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1965

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William Paul Haas

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NATURAL LAW NATURALLY CHANGES

William P. Haas, 1965: Revised 2012

It has been the Thomistic tradition from before the Reformation that the natural law can change with respect to how well it is understood (quoad notitiam) and with respect to its correctness (quoad rectitudinem) What concerns us here is particularly the later, change regarding the very correctness and rightness which is brought about by a change on the part of nature itself. Thomas Aquinas will be referred to frequently in this essay because of the richness of his insights and his willingness to look at the real difficulties in understanding natural law. Furthermore, he deserves reconsideration because of the fact that he is so often quoted in discussions of natural law, but also because his approach is often badly misrepresented. The temptation is for many “defenders of the faith” to select passages that oversimplify his vision and ignore his clear understanding that natural law as anything but static, delivered once and for all, with God whispering directions in our ear on demand. For Aquinas natural law must be discovered through a lifetime of probing and questioning the natural universe where the “natural order “ is not 100% consistent or orderly. Human consciousness and choice is not much better off. It will be argued here that the acknowledgement that mankind must figure out for itself how best to apply the simple first principles of rational life to the demands of constant but unstable surroundings does not compromise the validity of the fundamental principles of morality

If this interpretation of natural moral law is correct, then many Catholic prescriptions, particularly concerning sexuality and conception, may have to be reexamined and readjusted, not because the Catholic teachings are inherently wrong, but because they could be better applied, without compromising sound principles, to a nature now better understood. Admittedly, this is a challenging hypothesis, but one that is worth examining out of genuine philosophical convictions and out of a deep respect for the teachings of Jesus Christ and of the Catholic Church. Although the encyclical *Humanae Vitae*, which condemned all artificial contraception categorically, was

promulgated in 1968, the weakness of its argument, which relied on a concept of an inflexible natural law, lingers to this day. From 1968 the encyclical met with serious reservations by bishops and theologians around the world, especially in Canada, Scandinavia and Belgium. To this day inadequate attention is given to the lingering questions raised by the Church's interpretation of natural law. The failure to address these difficulties as worthy of attention sends honest people to look elsewhere. This essay tries to respectfully reexamine several of these difficulties by supposing that some major element in the appeal to natural law remain under a cloud. In other words, if the natural evil of contraception were so self-evident, how come so many individuals, inside and outside the Church, fail to see it as anything but reasonable and prudent. In the tradition of Thomas, one can better understand where the truth is when one can see the cogency of other views. Hence, Aquinas begins every exploration in the *Summa Theologica* with the clearest articulation of the best objections he can find to his own position and then he responds to them with typical scholastic courtesy - never deny, seldom affirm, always distinguish. The objections are as real and credible as his own judgment, they are not straw men set up to be easily dismissed. This spirit will guide the examination undertaken here. Again, the purpose of this exercise is to strengthen the Church's message on the sacredness of life and the sexual union, which begets it.

“Nature” or “natural” can mean at least two things and their confusion is at the heart of many difficulties in understanding the Catholic Church's message about the sacredness of all life. Confusion about just what is natural about natural law has led some to dismiss the very notion of natural law as indefensible and irrelevant. But, in the tradition, nature can mean the intrinsic principle of operation, which makes a thing to be the kind of thing it is and to behave as a specific type of reality: in other words, essence. Birds naturally fly, snakes do not. Nature thus understood can also signify the totality of specific natures in one more or less organized natural universe. Sea gulls naturally see the fish below and can dive down for lunch. However, natural can also mean the principle of what happens for the most part (*ut in pluribus*), when

all things are equal or normal. For the most part, it is natural for a man to see, but he does not cease to be a human being if he happens to be blind. When this distinction is applied to the first imperative of natural law - be reasonable, do good and avoid evil - insofar as it relates to the very humanity of man, there cannot be any change without a change of the essential coherence of human nature itself.

On the other hand, the secondary principles of natural law or applications of this central principle can be found in many formulations such as the Code of Hammurabi, the Decalogue and the Koran. These applications have to do with what is generally the most rational way to fulfill the capacities and inclinations of human persons within the experience of the natural universe with its own diversity and instability. Here there is room for variety, change and degrees of necessity. Monogamy, society, private property, capital punishment, war, and education are naturally good for humans (*ut in pluribus*), for the most part. They have a relative certitude about them which is less than absolute. All things being equal, which they usually are, these are surely reasonable goods for mankind. But, all things are not consistently balanced and nature itself often goes astray.

