the relevance of the Natural Law tradition of ethical reasoning in the contemporary world. Writing then as Joseph Cardinal Ratzinger, Prefect of the Congregation for the Doctrine of the Faith, he expressed concern (not his personal concern alone, but the concern of the Catholic Church) in "finding a common denominator among the moral principals held by all people."² The letter did not call for a return to Natural Law, or to the philosophy of Thomism, as Leo XIII did in his encyclical, *Aeterni Patris*. It was a humble questioning of the means to make this part of Catholic ethical theory relevant to our times.

Among the many strengths of Professor Budziszewski's essay are its persuasive rhetoric and strong arguments. It is in fact so strong and so sweeping in its scope that after reading it, one might wonder what

prompted the Holy Father to question the unquestionable vitality and relevance of the natural law tradition. What could be the source of concern that he expresses on behalf of the Church? Isn't the moral confusion and misguided scholarship of our times merely a cloud that can be evaporated by the light of natural law principles embedded like embers in the human heart? What I want to suggest here is that the meaning of this letter and the concern of the Church might be brought into better focus—and thereby the current state of Natural Law theories in general—by considering natural law in the context of the Catholic commitment to view faith and reason as harmoniously integrated. A distinctive characteristic of modernity has been the disintegration and disharmony to faith and reason. The contemporary intellectual milieu is marked by a dialectical opposition of faith to reason, and this conflict between faith and reason prevents the acceptance of Catholic ethics in our times.

The Balance of Faith and Reason in Thomistic Thought

In pre-modern Christian political and moral theory natural reason was carefully balanced with Christian faith. The most significant example for natural law theory is found in the philosophy of St. Thomas Aquinas, who delicately balanced reason and faith through a complex synthesis of Aristotelian philosophy and Neo-Platonism.³ St. Thomas generally accepts the Aristotelian view that beings are composed of matter and form, that only one substantial form actualizes a physical body, that matter individuates among beings, and that all beings have a *telos*—an end, purpose, or fulfillment which is their perfection.

Aquinas synthesizes Aristotelian metaphysics with Neo-Platonic metaphysics which he adopts from Pseudo Dionysius and St. Augustine.⁴ The Neo-Platonists believed that the essences of individual beings exist through participation in God's Being. Essence is different from existence because beings have unactualized existence. Only God, who is full, pure, actual being, has no unactualized existence. Since God's essence is infinite existence, God surpasses all of the contingency of beings. God alone is the ultimate fulfillment and perfection of existence.

This complex metaphysics entails a harmony between faith and reason. It is natural for human beings to know of God's existence, and knowing of God to desire to see God's essence. Knowing by natural reason that God *is*, one has a natural desire to know *what* God is. But, faith in revelation is necessary to know what God is, since his essence (infinite existence) exceeds the grasp of natural reason. Formal

intelligibility of essences is grasped in concepts known through abstraction from a multitude of actually existing particulars. Thus, conceptual knowledge presupposes the judgment of existence. And, the dynamic judgment of existence presumes conceptual knowledge of the essence of the thing. To make proper use of a thing requires both a conceptual knowledge of the essence of the thing and a judgment as to its actualization in relation to God.

Leonine Thomism and the Modern World

In 1879, Pope Leo XIII issued a call to for philosophers and Seminarians to return to the teaching of the Angelic Doctor in his encyclical, *Aeterni Patris*.⁵ On its face the encyclical stated the limited goal of reforming the philosophy curriculum in the seminaries,⁶ but it had the effect of launching a broad project for Catholic philosophers of attempting restore St. Thomas Aquinas to preeminence. The desire to find and defend a coherent philosophy is understandable in the context of rising challenges to tradition and faith posed by a variety of new philosophical systems inspired by developments in the natural sciences.

The philosophers who took up the challenge were collectively known as Leonine Thomists.⁷ They worked to recover the teaching of the Angelic Doctor underwritten by the belief that modern philosophy represents a crisis for the Church and in the belief that the thought of Aquinas contains the philosophical resources necessary to combat modern philosophy. Thus, by taking up this project, they positioned themselves as the defenders of Thomistic philosophy in opposition to modernity.

