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Letter from the President of the Fellowship

Dear Members of the Fellowship,

Many years ago, shortly after I graduated from college, a friend told me that he had been speaking to an American Cardinal who mentioned that, among the 120 or so Cardinals, he was “in a group of five or six who trust one another.” I remember thinking, “Well that can’t be true! I mean, they’re all Cardinals; how could the bond of trust and friendship not be uniform among all of them?”

During my years in academia, I have had many occasions to discover that scholars for whose work I have high regard do not always feel the same way about one another’s writings. “There is something ‘not quite right’ about his claim,” one will say about the other, happy to let me know just what is wrong, often “very wrong indeed.”

And, of course, many Catholics have gotten to know members of a variety of different religious orders, each solidly Catholic by all indications, and each thinking the others are perhaps “a little crazy” in their spirituality.

In a healthy marriage or friendship, in a healthy religious community or parish, the differences in personality and perspective can be fruitful, life giving. However, in some cases the differences can be so profound that they threaten what holds everything together. Distrust can develop, damage can be done to whatever is held in common. Even then, people may “weather the storm,” “agree to disagree,” and later rediscover or reestablish the bonds of communion.

Our society is not doing so well with these types of challenges. Many corporations and universities are becoming places in which differences of opinion on certain issues are not tolerated. People get “canceled” because of something they said or because they support an organization that is perceived, ironically, to be against diversity.

If a business or university environment cannot foster and sustain diversity of thought, then what environment is up to the task? The family? It used to be so. If my cousin had voted for a political candidate I thought was awful, he was still my cousin; I would not have “canceled” him. To be sure, there would have been topics we would not discuss, but the bond of unity, the extended family, was strong enough to persist despite even serious differences of opinion.

Such bonds of communion, such trust, can no longer be taken for granted. One offhand comment, or one misunderstood tweet, can lead to the loss of one’s

job and reputation. Many people are afraid to say what they really think, not only because others will consider them foolish or misguided, but also because they and their families may be punished for holding the wrong views. In one recent case, a mother was outed by her daughter who did not like the mother's politics; the mother subsequently lost her job.

Professors I recall encountering as a child seem to have been living in a very different world from the one I have just described. Each had his or her area of expertise, from which other professors and their families could benefit greatly. While there were disagreements, some more profound than I could have known at the time, it seemed to me that the milieu that was the Catholic university had what it needed to keep everyone engaged in the one project of *being* a Catholic university, namely, the joyful quest to know the fullness of what can be known, in all disciplines and in the highest discipline.

What is a Catholic university today? What ought it to be? On one extreme we have universities that profess "Everyone is welcome here, including Catholics." Another model, perhaps not exactly an extreme, is a university where "Everyone is welcome here, *because* we are Catholic." This first suggests that Catholicism amounts to one truth among many, and that the virtue of a Catholic university is in being "open to all truths, all points of view." So there are pro-life groups and pro-choice groups, RCIA programs, and LGBTQ chapters. "All are welcome."

The other model implies that Catholicism itself provides a healthy environment for all human beings. Each person is created in the image and likeness of God, each created for authentic freedom, which a Catholic institution endeavors to foster. Because it is Catholic, and because of a commitment to foster authentic freedom, the university would not seek to impose the faith on anyone. Nevertheless, every student would engage in a more than superficial study of Catholicism. While a student may choose not to embrace the faith, he or she would be expected to understand it well enough that a decision not to accept it is unlikely to be a rejection of a mere *caricature* of the faith.

Why is such an environment rare? Many Catholics do not understand Catholic doctrine as something that is true for all human beings. Perhaps their own Catholic education was weak. Others accept Catholic doctrine as universally true but would not begin to know how to explain or defend that view in an academic setting. Perhaps most significant of all is that most Catholic universities have far too many employees who are neutral or hostile toward the faith. In such a place, to suggest that the fullness of truth "subsists in the Catholic Church" is considered arrogant and offensive. To be sure, if the fullness of truth really does subsist in the Catholic Church, then it is not arrogant and offensive to claim that it does. Rather, to do so is to engage in intellectual charity.

How does a Catholic university proclaim this truth? First and foremost, it

should promote a rigorous study of faith and reason. There should be no fear that one will find a contradiction between faith properly understood and authentic reason. It is this depth and breadth that can provide what society so needs today, namely, a place where disagreements can be addressed with compassion and hope. Political and religious divisions are so deep that unless the principles providing “space” for the arguments are deeper, then disagreement will be forbidden and there will be pressure for everyone on campus to think the same way. All of higher education appears to be dealing with this challenge. We seem not to know how to disagree well about things large and small. *Everything* is at stake. “The center cannot hold.”

Some think the way forward is to downplay our differences. What I am suggesting just the opposite. The more authentically Catholic an institution is, the more welcoming it should be to all human beings, with all their large and small differences. However, in order for such an environment to work well, a critical mass of professors must be especially strong in their fields and in their understanding and living of the Catholic faith. When such is the case, a proponent of virtually any political, scientific, or moral view can be invited to speak on campus because it will become clear that, far from endorsing his or her view, the professors at the university are up to the task of showing precisely why the speaker’s view is attractive to many people and yet remains in some ways inadequate.

One final challenge to mention. Alasdair MacIntyre and others have noted that some professions seem to foster virtue. A good carpenter, for example, must treat the materials the way they *are*, not the way he wants them to be. Academic life is not always like this. Indeed, it seems like some areas of academia can foster vices. This is why it is so important that workers in the intellectual realm cultivate a deep humility even as they sore to the heights of their particular area of expertise.

Few if any of us work in an institution that matches what I have described, yet we can each cultivate such an environment in all we do. Our faith calls us to do nothing less.

Fr. Anthony Giampietro, C.S.B.
President, FCS

Washington Insider: Supreme Court

*William L. Saunders**

Abortion

The Supreme Court term that ended in July was a significant one. It included important decisions on religious freedom and on abortion. Since the religious freedom decisions were numerous, I will begin by reviewing the Court's decision on abortion, which was a setback to the pro-life cause.

The case was *June Medical v. Russo*, decided June 29.¹ It involved a state law in Louisiana that required abortionists to have admitting privileges at a local hospital in case the woman undergoing the abortion needed emergency medical care. Many observers, including myself, expected the Supreme Court to uphold the state law. The only question seemed to be how significant would be the inroads made in the "abortion right" created by the Supreme Court in *Roe v. Wade* and *Doe v. Bolton* in 1973.² The reason for this optimism was twofold. First, there are some infirmities in current abortion law, and second, the Court contains five justices who are widely understood to reject the free-wheeling, or living constitution, analysis that produced and sustained *Roe* and *Doe* – Chief Justice John Roberts and Associate Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, and Brett Kavanaugh.³

Several issues in abortion jurisprudence invited review and revision. First, why were *abortionists* bringing the case when it was allegedly *women* who were being harmed? Ordinarily, the law requires that the injured person sue on his or her own behalf. In the law, this is called *standing*. Nevertheless, in abortion-related cases, the Court has, over the years, failed to impose this ordinary requirement. It seemed likely – since the Court had requested briefing on this

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¹ *June Medical Services LLS v. Russo*, 591 U.S. ____ (2020).

² *Roe v. Wade*, 410 U.S. 113 (1973); and *Doe v. Bolton*, 410 U.S. 179 (1973).

³ Though the political terms *liberal* and *conservative* are often used, the actual distinction between living constitution and originalist–textualist jurisprudence is the fundamental divide on the Court. Roberts, who does reject the living constitution jurisprudence, still does not fall into the originalist jurisprudence; hence, he is often the deciding vote in close cases.

subject – that the Court would conform abortion litigation to the ordinary rules. Second, why were the abortionists challenging the law before it took effect? That is called a *pre-enforcement challenge*. It is not permitted by the courts in other areas of the law, though as with standing, it is routinely permitted by the Court with abortion.

The Court seemed to reject such challenges in *Gonzales v. Carhart* in 2007.¹ However, a few years after *Gonzales*, the Court decided *Whole Woman’s Health v. Hellerstedt*, which rejected *Gonzales*’s presumption of constitutionality regarding state abortion regulations passed through the normal legislative process.² The Court in *Hellerstedt* relied on the undue burden test created in the 1992 Supreme Court decision in *Planned Parenthood v. Casey*. The undue burden test asks, Does the “state regulation [have] the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion?”³ Using that test, the *Hellerstedt* Court struck down a Texas law that (like the one in Louisiana) required abortionists to have admitting privileges at a local hospital. In overturning the Texas law despite compliance with the normal legislative process (hearings, findings of fact, issuance of a legislative or committee report, voting, and so on), the Court ignored the presumption of constitutionality ordinarily employed by the courts in reviewing state laws.⁴

In fact, this is the inherent bias within the undue burden test: in effect, it presumes *against* the citizen-elected legislature and makes the unelected Court the fact finder. That keeps the Court, as Thomas noted, “the country’s *ex officio* medical board with powers to disapprove medical and operative practices and standards throughout the United States.”⁵ Consequently, the third basis on which many hoped the Court would cut back on the abortion license was by revising or rejecting the undue burden test, thereby allowing the states to pass laws regulating abortion practice (as they do in other areas of life).⁶

Of course, even if the Court had addressed all three things – standing, pre-enforcement challenges, and undue burden – it would not have addressed the fundamental question of whether there is a right to abortion rooted in the

¹ *Gonzales v. Carhart*, 550 U.S. 124 (2007).

² *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ____ (2016).

³ *Planned Parenthood of Southeastern PA v. Casey*, 505 U.S. 833, 877 (1992). In *Casey* the Court referred to the abortion of a fetus before viability.

⁴ With any law – state or federal – a court ordinarily asks whether there is a rational basis for the law: did the legislature, in enacting the law, consider the facts and policies involved? The proof that it did is ordinarily the holding of public hearings and so on.

⁵ *Gonzales*, 550 U.S. at 164, cited in *Hellerstedt*, 579 U.S., slip op. at 10 (Thomas, C., dissenting).

⁶ *License* is the right word because courts bend the rules in favor of abortion in ways that are inconsistent with the rules they apply in other areas of the law.

Constitution, as the *Roe*, *Doe*, and *Casey* decisions claimed. It must be kept in mind that abortion is available at any time in the United States under these decisions. The cases that have arisen since *Casey* involve peripheral limits on that “right.”¹

This background explains the intensity with which pro-life Americans awaited the decision in *June Medical*. They were bitterly disappointed. The Court split five to four, striking down the Louisiana law. However, the majority of five was itself split four to one. Roberts concurred in the *result* (striking down the law) but not in the *reasoning* of the other four, or the plurality, in the majority, which consisted of the four justices often denominated as *liberal* – Ruth Bader Ginsburg, Sonia Sotomayor, Elena Kagan, and Stephen Breyer. They engaged in an extensive balancing of harms and benefits that would, they believed, have resulted from the law, using the undue burden standard and relying on *Hellerstedt*.

Roberts’s concurrence struck many as odd. For instance, he had been one of the dissenters in *Hellerstedt*, which had similar facts. Furthermore, if Roberts were going to write a separate concurrence, one would expect him to join the result favored by the four dissenters (often denominated as *conservative*) – Thomas, Alito, Gorsuch, and Kavanaugh. That would have upheld the Louisiana law, thereby subjecting abortion litigation to the ordinary rules I have outlined above, *even if* Roberts disagreed with their *reasoning*. In other words, why concur with the abortion liberals rather than the conservatives?

The answer might be found when one considers the basis on which Roberts dissented in *Hellerstedt* – the technical legal doctrine of *res judicata*. Likewise, in *June Medical*, Roberts based his concurrence on a technical legal doctrine, *stare decisis*. He found the statute involved in *June Medical* to be essentially the same as the one struck down by the Court in *Hellerstedt* and therefore controlled by the decision in that case.

Stare decisis means that a court gives deference to prior decisions on the same subject. It is not an ironclad rule, however. While it has more force when a court is interpreting a law (a legislative enactment), it has less force when the Court interprets a Constitutional provision.² Otherwise, *Plessy v. Ferguson* could not have been overruled by *Brown v. Board of Education*, which ended “separate but equal.”³

¹ Even *Gonzales* was a narrow decision, only upholding the elimination of a single abortion procedure, partial-birth abortion.

² Because of the importance of the Constitution as America’s fundamental law and source of law, it is essential that the Court interpret the Constitution *correctly*. By contrast, a legislative enactment can be easily amended, while the Constitution cannot be.

³ *Plessy v. Ferguson*, 163 U.S. 537 (1896); and *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

Roberts's reliance on *stare decisis* to avoid upholding a peripheral regulation on abortion (that, additionally, straightforwardly benefits women) has caused many to wonder if Roberts is, in effect, indicating he would not ultimately vote to overturn *Roe*, because of *stare decisis*. While it is impossible to know for certain,¹ that very uncertainty would matter less were one of the four liberals replaced by another conservative justice, for thereafter, Roberts would no longer be the crucial swing vote.

The history of Supreme Court jurisprudence is one of shifting majorities and hence of quite unclear precedent. (For instance, *Hellerstedt* was decided by an eight-person, rather than a nine-person, Court following the death of Justice Antonin Scalia.) But as noted, the landmark cases are *Roe*, *Doe*, and *Casey*. Interestingly, Roberts rooted his understanding of undue burden in *Casey*, rejecting *Hellerstedt* as a departure from that standard. As a very cautious justice, Roberts, at least in the abortion area, decides cases narrowly. Since *Casey* did not provide for a balancing test, Roberts rejected it.

In sum, though Roberts's concurrence in *June Medical* was highly disappointing, it robs the decision of significant effect, essentially rendering it nonbinding as precedent and limiting it to its facts.

Religious Liberty

The Court decided four important decisions involving religious liberty. One of them has disturbing implications, but the other three taken together indicate that those implications are less likely than they first appear.

I will start with *Bostock v. Clayton County*, decided on June 15.² Gorsuch, writing for a six-vote majority,³ held that Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of sex,⁴ also prohibits discrimination because an employee is gay or transgender. In a painstaking analysis of the text, Gorsuch concluded that if the sex or gender of the employee is any part of the reason

¹ See, for instance, *June Medical*, 591 U.S., slip op. at 4 (Roberts, J., concurring), citing *Ramos v. Louisiana*, 590 U.S. ___, 20 (2020). “*Stare decisis* is not an ‘inexorable command.’ But for precedent to mean anything, the doctrine must give way only to a rationale that goes beyond whether the case was decided correctly. The Court accordingly considers additional factors before overruling a precedent, such as its administrability, its fit with subsequent factual and legal developments, and the reliance interests that the precedent has engendered.”

² *Bostock v. Clayton County*, 590 U.S. ___ (2020).

³ The majority consisted of Gorsuch, Roberts, Ginsburg, Breyer, Sotomayor, and Kagan. Alito, Thomas, and Kavanaugh dissented.

⁴ 42 USC §2000e-2(a)(1). The act prohibits employment discrimination based on “race, color, religion, sex, or national origin.”

for the employer’s action, then it is “because of sex” and therefore prohibited.¹ Gorsuch was unpersuaded by the argument that the legislative history of the text would show no legislator even *considered* that *sex* would cover homosexuality or gender identity, much less *intended* that it would prohibit such discrimination. Gorsuch maintained that the statutory text is clear and that discrimination based on homosexuality or gender identity is *necessarily* based, in part, on the sex of the employee.

The decision was highly controversial. After all, Gorsuch had been nominated and confirmed to the Court recently because he is a textualist committed to intellectually rigorous analysis of the text at issue. To many it seemed his decision in *Bostock* was the very opposite of that – that, in fact, he shoehorned into *sex* concepts that the statute (from 1964) simply could not have been meant to cover.

Many leaders of religiously affiliated institutions (churches, schools, hospitals, and so on) as well as businesses are severely worried about what this means for them, since their religions view such conduct as sinful and hence as quite relevant for hiring or firing. For instance, the president of the United States Conference of Catholic Bishops, Archbishop Jose Gomez, stated, “I am deeply concerned that the U.S. Supreme Court has effectively redefined the legal meaning of ‘sex’ in our nation’s civil rights law. This is an injustice that will have implications in many areas of life.”²

Gorsuch himself addressed this at the end of his opinion. Given the seriousness of this issue, it is worth quoting at length:

[Some] fear that [our decision]. . .may require some employers to violate their religious convictions. We are also deeply concerned with preserving the promise of the free exercise of religion enshrined in our Constitution; that guarantee lies at the heart of our pluralistic society.... [But such worries] are nothing new.... As a result of its deliberations in adopting [Title VII], Congress included an express statutory exception for religious organizations. This Court has also recognized that the First Amendment can bar the application of employment discrimination laws “to claims concerning the employment relationship between a religious institution and its ministers.” And Congress has gone a step further yet in the Religious Freedom Restoration Act of 1993 (RFRA).... Because RFRA operates as a kind of super statute, displacing the normal operation of other federal laws, it might supersede Title VII’s commands in certain cases.... [But these] are questions for future cases.³

¹ See *Bostock*, 590 U.S. at 12.

² U.S. Conference of Catholic Bishops, “President of U.S. Bishops’ Conferences Issues Statement on Supreme Court Decision on Legal Definition of ‘Sex’ in Civil Rights Law,” news release, June 15, 2020, <https://www.usccb.org/news/2020/president-us-bishops-conference-issues-statement-supreme-court-decision-legal-definition>.

³ *Bostock*, 590 U.S. at 32, citing *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 464 U.S. 171, 188 (2012).

In sum, it seems Gorsuch does not intend his opinion to mark a substantial infringement on religious liberty. His votes in the other important religious freedom cases this term confirm that.

In *Espinoza v. Montana*, the Court considered whether a state could refuse aid to a religious school while making it available to other kinds of schools.¹ In a five-to-four opinion, which broke along the familiar conservative and liberal lines and was written by Roberts (and joined by Gorsuch), the Court held it could not.² The state argued such aid was prohibited by a state constitutional amendment. Historically, such amendments were adopted in thirty states, in part to deny aid to Catholic schools.³ Hence, the decision in the case would appear to render all of these state constitutional amendments void when applied in similar factual circumstances.

In another important case this term, *Our Lady of Guadalupe School v. Morrissey-Berru*, the Court, in a seven-to-two decision written by Alito, held that the First Amendment permits a religious institution to hire and fire an employee without interference from the state.⁴ The case applied the familiar ministerial exception expansively, rejecting a narrow interpretation of prior cases that would have required that certain rigid criteria be satisfied. Instead, the Court said what mattered was whether the employee performed “vital religious duties” such as educating students in the faith of the school and guiding them in living that faith.⁵ The decision has obvious implications regarding the power of religious institutions even after the *Bostock* decision.

Finally, it should be noted that Gorsuch has insisted on the importance of religious freedom in many other contexts. For instance, he filed a written dissent

¹ *Espinoza v. Montana Department of Revenue*, 591 U.S. ____ (2020).

