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# On the Telos of Man and Law: An Essay Concerning Morality and Positive Law

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## On the Telos of Man and Law: An Essay Concerning Morality and Positive Law

Among the laws which men make are some which deal with what is good or bad by its very nature; and they require man to do right and avoid wrong, and make their observance binding on pain of some suitable penalty. But these laws do not owe their origin to civil society by any means. Civil society did not create human nature and so cannot be credited with being the author of the good which benefits the nature, nor of the evil that harms it. Laws were in existence before ever men formed themselves into a society; they come from natural law, which, in its turn, is a reflection of the divine, eternal law.

Pope Leo XIII, *Libertas preaestantissimum*

The positivist philosopher grants to the State the sole power to promulgate positive laws and thereby determine man's freedoms and liberties. Positivism, however, allows those in society with sufficient authority to enforce their will to suppress individual freedom simply by enacting positive laws. But mere positivism must be rejected as an inadequate philosophical reason for law because positive mandates can be inherently unjust and deprive persons of their natural rights. To preserve the justness of the law, the State's edicts must be derived from a reasoned and informed understanding of man's nature and the goal of human fulfillment.

Saint Thomas Aquinas stated that positive law is nothing other than "an ordinance of reason for the common good, made by him who has care of the community, and promulgated."<sup>1</sup> By stating that law is an "ordinance of reason," Aquinas advanced the idea that the common good of the community is rationally discernible to the human mind. In addition, Aquinas conceived the common good of the community as a universal principle of morality, because the term good, even in its utilitarian sense, has moral significance due to its inherent desirability. Aquinas thus linked a definition of law as an ordinance of reason with the moral principle of the common good.

The common good is an aggregate of the individual good of each member of the community. In turn, the realization of individual good depends upon achieving human fulfillment. Because human fulfillment is a tenant of the natural law, it becomes a rational method of determining the morality of law. Thus, from Aquinas' understanding, rational humans can judge the justness of positive laws according to a criterion superior to mere positivism by considering whether a given law frustrates human fulfillment. A law which hinders human fulfillment would be unjust or immoral and, depending

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1. T. AQUINAS, I SUMMA THEOLOGICA, q. 90, art. 4, at 495 (Dominican Fathers' ed. 1947).

on the severity of the injustice, should not bind the individual or society.

Starting with the proposition that man is a rational animal, Aquinas defined law as an ordinance of reason. It is the faculty of reason that separates man from the brute animals. However, reason itself is not empirically verifiable since by its very nature it is not quantifiable. In consequence, a skeptical materialist might challenge the assertion that man is a rational animal and demand an intellectual argument to support the proposition. Paradoxically, however, as Immanuel Kant recognized, the demand for intellectual proof by itself demonstrates the point that man, *sui generis*, is endowed with the faculty of reason. Kant stated succinctly that only a rational being would seek to "[prove by] reason that there is no such thing as reason."<sup>2</sup>

Given then that man has the use of the faculty of reason, how does man acquire knowledge? David Hume expounded as a philosophical truth that man could have knowledge only of that which is empirically verifiable.<sup>3</sup> For Hume, knowledge is limited to observations about a specific event at a particular moment in time. Under his theory, it is impermissible to abstract or generalize from an event because the recurrence of the same or similar event is unpredictable. In effect, Hume denied all causality.

However, the difficulty with Hume's proposition is the idea that all knowledge is known empirically. Hume's own theory of empiricism is unknowable since empiricism as an intellectual concept is itself not quantifiable or observable. The very definition of empiricism negates it as an intellectual principle and Hume's thesis is not so much erroneous as it is absurd because, as an argument, it is self-referentially inconsistent. Aside from its logical fallacy, the principle in practice would eliminate knowledge worthy of the name. Eliminating the ability to abstract generalities from particulars, a direct result of overthrowing knowledge of causalities, robs man of scientific knowledge.<sup>4</sup>

2. H. ARKES, *FIRST THINGS, AN INQUIRY INTO THE FIRST PRINCIPLES OF MORALS AND JUSTICE* 72 (1986).

The very posing of the challenge already presupposes the answer that the skeptics are seeking to resist. And of course who else but a rational creature would conceive of marshalling reasons at the highest level for the sake of resisting the proposition that human beings are capable of marshalling and understanding reasons?

*Id.* at 71-72.

3. D. HUME, *An Inquiry Concerning Human Understanding*, in *IV THE PHILOSOPHICAL WORKS OF DAVID HUME*, sec. IV, pt. I, (1854) "[Knowledge is not] attained by reasonings *a priori*; but arises entirely from experience, when we find that any particular objects are constantly conjoined with each other." *Id.*

4. H. ARKES, *supra* note 2, at 63.

We think we see a ship draw its anchor and prepare to leave the harbor, and later we see the ship moving out to sea. And yet we would not be warranted in assuming that this order of events, as it appeared to our senses, was a product

The preservation of knowledge gained by causality protects scientific knowledge. Scientific knowledge allows one to know particular facts that are universally true.<sup>5</sup> A simple illustration of scientific knowledge is found in geometric shapes. Every triangle will possess three sides. The same sort of knowledge holds true for the interaction of physical properties; two atoms of hydrogen and one atom of oxygen will universally produce water given consistent conditions in temperature and pressure. The converse of scientific knowledge is an individual occurrence which is not the member of a species.<sup>6</sup>

The requirement of empirical verification unduly restricts the original philosophical understanding of the term "science." Scientific knowledge is the means by which man takes separated segments of knowledge and attempts to "interrelate them, to grade them, and especially to explain them in function of what he finds to be their causes."<sup>7</sup> We can know through

of anything more than our own subjective understanding. For all we *strictly* know (on the premises of Hume's argument), the ship moving to sea might have *preceded* the drawing of the anchor and the preparation of the ship for departure. As silly as the prospect might be, Kant's point is that there would be no basis for asserting anything to the contrary as a necessary truth if we admit Hume's premise that what we know, we can know only on the strength of "experience."