Thus one view of natural law is that it is not limited to a set of certain, unchangeable and self-evident principles which apply certainly to all moral deliberations and choices, with no exceptions. Although it surely involves the application of principles, natural law is also the continuous search of human reason for an understanding of its own rational nature and of the natural universe of which it is a part. It is the nature of man to be curious about the curiosities of nature, and nature on the grand scale includes that curious being man, so that the natural moral law evolves out of the probing and unending curiosity of individuals and groups in the unfinished business of being human, individual and social, and of protecting the natural world from human exploitation and degradation.

It is useful to acknowledge that human reasoning goes far beyond the deduction of

certain conclusions from self-evident principles: deduction is analytical reasoning. Synthetic reasoning (induction) is also essential for humans to discover what is probably correct from the evidence of mounting experience throughout life. Furthermore, hypothetical reasoning (abduction) is no less essential when the fragments of experience yield only the suggestion of what is possibly natural. Thus the process of reasoning from first principles involves deduction when the evidence is certain; reasoning involves induction when the evidence is observable and calculable, and reasoning involves abduction when one can only guess at the possibilities to be explored. Like empirical science which develops from an hypothetical conjecture to a reliable scientific law, natural law emerges out of the creative fullness of human reason, not out of the narrowest exercise of deductive reasoning. Sometimes a good guess is as important to growth as is a certain conclusion. This more recent elaboration of reasoning, found in the work of C.S. Peirce, is implied in Thomas Aquinas' assertion that, while the bare-bones self-evident principle of natural law is absolute, everything else in moral deliberations is conditioned by what is discovered through experience and learning - *per inventionem secundum viam experimenti, vel per disciplinam.* (II-II, q. 47, a. 5)

This essay is itself based on an educated guess, an hypothesis, that maybe the few certain principles of natural law are perfectly applicable to the human experiences of a very changing and incomplete nature of a nature which sometimes actually contradicts itself. To paraphrase Thomas Aquinas, nature is as imperfect as are the humans who try to understand it and thus natural law is the endless attempt to get it more or less correct. This supposes that natural law is inaccessible as a finished product, thoroughly understood from beginning to the end and simply applied to all situations. Nature seems to contradict itself when a human being is naturally conceived but forced by that very nature to destroy itself and its mother, as, for example, when the conception takes place in the Fallopian tubes. In other words, humans confront a natural world, which naturally makes mistakes. Similarly, when it is said that a human person with full human rights exists in the womb from the

moment of conception, as much is left unsaid as is said.

The process by which an early human embryo is fertilized, divides, implants in the womb and then recruits blood vessels to nourish the placenta has been called “ the most awe- inspiring metamorphoses in all of nature” Yet it is considered to be “ horribly inefficient” because it fails as often as it succeeds. It is claimed that, at minimum, two-thirds of all fertilized human eggs fail to implant within the first week, or they are often later aborted naturally. It is also estimated that almost one-third of all implanted embryos later miscarry. Even if these estimates are not 100% accurate, they do suggest that the natural process of conception and gestation does not always work perfectly,

Not being a scientist one can only assume that some fraction of these claims warrant serious attention in trying to assess the meaning of “ from the moment of conception “, since the process is rather complicated and often not brought to completion. Just what value or “sanctity” nature attaches to the personhood of the evolving reality in the womb is a mystery to many reasonably informed individuals who seek only to discover what is naturally reasonable when they must make life and death choices within the limits of time and place. They rightly ask how one can be held responsible for “murdering” a mysteriously hidden reality that nature itself often treats as expendable in certain situations. Apparently, not every human entity conceived is naturally destined to be born whole and entire as a person . So, efforts to save the life of a mother, a person in the fullest sense, by removing the mysterious lethal threat to her life may seem quite reasonable when a couple is faced with a crisis pregnancy. And it is important to note that, even if persons were in error about this very difficult judgment, they have the natural and God-given obligation to make the decision that appears most reasonable to them.