² Thomas, Alito, Gorsuch, and Kavanaugh joined Roberts, while Ginsburg, Breyer, Kagan, and Sotomayor dissented. Gorsuch joined Thomas in a concurrence questioning the jurisprudence of the Court in establishment cases, that is, cases concerning the First Amendment’s prohibition of an establishment of religion. Though I cannot go into details in this article, the jurisprudence of the Court regarding establishment is indeed in need of reform. Furthermore, Gorsuch wrote a separate concurrence to emphasize the central importance of religious freedom to our Constitutional scheme of government: “Often, governments lack effective ways to control what lies in a person’s heart or mind. But they can bring to bear enormous power over what people say and do. The right to *be* religious without the right to *do* religious things would hardly amount to a right at all.... A right [such as religious freedom] meant to protect minorities instead could become a cudgel to ensure conformity.... Even today...people of faith are made to choose between receiving the protection of the State and living lives true to their religious convictions.” *Espinoza*, 591 U.S., slip op at 6 (Gorsuch, N., concurring), emphasis original.

³ *Espinoza*, 591 U.S., slip op. (Alito, S., concurring).

⁴ *Our Lady of Guadalupe School v. Morrissey-Berru*, 591 U.S. ____ (2020). Ginsburg and Sotomayor dissented.

⁵ *Our Lady of Guadalupe*, 591 U.S. at 21.

when the Court refused to review a case questioning the validity of state restrictions on religious freedom during the COVID-19 pandemic. The filing of such a written dissent when the Court declines review is unusual and indicates that the justice who writes it feels strongly about the issue. In this case, Nevada permitted movie theaters to reopen but prohibited churches from doing so. Gorsuch stated, “This is a simple case. . . . The First Amendment prohibits such obvious discrimination against the exercise of religion. The world we inhabit today, with a pandemic upon us, poses unusual challenges. But there is no world in which the Constitution permits Nevada to favor Caesars Palace over Calvary Chapel.”¹

In sum, when these cases are considered in total, it seems fair to say that while none of his critics would agree with his reasoning, Gorsuch himself does not see or intend *Bostock* to mark a serious infringement of religious freedom. And there would appear to be at least three other members of the Court who agree (Alito, Thomas, Kavanaugh).

As Gorsuch’s dissent indicates, however, one area in which the Supreme Court has not proven to be a friend of religious liberty concerns the pandemic. In several cases, it has declined to relieve churches of the burden placed on them by local government. The Court has been highly deferential to governmental authority.² Meanwhile, the U.S. Attorney General noted, “[T]he First Amendment and federal statutory authority prohibit discrimination against religious institutions and religious believers.... If a state or local ordinance crosses the line from appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court.”³ This issue will not go away until the pandemic does.

One other Supreme Court decision from the last term should be mentioned. It is *Little Sisters of the Poor v. Pennsylvania*.⁴ There the Court reversed and remanded a lower court’s nationwide injunction that prevented the federal government from revising the Obama administration’s contraceptive mandate. When Donald Trump was elected president, his administration moved to revise the mandate to protect these religious objectors. Pennsylvania alleged that the revocation of the mandate

¹ *Calvary Chapel Dayton Valley v. Sisolak*, 591 U.S. ____ (2020).

² See, for example, Robert Barnes, “Supreme Court, in Rare Late-Night Ruling, Says California May Enforce Certain Restrictions on Religious Gatherings,” *Washington Post* (May 30, 2020), https://www.washingtonpost.com/politics/courts_law/supreme-court-considers-churches-demands-that-states-lift-pandemic-restrictions/2020/05/29/af07b918-a1b2-11ea-81bb-c2f70f01034b_story.html.

³ William P. Barr, Memorandum for the Assistant Attorney General for Civil Rights and All United States Attorneys (April 27, 2020), 1.

⁴ *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 591 U.S. ____ (2020).

violated the requirements of the Administrative Procedures Act. The Court held that the Trump administration had the statutory authority to act as it did, but the justices remanded the issue to the lower courts to determine if the administration had complied with the APA. The decision, written by Thomas, commanded a seven-to-two majority.¹

Readers will recall that the contraceptive mandate was resisted by many religious organizations because they viewed it as requiring them to violate their religious beliefs.² Rather amazingly, the Court has never definitely applied the RFRA to the issue; instead, it remanded the litigation to the lower courts to find a resolution that respected the religious freedom of employers. Though this was thought by many to mark the end of litigation on this issue, it did not. The significance of the case for religious freedom is that the Court noted that the RFRA, which protects religious freedom absent a compelling and narrowly tailored reason on behalf of the government, is relevant to the mandate.³ Perhaps that will resolve the issue once and for all, but given the long litigation history of this issue, that is not certain.

¹ Two of the seven – Breyer and Kagan – doubted the Trump administration could meet the requirement of disinterested rulemaking required by the Administrative Procedures Act. Ginsburg and Sotomayor again dissented.

² For the history and extent of the mandate, as well as various objections to it, readers may refer to my column over the past several years.

³ Recall that in his opinion in *Bostock*, Gorsuch noted that the RFRA “is a kind of super statute, displacing the normal operation of other federal laws” in favor of religious freedom.

Fellowship 2.0?

*Gerard V. Bradley**

DOES THE FELLOWSHIP OF CATHOLIC SCHOLARS have a second act in it? Perhaps I take a liberty in posing the question so bluntly. But anyone can see that our Fellowship is suffering from at least a mild case of *ennui*. We have from time to time tried to revivify the group, especially to cultivate members and leaders from the new generation of orthodox Catholic scholars. The results have been modest.

The truth is that our apostolic era has passed. All but a handful of those who founded the Fellowship of Catholic Scholars at Saint Louis University on August 23-24, 1977, have escaped this vale of tears. (Of those attending who were identified by name in FCS records, only Fr. Joseph Fessio, S.J., Prof. James Hitchcock, and Sr. Hanna Klaus survive. Fessio is the youngster in the group. He is 80.) Our founders' example energized others to carry the work forward after their retirements and deaths. That energy now seems dissipated; indeed, the second generation – myself included – is itself nearing retirement. Another generation of Catholic scholars has matured who have no more personal memory of the battles our founders fought than they do of Lexington or Concord, or Vietnam. Or of “The Battle for the American Church,” as the chief instigator of our founding (Msgr. George A. Kelly) phrased it in a 1980 book of that title (republished as “Revisited” by Ignatius Press in 1995).

Is a Fellowship reboot nonetheless a realistic prospect?

I say “reboot” advisedly. I do so to indicate the need for a genuine *renewal* of the Fellowship founded in 1977 and not a reinvention of it doing different business under the same brand name. *That* would be a whole new venture, connected to the FCS by little more than genealogical continuity. The question considered here is about genuine continuity with a realistic prospect of success, amidst radical changes in historical context.

Central to considering that question is figuring out what is really in the DNA of the Fellowship, so that we could distinguish a renewal of it from a reinvention. Also central, or very close to it, is a frank account of the greatly changed circumstances confronting the FCS, mainly in the Church but also in the academy and in the priorities of younger Catholic scholars today.

One could get something of a handle on the first question (about DNA) by looking at the current “Statement of Purpose” on the FCS website. I should

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nonetheless like to describe in parts 1-3 herein the founding and the early years of the Fellowship, to further illumine its animating charisms. This is mostly a matter of letting the founders speak for themselves. Here and there in those pages I provide my own description of the group in operation, supplied from memory and from research in the FCS Newsletter, as well as in a few other published sources.

In part 4 I offer my tentative conclusions about what is in our DNA. In part 5 I turn to the leading considerations – both positive and negative, assets and liabilities – bearing upon whether the FCS could, and should try to, mount a second act.

Note that although I spoke at the 1987 convention in Los Angeles and knew of the FCS before that, my personal recollections of the group really date to 1992. Then I attended the annual meeting in Pittsburgh. By the next year I was vice-president. I served as president starting in 1995, for a total of eight years. I attended the conventions and board meetings without exception from 1993 until, I think, 2008. Since then my involvement with the FCS has been much less intense. I suppose that no one knows more about the middle third of the Fellowship's life than I do. I certainly spent much time working shoulder-to-shoulder with the Fellowship's founders.

1. In the Beginning, the First Part: Contingency

Fr. Ronald Lawler, O.F.M. Cap., wrote about the Fellowship's founding in the first president's column on the first page of the first Newsletter. He introduced readers to a certain serendipity: "In January 1977 in several different parts of the United States seven different priests were discussing with their local peers what could be done to redirect the Catholic scholarly community towards a more friendly approach to the teaching authority of the Church." Lawler wrote that "[a]lmost by accident of correspondence and informal conversations" these priests – New York's Msgr. George Kelly and Fr. Lawler among them, with Jim Hitchcock the great Saint Louis historian, the lone layperson mentioned – met on May 7-8, 1977, at St. Louis's Kenrick Seminary. At that meeting the decision was taken to convene a much larger group at Saint Louis University on August 23-24. Then and there, the group was born.

But what would it be called? Another bit of serendipity: Fr. Lawler wrote on that first page that the "name was suggested by an Australian layman who happened on the scene." That wandering Aussie was Karl Schmude, a professional academic librarian, a working independent scholar, and cofounder (with James Power, Sr.) of *Campion College*, near Sydney.

Schmude is a long-time dear friend, still standing tall for Catholic intellectual life in Australia. Karl kindly recollected his role at St. Louis, in e-mails to me during early 2021. Karl wrote:

When the assembled group (including Fr. Ronald Lawler) were searching for a collective name for the new body, Joe Fessio whom I'd met earlier in San Francisco that year, and backed up by Jim Hitchcock (whom the Australian Fellowship had already invited to a lecture tour Down Under in 1977 – he actually accompanied us back to Australia when we flew out in July 1977, following a lovely Mass Fr. Joe celebrated for us in San Francisco on the eve of our departure), suggested I might speak at some point.

We were meeting, as you'd know, at Kenrick Seminary. When I mentioned the name 'fellowship,' it seemed to catch on – and was quickly adopted by the group – as a word that captured both the camaraderie of the new association as well as its relative informality. I might add that, while a couple of the founding Australian Fellowship members (of Anglican background), whom you'd know, such as (later) Bishop Peter Elliott, thought that it had an ecumenical inspiration, with a certain Protestant resonance, the man who suggested it, Dr. Colin Jory of Canberra, a key founding member of the Australian Fellowship, has always insisted that it derived from Tolkien's 'Fellowship of the Ring.'

Then, even more contingency: Fr. Earl Weis, S.J. was at that meeting, too. He was evidently also among the "local peers" of Loyola (IL) professor Fr. Joseph Mangan, S.J., who met in Chicago and conceived (per Fr. Lawler) the embryonic idea of the Fellowship simultaneously with other "peer groups." Fr. Weis wrote six years afterwards that Msgr. Kelly

set out to cross the country for the purpose of finding out if there was a constituency of scholars in various fields 'out there' (as New Yorkers tend to think of the Midwest) and 'further out there' (as New Yorkers tend to think of the West and the West Coast) for such leadership as he could provide. His first stop was Loyola University of Chicago. There and at further stations west he found substantial support for the idea of such an interdisciplinary organization. He told me, quite a while afterwards, that had the group at Loyola not encouraged him, he would have turned around and gone back to New York. Thus encouraged, however, he met with a core group gathered at Kenrick, and then still later at the actual organizational meeting at St. Louis University.

Kelly himself later wrote that the proximate cause of what became the FCS was Cardinal Garrone, prefect of the Congregation for Catholic Education from 1968 until 1980. Garrone was tasked with producing the document that became, nearly a generation later, *Ex corde ecclesiae*. (I say "nearly a generation" because the drafting process began in 1968 and *ECE* was finally promulgated on the Feast of the Assumption in 1990.) After being told at the 1972 meeting of the International Federation of Catholic Universities by Notre Dame president Fr. Theodore Hesburgh, and by Fr. Robert Henle, S.J., then SLU president, that the Americans would refuse to abide any Roman regulation of colleges, Cardinal Garrone (in Msgr. Kelly's telling¹) asked: "Is there no other voice within American Catholic higher

¹ George Kelly, *The Battle for the American Church* (New York: Doubleday, 1979), 83.

education than that of the NCEA and Fr. Hesburgh?” The Fellowship, in Msgr. Kelly’s telling, became that voice.

Fr. Weiss continued his account of Msgr. Kelly’s thoughts and acts: “Was there, [Msgr. Kelly] and others asked, no group of distinguished scholars to speak out of their loyal learning in support of the Supreme Pontiff? In some “some” unsigned “notes” in the March 1992 Newsletter, an author whom I judge to have been Msgr. Kelly wrote: “Initially, it was suggested by Roman Cardinals as *an alternate voice* to the bureaucracies of the” USCC and the NCEA. Fr. Weiss continued: “And if there was not, why could not one be organized with members confirming one another in scholarly research, issuing timely statements on academic and ecclesial issues, holding annual meetings, and publishing a Newsletter to let the learned and administrative communities and the conference of bishops know that there are, indeed, usually two sides at least to many important but unsettled questions?”

Fr. Earl Weiss served as the fourth FCS president and was, until the mid-1990s or so, a regular at board meetings. He presented the Cardinal Wright Award to Fr. John Connery, S.J., in late 1982. Fr. Weiss then reported that the Fellowship “came into existence about a half-dozen years ago when thoughtful people in various academic and professional areas were put into a reflective and constructive mood by the reaction of a vocal segment of the world of Catholic learning to *Humanae vitae*.” Chief among these “thoughtful people” was Msgr. Kelly, the New York priest already mentioned. He had a doctorate in sociology from CUA, was long a parish priest and chancery official, but was by the time of our story teaching at St. John’s University. If there was a founder among the founders – a primal force in the creation of the Fellowship of Catholic Scholars – it was surely Msgr. George Anthony Kelly.

2. In the Beginning, the Second Part: Intention and Foundation

Coincidences and contingencies suffuse the founding saga. Yet there was resolute intention, too. The founders built for the long-haul. And they built sturdily. There is nothing in the original Statement of Purposes, for example, that is time-bound or contingent. In fact, the first Statement was drafted in August 1977 by Fr. Lawler and Prof. Germain Grisez. It is little different in substance from that presently on the FCS website.

The Fellowship’s original self-understanding is also manifest in this statement, adopted by the membership in 1978:

Scholarship is intended to be at the service of truth. It is of necessity open to all genuine truth. It also holds that the human person is free and tends to seek the truth and to know it when found.

All this is true of Catholic scholarship. The Catholic scholar is one who recognizes the truth of Catholic doctrine. For this reason, Catholic scholarship should be primarily at the service of Him who revealed Himself as the Way, the Truth, and the Life. It should foster that unity for which Christ prayed; it should evidence by its style and methods the presence of the Spirit, the bond of unity and love; it should respectfully acknowledge and assist those whose office in the Church endow them with the sure charism of truth.

That Catholic scholars depend in matters of faith on Revelation and the Magisterium is itself a freedom, liberating and enriching the human spirit. Catholic scholarship orients all investigations of truth towards personal love of God, who is at once the protector of all natural truth and the revealer of divine truths and saving mysteries. For truth itself is never divided. It all comes from God.

Catholic scholars accept the entire faith of the Catholic Church. This they see not only in solemn definition, but also in the ordinary teaching of the Pope and those bishops in union with him. They also see it embodied in those modes of worship and ways of Christian life and practice which express the faith of the Catholic community.

There are questions raised by contemporary thought that must be considered with courage and addressed with honesty. This we shall seek to do, faithful to the truth always guarded in the Church by the Holy Spirit and sensitive to the needs of the family of faith.

In the December 1983 president's column Fr. Weis asked: "What brought these disparate academics together in Fellowship?" He answered:

First, a shared concern that the integrity and the truth of the Church's message, as contained in the teaching of Vatican II, need be properly witnessed and authentically presented.

Secondly, a recognized need to counterbalance the discipline being exercised within the Church *against* those who in their academic or religious capacities who insisted on fidelity to Catholic norms in worship, life, and teaching.

Finally, Paul VI, by 1975 highly critical of dissent, was beginning to ask: "Where are our faithful sons?"

Fr. Weiss added a further crucial fact about the founding in that speech. He said that among the "number of points of identity" set in St. Louis was that the FCS would have "a clear societal personality, individual and separate, not to be identified with any already existing organization or entering into partnership with any such organization." This was, he emphasized, "an important point." It was to be an "independent" group, "making its own specific contribution, delicately balancing loyalty and scholarly objectivity, willingly taking on the tension and the risks involved in such a combination of standards."

Looking back from 1992, the author-whom-I-believe-to-be-Kelly wrote that, in "short order" after the founding, Fellowship members became *research scholars* for individual bishops and select Roman congregations; a "*support group*" for those academics who by virtue of their commitment to Magisterium suffered neglect, lack

of approval, harassment, loss of tenure or promotion, sometimes of position,” and “in due course” the realities of life in the Church “tended to confer” an “*outside critic’s role* against organizations within and without academia that contribute to defective position papers, doctrinal and disciplinary abuses” or undermine the efforts of the pope and of bishops united to him “to implement the decrees of Vatican II authentically.”

In mid-September 1986 William Cardinal Baum, then prefect of the Congregation of Catholic Education, observed how fortunate it was for the Church to have the FCS. At the opening of the annual convention in Manhattan two weeks later, John Cardinal Carberry told some 250 in attendance that the Fellowship “is a source of comfort, a source of joy to the Holy Father, and to all who uphold the teaching authority of the successor of St. Peter – there is no doubt that the Fellowship of Catholic Scholars is truly needed in the Church today.”

3. Fellowship Flourishing: The Early Years

The first Fellowship membership event took place in April 1978 at the airport Ramada in Kansas City. So began the practice of referring to the annual big event not as a “conference” but rather as a “convention.” For the first few years the pattern was spring convention and later-in-the-year board meeting, at which time the Cardinal Wright Award was presented. The FCS switched to a fall convention (with Cardinal Wright Award) and spring board meeting in 1986. That pattern persists.

Membership grew rapidly, even spectacularly. My best guess is that about fifty scholars attended the larger organization meeting at SLU in late August 1977. Fr. Lawler reported 150 members in the first Newsletter (dated December 1977). By March of 1979 he reported 400. Six months later it was 600. The 1980s were years of further growth, with FCS officers admitting strain as they tried to manage the correspondence, produce the Newsletter, organize the convention, and process membership applications. Now, the FCS has never been a well-oiled machine, notwithstanding the Homeric efforts of Fr. Koterski, when he was president in the first decade of this century, to make it at least not criminally inefficient. But for many years the group was slowed down by a cumbersome membership application process, where the board, assembled in semi-annual meeting, vetted each applicant for scholarly qualifications and for orthodoxy.

Through the 1980s there were a few large local chapters (for example, in NYC and DC) that met regularly. There was then also a dedicated effort to promote discipline-specific committees within the Fellowship and to stage breakout sessions at the annual convention. By the time I became president in 1995 neither of these undertakings was flourishing. I think that now the idea of local chapters is beyond reviving. During and since my years as president there have been periodic attempts to recreate the committees and/or discipline subgroup gatherings at the convention.

This practice continues and, in my judgment, should.

By 1993 there were over a thousand Fellowship members. In 2000 we had approximately 1300 members across the globe, with chapters in Canada, Australia, Ireland, England. Attendance at the convention was regularly between 250 and 300 persons.

Cardinal Carberry seems to have been an unofficial episcopal sponsor for several years after those first St. Louis meetings. The early Newsletters regularly listed other episcopal “Friends of the Fellowship.” Many there were. The March 1983 issue listed forty-one, including four Cardinals (Cooke, Krol, Manning, Madeiros). Then-retired Carberry was still a good friend of the group, as had been the recently deceased John Cardinal Cody.