*Id.* (emphasis in original).

5. J. OWENS, AN ELEMENTARY CHRISTIAN METAPHYSICS 236 (1986).

The universality and necessity under which intellection attains its object make possible scientific knowledge. Scientific knowledge has to be of the universal. It requires, for instance, that what is known of a particular piece of sodium in an experiment holds for all such pieces of sodium. It means that what is seen in one individual can be applied to all individuals of the species.

*Id.* (footnotes omitted).

6. *Id.*

When in a Euclidean plane triangle the equality of the angles to two right angles is demonstrated of an individual figure drawn on the board, it emerges as a truth of universal applicability. On the other hand, if a merely individual occurrence is considered without questions of any further applicability, it is not yet an object of science. The fact is simply recorded, for instance that the Titanic sunk at 2:20 a.m., April 15, 1912. Only when it is considered under an aspect that can be applied to other cases, for example that ships can be sunk by icebergs, does it come under scientific consideration.

*Id.*

7. *Id.* at 17.

In this fashion the natural disposition toward metaphysical thinking was located by Aristotle (*Metaph.*, A 1-2, 980A22 ff.) within the general desire of men for knowledge. Wonder, especially at things that happen in an unusual way, such as the movements of marionettes, prompts the inquiry into the cause. Accordingly wonder, as Plato (*Th.*, 155D) had noted, was the beginning of philosophy. For Plato (*Men.*, 97B-98A) knowledge through cause had meant knowledge according to a common Idea that manifested the nature of the individual. Against that background, universal knowledge of the particulars, and knowledge of a particular in the light of its cause, were equated by the natural desire, in this setting, tended toward not just a description of the "how," but toward a penetration into the "why." Cf. Aristotle, *Ph.*, II 7, 198a 14-21. Even today, according to the

scientific knowledge certain physical truths and certain conceptual and metaphysical truths. A crucial question is the extent of this knowledge.

A common responsory intoned by the pious adherents of the contemporary "dogma" of relativism is that "there is no truth." Ironically, this assertion in itself posits one absolute truth, that there is no truth. Such a proposition violates the philosophical principle of non-contradiction. The principle states that something cannot have being and not have being at the same time in the same sense. More simply, the principle requires that a light is either on or off, not both at the same time. From the contradiction in the statement that "there is no truth," it becomes obvious that truth does in fact exist. Unless these relativists are attempting to advance an idea of radical solipsism, they then must seek to deny truth in the context of morality.

The real question, then, is which truths are accessible to the human mind? Aquinas defined truth as "the conformity of intellect and thing. Hence, to know this conformity is to know the 'truth.'"<sup>8</sup> For Aquinas, truth is objective and exists apart from the subjectivity of the individual mind to which that individual mind must conform. Objectively true scientific knowledge of metaphysical principles is attainable to the human mind. Morality would certainly belong within this realm of metaphysical principles. However, is morality also objectively knowable as true to the faculty of reason and therefore classifiable as scientific knowledge?

Relativists invariably point to the manifold disagreements over matters relating to the field of morality, such as the fact that various value systems of different cultures or societies conflict with one another, in order to demonstrate that no universally true morality exists. Such arguments are replete with facile rhetoric and lack serious philosophical merit. A classroom filled with thirty second graders, working a simple math problem, may produce a plentitude of contradictory answers. Each child may subjectively believe that his answer is correct, yet the teacher and the mathematician will maintain that there is only one objectively correct answer. The students' answer fails to conform to objective mathematical truth. Aquinas addressed this aspect of truth when he wrote: "For we see that of themselves men can be deceived and err. But in order to know the truth they have to be taught by others."<sup>9</sup>

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ordinary use of language, scientific inquiry is regarded as causal at least in the sense of asking the "why"; "But in the way in which the term 'why' is most commonly used, science does explain why . . ." J. Hospers, "What is Explanation?" in *Essays in Conceptual Analysis*, ed. Anthony Flew (London, 1956), p. 117.

*Id.*

8. T. AQUINAS, *supra* note 1, q. 16, art. 2, at 90. Aquinas posits that truth is the *Verum finis ipsius* or that for which the intellect strives. *Id.* at 82, 3 ad im.

9. J. OWENS, *supra* note 5, at 265.

How does one arrive at the point where one can state that morality can be as objectively true as the proposition that a triangle has three sides, or that two plus two equals four? The answer to this question must be gleaned from a teleological examination of man. Determining human nature and its relationship to morality is fundamental to whether a given law is just.

Our treatment of anything must depend, in the last resort, on what we think it is: for instance, we treat people one way and cats another, because our idea of what a man is and what a cat is. All our institutions—family, school, trade unions, government, laws, customs, anything you please—grew out of what those who made them thought a man was.<sup>10</sup>

The translation of Aristotle from Arabic in the Middle Ages stimulated a great deal of inquiry into the nature of man. Aquinas is the exemplar and pioneer of this inquiry as it relates to natural law. After Aquinas, scholastic theologians and philosophers like Jesuit Francisco Suarez developed an essentially different paradigm from Aquinas' natural law theory.<sup>11</sup> This paradigm gained ascendancy as a theory in the seventeenth century and has held sway into this century.<sup>12</sup> Suarez's model was different in its intellectual mechanics from Aquinas' theory.<sup>13</sup> Suarez and the later scholastics were correct in their belief that man possesses the faculty of reason and that he is endowed with a common nature.<sup>14</sup>

10. F. SHEED, *SOCIETY & SANITY* 3 (1953).

11. *Id.* at 112. "For an account of the differences between Suarezian and Thomistic theories: Germaine Grisez, 'The First Principle of Practical Reason: A Commentary on the *Summa theologiae*, 1-2, Question 94, Article 2,' *Natural Law Forum*, 10 (1965), 168-201."