In formulating his ideas about philosophy, Pope Leo XIII had been particularly influenced by the late nineteenth century theologian, Joseph Kleutgen, who argued that modern philosophy had been infected with an unwarranted skepticism by Rene Descartes.⁸ It was Descartes's famous assertion that the proper method for philosophy is to first draw into doubt all that can be doubted which Kleutgen believed was the source of a radical rupture in philosophy.⁹ Descartes had argued that since the senses are notoriously unreliable, knowledge cannot be derived from experience. And since human beings cannot rely on experience, post-Cartesian modern philosophy denies the possibility of human knowledge of metaphysical essences, universal ideas, or teleology—all essential elements of Thomistic metaphysics.¹⁰ Therefore, given the foundational importance of Thomistic metaphysics to traditional Catholic philosophy, Cartesian thought and indeed all those modern philosophical projects that follow from it must conflict fundamentally with orthodox Catholic thought.

According to Aidan Nichols, Kluetgen argued that nineteenth century German theologies in particular had been infected by “the influence of post-Cartesian philosophy and these were congenitally incapable of defending the Church’s teachings on faith and reason, nature and grace.”¹¹ The Neo-Scholastic program held that the belief in an intuitive grasp of God that precedes any particular sensual experience of the world, was the error of post-Cartesian theology. The program of Neo-Thomism called for an abandonment of any Cartesianism in theology, declaring that the First Vatican Council had found that any system accepting Cartesian skepticism over the realism of coming to know God through experience of the world cannot properly harmonize between nature and grace or between faith and reason.¹² Kluetgen was confident that a revitalized Thomism could absorb the best of the new philosophies and scientific knowledge, just as Aquinas himself had done in his synthesis of Neo-Platonism with Aristotelian thought.

Kluetgen has been criticized by Alasdair MacIntyre for “epistemologizing” Thomistic thought by making it serve essentially modern purposes for which it was not intended.¹³ The importance of St. Thomas, for MacIntyre, lies not in his ability to provide an epistemology for refuting modernity, but in the development of an integration of Augustinian and Aristotelian metaphysical systems.¹⁴ Thomism unites, harmonizes, and synthesizes the metaphysics and epistemologies of St. Augustine and Aristotle but does not develop into an epistemology of justified knowledge, which has been the desire of modern thought. Epistemology takes place within the context of a set of theological presuppositions that are taken as given (warranted but not justified).¹⁵ The epistemology of modernity seeks a vantage point outside of presuppositions and prejudice from which epistemological claims can be justified. Thomism relies on a tradition that gives meaning to Scripture, teases out its insights, and provides warrants for believing in its conclusion. Kluetgen’s error is that “[he] instead treats Aquinas as presenting a finished system whose indebtedness to earlier writers is no more than an accidental feature of it.”¹⁶ Asking Thomism to do the work of refuting Cartesian epistemology distorts the nuanced synthesis of Thomism by “opening an epistemological question for which there is no place in Aquinas’s scheme of thought.”¹⁷ According to MacIntyre, it was this that led to a distortion in his thought that developed into a variety of anti-modern Leonine Thomisms.

MacIntyre locates the rupture of philosophy much earlier than with Descartes. Two often cited earlier sources of this distortion in Thomism are great Dominican philosopher, Cajetan, and the Jesuit philosopher, Suarez. Both of these late medieval Thomists offered

interpretations of Aquinas's metaphysics that stressed conceptual realism over existential judgment, which is to say that they stressed the Aristotelian metaphysics of essences over the Neo-Platonic metaphysics of existence. MacIntyre's claim is that while these metaphysical systems had been carefully balanced by Aquinas, they were put out of balance¹⁸ in favor of Aristotle in late Medieval thought. For Nichols, Cajetan is the source of error. On his reading, Cajetan's over-emphasis on Aristotelian metaphysics was occasioned by his opposition to Protestant thought with its connections to nominalism. Where Protestant thought was stressing the uniqueness of individuals whose inner reality is known only to God, Cajetan sought to assert the role of natural reason in knowing and understanding revelation. And, according to MacIntyre, Suarez denied the essence/existence distinction in Aquinas's thought. On MacIntyre's reading, Suarez saw Aquinas as an Aristotelian through-and-through. MacIntyre argues that Kluetgen, by adopting Suarez's misreading of Aquinas, created the conditions that led the Leonine Thomists to a variety of positions that did not balance faith and reason correctly.¹⁹

The Theological Context

Even twentieth century moral theology has fared no better than metaphysical philosophy in harmonizing faith and reason. In an article that appeared in *Communio* (Summer 2005) titled "Renewal of Moral Theology" Cardinal Ratzinger describes two fundamental changes in Catholic moral theory that have occurred since the Second Vatican Council: one has to do with faith, or more specifically the loss of faith that allows for a diminished role for Scripture in moral theology.²⁰ And the second has to do with the loss of confidence in reason itself. It is as though, having lost the careful integration of faith and reason so admirably balanced in Thomistic thought, modernity (including Catholic modernity) has lost confidence in both.