In the light of the common occurrences of natural abortions, miscarriages and ectopic pregnancies, which people are well aware of, the claim that a person exists in the

womb from the moment of conception does not appear self-evident at all. Furthermore, there is the serious danger of thinking that anyone who does not see what is claimed to be self-evident, must necessarily be at fault and therefore hopelessly immoral and stupid and not worth teaching. The natural uncertainty is not lessened by the type of circular reasoning which attempts to invent self-evident truths, as, for example, when it is argued that the being in the womb is a person because it is a “human being” and all human beings are person. This “self-evident” proposition avoids the fact that many living realities are truly human, and of no other species, but never pass as persons, for instance, a living human heart being transplanted, human semen, human eggs and other phenomena which participate in the human entity but are incomplete and incapable of sustaining their own reality. The life in the womb from the “moment of conception” does indeed deserve to be treated as sacred because it is a manifestation of the God’s largess , without the feeble attempt to make it into something it possibly is not and for which there is little if any natural evidence. Even without religious convictions human life at its origin deserves to be protected and nurtured because it is natural and reasonable, all things being equal, when they are so.

Aquinas clearly spells out how the precepts of the natural law can be modified by particular impediments arising from the contingencies and imperfections of nature itself. Things can go wrong with the natural order of goods, or the natural order, say of generation and conception, is naturally random and incomplete as if it were never meant to be otherwise. His example is clear enough: one would not be obliged to return a weapon to its rightful owner if the owner were angry or insane enough to misuse it. It is not natural for humans to lose control of themselves (for the most part), but they sometimes do. Private ownership is a good invention, but it is not essential in every instance to human well-being . Aquinas never overlooks the contingency of moral decision making in the real world full of its own contingency. What should not happen in nature sometimes does and man must naturally adjust his thinking and decisions accordingly. (I-II q. 94 and 96, Ethics, lectio 12, III Sentences, d. 37, q. 1, a.

3). Natural law would hardly be natural if it overlooked the essential characteristic of a created, contingent and imperfect universe, with man as its morally conscious inhabitant. Of course such thinking smacks of relativism: indeed it does, because the absolute principles of natural law are not absolute at all if they are not related to the reality of unfinished nature as God creates and sustains it. Absolute principles are the basis of relativism in ethics: what else is relevant to the real world?

In his exploration of the complexity and contingency of natural law, Thomas Aquinas suggests that a primary principle of natural law is self-preservation. In I-II, q. 94, a.2 Aquinas places man squarely in the center of the natural universe and argues that “whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law” He emphasizes that man shares this imperative of self-preservation with all other substances in creation, with other animals, and with his own rational convictions “Wherefore, according to the order of natural inclinations is the order of the precepts of the natural law.” Natural law is often described as a participation in divine wisdom: like all truths, this one can easily be misunderstood as some kind of a priori vision of a perfectly harmonized world, discovered completely from scratch with a clear vision of God orchestrating it. One will not find this oversimplified version of moral growth in Aquinas’ work, where even the discovery of God’s existence and characteristics is a long and difficult process (Summa Contra Gentiles, I,1) demanding a profound commitment to the work of abductive reasoning about a possible truth long before the final truth is discovered. Aquinas’ vision is more common sense: if you want the truth about natural law you must spend your life working at it.

This primary principle of natural law, self-preservation, is discovered from contact with the external arrangement of the world of things and animals. It is not derived from theory alone, though it enjoys a theoretical coherence. Aquinas does not hesitate to examine whether it would be permissible for one to kill another in self-defense. In II-II, q. 64, a. 7, he offers the challenging distinction that “Nothing hinders one act

from having two effects, only one of which is intended, while the other is besides the intention. Now moral acts take their species according to what is intended and not according to what is beside the intention, since this is accidental. Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor. Therefore this act, since one's intention is to save one's own life is not unlawful, seeing that it is natural to everything to keep itself in "being" as far as possible. And yet, though proceeding from a good intention, an act may be rendered unlawful, if it be out of proportion to the end....'it is lawful to repel force by force provided one does not exceed the limits of a blameless defense'. Nor is it necessary for salvation that a man omit the act of moderate self-defense in order to avoid killing the other man, since one is bound to take more care of one's own life than of another's"

Unfortunately, this powerful insight of Aquinas rarely appears in discussions of natural law and certainly not in discussions of therapeutic abortion or of artificial contraception. However, one who applied this common sense thinking to a life-threatening pregnancy could hardly be considered irrational or immoral for concluding that the first obligation was to do whatever was possible and necessary to save the endangered life of the one making the judgment. Though Aquinas acknowledges that aggression justifies defense, he never indicates that the guilt or innocence of the aggressor is the determining moral factor. The primary natural obligation is to the self, not to the other. Furthermore, the one threatened is left to figure out what constitutes "blameless" or "moderate" self-defense. That may well depend on the availability of other help, the availability of weapons, of instruments of constraint, and depend on how much time one has to make a decision. Maybe playing dead like a possum might ward off further danger - a hazardous guess, perhaps, but not unreasonable.