12. G. GRISEZ, *THE WAY OF THE LORD JESUS*, Christian Moral Principles 104 (1983).

13. *Id.*

14. *Id.*

What is most characteristic of scholastic natural-law theory is its notion of the objective moral norms. The basic moral standard is simply human nature as it is given—given, of course, not to sense experience but to intellectual knowing. Moral goodness or badness can be discerned merely by comparing the essential patterns of possible human actions with the intelligible structure of human nature considered both in its inner complexity (human persons are vegetative, sentient, and rational in themselves) and in its extrinsic relationships (human persons are creatures, fellow creatures, and rulers of lower creation in their essential relationships). When compared with human nature, actions are seen either to conform or not to the requirements set by nature.

3. According to scholastic natural-law theory, knowing whether or not a possible action conforms with human nature is a matter of making a comparison. Thus, this judgment is a piece of theoretical knowledge and has the kind of necessity enjoyed by a fundamental law of nature. When the action is compatible with human nature, the judgment registers conformity; it registers nonconformity, intrinsic evil, when the action is incompatible with human nature in any of its essential aspects.

4. Of course, to become aware of one's obligations it is not enough to observe the conformity or nonconformity between the action and one's nature. More than this theoretical knowledge, one needs a basic requirement. According to the theory, this can be expressed in various ways: *Follow reason, Act in accord with*

From these premises, the scholastic natural law argument was that certain acts are in accord with, or opposed to, human nature. In order for man to act in a rational way, the argument concluded, he ought to behave in accordance with his nature. Operative in the argument is the use of the term "is," as relating to human nature, and "ought," as relating to actions in accordance with that nature. To mix "is" and "ought" is logically to mix the proverbial apples and oranges. The problem is that it is logically erroneous to proceed from "is" to "ought," since "ought" does not follow "is."<sup>15</sup> Consequently, where does this leave the question of objective morality and human nature?

If in dealing with human nature we are precluded from going from "is" to "ought," we are also prevented from going from "is" to "is" in the field of morality. We cannot move from "is" to "is," because morality deals with what ought to be and not with what "is." Germain Grisez, professor of Christian ethics at Mount Saint Mary's College, advocates moving from "ought" to "ought." His theory proposes that instead of looking at human nature as it is, the focus should be directed to what man's end ought to be, what Grisez terms "integral human fulfillment."

Integral human fulfillment is concerned with human goods.<sup>16</sup> The good in human goods can be defined as the fullness of being.<sup>17</sup> Grisez presents

*nature, or Do good and avoid evil.* However formulated, the demand's full meaning is grasped only when one sees it to be a message to the created subject from God's sovereign will. And one sees nature itself as an effective moral norm only when one sees it as a sign of God's will.

*Id.* (emphasis in original).

15. *Id.* at 105.

But scholastic natural law theory must be rejected. It moves by a logically illicit step—from human nature as a given reality, to what ought and ought not to be chosen. Its proponents attempt to reinforce this move, from what ought to be, by appealing to God's command. But for two reasons this fails to help matters. First, unless there is a logically prior moral norm indicating that God's commands are to be obeyed, any command of God considered by itself would merely be another fact which tells us nothing about how we ought to respond. Second, even leaving this problem aside, the difficulty remains that human persons are unlike other natural entities; it is not human nature as a given, but possible human fulfillment which must provide the intelligible norms for free choices.

*Id.*

16. *Id.* at 115.

As the preceding critique of scholastic natural-law theory suggests, a sound account of normative existential principles must show how they are grounded in human goods. If they are not so grounded, there is no adequate answer to the question, "Why should I be morally good?" The answer is not that God commands this, for the moral obligation to obey divine commands, although rightly accepted by believers, is not self-evident. Indeed, nothing clarifies the force of moral norms except the relationship of morality to human goods.

*Id.*

17. *Id.* at 118.

The fullness of being, the goodness of each creature, is that fullness of which it

integral human fulfillment in such a way that it is constituted of seven, incommensurable human goods. In an of themselves, the goods of integral human fulfillment are not moral principles since "they do not directly tell one which choices to make and which to avoid."<sup>18</sup> Rather, as already mentioned, they are the goods to which humans strive.

The goods of integral human fulfillment are based on the dual aspect of the human person: the existential and the substantive.<sup>19</sup> Man is both sentient and intelligent; in common parlance he is a rational animal. There has been a good deal of debate through the centuries as to what constitutes man's reaching fullness of being. Grisez has posited four existential categories and three substantive categories. If an individual life includes a profound share of these goods, he will lead a fulfilling life.

The existential goods have as a common element an idea of harmony within oneself, including harmony among all the aspects of the person. The individual has the harmony of inner peace (the good of integrity) and harmony between the way he really is and the way he is perceived by others (the good of authenticity). There is also harmony among persons (the good of friendship or justice) and harmony between persons and God (the good of religion).<sup>20</sup> Harmony does not just transpire; it must be attained. Individuals must engage in some form of activity, the result of which is harmony. This is most clearly illustrated in the case of friendship. If two people are prevented from ever talking to each other, seeing each other, or engaging in any other form of activity, they will never become friends. These activities are the three substantive goods, the substance through which the existential goods come into being. There is the good that corresponds to the fact that man is an animal (the good of life and health). There is a good that

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is capable, insofar as it is a creature of a certain sort, with certain capacities and opportunities to be and be more. A turtle is not defective inasmuch as it lacks the ability to run like a gazelle, nor is an ape defective because it lacks a sense of justice. Goodness is the fullness appropriate to each entity. Badness is not simply lack, it is privation—lack of what ought to be.