I do not know for sure how a bishop ascended to the lofty stature of being an official “friend.” It probably meant that he contributed financially to the FCS, a practice that continued throughout my tenure as president. In fact, I solicited donations from every bishop annually, garnering on average \$6,000 to \$8,000. The appeal included a short report of our year’s activities and a standing offer of assistance in his ministry. The cash helped. More important, the practice maintained a sense that the Fellowship was an active collaborator of the bishops. I do not remember listing our donors as “friends” in the Newsletter, or anywhere else.

Somewhere in those early Newsletters Msgr. Kelly reported that six priest members of the FCS had become bishops. Among the first members were Fr. Donald Wuerl and Fr. Adam Maida, as well as Msgr. Anthony Bevilacqua. Cardinal Wuerl holds the unique honor of being the only person who has ever enrolled as a perpetual FCS member – twice! He joined on that basis early on and then, again, shortly after our convention in Pittsburgh in 2004. I thanked him warmly for his unusual support. I offered a refund of the second perpetual dues. Bishop Wuerl declined the offer.

Archbishop Fulton Sheen appears in the September 1979 Newsletter as a “friend of the Fellowship.” He was dead within three months.

Up until around the year 2000, it was protocol to be “invited” by the local ordinary to stage the convention in his diocese or archdiocese. The ordinary was also expected to celebrate Mass for the group and host the board for dinner on Friday night.

I recall now several articulated, recurring worries about the FCS. Among them were the assertions that the group was: (1) too much about philosophy and theology; (2) too old; (3) too negative; (4) too clerical; and (5) too clubby.

Speaking critically and just for myself about these worries, I suspect that the *first* was inevitable and not necessarily a defect of the organization. The work of the FCS has always centered around the truths of the faith and the documents of the magisterium, and their unpacking and their implications, as well as their contempo-

rary application. These truths and this work are really in the wheelhouse of those competent in theology and philosophy. So, yes, the FCS has always been very heavily populated by philosophers and theologians. But *too much* so? What is the metric by which an *excess* is to be shown?

As to the *second*: the Fellowship has always struggled to attract a younger cohort. It still does.

Third: Yes, at least occasionally the FCS focused upon the negative in the Church to some neglect of the positive, and maybe just plain excessively. Our humor at the banquets tended to be no-holds barred. Feckless bishops were often victims of our jokes. For many years the Newsletter ran a column (mostly written by Prof. Jim Hitchcock) of happenings around the Church and Catholic academic scene. It was clever, entertaining, and accurate. But if someone observed that it was “negative,” I would not require them to get their eyes checked. Even so, sharp criticism was part and parcel of what the FCS was about. Worrying about being perceived as too negative can, in any event, be crippling.

As to the *fourth* worry: yes and no. No one in FCS annals was more clerical than Msgr. George Kelly. He loved to talk about episcopal comings-and-goings, loved the company of priests, and he loved to tell “Spelly” (Cardinal Spellman) stories. Yet Msgr. Kelly was utterly devoted to the spiritual welfare of the people in the pews. He was long a parish priest and loved it. He made his name as a pioneer of the Catholic Family Movement, to which he was forever devoted. Within the FCS he promoted the work of lay scholars such as Prof. Bill May, Prof. Germain Grisez, and Prof. John Finnis with vigor and genuine admiration. I am convinced, too, that Msgr. Kelly steered the presidency first to Prof. Ralph McInerney and then to me, so that there was a full decade of uninterrupted lay leadership of the group starting in 1991. Msgr. Kelly and, for that matter, the other leading priest board members (Fr. Lawler, Msgr. Bill Smith, Fr. Ken Baker, Fr. Weis, Fr. Fessio) could not have been more supportive of me during my years as president. (Probably, they detected that I desperately needed the help.)

Fifth: “Clubby” may be just a side-effect of being a real “fellowship.” We strived for conviviality at our conventions. In that we succeeded. I think anyone who wandered into our conventions would have felt welcomed and had much fun. If this is clubbiness, count me in favor.

The Fellowship and in particular its board during my active years were populated by very strong personalities, men and women who, notwithstanding their profound fidelity to the Church, were *very* independent minded. Even so, I continue to marvel at how willing they all were to put shoulder to the wheel, to no particular acclaim or recompense, and usually against the odds. They did so with good cheer. They were, in the right sense of term, “team players.” I prefer to say that they were humble servants of the common good of the Fellowship of Catholic Scholars and,

in that manner, workers in the vineyard of truth.

I can remember only one time when a strong personality (whom I will not name) angled ambitiously for a position of prominence in the group. He was grasping for a certain measure of control over the group. Plainly put, he wanted to be in charge. This struck me and almost everyone else on the board as nearly repulsive. The board united to short-circuit this rare attempt to subordinate the FCS to someone's particular agenda.

Through the 1980s the Newsletters were only a little bit newsy. A typical issue would contain some notices and reports about what some members were writing or doing, and the occasional job or meeting announcement. But the "newsletter" was top-heavy with high-caliber scholarly work. These were usually composed for FCS readers by the group's most distinguished members, and they addressed leading matters in the Church's intellectual life. The American bishops' letters on War and Peace and on the Economy attracted a great deal of attention, as did drafts of the *Catechism of the Catholic Church*. The 1985 Extraordinary Synod commanded a comparably extraordinary amount of attention.

There was, on the other hand, very little interest in public affairs as such evident in the Newsletters and convention proceedings. Nor was there much about practical pastoral care, homiletics, or parish administration. The faith of the people in the pews was of great concern. But it was more a downstream effect of the group's focal point. The FCS was dedicated to the preservation of the faith by and through the teaching office of the hierarchy. Its concern was how Catholic intellectuals could help the Church hold the faith and pass it on intact. It was about the deposit of faith, the patrimony, and about faithfully transmitting it, so that the Church passing through America ca. 1980-1990 could hand off the Gospel intact to those who would come after.

The Fellowship of Catholic Scholars was a well-known "brand" within the Church from its beginnings on into the twenty-first century. It was very frequently noted by the Catholic press as standing with the hierarchy and the magisterium, and as standing athwart was then called "dissent" and "liberalism" within the Church. (Now it would be "progressive" Catholicism or, sadly, just "Catholicism.") On select intellectual matters pertaining to the good of the Church, the group acting through the board issued statements committing it to definite positions. This was often the case through the decades-long process that culminated in *Ex corde ecclesiae* and the American bishops' subsequent irresponsible refusal to actually "implement" it.

The FCS attained early in its life a limited but still important "authoritative" status within the Church. It was handled by those members with whom I interacted as the privileged trust that, in fact, it was.

4. *What Is in Our DNA?*

The FCS is hard-wired to be a multidisciplinary group of Catholic scholars. That breadth of membership alone makes it unusual among scholarly organizations. I know of two comparably multidisciplinary Catholic scholarly organizations. Neither of them significantly overlaps the mission of the FCS. One is University Faculty for Life, which has a different, more limited focus than does the FCS. The other is the limited (elected) membership group started by Michael Novak in 2016, the Academy of Catholic Thinkers and Artists. Michael's death in 2017 ended the group's activities. Recently, the young historian Michael Breidenbach is trying to get aloft what amounts to a successor to ACTA. It is the American Academy of Catholic Scholars and Artists, not yet operational. Its future success is to be encouraged.

The FCS is unlike other scholarly groups in another way. It is more than an association. It is self-consciously a *fellowship*. That characteristic has often included Homeric bouts of sheer conviviality. These are not going to be easily replicated. But the central meaning of what it means for us to constitute a "fellowship" is quite different, and replicable. It is a corollary of the overarching aim of the organization, which is Christian service. The servant is humble; he or she collaborates with other servants in the work put before them by the Master. There is no anticipation of credit or recognition; those who labor in the sun all day count just the same as those arriving late. Mutual aid and support in the common project are thus baked into our DNA. Karl Schmude reported to me that somewhere behind his suggestion that we style ourselves as we have, was a recollection of Tolkien's Fellowship of the Ring, as an exemplar of the selfless service to which our Fellowship aspires.

The FCS is composed of orthodox (faithful, solid) Catholic scholars. Its purposes and its members are characterized by fidelity to the magisterium, as well as by an unequivocal embrace of the Second Vatican Council. This has always presented a bit of a challenge. Back in the day, FCS leaders were occasionally arraigned by members who (and please forgive the flip expression) maintained that the Latin Mass is the eighth sacrament. One of the subtle successes of the Fellowship has been its welcome of such critics without adulterating its own identity to accommodate them. This sort of reply put off a few critics so much that they lost interest in the Fellowship. The FCS is indeed *orthodox*. But it is *not* essentially conservative or traditional.

Above all, the Fellowship was conceived and has been carried forward by its members as a service to the Church, and to the mission entrusted to it by the Lord to evangelize the world. In other words, the Fellowship of Catholic Scholars is hard-wired as an *apostolate*. Grasping this truth is, in my judgment, essential to understanding what the FCS has been. It is key to any future reboot.

5. *Future Prospects*

The Fellowship's present malaise is not entirely lamentable. To some extent, it is a cause for thanksgiving. It is not that the FCS is a victim of its successes. But the fact is, many landmarks have been erected for which the FCS worked so hard, that – in some measure – its work is done.

Our apostolate was founded when Paul was pope and *Humanae vitae* was the litmus test of orthodoxy. In 1977 that encyclical's status as the Church's firm teaching and, in fact, that of the Church's whole sexual ethic, were seriously in doubt. (Recall if you dare the scandalous 1997 CTSA study on *Human Sexuality*.) Within a year Wojtyła was pope. Archbishop Jean Jadot was no longer making America's bishops. Archbishop Pio Laghi was. Cardinal Ratzinger was in at the CDF. John Paul II many times affirmed *HV*. He promulgated a new Code of Canon Law in 1983, *Ex corde ecclesiae* in 1990, *Veritatis splendor* in 1993. And so on.

In religious life, the seminaries are much improved over the social-justice enamored and often sexually promiscuous dens they were in the late 1970s. In religious life we now have the Council of Major Superiors of Women Religious, founded in 1992. There has been renewal at some more Catholic colleges. There are many cells now of orthodox Catholic scholars. Disseminating their product is a cinch in the digital age. Today's younger cohort of Catholic scholars have the resources and the impetus to gather in person (when pandemics do not threaten). They are not as lonely as were our founders. I doubt that they feel as beleaguered. They are, however, likely to be much more perplexed, less courageous.

The FCS now has a lot of healthy competition. Since 1977, many Catholic scholars have broken with heterodox professional associations and founded orthodox alternatives; for example, the Academy of Catholic Theology (not to be confused with the CTSA), and the Society of Catholic Social Scientists (founded at the FCS 1992 convention in Pittsburgh by Prof. Steve Krason and Prof. Joe Varacalli. I was there). I do not myself know much about the trajectory of the American Catholic Philosophical Association. But it seems long to have been hospitable to orthodox scholars. On the professional side, consider the emergence of the Catholic Medical Association (alternative to the CHA). Catholic lawyers have St. Thomas More Societies.

These "competitors" are indeed discipline-specific; the FCS is not. Still, everybody has limited time, scholarly energy, and travel budgets. We can read and write only so much, join only so many organizations, and really get involved with even fewer.

Now, just carrying-on as best we can is one answer to the question posed at the top this study paper: whither the Fellowship? I am inclined against doing *that*. Survival is not the bottom line of a work such as ours. Useful service is. I claim no expertise or priority of opinion as to *what* it exactly would be. But I submit that *some*

critical metric of the Fellowship's flourishing as a service to the Church should finally govern deliberations about what to do.

One impetus for carrying on would be that it is a fit way to honor our founders – their legacy and all that. I am all-in for honoring our founders. But I think that aiming just to keep the shop open is not the way to do it. After all, they wanted to be servants of the Church, working as scholars arrayed in a particular configuration. If that distinctive service is no longer needed or welcome or realistically possible, then they would probably suggest that it is time to deploy our gifts elsewhere.

Going forward in genuine renewal is going to be daunting. Fidelity to the magisterium has been a hallmark of the FCS from the beginning. Faithfulness to the teachings of the present pontiff and his probable successor is not going to be invariably what we previously had in mind. Closer to home, an American episcopacy already shaped by Pope Francis, and now further to be staffed by Cardinals Cupich and Tobin, is unlikely to receive our gifts gladly. *Ex corde ecclesiae* was welcome. But, truth be told, it was weak. In any event the American bishops – true to the form they established as early as the Curran episode at CUA – totally gave up on implementing it here. The vast bulk of what is called “Catholic higher education” in America is mired ever deeper in apostasy. There are fewer and fewer USCCB statements to vet and to critique. (A tender mercy?) Fewer and fewer people read the ones that do come out. Almost no one cares. The Newsletter *cum* Quarterly will not any time soon be carrying running commentaries on conference documents.

The FCS can scarcely expect to partner with Rome as it used to do, to triangulate either the American bishops or the Catholic academy, or both. Rome blows an uncertain trumpet. America's bishops have forfeited their moral authority (and they know it). The renewal of the faith at some colleges is vastly outstripped by its abandonment on the vast majority of “Catholic” campuses.

The threats to Catholic faith and practice are now worse than ever. The sexual forces unleashed in the 1970s were, to be sure, formidable and destructive. But the combined effects of a practical universalism and of a biblicism that does not take seriously the possibility that the Gospels are anything like what they are, and the Council (*Dei Verbum*), plainly say that they are, namely, the words and deeds of Jesus transmitted to us intact by the apostles and apostolic men, are proving to be lethal to Catholic faith. The rot is not confined to the pews, empty as they are. It constitutes dogma among Catholic intellectuals and has corrupted the hierarchy.

All things considered, the Fellowship of Catholic Scholars is needed now more than ever.

Who We Are: Solzhenitsyn's Critique and the Christian Humanism of Pope St. John Paul II

*Msgr. Robert J. Batule**

ABSTRACT: The weeks-long rioting and the destruction of property were more than just a hyperreaction to apparent racial discrimination in 2020. We might interpret this antisocial and criminal behavior as having its origin with an envy and resentment over things material. We were warned about this misuse of our freedom more than forty years ago by Aleksandr Solzhenitsyn. Finding our way back from a materialist-saturated vision of the good life depends on taking up a Christian humanism which was championed by Pope St. John Paul II. We see that Christian humanism expressed vividly in family life.

IN LATE MAY of last year, already three months into the COVID-19 pandemic, millions of Americans watched a very disturbing video of a white police officer using his knee to subdue a black man lying face-down on the ground and handcuffed. That black man, George Floyd, later died. In the weeks that followed, people in cities across the country took to the streets to protest Floyd's death. At these protests, there were deaths, injuries, and the kind of rioting that caused an awful lot of damage to property. One estimate has it that there was between one and \$2 billion in property damage.¹

Where racial discrimination is indeed a factor in law enforcement, we justly need to condemn it. At the same time, though, we ought not to assume that racial prejudice is at issue in every case where it has been alleged. Consequently, investigations are necessary to make factual determinations to avoid jumping to premature and incorrect conclusions. All that having been said, we cannot let pass in silence real cases of racial injustice. Such acts need to be condemned unequivocally.

Thus, along with a censure of the violent reactions from some protestors

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¹ News organizations like Axios, FOX, and the *New York Post* all reported last year that the cost of damages stemming from the riots of 2020 was estimated at somewhere in the range of \$1-2 billion. No other reports, to my knowledge, disputed the figure just given.

following George Floyd's death, it behooves us to ask the following question. Is it possible that the rioting and looting on the part of some of the protestors was precipitated by an out-of-control materialism? To try to answer this question, we might look in the direction of our country's history. By looking there, we will be in a good position to discover some of the causes of antisocial and criminal behavior by some protestors.

Unlike Great Britain, which has a somewhat static social class system, the United States historically has not had such a phenomenon. It is not that social class is absent from the American experience. Quite the contrary. There are rich Americans, poor Americans, and lots of Americans in between. In fact, we use terms like upper class, lower class, and middle class. These terms correspond to definite realities. In the United States, though, class differentiation is relatively fluid. People in the United States may be born into one class but die in another, and this happens all the time. Fortunes change, and the American class system is flexible enough to absorb shifting placements over the generations and even within a generation.

Moving up and down the social class ladder in America is not the only issue, however. Another consideration would be the typical signs that are used to situate people within the American social class system. It is never just a matter of what is thought or said when it comes to social class. It always includes tangible signs of class ranking. The tangible signs would be what men and women have, their possessions. Thus, ownership is crucial in the social class hierarchy in America. Here, volume and value figure prominently in the distinctions that are made. Obviously having more of something (a bigger home, for instance) would be one of the tangible signs used in social class assessment. Homes are implacably there, for they are visible; they are not ethereal or abstract.

What makes something tangible is the fact that it is material. The materiality of possessions is not something we can deny. When we sit down in chairs, we are aware that our weight is being supported lest we fall on the ground. Chairs are constructed out of material things like wood and nails and upholstery. We sit in chairs to do the kinds of things human beings do. Some of those things include praying and thinking and listening. The acts of praying and thinking and listening are not of the material order. They are in fact real, but not materially real. When we pray and think and listen, we do not make things that can be seen and touched. Praying and thinking and listening are human acts that belong to a different mode of being than the chairs in which we sit and the homes in which we live.

The materiality of things is something we can minimize, value rightly, or overestimate in importance. When we overestimate in importance the materiality of things, we become materialists. We come to regard acquiring material things and using them as the highest functions of living, and we wind up subordinating all other purposes to that single goal of having and owning material things. To many of us,

however, this condition would not be living well at all. It would be the worst kind of impoverishment, we would judge. The philosophy of materialism, however, has deep tentacles, not just in individual lives but in societies and cultures as well. Think, for example, of Marxism. Another name for it is historical materialism.

With regard to the rioting and looting of last year, we have to acknowledge that the longer it went on, the less credibly anyone could claim that it had much to do with George Floyd. It seems to me to be fair to say that the rioting had a lot more to do with deep-seated grievances that are focused on not having what other people have. This is at the core of historical materialism. For this position, the conflict between social classes, whether it reaches the point of taking up arms or not, is fueled by envy and resentment. Thus, when proponents of this view say that it is a matter of the haves versus the have-nots, we ought not to pass too lightly over the middle word “versus.” There is definitely something more than competition going on between the two sides. There is antagonism and hostility there. Again, this assessment is the understanding offered by the materialist conception of history, which rules out higher motivations inspiring interpersonal relating.

If envy and resentment are exposed by the wanton destruction of property, might it also be true that materialism operates, with most people, in less offensive ways? Yes, it is true that materialism operates, with most people, in less offensive ways. Let me explain. I start with the notion that protesting in public usually involves just a small segment of the population. Next, not all protestors engage in the destruction of property. We also have to account for protestors being of like mind on one issue but not on others. With the rioting of 2020, we have to allow for protestors being united against racial discrimination but disagreeing on matters related, say, to the state of Israel. More to the point, though, if (as I contend) the rioting shows contempt for material things that other people have and the rioters do not have, there is still going to be a large portion of the protestors who are not repelled by the disparity of material possessions. These protestors, those who did not destroy, may see injustice in one part of “the system” but not in another.