These contingencies can only be determined by one rational enough to size up the situation in which the lethal aggression occurs and to figure out just how lethal the

aggression really is and how best to deal with the threat. The moral certainty is in the principle “save yourself”: but the principle is only a principle, it does not tell you how to go about saving yourself. That, you must figure out for yourself, reasoning inductively and abductively about the probabilities and possibilities which lie in the details of the concrete situation

A physical or mental condition, an economic crisis or domestic crisis might threaten the stability of a marriage or family in a way that makes the sexual bond to be especially important in preserving the spiritual and emotional well being of the parents and children. The use of artificial contraceptives may also appear to be the most rational, “blameless” and “moderate” way to survive the immanent danger. As in self defense, the decision to save the vitality of the marriage by whatever means are available would be the primary and defining intention, while the effect of limiting the number of children by artificial contraception would be secondary and accidental. The parents may ardently desire more children if the mother could survive another pregnancy or if the parents could care for additional children. The artificial instrument, the contraceptive, no more determines the moral integrity of the decision than the instrument of self-defense (gun, sword, the pepper spray, rope, fire, etc.) determines the morality of self defense. These judgments of conscience involve all the functions of reason, deduction, induction and abduction. In a given crisis, there may well be elements that are certain, others that are probable and others that are only possible. Being as reasonable as possible is not exactly the same as simply deducing clear conclusions from relevant principles. No principle by itself in isolation from the rational appraisal of the contingencies of the situation has any moral relevance by way of deduction alone. Often enough, reality offers little more than probabilities and possibilities to guide the morally conscious person who is seeking whatever wisdom he or she can find, when it is needed. It would be unfair to Thomas Aquinas to suggest here that he ever imagined that his words would be used to support an argument against the teaching of the Catholic Church, yet it would be even more unfair to him to ignore the power of his insight, so tersely stated and overflowing with implications,

for the sake of avoiding some painful corrections.

A somewhat different kind of example may illustrate the compatibility of sound moral principles with specific choices, which seem contradictory. Consciousness, for instance, is surely an essential condition of a fully human life. Yet it can happen in certain crises that the well being of a person and of others requires that consciousness be suspended, when for example, extreme pain, extreme stress or agitation produces greater harm to self and others than the temporary loss of consciousness. Using alcohol or drugs to dim one's consciousness for no other purpose than pleasure, is irrational and immoral because it obliterates the natural good that makes persons responsible for themselves and others.. But the use of alcohol or drugs as medical necessities, or even violence, to suppress consciousness can be the only rational choice in some extraordinary circumstances. The instruments do not define the morality of the choice: that is determined by the basic intention of the action, to protect all those who need protection. Beneath the surface of such situations is the sense that the real moral principle is "the end justifies the means" Well, shocking as it may seem, nothing else justifies a means but an end or purpose which makes the means to actually be the only or best way to the end or purpose. Nothing else makes a means to be a real means but a real purpose (*ratio mediorum sumitur a fine*) Yet, this generality is too often misconstrued to mean that any end justifies any means as long as it works.. However the traditional sense of the principle is that a truly rational human purpose justifies whatever truly human means , natural or artificial, are necessary to accomplish that end.

Nature, in the sense of the total natural universe, once in a while (*ut in paucioribus*) mistakenly reverses itself as when any species overpopulates itself with regard to its natural environment. Natural history is full of instances of former species, which have disappeared because of natural turns of events. Oddly enough, the claim that nature sometimes presents obstacles to its own purposes, as Aquinas sees it , rest on a clear cut realism which admits that there is indeed a continuity in nature which does

reveal structure and finality or purpose , but it also reveals the variations on the theme of order and structure. Order and chance are complementary, not contradictory or mutually exclusive. This structure and purpose in all natural phenomena along with the intrinsic contingency affecting all natural creation is oddly the foundation of the integrity of the whole sweep of moral natural law from universal principles to existential practice. The abiding structure of the first rational principles makes the variations and chance in the secondary principles reliable. Therefore, a well-founded natural moral law, to be true to itself, must also be practically relevant to those real exceptions to some of its own operating rules. Thus, for example, intercourse produces children - generally -, but not every act of intercourse produces a child and those acts that start the process of gestation do not always finish it. The half-finished task of human development within the womb, as in a miscarriage, appears to be an unnatural natural event, leaving the rational observer with more questions than answers about what it is that mother nature actually teaches. Again, the stability and structure of the natural process of generating offspring sustains the variation and chance within nature and within the morality that seeks to follow that stability and flexibility in nature. One begets children to endure a long and, at times, unpredictable journey to completion.. The journey begins with possibilities, travels through probabilities and hopefully arrives at certainty - for a while. The fundamental imperative of natural morality is to keep trying, keep looking, keep asking and do not imagine you will ever get it all correct.