*Id.*

18. *Id.*

19. *Id.* at 119.

By nature, human persons are both sentient and intelligent. Their sentient nature is similar to that of other animals; their intelligence and freedom of choice are distinctive. Emotions are aroused by sentient awareness of what is suited or unsuited to the person as organism. Free choices are made on the basis of judgments about what will fulfill or prevent the fulfillment of the person as a whole.

3. Although complex, the acting person is one self. A person lives in a single world, and behavior must be adapted to all aspects of the reality of this world. Hence, normally a person's outward behavior is motivated at once by both emotion and will, directed both toward sensible pleasure (or the avoidance of its opposite) and intelligible fulfillment (or the avoidance of its privation).

*Id.*

20. *Id.* at 124.



corresponds to the fact man is rational (the good of truth and appreciation of beauty). Finally, there is the good that conforms to the fact that man is a rational animal (the good of play and skilled performance).<sup>21</sup> All of the goods are co-equal; thus, one cannot be juxtaposed against another in order to conduct a balancing test.<sup>22</sup> Both the co-equal existential and substantive goods are aspects of the person and do not possess reality apart from the person.<sup>23</sup> The goods in Grisez's theory are reflexive "since they are both reasons for choosing and are in part defined in terms of choosing."<sup>24</sup>

What is immorality and how does it relate to this theory? Immorality is anything which keeps an individual from reaching integral human fulfillment. Challenging this point is senseless for who would suggest that man should not live in harmony with his fellow man? When a man acts morally, he acts in the way he ought to act, and he ought to act in the manner by which he will reach integral human fulfillment. As stated before, the seven goods of integral human fulfillment are not principles of morality but personal principles which our nature strives to obtain. Morality is deduced from the first principle of reason and what Grisez terms the first principle of morality as well as his eight modes of responsibility.<sup>25</sup>

The first principle of reason is that "[t]he good is to be done and pursued; the bad is to be avoided."<sup>26</sup> This is a directive for action and not a description of good and evil. Grisez points out that

when choices are made, the goodness of good is never directly challenged. In making life and death decisions, for instance, no one assumes that life as such is bad and death good; choices to let die or even to kill are instead made on other grounds, such as the limitation of suffering or the justice of punishing criminals. Evidently, then, there is a need for

21. *Id.*

22. *Id.*

Religion is a great blessing, for nothing in life is more important than liberation from sin and friendship with God. However, harmony with God should not be confused with God himself nor with the divine life in which Christians share by adoption. The human good of religion—that harmony with God which perfects human persons as human—is only one human good alongside others . . . St. Thomas Aquinas makes this point by distinguishing the virtue of religion from the theological virtues [faith, hope, charity]. The former, concerned with specifically religious acts, such as prayer and sacrifice, does not bear upon God himself as the latter do . . .

*Id.*

23. *Id.* at 121. "Property and other things extrinsic to persons can be valuable by being useful to persons. But the basic goods by which they enjoy self-fulfillment must be aspects of persons, not merely things they have . . ." *Id.*

24. *Id.* at 124.

25. *Id.* at 189.

26. T. AQUINAS, *supra* note 1, q. 94, art. 2, at 1009.

moral norms which will guide choices toward overall fulfillment in terms of human goods.<sup>27</sup>

The first principle of morality, which is designed to guide choices toward fulfillment in the human goods, can be formulated as follows: "In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfillment."<sup>28</sup> The first moral principle is enacted when a choice must be made, yet freedom is maintained in that a person can act against its dictates. Alone, the first principle of morality is too broad to provide precise answers to specific moral questions. What Grisez calls the eight modes of responsibility stand as a *via media* between the first principle of morality, and the direct choices that confront the individual.<sup>29</sup>

Each of the eight modes of responsibility excludes a certain unreasonable act of volition which would be contrary to the attainment of integral human fulfillment. The first mode can be characterized by the statement: "One should not be deterred by felt inertia from acting for intelligible goods."<sup>30</sup> This mode essentially dictates that laziness, depression, or lack of enthusiasm should not prevent the individual from pursuing the goods that will lead to integral human fulfillment. A distinction must be made between slothful inaction and an action not undertaken because it would be too taxing or because a person needed rest. Inaction undertaken for reasons of this nature do not violate the first mode of responsibility.<sup>31</sup>

27. G. GRISEZ, *supra* note 12, at 183.

St. Thomas holds that the precepts of charity (see Mt 22.37-39) are the primary and general moral principles of natural law, and the Ten Commandments, which he also thinks belong to natural law, follow from these primary precepts as conclusions from principles (see S.t., 1-2, q. 100, a. 3, ad 1; cf. q. 98, a. 1; q. 99, a.1, ad 2; q. 99, aa. 2-3). As St. Paul points out, love fulfills the law because one who loves certainly avoids harm to any neighbor and seeks the neighbor's good (see Rom 13.8-10; 1 Thes 5.15).

*Id.*

28. *Id.* at 184.

29. *Id.* at 189. "The modes of responsibility specify—'pin down'—the primary moral principle by excluding as immoral actions which involve willing in certain specific ways inconsistent with a will toward integral human fulfillment." *Id.*

30. *Id.* at 205.

31. *Id.* at 206.