In other words, the materialist philosophy has a wing that is basically negative and another wing that is basically positive. The second group, by far the bigger of the two, would not all be Milton Friedman capitalists, but it has individuals in it who are “at home with” (or at least are not conscientious objectors to) the prevailing structure and ethos of the capitalist system. I do not think that I go too far out on a limb when I say that such “positive materialists” are *woke* about a lot of things but not about “stuff.” They like their “stuff” and do not want to give it up to live in a commune.

There is an undeniable upside to certain aspects of materialism, for it is quite clear that not all materialist concerns are self-ruinous. Materialist concerns have, quite simply, made life better for a lot of people. It has given us various types of

progress and innovation and has produced a high standard of living for many, especially in the West. But there is a downside that many, perhaps most, thorough-going materialists do not care to acknowledge. It consists of ignoring that part of life in which we rise above what gives us momentary joy and satisfaction as we search for the joy and satisfaction that are lasting. This is precisely the role that religion has had from the beginning, that is, of facilitating an encounter with the One Who makes joy and satisfaction lasting. Materialists are generally not so religion friendly.

Among materialists, attendance at church, synagogue, or mosque is very low. Many materialists are counted in that rapidly growing part of the population that eschews confessional membership and even affiliations like "Christian," "Jewish," or "Muslim." In surveys on religion they tend to self-classify as "nones." They see their happiness in the here and now, not with God in the hereafter. They may acknowledge a "Higher Power" at work in the universe when pressed, but they are doubtful about religion having any specific content. When it comes to a moral code, materialists would not see a role for religion there either. Their sense of ethics is derived from natural sources, and they would more or less subscribe to the moral relativism that now enjoys much cultural favor.

In a sense, there is nothing new in the phenomenon of religious decline, except of course its intensity and how many people are affected by it in our epoch. For example, back in 1925, T.S. Eliot wrote a poem entitled "The Hollow Men." He offered it as a characterization of what the period after World War I was like in Europe, culturally speaking. He described Europeans as inwardly empty. "We are the hollow men, we are the stuffed men," the poem begins. Inwardly empty, they had lost a sense of the presence of God. Any hope of reclaiming that sense of the presence of God, according to Eliot, meant having to pass through the crucible of faith. The journey to faith – in any age – is never easy. What we are always going to need is a wakeup call, a summons to shed our hubris and to live once again for God. In short, we need to be converted all over again. And that is why we have to consider Eliot's contribution in "The Hollow Men" as not just literary. It is eminently spiritual at the very same time. Eliot, though, would not be the only literary prophet of the twentieth century. There would be others, including one from the East.

Solzhenitsyn's Critique

Born a month after World War I ended, Aleksandr Solzhenitsyn was raised by his mother and his aunt. (His father had died before his son's birth.) He was baptized a Christian and was instructed in the Russian Orthodox faith. In early adulthood, he served in the Soviet Army and during World War II was a commander and artillery officer and was even decorated on two occasions. In the final months of military operations, Solzhenitsyn was arrested and jailed for remarks that he made

against Josef Stalin in private letters to a friend. Eventually he was sent to a labor camp in Siberia where he remained until 1956 when he was released and exonerated.

After getting out of prison, Solzhenitsyn published his first book, entitled *One Day in the Life of Ivan Denisovich* (1962). With the support of Nikita Khrushchev, there was a brief period in which that book and other works by Solzhenitsyn circulated and were read. But that all changed with the removal of Khrushchev in 1964. Solzhenitsyn was a marked man again, and the KGB confiscated the texts that he had been working on, including his drafts of *The Gulag Archipelago* (1973). Although Solzhenitsyn won the Nobel Prize for Literature in 1970, he had to accept his award some four years later after his expulsion from the Soviet Union. In 1974 Solzhenitsyn's Soviet citizenship was revoked, and he went to live first in West Germany and then in Switzerland. Two years later, in 1976, Solzhenitsyn moved to the United States, living first in California and then in Vermont.

It was while he was living in Cavendish, Vermont, that he was invited to deliver the commencement address at Harvard University on 8 June 1978. Solzhenitsyn gave his address the title "A World Split Apart." The address, which went about one hour because of a simultaneous translation from Russian into English, was remarkable and stunning at the same time. It was remarkable in that Solzhenitsyn, no doubt a great writer, could cover so much ground – historically, politically, and philosophically – in a single speech. It was stunning in that Solzhenitsyn, who had written in the past so movingly about freedom, had used this oration to criticize it. It was not that Solzhenitsyn had turned on freedom – no, not at all. He was, though, deeply grieved at what the West had done with freedom. Very grave missteps on the part of the West, Solzhenitsyn believed, were responsible for bankrupting the meaning of freedom. Let me indicate where Solzhenitsyn found fault with the Western stewardship of freedom.

Not starting softly or gently, Solzhenitsyn began his criticism of the West by saying that freedom had devolved into what he called "the cult of material well-being."¹ With the help of technological progress, he continued, the West had pursued materialistic objectives with excessive and unwarranted zeal.² The relentless pursuit of materialistic objectives had coincided, Solzhenitsyn maintained, with a decline in religion, traditionally understood. Rather than worshiping God, men and women in the West had already advanced far down the path of worshiping themselves, Solzhenitsyn criticized.³ The effect of gearing everything toward a materialistic conception of reality and abandoning God produced, in Solzhenitsyn's

¹ "A World Split Apart" is the title of Aleksandr Solzhenitsyn's commencement address at Harvard University on June 8, 1978. For the purposes of this essay, I have indicated by paragraph where I am citing Solzhenitsyn. The first citation is from par. 43.

² Ibid., par. 48.

³ Ibid.

estimate, a very different kind of humanism. It was, to use Solzhenitsyn's phrase, "a despiritualized humanism"¹ that had risen up and taken hold, personally and communally in the West.

My inclination is to accept Solzhenitsyn's indictment of the Western debasement of freedom. His critique is accurate. I call attention, though, to what Solzhenitsyn said regarding Christianity. The West, he made clear in the commencement address, had thrown its Christian heritage away.² Curiously Solzhenitsyn never called for the West to recover it. He spoke instead of the need to "[fulfill]...a personal, earnest duty so that one's life journey may become an experience of moral growth."³ Not dissimilar is the observation by Solzhenitsyn that "[o]nly voluntary, inspired self-restraint can raise man above the...stream of materialism."⁴ The appeal for a remedy was thus doubtlessly too generic on Solzhenitsyn's part. In the end, he should get credit for a right diagnosis of the problem, but his prescription for a healing of the malady is not particular enough. He leaves out Christ who is the indispensable lodestar for cultural renewal in the West and everywhere else. The rehabilitation of freedom remains only a pipe dream until Christ is understood as the propagator of a new humanism.

The Christian Humanism of Pope St. John Paul II

Several months after Solzhenitsyn's Harvard address, the cardinals of the Catholic Church met in Rome to select a new pope for the second time that year. The first time resulted in the election of Albino Luciani, then the Patriarch of Venice. But the pontificate of John Paul I lasted a mere thirty-three days when Peter's Successor died in his sleep. In the second conclave of 1978, the cardinal electors chose Karol Wojtyła, a son of Poland and just 58 years of age. The parallels between Solzhenitsyn and John Paul II cannot be overlooked. First, they were contemporaries, with Solzhenitsyn being a little bit older. Second, both men had lived under the yoke of Communism; therefore, they knew in a deeply personal way what it meant to be deprived of their freedom by the state. Finally, both were men of letters – Solzhenitsyn, a novelist of international reputation, and Wojtyła, a renowned philosopher who would soon enough draw more acclaim with his first encyclical.

That first encyclical, *Redemptor hominis*, was issued on 4 March 1979, less than six months after the papal election. It was the First Sunday of Lent, at the beginning of our season-long reflection on the importance of dying and rising with Christ. To guide our reflection on the paschal mystery, the encyclical sets before our

¹ Ibid., par. 51.

² Ibid., par. 52.

³ Ibid., par. 55.

⁴ Ibid.

eyes an unmistakable starting point. It is man himself. Consider these words of the Pope from *Redemptor hominis*:

Man who in his reality has, because he is a ‘person,’ a history of his life that is his own and, most important, a history of his soul that is his own. Man who, in keeping with the openness of his spirit within and also with the many diverse needs of his body and his existence in time, writes this personal history of his through numerous bonds, contacts, situations, and social structures linking him with other men, beginning to do so from the first moment of his existence on earth, from the first moment of his existence on earth, from the first moment of his conception and birth. Man in the full truth of his existence, of his personal being and also of his community and social being – in the sphere of his own family, in the sphere of society and very diverse contexts, in the sphere of his own nation or people...and in the sphere of the whole of mankind.¹

From these words, the personalism of John Paul II is evident. We begin moreover to get some sense of the humanism in the pontiff’s thinking. He had a conception of who we are which is transcendent and metaphysical. The very words “soul” and “spirit” in the passage above reveal that transcendence and metaphysical certitude. But it is never “just man” or “man alone.” It is a humanism in which each one of us is united to Christ. This union with Christ creates us anew, thereby conferring upon us Christ’s own life.² Conceptually then, we express it as a profound engagement of humanism with anthropology. It becomes a Christian humanism through its interaction with Christian anthropology. Put another way, we are who we are because of the God-Man, Christ. Our identities have been fashioned in and through him and that has a bearing on everything.

Where it matters most of course is with death. Christian humanism is not taciturn on this subject. Unflinchingly, we hold that Christ’s Resurrection is our hope of Resurrection too. So great a mystery is the Resurrection that Pope John Paul II in *Redemptor hominis* calls it “the highest affirmation of man.”³ It can only be conceived of as such because the God-Man has made it that way for us. But that is not all. Christian humanism enables us to catch glimpses of the risen life even before we die. This anticipation we experience through the Holy Spirit. Our experience of the Holy Spirit, the pope avers, is in our hunger for justice, peace, love and goodness.⁴ This hunger we have for these marks of the Kingdom is satisfied by the gifts and fruits of the Holy Spirit inside of us.⁵ Christian humanism, beginning with our union with Christ, is continually being deepened and enriched by the share we have in the life of the Holy Spirit.

¹ *Redemptor hominis*, 14.

² *Ibid.*, 18.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

Along with the theological elements just covered, we want to account also for how Christian humanism is embraced existentially. After all, Christian humanism is most recognizable in the effort made to permeate culture with the principles and values of the Christian faith. The effort to permeate the culture surely involves evangelization and baptism, and catechesis and liturgical celebrations too. Yet as important as these religious acts are to the advancement of Christianity in cultural settings, the most important factor in the promotion of Christian humanism is the relating between and among Christians. Their relationships put flesh and blood on the principles and values that Christians want to see in the social fabric. It is thus not something legislated or dictated from “on high.” Rather, it bubbles up organically. It works this way because it is a conviction, a conviction that our living together be formed and shaped by Christian ideals.

Convictions are personal in nature; they are not grafted on to communities. Beliefs are not transferrable on to groups if they are not first assented to individually. At the same time, Christian humanism is extended through the culture by example, especially the example shown by individuals held in high regard – like parents, teachers, coaches, and others. Considering the first group, parents, they contribute to the suffusion of Christian humanism by sharing their faith with their children. That faith is the most precious thing parents have, even if they are not always conscious of how rich the gift is. There is no price tag on it obviously, but neither is there an expiration date on the gift. It is, theoretically, always there. The family then is a good place for Christian humanism to be practiced; in fact, it is really *the best place* for Christian humanism to take root and grow.

Raising children gives parents the opportunity to do more than just feed and clothe the little ones with the same genetic makeup. Except in rare circumstances, parents are simply the most significant persons in the lives of their children. Their influence is felt in multitudinous ways – from the kitchen, to the living room, to the bedroom – what parents do with their children in those aforementioned places will have long-term consequences, well beyond the houses we live in, the cars we drive and the schools we attend. In *Familiaris consortio* (1981), a document issued by John Paul II two years after *Redemptor hominis*, the pope refers there to the family as the place of origin and the most effective means for humanizing society.¹ Humanizing is essentially what child rearing is. The whole idea is for parents to do this humanizing for their children up to a point, that is, until the children attain adulthood themselves and begin through marriage and family life to carry out this same service for *their own children*. What this looks like more specifically is indicated by the Pope. Family life, he writes in *Familiaris consortio*, “[makes] possible a life that is properly speaking human...by guarding and transmitting virtues

¹ *Familiaris consortio*, 3.

and values.”¹

We already know that the humanizing of family life involves faith, one of the three theological virtues. But what about the other two – hope and love? Regarding hope, it is a virtue with an orientation to the future. That parents have children together is indeed an expression of hope, a hope that God’s image and likeness (cf. Gn 1:27) will never fade from cultural consciousness. The human bears the divine in conjugal love, giving proof that Christian humanism does not wait until the first diaper is changed. Having children according to a rightly ordered conjugal love is an act of hope that the provisions of God drive away all human selfishness. Love, the greatest of the theological virtues (cf. 1 Cor 13:13), it is at the core of sacramental marriage. The covenant of marriage, we hold, is reflected in every subsequent decision on the part of the spouses to love until the moment of death. Yes, permanence can be overwhelming to some until they realize that the commitment unto death is supported by countless acts of love along the way. Permanence is what we get when our love is unafraid of the presence of hardship, pain, and suffering. There is no fear in love. (cf. 1 Jn 4:18)

Christian humanism sets a high bar for spouses and children. It is reasonable to ask then if there is any assistance available to families. In the past, the Christian Family Movement provided assistance and moral support. For a while, Marriage Encounter did the same. Increasingly though, today’s families are “on their own.” There is not much organizational support around now for families dedicating themselves to Christian humanism. In the absence of organizational help for families, there must be a reliance then on one of the cardinal virtues. That cardinal virtue is fortitude.

Christian humanism needs fortitude in two ways. The first is in the deliberate intention undertaken by families to live the kind of witness called for in Christian humanism. To be sure, Christian humanism is not something families arrive at by chance. There is not anything inchoate about it. Since it is a self-conscious attitude sought in advance, it must be preceded by prayer and asceticism. As an examination of conscience, it requires an acknowledgment of periodic failure and a readiness to forgive and be forgiven. All of these – prayer, asceticism, honesty, and reconciliation – are not accomplished without work and sacrifice. The demands of Christian humanism are quickly set aside then without fortitude.

The second way in which Christian humanism needs fortitude is for resisting false or counterfeit claims made about the family. It is no secret that there is hostility in many quarters today to the traditional family. That hostility has been there for quite some time, but its intensity has increased noticeably in just the last decade or so. It is evident in social media, in the schools and in government at all levels. Now

¹ Ibid.

is not the time to withdraw from the cultural struggle over the true meaning of the family. Remaining engaged in a defense of the family is just a foolish exercise if it is attempted without fortitude.

A Brief Reprise

We cannot deny the importance of the materiality of creation. But even good things have limits in this world. Material things then must remain subordinate to those who use them. And those who use material things are free from undue attachments because of Christ. Christian humanism teaches us that.

It comes to us, the Christian humanism, preeminently through the family which is like the rich soil where the seed fell and produced fruit, a hundred or sixty or thirtyfold (cf. Mt 13:8). The harvest is abundant, but the laborers are few. So, ask the master of the harvest to send out laborers for the harvest (cf. Lk 10:2).

Shakespeare's Lincoln

*Glenn Arbery**

ABSTRACT: Shakespeare was so popular in the United States during the 1800s that almost every frontier household had a volume of his plays, as Alexis de Tocqueville discovered on his travels. Most of the American statesmen of the age knew the plays well, but in no single figure does the influence register so profoundly as in Abraham Lincoln. His earliest training in rhetoric drew upon famous speeches in Shakespeare. The actions and characters of the great tragedies deeply influenced his thinking about politics and power. Tellingly, Lincoln's favorites tended to be plays about murderous usurpers (Richard of Gloucester, Macbeth, and Claudius) who achieved rule despite the opposition of fortune. Lincoln was a superb private actor of these roles, but his crowning debt to Shakespeare might be the mode of his death and the assassin who immortalized him.

I

IT WOULD BE GRATIFYING to show that Shakespeare decisively shaped the thought of the American Founders in framing our Constitution, if only to interrupt the prevailing conversation about Locke and liberalism. Many of the founding fathers certainly *knew* Shakespeare's plays; John Adams and Thomas Jefferson visited Stratford-upon-Avon together a year before the Constitutional Convention. Adams, always a great reader of Shakespeare, wrote decades later to his son John Quincy Adams (another great reader) that the English history plays showed "the Treachery Perfidy Treason Murder Cruelty Sedition and Rebellions of rival and unballanced factions"¹ – certainly a problem addressed in the *Federalist Papers*. The tragedy *Coriolanus*, another play that Adams references, exposes the dangers both of contempt for the people and of short-sighted majority tyranny. No playwright imagines the texture of political questions more cannily than Shakespeare, so much so that he has given rise to a whole new field of scholarship in the past half-century among Straussian students of political philosophy.² However, just as it is difficult to prove the direct influence of Homer on Greek constitutions or of Dante on Italian

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¹ John Adams, "Letter to John Quincy Adams," in *Shakespeare in America: An Anthology from the Revolution to Now*, ed. James Shapiro (New York: The Library of America, 2015), 14.

² This ever-burgeoning body of work began with *Shakespeare's Politics*, coauthored by Allan Bloom and Harry Jaffa (Chicago: The University of Chicago Press, 1964).

politics, so it is difficult to trace any direct line from poetry to American law. Percy Bysshe Shelley's famous conclusion to his defense of poetry, asserting that poets are "the unacknowledged legislators of mankind," holds true both for these earlier poets and for Shakespeare's deep influence in mapping the American terrain of power and ambition, so pervasively in Lincoln's century that it almost amounted to recolonization by the English imagination.

After Alexis de Tocqueville visited America in 1831, he wrote that "[t]here is scarcely a pioneer's cabin where you do not find a few odd volumes of Shakespeare. I recall having read for the first time the feudal drama of *Henry V* in a log house."¹ Not only in New York, Boston, Philadelphia, and Washington, D.C., but also in towns large and small across the growing country, famous actors, American and British, performed Shakespeare's plays for enthusiastic audiences. As early as 1821, a young British genius named Junius Brutus Booth, a rival of the great Edward Kean in London, fatefully emigrated from England to America with his mistress Mary Ann Holmes and earned acclaim everywhere he performed. Actors like Booth toured the new nation, and their interpretations of such favorite Shakespeare plays as *Hamlet*, *Richard III*, *Othello*, *Macbeth*, and *Romeo and Juliet* worked their way more and more deeply into the American imagination.

But how? In an essay at mid-century when he was writing *Moby-Dick*, Herman Melville makes a sharp distinction between the Shakespeare of discerning readers and the one who had a "mere mob renown" with the common people because of "all the popularizing noise and show of broad farce, and blood-smeared tragedy."² Later in the nineteenth century, Mark Twain shows us what this "mere mob" Shakespeare must have looked like out on the frontier when the so-called Duke in *Huckleberry Finn* dreams up a theatrical scam to make money in a small town on the Mississippi. Twain's readers in 1885 instantly knew what a hilarious botch the Duke was making of *Hamlet* and *Macbeth*. Still, as Melville writes, "it is the least part of genius that attracts admiration. And so, much of the blind, unbridled admiration that has been heaped upon Shakespeare has been lavished upon the least part of him."³

The part of Shakespeare that Melville most admires is a depth of metaphysical suggestion in the tragedies, a "blackness of darkness" that Shakespeare shares with Nathaniel Hawthorne. The playwright, says Melville, "sometimes insinuates the things, which we feel to be so terrifically true, that it were all but madness for any good man, in his own proper character, to utter, or even hint of them."⁴ Melville was by no means alone in picking up these intuitions. The great actors of the time did.