According to the description of moral theology set out by Cardinal Ratzinger, in the early part of the twentieth century, the moral theology of the Church was dominated by manualists and rationalism.²¹ The term "Manualists" refers to the manuals used to train confessors. He explains that the underlying moral theology of the manualists typically rooted the idea of casuistry in natural law theories.²² The tradition of virtue ethics that St. Thomas had integrated so seamlessly into his thought had been nearly forgotten in nineteenth and early twentieth century thought. The "rationalism" refers to the fact that the manuals were not Christological. In fact they made little reference to Scripture at all because the casuistic enterprise could be conducted through natural

reason alone. In the word of the Cardinal, “The older type of [Manualist] moral theology no longer allowed people to encounter Christ. Rather it stressed above all the negative aspect of so many prohibitions, so many “no’s”.²³ According to the essay, the use of Scripture in moral theology was reduced to rhetorical flourishes. The moral life was no longer viewed in Christocentric terms. Faith and reason were badly out of balance.

He explains that the council hoped that moral theology would be reinvigorated by developing more Scriptural connection, but this has not occurred. Instead, the de jure segregation of Scripture from moral theology became de facto separation in the later half of the twentieth century by moral theorists who found Scripture to be too contradictory and vague to provide concrete guidance in moral issues. They rejected the integrative hermeneutics of pre-modern Christians in favor of historical/critical methods, but they could not find in the scientific analysis of pericopes an integrative reading that made it possible to have a meaningful encounter with Christ.²⁴

Reason too was torn asunder in twentieth century moral theology. No longer was philosophy simply skeptical about philosophical realism. It became indifferent toward the question, a condition that Pope Benedict XVI describes as “a-metaphysical.”²⁵ He means it was unconcerned with metaphysics and, lacking concern for metaphysical questions, reason “closed in on itself.” A radical evolutionism has developed—it is as though evolutionary biology (or perhaps information theory) is a changeling for metaphysical realism in Western thought. But, this new ethos lacks the means for connecting moral claims to ultimate truth because it cannot recognize the moral meanings inscribed in being. Nothing is inscribed in being but a calculus of forces and counter-forces. This is what Jean Elshtain and John Milbank have referred to as the ontology of violence in social science moral theory that is fundamentally at odds with the ontology of love that is the true ground of Being.²⁶

Conclusion

This is the conundrum that the Natural Law theorist faces today. Because faith and reason are out of balance in favor of a particular conception of reason, we miss seeing our connection to Christ and God’s abiding love. It is modern to focus on epistemological issues, so we argue that it is a fact that there are common moral truths that human beings know in their hearts. The modern thinker asks: To what does this proposition correspond? What set of intuitions is verified? There are

many moral intuitions, both Mother Theresa of Calcutta and Tony Soprano of HBO have moral intuitions. How do we know which are better or more in accord with the good?

In modern philosophical thought the task of Ethical theories is to provide modes of discourse that allow us to assert with apodictic warrants that one person's moral intuitions surpass another. But, for Christian believers that discourse is not simply one of natural reason. It is basic to Christian belief that Christ plays a role in the moral life. Understanding that role has to do with how we integrate faith and reason. For St. Thomas this was accomplished through his carefully nuanced natural law theory that is set in the context of the theological matrix of Eternal and Divine Law. And even that natural law theory was accompanied by a fully developed theological account of virtue. In this way St. Thomas brings multiple modes of discourse to bear in developing a highly nuanced account of the moral life which integrates nature and grace. Both stand together in his thought—faith and reason are integrated in a natural law that is set within an axiology of divine Good.

But, this balance is fundamentally at odds with modernity. It is no longer widely understood by even some Catholic intellectuals and certainly not in the secular academy. Given the distortions in metaphysics that MacIntyre describes and the separation of Christology from moral theology that the Holy Father describes, there is considerable concern that even among Catholics, faith and reason in the moral life are poorly integrated. Beyond the circle of Catholic moral theorists, natural law faces greater challenges. A dominant consensus today gives hegemony to scientific/technical rationality. Other forms of rationality (hermeneutical, aesthetic, and the sort of rationality that is unique to faith) are excluded and even driven from the field. And, the dominant technological and scientific rationality is largely instrumental and consumerist in its goals. It is doubtful, I think, that an exclusively scientific/technical rationality can integrate and harmonize with faith. And that implies that a scientific/technical reading of the natural law will have difficulty accommodating a role for Christ in the moral life. The Church's concern about the ability of natural law to speak to the contemporary world might be understood in this dimension. Is it possible to re-establish the harmony of faith and reason that existed in such delicate integration in St. Thomas's thought through the modes of discourse available to contemporary natural law theories?