Here is an example of the violation of this mode: Simply out of laziness, a man sleeps past the time when he had decided to get up and so fails to do something he had judged worth doing. Again: A woman in authority realizes that a particular situation requires attention but somehow just doesn't get around to dealing with it. The virtuous disposition corresponding to this mode has various aspects and is usually named in reference to some particular sphere of action. Various aspects are referred to by certain words like "ambitious," "energetic," "diligent," "industrious," and "enthusiastic." Words which name the opposed vice include "lazy," "sluggish," "lackadaisical," "slothful," and "dilatatory."

*Id.*

That "one should not be pressed by enthusiasm or impatience to act individualistically for intelligible goods,"<sup>32</sup> is the second mode of responsibility. The individual violates this mode when he acts on nonrational grounds and fails to consider or dismisses the communitarian aspect of his acts. "Unnecessary individualism is not consistent with a will toward integral human fulfillment, which requires a fellowship of persons sharing in goods."<sup>33</sup> It is important to keep always in mind that integral human fulfillment is not found in social Darwinism but in the realization of all of the human goods in the totality of the human community.<sup>34</sup>

The third mode deals with action motivated by desire, impulse, or habit. "One should not choose to satisfy an emotional desire except as part of one's pursuit and/or attainment of an intelligible good other than the satisfaction of the desire itself."<sup>35</sup> The end or goal of a choice which violates this mode is not an intelligible good but the satisfaction of an emotional desire; at the very least, the choice thus uselessly expends time and energy which should be directed to the attainment of human goods.

Violators [of this mode] are not in control of their own lives but are slaves to nonrational motives. Self-control includes at least some aspects of many traditionally recognized virtues, such as temperance, modesty, chastity, and simplicity of life. . . . The opposed vice includes at least certain aspects of lustfulness, gluttony, greed, jealousy, envy, shortsightedness, impetuosity, and so on.<sup>36</sup>

When actions are undertaken based on a choice motivated by a desire to fulfill some emotional satisfaction, the will is directed against integral human fulfillment.<sup>37</sup>

32. *Id.*

33. *Id.*

34. *Id.* at 207.

Examples are often found in the tendency of a community's more active members to appropriate functions to themselves instead of fostering wider, active participation, because the latter is more trouble and leads to uneven performance. Again: A person with many interests easily becomes overcommitted; this will lead to mediocre performance and to conflicts of responsibilities which eventually will affect others adversely.

*Id.*

35. *Id.* at 208.

36. *Id.* at 209.

37. *Id.*

If a person chooses to engage in some sort of sexual behavior merely to experience pleasure and still desire, this mode is violated. But it is not violated when a married couple spontaneously take pleasure in marital intercourse. If they do not hesitate and deliberate, it is because there is no reason why they should not engage in intercourse. In their situation, it has an inherent intelligible significance, for it expresses and celebrates the larger, intelligible good to which they are committed—namely, their marriage itself as a special sort of friendship. Loving marital intercourse contributes to faithful communion in this relationship, which is structured in a way that integrates sexual behavior in the service of life and

Moreover, choices based on emotion violate the fourth mode of responsibility. The directive of this mode is that "[o]ne should not choose to act out of an emotional aversion except as part of one's avoidance of some intelligible evil [which is the privation of good] other than the inner tension experienced in enduring that aversion."<sup>38</sup> In this mode the individual's choice yields to an emotional repugnance not founded upon an intelligible evil. This situation is distinct from the morally acceptable practice of spontaneously avoiding that which rationally should be avoided.<sup>39</sup> Violations of this mode occur when an individual abandons the duties of his vocational state solely because of adverse feelings.

The fifth mode of responsibility deals with universality in the treatment of individuals. Grisez elucidates the principle that "[o]ne should not, in response to different feelings toward different persons, willingly proceed with a preference for anyone unless the preference is required by intelligible goods themselves."<sup>40</sup> In violating this mode, choices made are not in totality based on the achievement of human goods, but are instead motivated by the feelings of partiality, which is advantageous to one or more but acts to the detriment of the community. "Although partiality is often expressed as selfishness, simple egoism is only one form. Possibly more common, and certainly as unreasonable, is allowing one's choices to be shaped by personal likes and dislikes, jealous love of one's own family, group prejudices, culturally established patterns of bias, and so on."<sup>41</sup> The fifth mode's dictate

its transmission. This substantive good provides the vehicle for the reflexive good of marital friendship, and so it helps distinguish authentic marital friendship from its counterfeits, and love giving marital intercourse from the use of the marital relationship for self-gratification.

*Id.*

38. *Id.* at 210.

39. *Id.* at 211.

The soldier who chooses to leave his post to avoid being killed does not violate this mode of responsibility. His choice is not merely to escape fear itself. Rather he seeks to escape the fearful and intelligible evil of death. His choice can be morally wrong—for example, because the call of duty is a genuine one. Or the choice to flee can be morally right—for example, because he is ordered unreasonably to stand and fight by a leader who realizes defeat is inevitable but wants his army to fight to the death.

*Id.*

40. *Id.*

41. *Id.* at 212.

Here are some examples of violations. Somebody accepts favors but always finds excuses when asked to do them. People resent gossip about themselves and their loved ones but gossip freely about others. Professional people give better treatment to more respectable and congenial clients than to others with similar needs and claims to their service. Lawmakers favor powerful interest groups which support them, rather than working for the laws and policies they think best for the people as a whole.

*Id.*

of impartiality does not include the denial of special commitments that one owes to one's family or other individuals.