¹ Alexis de Tocqueville, *Democracy in America*, vol. 2, ed. Eduardo Nolla, trans. James T. Schleifer (Indianapolis: Liberty Fund, 2012), 803.

² Herman Melville, "Hawthorne and His Mosses," in *Shakespeare in America*, 130.

³ *Ibid.*

⁴ *Ibid.*, 129.

Moreover, the most consequential reader of Shakespeare in American history – the climactic figure of Shakespeare’s intersection with America in our most Shakespearian century – certainly agreed with Melville about what was “terrifically true” in the tragedies.

Abraham Lincoln brings the American engagement with Shakespeare into its most profound and paradoxical form. Like Shakespeare, Lincoln had no university education to ease his way in the world, but even as a boy, as Doris Kearns Goodwin explains in *Team of Rivals*, quoting the historian Douglas Wilson, Lincoln “knew he was unusually gifted and had great potential.”¹ Another biographer says that “he carried away from his brief schooling the self-confidence of a man who has never met his intellectual equal.” From the time he was a boy, Lincoln “followed the English kings into battle with Shakespeare. As he explored the wonders of literature and the history of the country, the young Lincoln, already conscious of his own power, developed ambitions far beyond the expectations of his family and neighbors.”² Just *how* far beyond might still surprise us. Shakespeare helped to form Lincoln’s ambition, both to give it impetus and to warn him against where it might lead.

In his famous *Lyceum Address*, the speech that he gave in 1838 when he was 29 years old, Lincoln pulls back the curtain for a moment to reveal what Shakespearian ambitions might look like in America. He speaks of the Founding generation and the deeds that won its members lasting fame, and he wonders what follows *now* for those with ambitions as great as theirs: “It is to deny, what the history of the world tells us is true, to suppose that men of ambition and talents will not continue to spring up amongst us. And, when they do, they will as naturally seek *the gratification of their ruling passion*, as others have so done before them.” He goes on to ask what to do with such a passion in the fledgling republic: “[C]an that gratification be found in supporting and maintaining an edifice that has been erected by others? Most certainly it cannot.” The “edifice” here means the established order of Constitutional offices. Ordinary men might be satisfied with these; geniuses would not.

Many great and good men sufficiently qualified for any task they should undertake, may ever be found, whose ambition would inspire to nothing beyond a seat in Congress, a gubernatorial or a presidential chair; *but such belong not to the family of the lion, or the tribe of the eagle*. What! think you these places would satisfy an Alexander, a Caesar, or a Napoleon? – Never! Towering genius disdains a beaten path. It seeks regions hitherto unexplored. – It sees *no distinction* in adding story to story, upon the monuments of fame, erected to the memory of others. It *denies* that it is glory enough to serve under any chief. It *scorns* to tread in the

¹ Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon & Schuster, 2005), 51.

² *Ibid.*

footsteps of *any* predecessor, however illustrious. It thirsts and burns for distinction; and, if possible, it will have it, whether at the expense of emancipating slaves, or enslaving freemen.¹

Lincoln goes on to ask, “Is it unreasonable then to expect, that some man possessed of the loftiest genius, coupled with ambition sufficient to push it to its utmost stretch, will at some time, spring up among us?” It will require great attachment to the laws, he says, to restrain such a man. “*Distinction* will be his paramount object, and although he would as willingly, perhaps more so, acquire it by doing good as harm; yet, that opportunity being past, and nothing left to be done in the way of building up, he would set boldly to the task of pulling down.”²

It is always disconcerting, looking back at the speech from Lincoln’s later career, to find the man who emancipated the slaves here speaking of the thirst for distinction. Despite his lifelong attachment to the laws, including his decades of practice in Illinois, Lincoln understands this “towering genius” as few other men could; in fact, this whole meditation on “the family of the lion, or the tribe of the eagle” could not come from a man of modest aspirations. As the American critic Edmund Wilson has written in *Patriotic Gore*, “[i]t is evident that Lincoln has projected himself into the role against which he is warning them.” Harry Jaffa agrees, though he argues that Lincoln would never be the Caesar whose ambition destroys the republic but rather an even greater figure, the savior of the republic, the anti-Caesar. In any case, the young Lincoln was “extremely ambitious,” as Wilson says. He had great gifts, and the great distinction that history has since accorded him – a place higher than any American president besides George Washington – did not come unsought. William H. Herndon, his law partner, said of Lincoln after his death, “That man who thinks Lincoln calmly gathered his robes about him, waiting for the people to call him, has a very erroneous knowledge of Lincoln. He was always calculating and planning ahead. His ambition was a little engine that knew no rest.”³

In other words, Lincoln was by no means one of those reluctant rulers who have to be virtually forced into office. Shakespeare, too, has reluctant rulers – Prospero, for example, who prefers his books and who disastrously leaves the daily management of Milan to his brother. But figures like Prospero were not the ones who preoccupied Lincoln. Rather, his favorites reveal his mindfulness of the dark side of ambition. Lincoln loved *Othello*, for example, and when one of his staff went to see it with him, the man was struck by “the keen interest with which he followed the development of Iago’s subtle treachery.” Lincoln insisted on talking to the Iago

¹ Abraham Lincoln, “Address to the Young Men’s Lyceum or Springfield, Illinois: The Perpetuation of Our Political Institutions,” in *Speeches and Writings 1832-1858*, ed. Don E. Fehrenbacher (New York: The Library of America, 1989), 34.

² *Ibid.*, 35.

³ Quoted in William Osborne Stoddard, *Inside the White House in War Times*, ed. Michael Burlingame (Lincoln: University of Nebraska Press, 2000), 189.

performer between acts, with “a very near approach to excitement.” It was apparently disconcerting to see. “One would have thought,” the secretary said, “that such a character would have had few points of attraction for a man to whose nature all its peculiar traits were so utterly foreign. Perhaps he was fascinated by the very contrast.”¹

But the interest is consistent. His fascination with the “blackness of darkness” shows through the plays and the speeches that virtually obsessed him. Lincoln’s private secretary, John Hay, recounts a time when Lincoln read him the end of *Henry VI, Part 3* and the beginning of *Richard III*, relenting only when the young man started falling asleep.² This was no random choice. In the last part of *Henry VI, Part 3*, Richard defines himself as the same kind of deceptive villain as Iago:

Why, I can smile, and murder whiles I smile,
And cry ‘Content’ to that which grieves my heart,
And wet my cheeks with artificial tears,
And frame my face to all occasions.

...

I’ll play the orator as well as Nestor,
Deceive more slyly than Ulysses could,
And, like a Sinon, take another Troy.
I can add colours to the chameleon,
Change shapes with Proteus for advantages,
And set the murderous Machiavel to school.
Can I do this, and cannot get a crown?

Actors love the role because of the range it allows them in displaying their craft. But why did Lincoln love it? After Lincoln’s closing argument in the Quinn Harrison trial in the summer of 1859, the opposing lawyer, John Palmer, accused Lincoln of believing nothing he said but of feigning emotion to sway the jury: “You have been listening for the last hour to an actor, who knows how to play a role of honest seeming, for effect.”³ Lincoln made his old acquaintance withdraw the accusation on the spot. Still, he returns often to the opening soliloquy of *Richard III*. In the previous play, *Henry VI* has just died at Richard’s hand, and Edward of York, Richard’s older brother, has just ascended the throne to general rejoicing. In his soliloquy, the hunchbacked and limping Richard explains how, in the “glorious

¹ Paul Boller, “The American Presidents and Shakespeare,” The White House Historical Association, <https://www.whitehousehistory.org/the-american-presidents-and-shakespeare> (accessed March 8, 2021).

² John Hay, *Inside Lincoln’s White House: The Complete Civil War Diary of John Hay* (Carbondale: Southern Illinois University Press, 1999), 76.

³ Dan Abrams and David Fisher, *Lincoln’s Last Trial: The Murder Case that Propelled Him to the Presidency* (New York: Hanover Square Press, 2018).

summer” of King Edward’s new reign, “grim-visaged war” now “capers nimbly in a lady’s chamber / To the lascivious pleasing of a lute.” Richard, by contrast, feels his own unsuitability for the lover’s role, and his very ugliness draws the audience into an uneasy sympathy:

But I, that am not shaped for sportive tricks,
 Nor made to court an amorous looking-glass;
 I, that am rudely stamp’d, and want love’s majesty
 To strut before a wanton ambling nymph;
 I, that am curtail’d of this fair proportion,
 Cheated of feature by dissembling nature,
 Deformed, unfinish’d, sent before my time
 Into this breathing world, scarce half made up,
 And that so lamely and unfashionable
 That dogs bark at me as I halt by them;
 ...
 I am determined to prove a villain
 And hate the idle pleasures of these days.

Nature gave Richard an outer appearance and a place in the order of birth thoroughly at odds with his intelligence, his courage, and his ambition to be king. The mordant humor of his self-description cannot hide the bitterness that he counteracts with his determination to overcome both nature and fortune – if in fact the disposer of being can be described so impersonally.

Lincoln sometimes quoted Richard’s lines in referring to his own ugliness. His friend Ward Hill Lamon described him as “over six feet four inches in height, his legs out of all proportion to his body. His head was long and tall from the base of the brain to the eyebrows. His ears were large, his nose long and blunt, the tip of it rather ruddy, and slightly awry towards the right-hand side; his chin, projecting far and sharp, curved upward to meet a thick lower lip which hung downward” – and so on.¹ In a book about Lincoln’s Cooper Union speech in New York City, Harold Holzer has a whole chapter about how hard the famous photographer Matthew Brady worked to dignify Lincoln’s homely looks in an iconic photograph from 1860. The artist Francis Bicknell Carpenter, who painted official portraits of Lincoln and his family, obviously had some of the same challenges as Brady.

From Carpenter, who later wrote a book called *Six Months in the White House*, we get the most fascinating glimpse of Lincoln’s absorption with Richard III. Lincoln told Carpenter, “The opening of the play of *King Richard the Third* seems to me often entirely misapprehended. It is quite common for an actor to come upon the stage, and, in a sophomoric style, to begin with a flourish: ‘Now is the winter of

¹ Quoted in Harold Holzer, *Lincoln at Cooper Union: The Speech That Made Abraham Lincoln President* (New York: Simon & Schuster, 2006), 93.

our discontent / Made glorious summer by this sun of York, / And all the clouds that lowered upon our house, / In the deep bosom of the ocean buried!’ Now,” said Lincoln to Carpenter, “this is all wrong. Richard, you remember, had been, and was then, *plotting the destruction of his brothers*, to make room for himself. Outwardly, the most loyal to the newly crowned king, secretly he could scarcely contain his impatience at the obstacles still in the way of his own elevation. He appears upon the stage, just after the crowning of Edward, burning with repressed hate and jealousy. The prologue is the utterance of the most intense bitterness and satire.”

[U]nconsciously assuming the character [Carpenter writes], Mr. Lincoln repeated, from memory, Richard’s soliloquy, rendering it with a degree of force and power that made it seem like a new creation to me. Though familiar with the passage from boyhood, I can truly say that never till that moment had I fully appreciated its spirit. I could not refrain from laying down my palette and brushes, and applauding heartily, upon his conclusion, saying, at the same time, half in earnest, that I was not sure but that he had made a mistake in the choice of a profession, considerably, as may be imagined, to his amusement. Mr. [Samuel] Sinclair [of the *New York Tribune*] has since repeatedly said to me that he never heard [this] choice passage of Shakespeare rendered with more effect by the most famous of modern actors.¹

I doubt that we should treat Carpenter’s quotations from Lincoln as verbatim transcripts – they sound like reconstructions after the fact – but there is no reason to doubt the veracity of the opinions expressed. Not only does Lincoln interpret the speech, but the speech interprets Lincoln: he “unconsciously assumes the character” – that is, gives voice to “the most intense bitterness and satire,” “burning with repressed hate and jealousy.” Lincoln reveals his understanding of what the actor in this famous, popular role most needs to convey, and he draws upon his own capacities to convey it. Is there another American president we can even imagine doing such a thing?

II

Despite his rebuke of John Palmer in the Quinn Harrison trial, Lincoln felt at home among actors. He befriended a number of them, and among these Shakespearean peers, so to speak, his favorite was James Hackett, whose performance of Falstaff he greatly admired. In a letter to Hackett, Lincoln told him,

Some of SHAKESPEARE’s plays I have never read, whilst others I have gone over perhaps as frequently as any unprofessional reader. Among the latter are *Lear*, *Richard Third*, *Henry Eighth*, *Hamlet*, and especially *Macbeth*. I think none equals *Macbeth*. It is wonderful. Unlike you gentlemen of the profession, I think the soliloquy in *Hamlet*, commencing, “O, my

¹ Francis Bicknell Carpenter, *Six Months at the White House with Abraham Lincoln* (Carlisle, MA: Applewood Books, 2008), 51-52.

offence is rank," surpasses that commencing, "To be or not to be." But pardon this small attempt at criticism. I should like to hear you pronounce the opening speech of *Richard the Third*.¹

Hackett would not have suspected what kind of rival he had in Lincoln. As it happens, the *most* famous actor of the age, much more famous than Hackett, was Edwin Booth, son of Junius Brutus Booth. Noah Brooks, a friend of Lincoln's during his years in the White House, writes that he accompanied Lincoln to see Booth (probably as Shylock) in a production of *The Merchant of Venice* at Ford's Theater. But Hamlet was Booth's favored role, and he had recently performed it in New York City a hundred nights in a row to great acclaim.

In his memoir Carpenter remembered that Edwin Booth had been playing an engagement at Grover's Theatre in Washington and that he was playing Hamlet that evening, a performance Lincoln proposed to see. This play "had at all times a peculiar charm for Mr. Lincoln's mind," and, reiterating the opinion expressed in his letter to Hackett, Lincoln told Carpenter, "There is one passage of the play of *Hamlet* which is very apt to be slurred over by the actor, or omitted altogether, which seems to me the choicest part of the play. It is the soliloquy of the king, after the murder. It always struck me as one of the finest touches of nature in the world."² Claudius's soliloquy, very much unlike Richard III's, depicts a soul wrestling with despair:

O, my offence is rank! it smells to heaven;
It hath the primal eldest curse upon't,
A brother's murder. Pray can I not,
Though inclination be as sharp as will:
My stronger guilt defeats my strong intent;
And, like a man to double business bound,
I stand in pause where I shall first begin,
And both neglect. But, O, what form of prayer
Can serve my turn? 'Forgive me my foul murder'?
That cannot be; since I am still possess'd
Of those effects for which I did the murder,
My crown, mine own ambition and my queen.
May one be pardon'd and retain the offence?

The speech goes on for another sixteen lines, and Carpenter remarks that Lincoln "recited this entire passage from memory, with a feeling and appreciation unsurpassed by anything I ever witnessed upon the stage."³ David Herbert Donald

¹ Abraham Lincoln, "Letter to James H. Hackett," in *Shakespeare in America*, 182.

² Carpenter, *Six Months at the White House*, 50.

³ *Ibid.*, 51.

remarks in his biography of Lincoln that this speech was included in William Scott's *Lessons in Elocution*, a book Lincoln had from his stepmother as a boy.¹ There were fourteen other speeches by Shakespeare in that volume, including Mark Antony's speech over the body of Caesar and Henry V's St. Crispin's Day speech. The fact that Claudius's speech appeals to Lincoln more than "To be or not to be," even performed by Edwin Booth, makes sense in the same context as Macbeth's soliloquies after the murder of Duncan. David Bromwich writes that "Lincoln was deeply touched by the portrait of a politician who had committed great wrongs. He was not equally moved by the thoughts of a hero who reproached himself for doing too little."²

III

Lincoln could never be accused of doing too little. As a trial lawyer his closing arguments – which could be full of pathos – were as famously effective with juries as his logical arguments were with judges. On the national level he was a powerful interpreter of the Constitution and the intention of the Founders. Whether slavery would be allowed in the new territories was the great question in the 1850s, and Lincoln's persuasiveness as an opponent of Stephen Douglas's "popular sovereignty" brought him from obscurity in Illinois to the Republican nomination for president in 1860. The Cooper Union speech early in 1860 addressed the South in a series of questions almost guaranteed to rouse Southern sentiment against him. He won the election that November with less than 40 percent of the popular vote, and his victory in the Electoral College prompted the secession of the Southern states and the formation of the Confederacy. After the attack on Fort Sumter in April of 1861, Lincoln called for troops and sent them against the states whose right to secede from the Union he denied, and the war began in earnest with the first Battle of Manassas in July of that year.

The Civil War was unquestionably the greatest crisis of our history, comparable to the civil wars of Rome between Caesar and the defenders of the republic. It far exceeded in devastation the War of the Roses. An estimated 620,000 men died, more than the total number of dead in all other American wars, including the two World Wars and the Korean War, until Vietnam added enough mortalities to pass it. Lincoln was at the center of it, and Shakespeare was his recourse throughout this protracted crisis, as many witnesses attest. The plays gave language to those depths in Lincoln that he could never say or even hint at, "in his own proper character," as Melville puts it.

¹ David Herbert Donald, *Lincoln* (New York: Simon & Schuster, 1996), 31.

² David Bromwich, "Shakespeare, Lincoln, and Ambition," <https://www.nybooks.com/daily/2014/04/11/shakespeare-lincoln-ambition/> (accessed March 5, 2021).

It would be disingenuous to pretend that Lincoln's Shakespearean preferences tell us nothing about him. He feels the quandaries of Claudius or Macbeth more deeply than the rhetorically charged dilemmas of Hamlet. Why? Because somehow he understands what it feels like to want to repent and yet not to be able to give up the rewards for which he committed the offense. He feels very keenly the approach of a judgment where "the action lies / In his true nature; and we ourselves compell'd, / Even to the teeth and forehead of our faults, / To give in evidence." He feels this judgment on the nation in the Second Inaugural: "If we shall suppose that American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him?"¹

Does he feel a guilt of his own as well? Lincoln believed that the South had insisted on war, but he had to see himself as a cause – to be sure, a principled cause – of immense suffering in defending the Union. In war the whole aim is to win, and in winning the war he did what was expedient with respect to the Constitution, not that he planned it at the outset. What began in 1861 as a war to restore the union became by 1863, with the Emancipation Proclamation, a war to emancipate the slaves, and as this holy war escalated, he watched the North demonize the people of the Confederacy, most of whom (67 percent) had never owned slaves. He encouraged Sherman and Sheridan to wage war on civilized populations in a way that would make restored Union the rule of a victorious nation over a subjugated and embittered one, not a matter of the consent of the governed.

No man with Lincoln's depth of soul could fail to be conscious of his own part in the divide between the first American order and the very different union that would emerge from the Civil War. Neither could he fail to be conscious of an almost divinizing glory attaching to him as Father Abraham, the Great Emancipator. This was a distinction he could never have achieved in "a weak piping time of peace," as Richard III puts it – or the "mild season of peace" (*Federalist 2*) when the Constitution itself was framed.