It seems to me that the Church (and especially an Augustinian Pope) might reasonably doubt that a contemporary natural law theory could accomplish the necessary reintegration of faith and reason for our

times. The balance of faith and reason that is fundamental to a contemporary Catholic moral thought must be rooted in a rich syntax and idiom for investigating the connections between the experience of moral awareness and a comprehensive account of the moral good. It must be rooted in a conception of human reason that embraces modern awareness of the phenomenological side to human existence, and yet be resolutely realist. It must balance a defense of a rich account of reason with the human need (both psychological and epistemological) for faith and do this without becoming sectarian. It must balance deontological principles of moral “ought” with virtue ethics of character and goodness without becoming incoherent or allowing moral laxism. It must address the solipsism and subjectivity of modern thought without diminishing the awareness of “God within” of Augustinian thought. All hugely difficult tasks.

I believe that Natural Law theory will find the means to continue to contribute to Catholic moral thought in the modern and postmodern world, and whatever comes next. But, it will not stand alone in doing so. It will be joined by renewed appreciation of virtue ethics and theological ethics rooted in new hermeneutical orientations. I think what is wonderful about Jay’s paper is its insightful portrayal of the strengths of the natural law tradition, and the suggestion that the sort of integration of natural law with other ethical theories is possible. He sets out his defense of natural law in terms accessible to the scientific/technical rationality that dominates discourse today, using familiar concepts like fact, theory, objective, subjective, will, intention, use, application, penalty, and violation. We can hope that his work of renewing the formal structure and reasonableness of natural law can open to the faith and the love that ultimately is the ground of all existence.

Notes

1. Cite to Professor J Budziszewski's paper to which I am responding
2. Cite to quote in Professor J Budziszewski's paper.
3. I am guided by my reading of St. Thomas by Gilson's existential Thomism. See, *The Philosophy of St. Thomas Aquinas*.
4. This essay was influenced by John M. McDermott, "The Context of *Veritatis Splendor*" in *Prophecy and Diplomacy, The Moral Doctrine of John Paul II* (John J. Conley and Joseph Koterski eds.) (New York: Fordham University, 1999) 115-175.
5. See Gerald McCool, *From Unity to Pluralism*.
6. This is not to suggest that the encyclical was intended to have a limited effect. Leo XIII sought a revival of Thomistic philosophy in order to deal with the controversy between religion and science of the time.
7. McCool, *Unity to Pluralism, Nineteenth-Century Scholasticism* (New York, Fordham University Press, 1977) 1-17.
8. See, e.g., id.
9. Id. 147-215.
10. Id.
11. Aidan Nichols, *Catholic Thought Since the Enlightenment* (Pretoria, South Africa: The University of South Africa Press, 1998) 73.
12. Nichols explains that for Kluetgen: "Catholic theology must abandon forthwith the subjective starting-points of the philosophies which saw intellectual day after Descartes and returned to the sane metaphysics of St. Thomas, grounded as that is on a grasp of the conceptualisable in finite reality, attained through the happy co-operation of the lowly human senses and the busily exploring agent or abstracting intellect of the Aristotelian theory of knowledge." Id. at 74.

13. Alistair MacIntyre, *Three Rival Versions of Moral Enquiry* (Notre Dame, IN: The University of Notre Dame Press, 1990) 68-70

14. Id.

15. I am drawing here from Alvin Plantinga's *Warranted Belief and Proper Function*.

16. Nichols, 74.

17. Quoted in Fergus Kerr, *After Aquinas, Version of Thomism* (Oxford, Blackwell Publishing, 2002) 18.

18. Nichols, 73-74

19. MacIntyre, 73-75.

20. Ratzinger, *Communio*.

21. I am guided here by Servais Pinckaers' *Sources of Christian Ethics*, as well as the Holy Father.

22. Ratzinger, *Communio*.

23. Ibid.

24. Ibid.

25. Ibid.

26. Ibid.