In the sixth mode of responsibility, the triumph of form over substance is considered. This mode states that "[o]ne should not choose on the basis of emotions which bear upon empirical aspects of intelligible goods (or bads) in a way which interferes with a more perfect sharing in the good or avoidance of the bad."<sup>42</sup> Stated differently, individuals should not allow emotional choices to limit their participation in intelligible goods or the converse. Choices in violation of this mode are acts of self-deception with deleterious ramifications on the individual's concept of the intelligible goods. It is also immoral because people who allow their choices to be framed by such emotions fail to move toward integral human fulfillment. People who make such choices limit their participation in this portion of reality to mere appearance.<sup>43</sup>

The seventh mode of responsibility concerns the malignant volitional destruction of an intelligible human good. Grisez relates that "[o]ne should not be moved by hostility to freely accept or choose the destruction, damaging, or impeding of any intelligible human good."<sup>44</sup> When an individual acts on negative feelings, he embarks on a course contrary to human fulfillment by irrationally seeking to reduce human fulfillment.<sup>45</sup> Two acts which are similar yet distinct need to be considered. If an action is motivated by a hatred for evil, and the act and the reason behind the act are to protect a good or limit an evil, then the act is morally permissible.<sup>46</sup> The other permissible case is the release of hostile feelings through means that are not destructive of human goods.<sup>47</sup>

The eighth mode excludes balancing among the various intelligible goods. "One should not be moved by a stronger desire for one instance of an

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42. *Id.* at 214.

43. *Id.*

Here are some examples of violations. A sick man who could have treatment which would really cure his condition prefers less effective treatment which offers a feeling of quick relief. A girl engaged to be married spends all her time and energy planning her wedding and has none left for adequate spiritual preparation for married life. A bishop, anxious to reconcile those alienated from the Church, holds penitential services to which he invites persons unwilling to amend their lives, gives all who come general absolution without individual confession, and thus fosters an appearance of reconciliation as a substitute for the reality.

*Id.*

44. *Id.* at 215.

45. *Id.* at 216. Several examples are:

A nation which is losing a war launches all its nuclear weapons against its enemies to make their victory as costly as possible. Children who have been outvoted in planning a party stay away in order to detract from the joy of the event. A wife who resents her husband's infidelity has an affair to get even.

*Id.*

46. *Id.* at 215.

47. *Id.*

intelligible good to act for it by choosing to destroy, damage, or impede some other instance of an intelligible good."<sup>48</sup> This mode is the refutation of the phrase that the end justifies the means. The violation of the eighth mode occurs when a choice is made to act against an intelligible human good in order to prevent an evil or to secure some other human good. The impetus behind the choice is the strength of the various desires present to the individual. "Thus one subordinates some possible elements of human fulfillment to others, even though there is no reasonable basis for doing so. In placing a nonrational limit on fulfillment, one proceeds in a way not consistent with a will toward integral human fulfillment."<sup>49</sup> The eighth mode should not be confused with a permissible choice for a human good the execution of which will incidentally result in a human evil, even though the probability of the evil was foreseen. It is also acceptable to subordinate freely nonhuman goods to human goods.<sup>50</sup>

The desire for integral human fulfillment is inherent to each individual, but it is not actuated by egoism; it is, rather, realized in the community. Integral human fulfillment, the first principle of reason, the first principal of morality, and the modes of responsibility are accessible to the human intellect through the faculty of reason because they are universal truths of human nature.<sup>51</sup> When considered in totality, they are self-evident truths, and their denial would be an act of irrationality. In Grisez's thought, these

48. *Id.* at 216.

49. *Id.* at 216-17.

50. *Id.* at 217.

This mode of responsibility is not violated by one who freely accepts death rather than leave an important duty unfulfilled. Nor is it violated by killing animals for food, since animals' lives are not instances of a human good. Nor is there a violation in setting aside the letter of legal requirements for the sake of fairness, since law is simply a means to this human good. Violations are present in the following. To obtain a grant to continue his research, a scientist falsifies data to make the project's initial results appear more promising than they are. To obtain information which will save many lives, a military commander tortures children. To bring about what he considers a necessary change in moral teaching, a theologian encourages people to do something they believe wrong.

*Id.*

51. *Id.* at 196.

Apart from faith, humankind cannot know that integral human fulfillment is possible, and faith teaches that this possibility can be realized only by the divine act of re-creating all things in Jesus (see Eph 1.3-10; Col 1.15-20). However, reason does not exclude the possibility of integral human fulfillment, and a generous and reasonable love of human goods will lead one to act in a way compatible with this ideal. In so acting, some degree (and a concretely expanding degree) of human sharing in goods will be achieved and openness to integral fulfillment will be maintained; at the same time, unnecessary self-limitation will be avoided.

*Id.* at 185-86.

principles constituted a constituent part of what has been classically referred to as natural law.<sup>52</sup>

The concept of natural law as understood by Aquinas begins with the Eternal law, which is the mind of God.<sup>53</sup> Just as an architect has a blueprint for a building he has designed, so also the Uncaused Cause has a blueprint for the ordering of creation He has brought into existence *ex nihilo*. Aquinas states in his *Treatise on Law*:

[A] law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community [this is an Aristotelian concept; the banding together of human beings into a polity was considered to be the highest form of community]. Now it is evident, granted that the world is ruled by Divine Providence, . . . that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of law. And since the Divine Reason's conception of things is not subject to time but is eternal, according to Prov. viii. 23, therefore it is that this kind of law must be called eternal.<sup>54</sup>

To continue with the analogy, the architect has designed the building to function in a certain manner. Hence, he has probably not designed, purposefully, a building that has collapsing walls or is likely to fall over. The same can be said for Aquinas' view of natural law. He states that the

light of natural reason, whereby we discern what is good and what is evil, which is the function of the natural law, is nothing else than an imprint on us of the Divine light. It is therefore evident that the natural law is nothing else than the rational creature's participation in the eternal law.<sup>55</sup>

In keeping with our analogy, human beings can be likened to the walls in a building; they are designed to function in a certain fashion, thus bringing about the good or the fullness of being. This certain fashion in which humans are to function is what Grisez has termed integral human fulfillment.