He could not repent of the outcome – the nation reunited, slavery abolished, himself immortalized. Yet somewhere in Claudius he sees his own dilemma. He does not exult over his gains. Nowhere do we sense in Lincoln the unassailable self-righteousness that one can find in the abolitionist William Lloyd Garrison, who condemned Southern slaveholders as possessed by demons. On July 4, 1854, in Framingham, Massachusetts, Garrison publicly burned a copy of the Constitution

¹ Abraham Lincoln, "Second Inaugural Address," in *Speeches and Writings 1859-1865*, ed. Don E. Fehrenbacher (New York: The Library of America, 1989), 687.

and described it as “a Covenant with Death, an Agreement with Hell” because of its compromise with slavery. From Lincoln, instead of such preachments of moral superiority, we get the soliloquies of Richard III and Claudius; we get fascination with Iago and praise for *Macbeth*, that tragedy about a villain of unbridled ambition with an even more ambitious wife urging him on. Lincoln seems drawn to contemplate a particular kind of scheming, chameleonic, ambitious character. Perhaps it comes from his close scrutiny of human nature as a lawyer. But where is his interest in Henry V, for example, who goes in disguise among the soldiers at Agincourt at night? Or the noble Kent in *King Lear*? Or the fiercely proud Coriolanus, who cannot bring himself to feign a humble respect for the common people? “I will not do’t,” says Coriolanus, “Lest I surcease to honour mine own truth / And by my body’s action teach my mind / A most inherent baseness.” Rather than play a part like an actor, Coriolanus forfeits his chance to be consul and turns against his own city.

Lincoln, by contrast, has no such scruples. He follows Shakespeare deep into the inner dynamics of villainy. He does not stand *outside* a villainous character merely to condemn him, but *enters in*, finding the man’s own inner justification and distinctive voice, and giving his own voice to its expression. As an actor, he can uncover the darkness he knows and yet do so in a way that makes it a performance, a *made persona* different from what he is in his own nature; he can objectify an inner possibility and displace it onto a character as Shakespeare does in writing the part and as an actor does on the stage. In private, in his brilliantly dark soliloquies before the man charged with painting his portrait, Lincoln revealed that he might in fact have been the greatest actor of the age.

IV

In one sense that assessment is already a Shakespearean truism: *All the world’s a stage* (another speech to be found in *Lessons in Elocution*, by the way). After the French Revolution, there was no greater world stage for ambition than the American Civil War, and there was no greater backdrop for the irony and tragedy of Lincoln’s assassination than Lee’s surrender at Appomattox only five days earlier. But the stage, in Lincoln’s case, has an even more literal meaning, since he was shot in Ford’s Theater at the performance of a popular play called *Our American Cousin* starring the famous actress Laura Keene. A decade earlier Laura Keene had been Edwin Booth’s lover. In fact, Edwin Booth, the man who redefined Shakespearean performance in the Shakespearean nineteenth century – unquestionably the most celebrated actor of his time – was so deeply embedded in the meaning of Lincoln’s assassination that Lincoln almost becomes *his* double, *his* substitute, and not the other way around.

Booth's younger brother, John Wilkes Booth, also an actor, had very little talent. He wrecked more than one performance by forgetting his lines; when he did remember, he ranted like the Duke on Huck Finn's raft. But he was handsome enough to make a certain class of women swarm around him wherever he went, and his natural athleticism let him excel at leaping or at sword-fighting scenes, though he often injured his fellow actors in his raging enthusiasm. Trading on his father's famous name, Wilkes (as he was known) performed in venues across the country – including stints in Washington, D.C., where Lincoln saw him at least once – but with little success. Next to Edwin, he was nothing. As the historian Nora Titone shows in *My Thoughts Be Bloody*, a chronicle of the Booth family, Wilkes increasingly identified his highhanded older brother with Lincoln and the Union cause.¹ John Wilkes Booth seems almost to have been summoned out of obscurity just to be the anti-Lincoln, a handsome man who burned and thirsted for distinction out of his consciousness of inferiority instead of his sense of towering genius.

Already in 1862, drinking one afternoon in Chicago, Booth was heard to say, "What a glorious opportunity there is for a man to immortalize himself by killing Lincoln!" By 1864 he was caught up in a plot to do it, and on April 14, 1865, he entered Lincoln's private box at the Ford Theater and shot Lincoln in the head. Then he leapt down to the stage with his usual athleticism and shouted to the audience "*Sic semper tyrannis!*" – "Thus always to tyrants." In his own estimation he had just assassinated a Caesar or a Napoleon. He thought he would be honored for it, just as Brutus and Cassius thought they would be honored for ages to come, their deed reenacted in plays. Everything about the scene and its aftermath feels Shakespearean. It is as though the hunchbacked chameleonic villain that Lincoln had understood so well had coalesced in this resentful actor. John Wilkes Booth had actually played Richard III on occasion, but unconvincingly; now he literally limped off the stage after injuring his leg. Laura Keane, who had played so many Shakespearean heroines, held Lincoln's bleeding head in her lap. Killing Lincoln immortalized John Wilkes Booth and erased his brother, who almost literally died in the first shame of it. Nora Titone shows in detail how Edwin recovered his career and dominated the American stage for three more decades, but few in our century know even the name of Edwin, whereas everyone knows John Wilkes Booth. This was the same kind of murderous usurpation that Lincoln brooded on so profoundly. Killing Lincoln was the means for an envious brother to steal from posterity the fame of the greatest actor of the age.

Ironically – and the ironies go far – the very murder that erased Edwin secured the undying glory of Abraham Lincoln. The assassination cast out forever the

¹ Nora Titone, *My Thoughts Be Bloody: The Bitter Rivalry Between Edwin and John Wilkes Booth that Led to an American Tragedy* (New York: Free Press, 2010).

shadow of Lincoln's supreme ambition by making him die the death of a Caesar without deserving it. Instead of becoming a Brutus, John Wilkes Booth absorbed forever the figure of the scheming usurper and ceded the role of noble victim to Lincoln. But above all, John Wilkes Booth made Lincoln Shakespearean in the very staging of his death. In all of Shakespeare, only the death of Lear approaches Lincoln's in high tragic pathos. To my mind, only Shakespeare can prepare us to understand the whole truth of this man who burned for distinction as a young man and who achieved a distinction unique in our national history.

Karol Wojtyła's *The Jeweler's Shop*: On Passing from Meditation to Drama

*John Hittinger**

ABSTRACT: A reflection on the nature of the Rhapsodic Theater in light of Karol Wojtyła's *The Jeweler's Shop*. His subtitle, *A Meditation Passing on Occasion into Drama*, offers a challenge for how to produce the play and to understand exactly the meaning of Rhapsodic Theater.

POPE JOHN PAUL II SAID in his "Letter to Artists" that toward artists he feels "closely linked by experiences reaching far back in time and which have indelibly marked my life."¹ He had to reach very far back, over sixty years before, to the moment when in Nazi occupied Poland Karol Wojtyła joined a group of actors who met in basements and kitchens to rehearse long passages from great Polish literature. They gave birth to the Rhapsodic Theater – what he called a "Theater of the Word." In his memoir, *Gift and Mystery*, John Paul II recalls his close friendship with its founder Mieczysław Kotlarczyk: "Sharing the same house, we were able not only to continue our conversations about the theater, but also to attempt some actual performances. These took the form of the theater of the word. It was all quite simple. The scenery and decoration were kept to a minimum; our efforts concentrated essentially on the delivery of the poetic text."² The experience made a deep impression and on him, especially the power of the word "in creating culture and educating the young generation."³

During those war years, the Rhapsodic Theater group produced ten original shows, twenty-two performances, and met for over a hundred rehearsals or evening workshops in clandestine conditions. Wojtyła was one of four people selected by Kotlarczyk to be a core actor for his ensemble. After the war three of the four actors

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¹ John Paul II, "Letter to Artists" (1999).

² John Paul II, *Gift and Mystery: On the Fiftieth Anniversary of My Priestly Ordination* (New York: Doubleday, 1996), 10-11.

³ Karol Wojtyła, "Foreward to Mieczysław Kotlarczyk's *The Art of the Living Word*," in *The Collected Plays and Writings on Theater*, trans. Boleslaw Taborski (Berkeley: University of California Press, 1987), 394-95.

went on to a career on the stage. God had other plans for Karol Wojtyła. After participating in the group for a year, he entered the seminary, which had also been forced underground to evade Nazi oppression. Yet, in his new vocation the political, artistic, and spiritual ideals of the Rhapsodic Theater continued to resonate deeply in the soul of Wojtyła. He proclaimed in a letter to Kotlarczyk: "I send you greetings in the name of beauty, which is the profile of God, the cause of Christ, and the cause of Poland."¹ The cause of Christ predominated in his vocation, but it was always closely linked to the cause of Poland and to beauty. For Polish culture was essentially Catholic culture, and the connections between art and faith were live, and problematic only in a creative sense.

After being ordained a priest on November 1, 1946, he went to study in Rome and wrote a dissertation St. John of the Cross. Upon its completion he returned to Poland and assumed his parish duties. In the interval between leaving the theater for the seminary and his election to the papacy, Wojtyła never strayed far from his connections to the Rhapsodic Theater. The first baptism he administered was for the daughter of one of its four core actors. The baby's name was Monica (the name of a character in *The Jeweler's Shop*). As a pastor, he staged dramas for his parishioners. He attended the theater and wrote reviews under a pseudonym. When the Rhapsodic Theater was twice threatened by closure by the communist authorities, Wojtyła rose to its defense.² He even continued to write plays as Bishop of Kraków, completing his last effort in 1964 with *The Radiation of Fatherhood*. His penultimate play was called *The Jeweler's Shop*. Written in 1960 and first performed in 1961, it is subtitled: "A meditation on the sacrament of matrimony, passing on occasion into a drama."

This subtitle poses a fundamental question about the nature of the Rhapsodic Theater. Boleslaw Taborski, a translator and interpreter of the works of Wojtyła, suggests that Wojtyła was "concerned not so much with constructing an effective piece of theater as with 'prompting reflection on problems of ethics' through semipoetic, semimoralistic discourse."³ Taborski quotes a letter written by Bishop Wojtyła to Kotlarczyk accompanying his draft of *The Jeweler's Shop* to the effect that his rhapsodic style "seems to me to serve meditation rather than drama." Nevertheless, Taborski claims that the dramatic structure of the play is "carefully

¹ Adam Boniecki, *The Making of the Pope of the Millennium: Kalendarium of the Life of Karol Wojtyla* (Stockbridge, MA: Marian Press, 2000), 64.

² See Wojtyła, *The Collected Plays and Writings on Theater*, 10-13. For insightful analysis of his drama see Kenneth Schmitz, *At the Center of the Human Drama: The Philosophical Anthropology of Karol Wojtyla/Pope John Paul II* (Washington, DC: The Catholic University of America Press, 1993), and Rocco Buttiglione, *Karol Wojtyla: The Thought of the Man Who Became Pope John Paul II* (Grand Rapids, MI: Eerdmans, 1997).

³ Boleslaw Taborski, "Introduction," in Karol Wojtyła, *The Jeweler's Shop*, trans. Boleslaw Taborski (New York: Random House, 1980), 17.

worked out and lucid.” Although free of obvious stage conventions, the play is a play. Taborski calls it a “drama of inner development, recounted in both the past and the present.” He reminds us that the literal translation of the title, namely, “Before the Jeweler’s Shop” (*Przed sklepem jubilera*) suggests that the characters act always in the sight of God.¹ But he also adds: “it is a drama presented from the human viewpoint.” The jeweler and his shop “are there, or are not there, depending our need or willingness to perceive them.”² Hovering between meditation and drama, *The Jeweler’s Shop* would seem to provide a director with considerable latitude in how to present and stage this play.

In November 2011 the John Paul II Forum that I direct backed a production of the play.³ The play was performed in a small theater, a black box, in the Houston Heights. The theater holds about ninety people. The play was sold out for four shows over two weeks. Cardinal DiNardo was in attendance on opening night and appreciated my opening remarks reminding the audience that Wojtyła wrote the play while he was an archbishop. We could have easily performed another two or three times and sold out. We performed an encore performance in a theater of 300 at the University of St. Thomas. The play was thus presented to over 600 people, a stirring testimony to the interest and love for St. John Paul II and for the creative presentation of his work.

The director, Guy Schaafs, majored in drama at the University of Texas and worked for a business in town. We had met as members of the Knights of Columbus. After a read-through of the play in March, we held auditions in April and the cast was selected soon thereafter. We had eight truly talented young actors, including – three from the University of St. Thomas.⁴ Four actors were not Catholic and knew little about the pope or about theology. But the actors saw the dramatic potential of their parts and threw themselves into the production. The director did a marvelous job in blocking the play and drawing out the dramatic aspects of the “meditation on the sacrament of matrimony.” As the subtitle notes, it is a play that purports to pass into drama only on occasion.

The set was minimal – black curtains and gray floor. We had a raised platform in back, with two levels, and a grey backdrop. In the middle front of the platform was a black box with a tallish slender device with a flat surface. The jeweler would stand behind or next to this item. The jeweler would come out, sometimes with a

¹ Wojtyła, *The Collected Plays and Writings on Theater*, 272, and *The Jeweler’s Shop*, 18.

² *The Jeweler’s Shop*, 18.

³ The play may be viewed online at <https://www.youtube.com/watch?v=LHki1shZJB0>.

⁴ The cast was as follows: John Strickland (Andrew), Katherine Rinaldi (Chorus), Alex Ozburn (Christopher), Katy Burns (Anna), Autumn Clack (Theresa), Leah Englund (Monica), Sara Kumar (Chorus).

small entourage, and say the lines from the main character's speech. The same actor played the jeweler and Adam (with a different costume and voice). These two characters provide the play with a point of reference beyond subjective musing and memory, serving as a touchstone for conscience and accountability. This decision by the director clearly falls within the scope of staging according to the intention of the author, as Taborski indicates.¹

Two other decisions that the director made are somewhat more controversial to a purist who expects complete fidelity to the text. As director he judged that these changes would give the play a bolder look and a clearer ending but remain true to the message of the play. First, he proposed that the play come to an end with the statement of Theresa and that this production would eliminate the speech of Stefan at the end.' He had her speech made center stage with all actors on stage. Her closing lines are:

They [Christopher and Monica, the young couple] will come back here [before the Jeweler's Shop], they will certainly come back. They have simply gone to ponder for a while: To create something, to reflect the absolute existence and love, must be the most wonderful of all! But one lives in ignorance of it.² [stage goes black]

Stefan's speech ponders the sentiment of Theresa and ponders the statement by Adam on the need to reflect an absolute existence and love. It adds little to main thrust of the third act, but it does signal a hope for reconciliation with Anna from the second act. Stefan is absent for the part of the play. His statement may aid the meditation, but not so much the drama.

The second change is a significant one, and I continue to ponder whether it is in keeping with Rhapsodic Theater. The director asked to eliminate the motif of the bridegroom from Adam's speech to Anna in act two and later its brief mention in act three. This was done for two reasons. First, it was to be awkward challenge to staging the scene with the bridegroom and the waiting virgins. It could be in the realm of imagination, but at some point the bridegroom becomes a real character encountered by Anna in the process of her search for love. Her story to Adam about seeking out love and affirmation from another man and about her attempts to get other men to notice her could be staged very effectively. Second, the effort to emphasize the aspect of the "quest" for love in terms of human experience, disappointment, and openness to transcendence from within the experience of love could be conveyed without that motif. Just as the philosopher Wojtyła could use phenomenology in his book *The Acting Person* to describe the growth of conscience

¹ Boleslaw Taborski, "Introduction," in Karol Wojtyła, *The Jeweler's Shop*, trans. Boleslaw Taborski (San Francisco: Ignatius Press, 1992), 17; and Taborski, "Introduction to *The Jeweler's Shop*," in *The Collected Plays and Writings on Theater*, 269.

² Wojtyła, *The Jeweler's Shop*, 90-91.

and a moment of truth, so too the drama could be used to convey the human disappointment and awareness of the futility of the search for a substitute for her husband. It could readily show the emptiness of the isolated moment and the weight of selfishness overcome through a new appreciation for giving and taking in a new proportion. It contains references to the “vertical” in each marriage. Most of all, the emphasis here is placed on the appeal to the “Absolute existence and love” and to the lack of such dimensions in mere human love.

It may helpful to compare an important part of Adam’s speech at the end of act three and how it was changed.¹ The speech reads as follows:

That evening I saw Anna again. The memory of her encounter with the Bridegroom was still vivid to her. Anna had entered the road of complementary love – she had to complement, giving and taking in different proportions than before. The turning point occurred that night many years ago. At that time everything threatened self-destruction. A new love could begin only through a meeting with the Bridegroom. What Anna felt of it at first was only the suffering. In the course of time a gradual calm came. A something new was growing.

The text was changed to the following:

That evening I saw Anna again. The epiphany of the challenge of authentic love was still vivid to her. Anna had entered the road of gift-love – she had to give and take in a new way, in different proportions than before. The turning point occurred that night many years ago. At that time everything threatened self-destruction. A new love could begin only through an appreciation of what is higher; through an awareness that our feeble efforts of love need the signs of enduring generosity. What Anna felt of it at first was only the suffering. In the course of time a gradual calm came. A something new was growing.

A scriptural reference and thus a motif are lost, and the overt theological dimension of the play is gone. But the inner theater, the inner movement of the soul toward transcendence, remains. If the work is a meditation that passes on occasion into drama, does this point suggest perhaps that not all of the meditation can be carried over onto the stage as drama? If so, then what remains as meditation? Does this problem come to reveal the inner limit of the theater of the word, namely, that it must be more than word or song, as Wojtyła himself argued? Taborski claims that Wojtyła has produced a dramatic work that is religious, but not devotional.² By religious, does he mean first of all an existential appreciation of transcendence and the question of God? What would it mean for a work to be “devotional”? Perhaps that it resolves its dramatic tension in an act of faith or piety? That the symbols of the play are meant to simply edify and lead toward meditation? In his concluding account of the play Taborski muses that in the play “there are no easy solutions,

¹ *Ibid.*, 87.

² Taborski, “Introduction,” 16.

there is no happy ending. But there is hope, if only we reach out of ourselves, see the true face of the other person, and hear the signals of a Love that transcends us. To this state of mind we are not browbeaten but invited.”¹ I think that our production achieved this result.

Can one normally depict the life of grace directly in a work of fiction or drama? Perhaps a book or a show about a saint as a saint would need to indicate the experience of grace and conversion. But can the struggle of the nonsaint be so depicted? Flannery O’Connor said that God is not a character in her stories. But grace can be shown indirectly or in the moment of action. This is what Wojtyła achieves in *The Jeweler’s Shop*. In her remarks at Hollins College O’Connor said:

I often ask myself what makes a story work, and what makes it hold up as a story, and I have decided that it is probably some action, some gesture of a character that is unlike any other in the story, one which indicates where the real heart of the story lies. This would have to be an action or a gesture which was both totally right and totally unexpected; it would have to be one that was both in character and beyond character; it would have to suggest both the world and eternity. The action or gesture I’m talking about would have to be on the anagogical level, that is, the level which has to do with the Divine life and our participation in it. It would be a gesture that transcended any neat allegory that might have been intended or any pat moral categories a reader could make. It would be a gesture which somehow made contact with mystery.²

I think this helps resolve the decision concerning Anna and the bridegroom. The key is a gesture – it may be her hand on the door of the car with a man inviting her in, and this hand is then pulled off the door by Adam. To place it in the category of an encounter with the bridegroom, demanding fidelity to the spouse, I believe is too neat. Wojtyła’s meditation does indeed pass into drama and the second act of *The Jeweler’s Shop* is a key to the play.