ADDENDUM

A final reflection on Natural Law Naturally Changes

It would be useful here to acknowledge that behind the assertion that natural law changes because everything in nature, including human nature, is subject in one way or another to change and contingency, lies the philosophical conviction that finite being does not exist or function necessarily. In a word, everything that just happens to be as this or that kind of thing is part of a finite universe of conflicting causes, inept agents and indisposed matter. Creation, therefore, could not be other than imperfect in both the way it exists and in the way it acts.

One of the earliest witnesses to this sweeping vision was Aristotle, about whose works, Metaphysics and Perihermenias Thomas Aquinas wrote penetrating commentaries. In his reflection on the Metaphysics, VI, lectio 3, no. 1210 Aquinas offers: “If then, we attribute all contingent events here to particular causes only, many things will be found to occur accidentally. This will be so for a number of reasons: first, because of the conjunction of two causes one of which does not come under the causality of the other.... Second, because of some defect in the agent, who is so weak that he cannot attain his goal and third, because of the indisposition of the matter, which does not receive the form. This is what occurs, for example, in the case of the deformed parts of animals.” This comment about deformed animals cannot exclude the human animal: it might also be applied to much that occurs in human reproduction, as when a self-destructive conception also threatens the life of its own mother.

In no.1217, Aquinas adds: “It now remains to see how the affirming of fate or providence does not eliminate contingency from the world, as if all things were to happen of necessity.” And in no. 1221 “However, insofar as an effect is considered under its proximate cause, not every effect is necessary, but some are necessary and some contingent in proportion to their cause.”

In the commentary on Perihermenias, book 11, 14 n.6 Aquinas further elaborates: “...universally in the things not always in act, there is the potentiality to be or not to be. In natural things it is therefore possible for them to be or not to be... There is also the possibility of becoming or not becoming. Such things neither are nor come to be of necessity, but there is in them the kind of possibility which disposes them to becoming and to not becoming, to being and not being.”

From a very different perspective, less metaphysical and more psychological, Aquinas asks whether Any Pleasure is Not Natural. I-II Q. 31, Art. 7. Here he illustrates how human affairs can be radically transformed by accidental disruptions, claiming that certain behaviors which would be against human nature (and natural law) become connatural for particular individuals because of the intrusion of many different kinds of accidental factors. He notes that ‘nature’ can be taken in two ways. “First, inasmuch as intellect and reason is the principal part of man’s nature....Secondly, nature in man can be taken as contrasted with reason, and as denoting that which is common to man and other animals, especially that part of man that does not obey reason.” Thus the pleasures of food, drink sleep and sexual intercourse afford man natural pleasure. In this category “we find some that are not natural speaking absolutely, and connatural in some respect. For it happens in an individual that some one of the natural principals of the species is corrupted, so that something which is contrary to the specific nature, becomes

accidentally natural to this individual... And this corruption may be either on the part of the body - from some ailment; thus for a man suffering from a fever, sweet things seem bitter and vice versa, - or from an evil temperament; thus some take pleasure in eating earth or coals and the like: or on the part of the soul; thus from custom some take pleasure in cannibalism or in the unnatural intercourse of man and beast, or other such things which are not in accord with human nature.”

Of course, Aquinas is not saying that such “accidentally natural” conditions of individuals set a norm in natural law for all human, but he is asserting that accidents can transform what is “natural” for human beings generally, who have not been so adversely affected, into a kind of connatural adaptation in those who have been so affected. He certainly is not ruling out the vast and profound influence of accidental and contingent events in shaping the destiny of individuals. And there is no evidence that Aquinas imagines that all such “accidentally natural” conditions are the result of genuinely evil human acts of the individuals affected. In summary, from Aquinas’ acknowledgement of the “connatural” and “accidentally natural” conditions of some individual it is obvious that the natural law must be modified as it is applied to their individual situations, without any compromise of the general validity of the principles of natural law “speaking absolutely.”