52. *Id.* at 329.

Likewise, any emphasis on law is likely to be confusing. "Law" has a bad name, for it is much abused as an instrument of formal social control and an enforcer of conventional norms, regardless of whether they have a moral foundation. Hence, the aspect in which law is an alien imposition upon one's freedom is paramount in most people's thought. Moreover, small children necessarily view morality in a rather legalistic way, and adolescents inevitably rebel against this childish view. Today, such rebellion is in full flower, with the whole culture selectively setting law aside as an encumbrance of childhood.

For these reasons, I do not speak of "natural law," but rather of human modes of responsibility, human moral principles, and so on.

*Id.*

53. The scope of the note prevents a recapitulation of Aquinas' proofs for the existence of God. See generally T. AQUINAS, *supra* note 1, at X.

54. T. AQUINAS, *TREATISE ON LAW* 12-13 (Gateway ed. 1964).

55. *Id.* at 15-16.

The postlapsarian human condition has brought into play the first principle of morality and the modes of responsibility.

Positive law is law that is posited or placed by man. "[I]t belongs to the notion of human law, to be ordained to the common good of the state."<sup>56</sup> The common good for both Aquinas and Aristotle was the leading of man to virtue, or the fullness of being, as Grisez would say.<sup>57</sup> An unjust or bad law would not lead the individual or the community to the attainment of the common good. Aristotle, in his *Politica* states:

For man, when perfected, is the best of animals, but, when separated from law and justice, he is the worst of all; since armed injustice is the more dangerous, and he is equipped at birth with arms, meant to be used by intelligence and virtue, which he may use for the worst ends. Wherefore, if he have not virtue, he is the most unholy and the most savage of animals, and the most full of lust and gluttony. But justice is the bond of men in states, for administration of justice, which is the determination of what is just, is the principle of order in political society.<sup>58</sup>

Just laws advance the common good, or integral human fulfillment, which is living in accord with natural law.

What course should be followed when a law runs contrary to the common good or, to put it in Aristotelian terms, is unjust and thus runs counter to the principle of an ordered political society? Aquinas states that "what pertains to the nature of man is not subject to human government . . ."<sup>59</sup>

56. *Id.* at 85.

57. *Id.* at 74-75.

[M]an has a natural aptitude for virtue; but the perfection of virtue must be acquired by man by means of some kind of training. Thus we observe that man is helped by industry in his necessities, for instance, in food and clothing. Certain beginnings of these he has from nature, viz., his reason and his hands; but he has not the full complement, as other animals have, to whom nature has given sufficiency of clothing and food. Now it is difficult to see how man could suffice for himself in the matter of this training: since the perfection of virtue consists chiefly in withdrawing man from undue pleasures, to which above all man is inclined, and especially the young, who are more capable of being trained. Consequently a man needs to receive this training from another, whereby to arrive at the perfection of virtue. And as to those young people who are inclined to acts of virtue, by their good natural disposition, or by custom, or rather by the gift of God, paternal training suffices, which is by admonitions. But since some are found to be depraved, and prone to vice, and not easily amenable to words, it was necessary for such to be restrained from evil by force and fear, in order that, at least, they might desist from evil-doing, and leave others in peace, and that they themselves, by being habituated in this way, might be brought to do willingly what hitherto they did from fear, and thus become virtuous. Now this kind of training, which compels through fear of punishment, is the discipline of laws. Therefore, in order that man might have peace and virtue, it was necessary for laws to be framed . . . .

*Id.*

58. ARISTOTLE, X THE WORKS OF ARISTOTLE, 1253a29-40 (W. D. Ross trans. 1921).

59. T. AQUINAS, *supra* note 54, at 46.



Since integral human fulfillment is the common good for which man individually and collectively strives, a law which violates integral human fulfillment or the modes of responsibility is *ipso facto* unjust. It is unjust because humanly posited law is subservient to, and derives its purpose from, integral human fulfillment.

As Augustine says (*De Lib. Arb.* i. 5), *that which is not just seems to be no law at all*: wherefore the force of law depends on the extent of its justice. . . . Consequently every human law has just so much of the nature of law, as it is derived from the law of nature. But if in any point it deflects from the law of nature, it is no longer a law but a perversion of law.<sup>60</sup>

By way of illustration the Final Solution and abortion provide a case study of unjust legal situations.

The Final Solution in Nazi Germany and *Roe v. Wade*<sup>61</sup> in the United States both violate the eighth mode of responsibility which embraces the substantive human good of life in and of itself.<sup>62</sup> Intertwined with the good of life in both of these situations is the concept of legal positivism. The concept of legal positivism was cogently set forth by Thomas Hobbes in his work, *Leviathan*.<sup>63</sup> For Hobbes there are no natural rights or law as understood by Aquinas. Hobbes instead understands natural rights to be those rights that man possessed in the state of nature, which essentially devolves down to the simple axiom that a man could do whatever he had the power to do. The State, which arises from the state of nature, in the Hobbesian world is the dispenser of all rights.<sup>64</sup> With no connection between law and morality, the State is free to promulgate any law or recognize any right. Positivism as a legal philosophy reinforces the bulwark of the State's power by holding its laws responsible to no superior criterion. Pope Pius XII pointed out five years after the collapse of the Third Reich:

The mere fact that the legislative power has declared something of a binding law within the state does not in and by itself make this a true law or constitute a true rights. The mere fact is only a standard or measure of rights and laws in the case of the sovereign author and ruler of all rights, namely God. The indiscriminate and decisive application of this measure to the human legislator, as though its laws were the supreme standard of rights, is the error of legal positivism in the strict technical sense of the term. It is an error which lies at the base of state

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60. *Id.* at 78 (emphasis in original).