We must go back to consider Wojtyła’s own account of the Rhapsodic Theater. If we reach back nine years to 1952, we find the priest, the young Fr. Karol Wojtyła, writing a review of a performance of Shakespeare in the style of the Rhapsodic Theater. And of course, ten years previous to that Wojtyła was present at the founding of the Rhapsodic Theater, as a gesture of underground resistance to Nazi occupation, as the Polish nationals preserved their cultural identity through this medium. What then is the “Rhapsodic Theater” – what Wojtyła called the Theater of the Word? It is fascinating to read his understanding of the Theater of the Word in his essay of 1952.³

Wojtyła contrasts Rhapsodic Theater with Shakespeare; Rhapsodic Theater is

¹ Ibid., 19.

² Flannery O’Connor, “A Reasonable Use of the Unreasonable,” in *Flannery O’Connor Collection* (Park Ridge, IL: Word on Fire, 2019), 69-70.

³ Wojtyła, *The Collected Plays and Writings on Theater*, 371-78.

“far removed” from Shakespearean theater. Its action is more stylized, he says at the end of the essay, to give “sway to the word.” Yet it is more than the recitation of poetry. How is this? He explains at the beginning:

As in life, the word can appear as an integral part of action, movement, and gesture, inseparable from all human practical activity; or it can appear as ‘song’ – separate, independent, intended only to contain and express thought, to embrace and transmit a vision of the mind. In the latter aspect, or position, the word becomes ‘rhapsodic,’ and a theater based on such a concept of the word becomes a rhapsodic theater.¹

Rhapsodic Theater gives more sway to word, but how can word become separate or independent of action? Would it not become simply philosophy or poetry? (Presuming even they could achieve such independence.) No, he will insist that it is theater. It requires acting, staging, drama. I think it is a way to open up the dimension of conscience and self-reflection as an essential dimension of personal existence. So action must be suspended in the meaning of personal existence.

Wojtyła finds a passage from Shakespeare inviting an inquiry into the relation of word and action.

Suit the action to the word, the word to the action, with this special observance: that you o’erstep not the modesty of nature. For anything so overdone is from the purpose of playing, whose end, both at the fist and now, was and is to hold as ‘twere the mirror up to nature, to show virtue her own feature, scorn her own image, and the very age and body of the time his form and pressure. (*Hamlet*, 3.3.16-23)

But it is ironic that Wojtyła will quote a passage from *Hamlet*, the man for whom “words, words, words” displace action or render action null. It must be ironic, because Wojtyła is neither a nominalist nor a nihilist. His point may be that action continues to reverberate in conscience; so too action emerges from the heart; and action intensifies (or degrades) love. Action must be suspended in the meaning of personal existence, a meaning continually open to meditation and inner dialogue. The Rhapsodic Theater captures that inner dialogue, as the true medium of action.

The Jeweler’s Shop is a drama about love, marriage, and divorce but the action is past or future. With Augustine we discover that past and future are present as aspects of the soul (distension of the soul, *Confessions* 11.26-27). Memory and anticipation must be fed by present attention (present) and ultimately by prayer. So perhaps the Theater of the Word, the Rhapsodic Theater, is an Augustinian exploration of the person.

On the one hand, Rhapsodic Theater will establish a different approach to both the content and form of theater. On the other hand, Wojtyła says that it is theater,

¹ Ibid., 372.

and fulfills the vision for theater as propounded in *Hamlet* – the mirror held up to nature, showing virtue her own feature, and so on. How does it do so? How does one suit action to word, and word to action? A profound question of philosophic and political import, as well as dramatic or aesthetic.

Boleslaw Taborski provides an insightful account in his introduction that also suggests an interpretation of the theater of the word along the lines of Augustinian philosophy of time. Taborski says that Wojtyła's inner drama is unique, reaching beyond the bounds of the Rhapsodic Theater: it "creates its own dramatic reality. The world of external events is not so much expressed by the dramatist directly as absorbed into the 'inner space,' the psychological space, of the protagonist, where it exists timelessly, in projections into past or future (that is, in the memory of the hero or in his prophecies), supported by the author's knowledge of history, or even theology."¹

We cannot say that action is swallowed up, because action remains in the theater of the word. But Taborski's term "absorbed" is much better. Action is present but absorbed into the word, suspended in its meaning. It is a different (truer) perspective on time and human action. Augustine got this right – there is only present, and the soul's attention, through which passes memory (time past) and anticipation (time future). Time is not an external box into which we fix time or an a priori form onto which we fit actions, as schoolboys fuss over their timelines. No, time is a "distension of the soul." Aristotle had it partially right – time is a measure of a before and after, and therefore time requires mind, an attentive awareness of change. But here is Augustine on time – past and future do not exist as such (the past is no longer and the future is not yet). So what then? Time is present, only present, even memory and anticipation:

Nor is it properly said, "there be three times, past, present, and to come": yet perchance it might be properly said, "there be three times; *a present of things past, a present of things present, and a present of things future.*" For these three do exist in some sort, in the soul, but elsewhere do I not see them; present of things past, memory; present of things present, sight; present of things future, expectation. (*Confessions* 11.28)

The inner drama, the theater of the word, rolls time into the present, the inner space of the actor. Taborski had earlier explained that Wojtyła's dramatic works belong to the sphere of poetic drama: "[H]e is not concerned so much with external events as with exploring man's soul; it is there that 'action' often unfolds."² Taborski's overall assessment of Wojtyła's drama is quite generous:

¹ Taborski, "Introduction," 16.

² *Ibid.*, 15.

To a remarkable extent the dramas of Karol Wojtyła, despite being written over a twenty-five year period (1939-1964) and despite their stylistic differences, are in some respects monolithic, especially in their themes and their moral import, mature even in Wojtyła's work as a nineteen year old. They are coherent in what I call their inner form. In fact, from the beginning Wojtyła as a playwright was no debtor but consistently build his own vision of the drama of human existence: the vision of man's place on earth and in the divine plan of creation. In his plays he referred to the highest values in our culture, and at the same time, in the days when word and language were totally degraded and devalued by ideologies that demanded their subservience to shallow, often inhuman purposes, he aimed at the revaluation of words. With astounding consistency, he developed a modern form of theater that is religious without being devotional. Even though the author of these works did not specifically aim at the theater at large, they are a proposition that the theater ought to seriously consider.¹

No doubt an artist and dramatist in his own right, Karol Wojtyła was most interested in meditation on human existence and the vertical transcendence to truth, goodness, and beauty and ultimately toward God. The plays and his poetry contribute to our deeper understanding of his work as a whole. Cardinal Ratzinger summarized it best when he said:

[H]is point of departure was philology – the love of language—combined with the artistic application of language, as a representation of reality, in a new form of theater. This is how the distinctive form of philosophy characteristic of current pope emerged. It is a way of thinking and dialogue with the concrete, founded upon the great tradition, but always in search confirmation and present reality. It is a form of thought that springs from an artist gaze and, at the same time, is guided by a pastor's care. And it is offered to man, to show him the way.²

Taborski comes a strikingly similar conclusion: “[I]t is the work of man in whom unbending principles are connected with boundless forbearance and understanding for people. Here, too, out of the chaos created by our human loves, hates and weaknesses, he gently points the way in the right direction.”³

I would conclude by a return to the line that opened this paper. John Paul II wrote in his “Letter to Artists”: “I feel closely linked [to you artists] by experiences reaching far back in time and which have indelibly marked my life.” We learn from Wojtyła's drama not only something about the human person, love, and responsibility; we also learn about the man himself. We have a portrait of Wojtyła as a young man; it is seen in the mirror of his own art. As we were finishing the production of *The Jeweler's Shop*, I started to get mesmerized by the magic of the theater and fancied that I could look into the mirror of the jeweler's shop window and see time bent to suit our vision – and I saw young Karol in the faces of the actors performing at the Obsidian Art Space in Houston. Houston 2011 seemed to open back to

¹ Ibid., 16.

² Joseph Ratzinger, *My Beloved Predecessor* (Boston: St. Paul, 2007), 8.

³ Taborski, “Introduction,” 19.

Krakow 1941 – seventy years in a flash – there he is, performing for the Rhapsodic Theater. Devoted to the task of the play – memorizing long lines of dialogue – enthralled with the beauty of the verse and the color of the scene. Pope John Paul II continued to live the actor's life, not because he loved the limelight or was good at hamming it up but, rather, because he retained his youthful love of the beautiful, he stood in awe before the depth and passion of the human person, felt grief over human weakness and foible, and mastered the craft of an art. Actors are “all in” and give of themselves for a common good. If I look away from the mirror in the jeweler's shop where I saw Karol's face and heard his voice, and turn to the “Letter to Artists,” I read:

Society needs artists, just as it needs scientists, technicians, workers, professional people, witnesses of the faith, teachers, fathers and mothers, who ensure the growth of the person and the development of the community by means of that supreme art form which is ‘the art of education’. Within the vast cultural panorama of each nation, artists have their unique place. Obedient to their inspiration in creating works both worthwhile and beautiful, they not only enrich the cultural heritage of each nation and of all humanity, but they also render an exceptional social service in favor of the common good.

The pope spoke from experience. We need artists and we need more young people devoted to art; we need more young people memorizing their lines and working with a team to present the tragedies and comedies of our human life; we need more young people with palette and pencil tracing out the shadows and forms of things; we need more young people playing music and singing. They enrich us as no one else can. Schools must not squander their charge with the likes of cancel culture and the adulation of celebrity. John Paul II also scored this deviation:

Artists who are conscious of all this know too that they must labor without allowing themselves to be driven by the search for empty glory or the craving for cheap popularity, and still less by the calculation of some possible profit for themselves. There is therefore an ethic, even a ‘spirituality’ of artistic service, which contributes in its way to the life and renewal of a people. It is precisely this to which Cyprian Norwid seems to allude in declaring that ‘beauty is to enthuse us for work, and work is to raise us up.’

As John Paul II reminds us in the “Letter to Artists,” “not all are called to be artists in the specific sense of the term. Yet, as Genesis has it, all men and women are entrusted with the task of crafting their own life: in a certain sense, they are to make of it a work of art, a masterpiece.” The subtitle of *The Jeweler's Shop, A Meditation that Passes on Occasion into Drama*, is a description of human action turning on a moment of truth. Through his meditations and his art, Karol Wojtyła helps the reader to engage the drama of human existence, to “be the author their own

acts with responsibility for their moral value,”¹ and to pass into the realm of moral goodness. As Karol Wojtyła wrote in *The Acting Person*, the experience of human action reveals to us the “remarkable drama of human innerness, the drama of good and evil enacted on the inner stage of the human person by and among his actions.”²

¹ “Letter to Artists,” §2.

² Karol Wojtyła, *The Acting Person*, trans. Anna-Teresa Tymieniecka (Boston: D. Reidel Pub. Co., 1979), 49. See Schmitz, *At the Center of the Human Drama*, 75.

Natural Right, Natural Justice, and Natural Law in Aquinas

*Randall Smith**

ABSTRACT: In the *Summa of Theology*, Aquinas defines justice as “a habit [*habitus*] whereby a man renders to each one his due [*ius*] with a constant and perpetual will.” How should we understand *ius*, often translated “right”? Some of the confusion has arisen because Aquinas often seems to use the terms *ius naturalis* and *lex naturalis* synonymously. In this article, I attempt to clarify what Aquinas means by *ius* and then show how a proper understanding of that concept illuminates our understanding of the relationship between *ius naturalis*, *lex naturalis*, and natural *iustitia*. I will also seek to show how both the Mosaic Law and grace are essential to Thomas’s full teaching on the moral life and our obligations of natural justice.

EARLY IN PLATO’S *REPUBLIC*, Socrates asks young Polemarchus: “[W]hat is it that you affirm that Simonides says and says rightly about justice?” To this the younger man replies: “[I]t is just [*dikaion*] to render to each his due.”¹ This was good for a start. But Socrates has a few more questions, and the rest, as they say, is the *Republic* – and history – and in the centuries that followed, as Alfred North Whitehead once said, a long series of footnotes to Plato.

So, for example, in his *Rhetoric* Aristotle defines justice (*dikaiosunē*) as “the virtue which assigns to each man his due.”² Cicero describes justice in *De finibus* as “assigning to each his own” (*suum cuique tribuens*).³ The early Christian bishop

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¹ For example, Plato, *Republic* 1.331e: “Tell me, then, you the inheritor of the argument, what it is that you affirm that Simonides says and rightly says about justice.” “That it is just,” he replied, “to render to each his due” (τὸ τὰ ὀφειλόμενα ἐκάστῳ ἀποδιδόναι δίκαιόν ἐστι). Cf. *Republic* 4.433e: “Will not this be the chief aim of their decisions, that no one shall have what belongs to others or be deprived of his own? Nothing else but this.” “On the assumption that this is just [δικαίου]?” “Yes.”

² Aristotle, *Rhetoric* 1.9.7 (1366b9): “Justice is a virtue which assigns to each man his due” (ἔστι δὲ δικαιοσύνη μὲν ἀρετὴ δι ἣν τὰ αὐτὸν ἕκαστα ἔχουσι). Aristotle also discusses justice in terms of what is due and injustice in terms of taking more than what is due in *Nicomachean Ethics* 5.2.1130a20. In book 5, Aristotle also talks about justice in terms of equality and legality, calls it a “middle,” and affirms that “it involves relationship with someone else” and that it, alone of the virtues, is “the good of others.” See 5.1.1130a1.

³ Cicero, *De finibus*, 5.23.65, trans. H. Rackam, Loeb Classical Library (Cambridge,

Ambrose, in his treatise *On Duties*, speaks of “justice, which gives to each what is his” (*iustitiam, quae suum cuique tribuit*).¹ St. Isidore in his influential *Etymologies* states that “a man is said to be just because he respects the right of others” (*iustus dicitur quia ius custodit*) – or perhaps more literally, “because he is a custodian of *ius*.”² And centuries after Plato, we still find in the first words of Justinian’s famous law code: “Justice is a constant and perpetual will to render to each one his due” (*Iustitia est constans et perpetua voluntas ius suum cuique tribuens*).³

This last definition is the one Aquinas adopts in the *Summa of Theology* where he defines justice as “a habit [*habitus*] whereby a man renders to each one his due [*ius*] with a constant and perpetual will.”⁴ Elsewhere he uses slightly different formulations to say essentially the same thing. So, for example, in some places he says that “justice involves a relationship to another, to whom it renders what is due” (*debitum*),⁵ in others he says that “justice consists in rendering to each that which is his own” (*quod suum est*).⁶ Each of these has verbal antecedents in the tradition, as we have seen.

One of the sticking points in modern interpretations of Aquinas, however, is how to understand that little word *ius*, which Aquinas in the very first article of his questions on justice calls the “object of justice.”⁷ Some of the confusion has arisen because Aquinas often seems to use the terms *ius naturale* and *lex naturalis* synonymously, causing people to wonder whether *ius* is something like a law. But is it?

In what follows, I will attempt to clarify what Aquinas means by *ius* and then show how a proper understanding of that concept illuminates our understanding of the relationship between three terms in Aquinas that are often confused: *ius naturale*, *lex naturalis*, and *iustitia*. So, for example, is *ius naturale* the same as *lex naturalis*? Some translators render both as “natural law.” And what is the relationship between *ius naturale* (natural right) and *iustitia* (justice, or what commentators sometimes designate as “natural justice”)? What, then, is *ius* (right), and how do we distinguish it from modern notions of “a right,” such as when contemporary people speak of “inalienable rights.” It will be the work of this paper

MA: Harvard University Press, 1931).

¹ Ambrose, *De officiis*: “justice, which allows everyone to have what is rightfully his” (*iustitiam, quae suum cuique tribuit*).

² Isidore, *Etymologiae*, bk. 10, no. 124. I have quoted the Latin version in Thomas’s *Summa*. Modern editions of the *Etymologies* have “Iustus dictus quia iura custodit.”

³ *Institutiones* of the *Corpus iuris civilis*, 1.1: “Iustitia est constans et perpetua voluntas ius suum cuique tribuens.” This passage is quoted from the Roman jurist Ulpian.

⁴ *ST* II-II, q. 58, a. 1.

⁵ *SCG* 2.28.2.

⁶ *SCG* 2.28.3.

⁷ *ST* II-II, q. 57, a. 1.

to attempt to sort through these questions.

Since, as Aquinas says, “justice” (*iustitia*) is “the constant and perpetual will to render to each person his right” (*ius*), we will begin our reflections with an analysis of the meaning of *ius*.¹

Ius Is Not the Same as a Modern “Right”

The first confusion we must avoid is mistaking what Aquinas is referring to when he uses the word *ius* with our modern notion of “a right.” The Latin word *ius* was translated into the Anglo-Saxon *recht*, which implies “aligned” or “fitting,” a proper measure. This communicates something of the nature of *ius*, since as Aquinas says, the matter of *iustitia* “is external operation, in so far as an operation or the thing used in that operation is duly proportionate to another person, wherefore the mean of justice consists in a certain proportion of equality between the external thing and the external person.”² In the modern world, however, “a right” is now taken to be a universal, inalienable, subjective claim that something is due to everyone regardless of the circumstances.

However, this modern use of the word “right” blinds us to the fact that a “right” always involves an *obligation* on someone else. Modern folk have little trouble believing that they have rights that should be respected. They have more difficulty accepting that they have *obligations* to others that they have not *chosen*. If I have a “right” to health care, then someone must supply me with health care. Who is obligated to do that? Anyone? No one? Without a clear answer, the claim to have such a “right” is empty. Indeed, the difficulties that we have answering this question are reflected in the way that some authors have claimed these subjective

¹ I will advise the reader in advance that I will not be as concerned with the issue of the passions of the will in this analysis of the virtue of justice. In this paper I am more concerned with what we might call the *object* of justice rather than the habitual act of the will enabling the act. The goal is to clarify some conceptual confusions that arise in modern conceptions of Thomistic natural right and natural law.

² *ST* II-II, q. 58, a. 10: “materia iustitiae est exterior operatio secundum quod ipsa, vel res cuius est usus, debitam proportionem habet ad aliam personam. Et ideo medium iustitiae consistit in quadam proportionis aequalitate rei exterioris ad personam exteriorem.” This discussion of justice as a “mean” and a “proportion” is important in both Aristotle and Aquinas since, as Aristotle makes clear, the relationship between the farmer and the shoemaker cannot be a mean (a “middle”) in the sense of a strict “equality,” since shoes and stocks of wheat are not of the same value. If there is to be a “common good” shared by members of the community, made possible by certain citizens specializing in certain tasks (defense, agriculture, metal working, shoemaking), it will be essential to determine the right “measure” between the items each person has to offer. One shoe is not the same value as one metal shield. See Aristotle, *Ethics* 5.3 and Thomas’s *Commentary* 5.4.934-935.