61. 410 U.S. 113 (1973).

62. It cannot be denied that today numerous individuals posit that human life is not of intrinsic value, but is only of instrumental value. For a philosophical refutation of the instrumental value of life, see G. GRISEZ AND J. BOYLE, *LIFE AND DEATH WITH LIBERTY AND JUSTICE*, 372-80 (1979). Readers who also are interested in a theological refutation of the instrumentalist theory of the value of life should see G. GRISEZ, *supra* note 12, at 137-38.

63. T. HOBBS, *LEVIATHAN*, (C. Wilson & R. McCellum eds. 1960).

64. *Id.* at ch. 14.

absolutism, and it amounts to the deification of the state itself.<sup>65</sup>

Under the ambit of legal positivism, as pioneered by Hobbes, there exists no cogent method of criticizing the legal acts of Nazi Germany or preventing such acts from transpiring in the future, save an illusory hope that humanity has learned its lesson.

The State is not limited to participating actively in unjust legal acts; it may also sanction the unjust acts of its citizens by stamping them with the imprimatur of the state. Regarding abortion, advocates of natural law must ask as an initial matter what is the value of human life, and whether the fetus is a human life. The proponent of natural law must first decide whether life is an instrumental or an intrinsic good. The instrumentalist position considers life of value because it is used to attain a real good. This position presupposes a duality between the person and his body and is best characterized by the debates concerning "quality of life." Life can also be viewed as an intrinsic good inseparable from the person. In analyzing the two respective positions, Grisez concludes:

The dualist wants a distinction between person and life in order to treat life as merely instrumental, wants to treat life as merely instrumental to justify subordinating it as mere means to "higher" and "personal" values, wants to subordinate life to protect the person's dignity, but conceives of the person in a fashion that makes what befalls the organism irrelevant to dignity. We conclude, therefore, that dualism is indefensible. It is a theory which is at war with the experience all persons have of themselves as unified wholes, as unified self-actualizing entities, whose potentialities are given but whose flourishing is a unique challenge, and whose life pervades and includes both. And since dualism is false, so is the instrumentalist conception of human life which implies dualism.<sup>66</sup>

If instrumentalism is rejected, and if the fetus is a human life, then abortion violates the eighth mode of responsibility. Some individuals assert that abortion does not violate the eighth mode because there is no proof that the fetus is a human life. However, this assertion is philosophically ludicrous because it attempts to place arbitrary lines in a linear biological process.<sup>67</sup>

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65. A. BYRNE, *GOD'S LAW AND MAN'S LAW* 16 (1979) (quoting address of Pius XII (Nov. 13, 1949)).

66. G. GRISEZ AND J. BOYLE, *supra* note 62, at 379.

67. The following editorial from *California Medicine* highlights this point:

The process of eroding the old ethic and substituting the new has already begun. It may be seen most clearly in changing attitudes toward human abortion. In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition, or status, abortion is becoming accepted by society as moral, right, and even necessary. . . . Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really

The Final Solution and the decision in *Roe v. Wade* are unjust because they flagrantly violate the eighth mode of responsibility, or put simply, the good of life in and of itself as part of integral human fulfillment. They both show the result of divorcing the legal system from natural law.

There are two distinct forms of unjust law, those that immediately violate the general welfare, whether in actuality or application, and those that do not.<sup>68</sup> Aquinas gives this example of an immediately unjust law in application:

For instance, suppose that in a besieged city it be an established law that the gates of the city are to be kept closed, this is good for public welfare as a general rule: but, if it were to happen that the enemy are in pursuit of certain citizens, who are defenders of the city, it would be a great loss to the city, if the gates were not open to them: and so in that case the gates ought to be opened, contrary to the letter of the law, in order to maintain the common weal . . .<sup>69</sup>

A law which is not immediately unjust does not require prompt direct action. The method of opposing this second type of unjust law guards against anarchy in that if the danger is not immediate, then the people are to act through their duly constituted authorities.<sup>70</sup> These dictates make sense only if we recall that law is ordered to serve the common good. This ordering can only occur if laws are judged against the higher principle of integral human fulfillment or, as classically rendered, the natural law.

Positive laws should not violate natural law, yet we should not legislate all that is contained within natural law. For example, being rude to a waiter may be morally blameworthy under the human good of harmony, but to proscribe rudeness would be preposterous. In the process of striving for integral human fulfillment, man should be concerned only with those acts or laws which seriously threaten integral human fulfillment. The purpose of positive law is reactionary; it seeks to prevent egregious violations of natural law and to provide an incomplete road map to human goods. Its function is not, however, to guide all of the seemingly inconsequential human acts toward integral human fulfillment; one cannot hope to achieve integral human fulfillment through coercion. The concept of liberty, or being allowed to engage in activities leading to integral human fulfillment,

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knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices. It is suggested that this schizophrenic sort of subterfuge is necessary because a new ethic is being accepted the old one has not yet been rejected.

*Id.* at 403 (quoting *Editorial: A New Ethic for Medicine and Society*, 113 CAL. MEDICINE 67-68 (1970)).

68. T. AQUINAS, *supra* note 54, at 102-03.

69. *Id.* at 103.

70. *Id.* at 103-04.

is of preeminent importance. Aquinas makes just this point when he states:

Now human law is framed for a number of human beings, the majority of whom are not perfect in virtue. Wherefore human laws do not forbid all vices, from which the virtuous abstain, but only the more grievous vices, from which it is possible for the majority to abstain; and chiefly those that are to the hurt of others, without the prohibition of which human society could not be maintained: thus human law prohibits murder, theft and such like.<sup>71</sup>

Just laws need not be consubstantial with morality, yet neither may they violate it.

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71. *Id.* at 91-92.