“rights” do not exist. Bentham described them famously as “nonsense upon stilts.”¹ Alasdair MacIntyre claims in *After Virtue* that belief in rights is “one with belief in witches and unicorns.”²

The tendency among many modern lawyers is to think of justice in terms of obedience to certain laws or fundamental rules. The most common tendency among the rest of the citizens in contemporary society is to think of justice in terms of absolute, individual “rights.” Ask most young adults what justice is, and they will tell you it involves protecting and expanding individual *rights*. Whatever the pros and cons of either view, neither captures the fullness of the Thomistic understanding of natural right as the basis of natural justice.

On this account, we have obligations to others and they to us, but they are not always “universal” and “absolute” as is the case with the modern notion of “rights.”³ Nor is the Thomistic understanding of “right” (*ius*) a universalizable principle of “rightness” such as generated by Kant’s categorical imperative. On the Thomistic account, and for the entire premodern world, a “right” can be limited, and often is, depending upon the persons, the circumstances, and the relationship involved, considered within the context of concern for the common good.⁴

Natural Justice: Respecting the Natures and Ends of Things

¹ See Jeremy Bentham, *Rights, Representation, and Reform: Nonsense upon Stilts and Other Writings on the French Revolution*, ed. P. Schofield, C. Pease-Watkin, and C. Blamires, *The Collected Works of Jeremy Bentham* (Oxford: Oxford University Press, 2002), 317–401.

² Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981), 69.

³ For a good introduction to the origin and distinctive character of modern “rights talk” in contemporary U.S. jurisprudence, see Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991). For a good overview of the scholarly debate about “rights” in Aquinas, see Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625*, *Emory University Studies in Law and Religion* 5 (Atlanta: Scholars Press, 1997), esp. 257–60, and the special series of articles that appeared subsequently in *Review of Politics* 64, no. 3 (Summer 2002): Brian Tierney, “Natural Law and Natural Rights: Old Problems and Recent Approaches,” 389–406; John Finnis, “Aquinas on *Ius* and Hart on Rights: A Response to Tierney,” 407–10; Douglas Kries, “In Defense of Fortin,” 411–13; Michael P. Zuckert, “Response to Brian Tierney,” 414–15; and Brian Tierney, “Author’s Rejoinder,” 416–20. Two more recent excellent considerations of the topic can be found in Jean Porter, “Justice, Equality, and Natural Rights Claims: A Reconsideration of Aquinas’s Conception of Natural Right,” *Journal of Law and Religion* 30 (2015): 446–60, and Dominic Legge, O.P., “Do Thomists Have Rights?” *Nova et Vetera* 17, no. 1 (Winter 2019): 127–47, esp. 134 n. 23 for examples of various forms of *ius*.

⁴ On this, see the classic article by Michel Villey, “Abrégé du droit naturel classique,” in *Leçons d’histoire de la philosophie du droit* (Paris: Dalloz, 1962).

In his magisterial work on the virtue of justice, Josef Pieper explains: “We cannot state the basis of a right and, hence of a judicial obligation, unless we have a concept of man, of human nature.”¹ “Right” (*ius*), on this view, and the obligations we have toward others *in justice*, are bound up with their nature and ends as we discover them through experience and reason or as those obligations have been revealed to us by the Creator, especially in the moral precepts of the Old Law.

And yet, we must distinguish. A *debitus* or *ius* can arise in two ways, says Aquinas. On the one hand, a thing might be due to a person on the basis of agreements, treaties, promises, or legal decisions.² I contract with my plumber to fix my sink; she does; and I pay her the \$200 we agreed upon. She owes me a fixed sink; I owe her \$200. This is “contractual” *ius*. We might also ask whether this price is “just,” whether the proper proportional “mean” has been reached between the value of the work completed and the money rendered. If not, then the *debitum* (what is owed contractually) would not be *iustum* (and thus not “owed” in a second sense).³ But this second sense of *ius* would be “natural” *ius*, on which more in a moment.

In classical and medieval usage, we find *ius* applied to many contractual relationships of this sort – as for example, in land contracts, where one person may have had the *ius utendi*, the right to use property without destroying its substance, while another person had concurrently a *ius fruendi*, the right to reap some fruits or profits of the property. There were many such “rights” (*iura*) in the ancient and medieval world, specifying what was due and what obligations were expected.⁴

¹ Josef Pieper, *The Four Cardinal Virtues* (Notre Dame, IN: University of Notre Dame Press, 1966), 49.

² *ST* I-II, q. 57, a. 2.

³ In this way, natural *ius* can serve as a “measure” of contractual *ius*.

⁴ So, for example, in addition to the *ius utendi*, someone might also have had (or might not have had) the *ius abutendi*, the “right of disposal,” the right to dispose of property, that is, by alienation, inheritance, or otherwise, or “the right to destroy or use up the *res* altogether.” In the ancient Roman world, inheriting an estate could bring unwanted entanglements or debts, so one had the *ius abstinendi*, the right to refuse the bequest. Note again, one might have the “right of use” of some land without having the full “right of its fruits.” Or one might have the “right of its fruits” without having the “right of disposal” of it. What we in the modern world think of as the absolute “right” to private property was called *dominium*. The fourteenth-century jurist Bartolus de Saxoferrato (1313–1357), one of the most celebrated jurists of his day, gave the following definition of *dominium*: “What, then, is ownership? Answer: it is the right of complete disposal over a corporeal thing, as long as it is not prohibited by law.” (Bartolus a Saxoferrato, *In primum Digesti Novi partem Commentaria*, ad D 41.2.17.1 n. 4 (1574; electronic ed. by A. J. B. Sirks, 2004). fol. 73va: “Quid ergo est dominium? Responde, est ius de re corporali perfecte disponendi, nisi lege prohibeatur.”) Notice that, even here, *dominium* is defined in terms of *ius*. It is a *perfecte ius disponendi*. But note as well that even this *ius perfecte* might still be prohibited by law, something that clearly indicates Bartolus and his contemporaries did not consider

In addition to these contractual “rights,” however, there are also things due to others, says Aquinas, based on the nature of the thing, *ex ipsa natura rei*. This, says Thomas, is called “natural right,” *ius naturale*.¹ What creates a “natural right” as opposed to a “contractual right”? One answer is that things have the intrinsic value they have – the value we are called upon to respect—because they have been created by God and given specific natures in accord with which they flourish. Hence to know what is required “by right” (*ius*) “in justice” (*iustitia*), we must first, as Josef Pieper has said, understand something about the nature of the thing or about the person with whom we are dealing, and then we must understand our relationship to that person within the context of the common good.²

On this view, we are made “in the image of God.” Just as “divine providence provides for all things according to their measure,”³ so too we, as human beings, are called upon to be provident for God’s creation in accord with the natures of things as God has created them. Now, as this knowledge is not always clear to us because of our fallen nature or our natural limitations, God has revealed some of what this care and concern for others requires of us in the precepts of the Old Law, especially the Decalogue. We will have more to say on that topic in due course.

On Aquinas’s account, what distinguishes human beings from other creatures is that we can come to know, understand, and respect the natures and ends of other beings. We are likely to go wrong, however, when we fail to understand the natures of things and try to use them in ways contrary to their proper ends. Becoming a mature adult entails understanding the natures and ends of the things in the world and taking proper account of these in deciding upon my purposes.⁴ Instead of simply trying to manipulate things in accord with my purposes, my purposes should respect the nature and ends of the things I encounter. My dog is not a horse, therefore my purposes should be in accord with the dog’s nature and end. I should not try to ride him like a horse or make him pull a plough like an ox.

ius and *lex* to be the same thing. This definition influenced conceptions of property law for many centuries. It is, for example, repeated almost verbatim in the French *Code civil*, article 544: “La propriété est le droit de jouir et disposer des choses de la manière la plus absolue, pourvu qu’on n’en fasse un usage prohibé par les lois ou par les règlements.” These examples were only the most prominent of the *iura* associated with property “rights” in the ancient Roman world. There were others associated with other areas of life, such as marriage, child-rearing, office-holding, and many more.

¹ *ST* I-II, q. 57, a. 2.

² For an interesting discussion of the relational character of *ius* in Aquinas’s treatment of justice, see Christopher A. Franks, “Aristotelian Doctrines in Aquinas’s treatment of Justice,” in *Aristotle in Aquinas’s Theology*, ed. Gilles Emery and Matthew Levering (Oxford: Oxford University Press, 2015), 143–47.

³ *SCG* 3.148.2.

⁴ For an excellent discussion, see Robert Sokolowski, “What is Natural Law? Human Purposes and Natural Ends,” *The Thomist* 68, no. 4 (2004): 507-29.

So too, *a fortiori*, my fellow human beings have a distinctive nature and ends that I should respect. If my purpose is to build a pyramid in Egypt or a tower in modern New York, I should not treat the workers as if they were oxen, mules, or machines. I should respect the natural limitations of their bodies and respect their natures as both *rational* and *free*. They too have goals, purposes, hopes, and fears just as I do. I may not simply ignore them when I consider my own purposes. These extra dimensions of human nature are precisely what makes dealing with humans so much more fruitful but so much more complicated than dealing with horses, dogs, or machines.

When a woman in the rural South says of a man who has impregnated her, “He needs to do right by me,” she is expressing something of this classical sense of “right.” She does *not* mean “I have a universal, inalienable *right* that makes a claim on every person.” She might mean that if she were proposing that every pregnant woman in the country has a “right” to be supported by the state. Rather, in the colloquial sense intended, she means that, because this man has impregnated her, because he is the *father* of their child, he now has a *duty* to help support that child. Being a father means that one has the duties of a father.

Why would she claim this and why would society agree that he has this duty? On the Thomistic account, it would be because he is the *father* of this child and because human children, unlike the young of many other species, need a long period of nurture and education within the context of a stable marriage between both parents.

Would it be essential to believe in a personal Creator God in order to accept the notion that there are “natural” rights (*iura*)? Not necessarily. One might simply have an intuitive sense of the respect due to nature or due to things of various natures, and plenty of non-Christians and nontheists throughout history have had this sense of things.

Christians believe that divine revelation helps to reinforce something we know, at least in part, by human reason. The more we discover either by reason or revelation about the *nature* and *dignity* of created things, the better respect we can show for them – provided that we are of a mind to *respect* them rather than to use our knowledge merely to manipulate them in accordance with our own will in an attempt to control the world as though *we* were its “god.” This temptation to reconstitute and control the world according to our own will, “like a god,” is the fundamental temptation of the serpent in the Garden. On the contrary, we observe the “right” relationship with another or with others when we conform our will and actions with the wisdom of the divine law has constituted nature as it is. We are called upon to conform our will and actions to *reality* as it has been created and

revealed by God.¹

Different Categories of Rights and Justice

“Right” (*ius*), says Thomas, “depends on commensuration with another person” (*dicitur per commensurationem ad alterum*).² But we can distinguish two basic senses of “another.” Someone may be “simply” *other*, as when two people are not subject to one another but both are subjects of the same state. Or someone may be said to be “other,” not simply (*simpliciter*), but “as belonging in some way to that something else” (*sed quasi aliquid eius existens*). For example, a son who has received his existence from his father is “other than” his father but also in a certain way “part of him” (*quia quodammodo est pars eius*). Thus there will be a difference between the sort of “right” appropriate to the relations between a father and a son, or a husband and a wife and the sort of “right” appropriate to the relations between the citizens in the state.

Within the civil sphere – that is to say, within the state – there are also distinctions to be made between the “right” (*ius*) proper to, for example, the military, the magistrates, and the priests (*ius militare vel ius magistratum aut sacerdotum*). These are still *natural* rights, but they are also associated with various “offices” necessary to the civil state.³

Note, however, that all forms of justice, whatever the *ius* involved – whether it has to do with the military, governmental officials, or priests – are to be directed ultimately to the common good. “The good of any virtue,” says Thomas, “whether such virtue direct man in relation to himself, or in relation to certain other individual persons, refers to the common good, to which justice directs: so that all acts of virtue can pertain to justice, in so far as it directs man to the common good.”⁴

When the subject is justice, people tend to think of either commutative or legal justice. But there is also “distributive justice.” In Aquinas’s discussion of distributive justice, it is even clearer that *ius* often depends on social position or rank. In distributive justice, says Aquinas, “a person receives all the more of the common goods, according as he holds a more prominent position in the community.” “Hence in distributive justice, the mean is observed, not according to equality between thing and thing, but according to proportion between things and persons: in such a way

¹ *Ius* and *iustitia* are *ad alteram*, according to Aquinas, thus essentially “relational.” That relationship could be what I owe *this particular person* in *this particular situation*. But it could also be what I owe this person or group within the context of the common good. So, for example, I might owe my neighbor more help than usual if the community has just suffered a natural disaster and certain crucial supplies I have in adequate supply are now lacking in the stores.

² *ST* I-II, q. 57, a. 4.

³ *ST* I-II, q. 57, a. 4, ad 3.

⁴ *ST* I-II, q. 58, a. 5.

that even as one person surpasses another, so that which is given to one person surpasses that which is allotted to another.”¹ Poor people, for example, often need *more* help than those whose wealth allows them to “weather the storm” more easily. Government officials often need more security than citizens, both because of the increased danger to their lives and because of the important role they have in the community.²

Aquinas frequently speaks of what is “right” with respect to a role or position within society. Most of the questions in Aquinas’s discussion of “justice” in judicial proceedings consists of designating what is proper to various offices and what is not. It is not proper for a judge to pass judgment on a man not subject to his jurisdiction or on a man who has not been accused.³ Nor can a judge licitly remit the punishment (*poenam relaxare*) on a person convicted of a crime. Why not? Because, says Thomas, on the part of the accuser it is “right” (*ius*) that the guilty party should be punished, and it is not “in the power of a judge to remit such punishment, since every judge is bound [*tenetur*] to give each man [what is] right [*ius*].”⁴ As for the accused, although he is in duty bound to tell the judge the truth, the judge is bound in judicial proceedings by what is often translated as “the form of law” (*secundum formam iuris*). Thus, if the judge asks the accused that which he should not ask “in accordance with the order of [what is] right” (*secundum ordinem iuris*), he is not bound to answer, although he is still not permitted to lie.⁵

There are many such uses of “right” to be found in Aquinas, as also in all of his contemporaries.⁶ Permit me to mention a few more from domains other than those involving judicial proceedings. It is “right” that a king should have “” his authority respected. But by the same token a free citizen has a “right” of speaking against a ruler (*ius contradicendi*) if the ruler passes an unjust law.⁷ Priests have a “right” to receive tithes (*ius accipiendi decimas*). This “debt” (*debitum*) is owed (*debent*) to “ministers of the altar for the expenses of their ministry. And hence this right is applicable to them alone (*competit hoc ius habere*).”⁸ Moreover, by baptism, a person becomes a participant in the unity of the Church, whereby he also receives the “right to approach the table of the Lord” (*ius accedendi ad mensam domini*).⁹ And finally, a man who has purchased a field and subsequently finds a treasure there has the “right of possessing” (*ius possidendi*) the whole treasure, but only if the treasure is

¹ *ST* II-II, q. 61, a. 2.

² *ST* II-II, q. 58, a. 10, ad 3.

³ *ST* II-II, q. 67, aa. 1 and 3.

⁴ *ST* II-II, q. 67, a. 4.

⁵ *ST* II-II, q. 69, a. 1.

⁶ For a good list, see Legge, “Do Thomists Have Rights?” 134 n. 23.

⁷ See *ST* I-II, q. 58, a. 2.

⁸ *ST* II-II, q. 87, a. 3.

⁹ *ST* III, q. 67, a. 2.

“unappropriated” (*pro derelictis*) and does not belong to another.¹ Note in all these cases the relationship between privileges and obligations following upon a certain role, relationship, or office.

Indeed, nearly every people and culture has had a sense of the duties owed to people in various roles and relationships, such as the duties of a father or a grandparent or an employer. This understanding prevailed – until the universalizing and standardizing tendencies of the French Revolution dominated every discipline so that, along with standardized calendars, currencies, weights, measurements, and language, societies felt compelled to adopt standardized “rights” general enough that they would not differ from place to place and could be published throughout the nation in a standardized list. This modern conception of an absolute, subjective “right” that the individual can assert absent any consideration of or obligation to the common good is a distinctly modern, Western creation, not something recognized by all people and cultures.

The demand for equal “rights” seems good if the inequality is that aristocrats and rich people getting better treatment than others in the law courts. Problems arise, however, when the demand for equal “rights” is taken to mean that if abortion and euthanasia are permitted in the Netherlands as a “right,” this means access to it must be protected everywhere. And if “rights” are “trumps,” as is commonly asserted, then the “right” to own a gun “trumps” the social benefits that might accrue to the common good by restricting widespread gun ownership, and the “right” to gun ownership must be protected as vigorously in urban Chicago as it is in rural Michigan, no matter how many people vote for such restrictions.²

We want political and legal justice. Often we assume that this has something to do with conformity to *law*, as though “justice” was determined solely by *law*. If we then complain (as we often do) that laws should be “just,” we could do so only failing to recognize that the way we have defined “justice” precludes this complaint. If “justice” is defined as obedience to law, we cannot complain that the laws are “unjust” unless we recognized the existence of a “higher” form of law – one that accurately embodied a natural *ius* or *debitum* owed to others.

We may call this “higher law” the “natural law” to make clear that it is an expression of natural justice, based on respecting the fundamental nature of the human person. Then we can say *either* that human law should be in accord with “natural law” (*lex naturalis*) *or* that it should be in accord with what is “naturally owed” a person (a *debitum*) based on his or her nature and flourishing (*ius naturale*). Granted, this might lead people to think we were using the two terms *ius naturale*

¹ *ST* II-II, q. 66, a. 5, ad 2.

² The view that rights should be considered “trumps” against any utilitarian “balancing” of social benefits is most prominently associated with Ronald Dworkin. See his *Taking Rights Seriously* (Cambridge: Harvard University Press, 1978).

and *lex naturalis* synonymously, but there would still be an important difference between the two.

The Measure of Justice

What, then, are my obligations toward others “in justice”? The answer cannot be given in one sentence or in one book. Being “just” on this view is not a matter of reading off a list of *a priori* rules and abiding by them. Rather, developing the virtues of prudence, justice, temperance, and fortitude means seeking to understand the natures of things and persons more deeply, so that one can respond more fully to them with appropriate care. Nature and persons, individually and communally, make a claim on us. How dutifully we attend to those claims will reveal what sort of character we have and what sort of person we have become. It will disclose whether a person is – someone who is fully realizing his true nature as a rational seeker of the truth of things, made “in the image of God,” exhibiting a wise and providential care over the creation God has entrusted to us, especially for the lives and well-being of those connected with me in my community.

My obligations toward others in justice are not purely *subjective*. They are based upon the objective nature of the thing or person. And yet they are not *universal* in the way modern “rights” are often taken to be. *Every person* has an intrinsic “right” (a *ius* or *debitum*) such that they are owed respect for their lives, but it does not follow on the classic notion of *ius* that *in justice* I owe the exact the same things to all people. I have certain obligations to my family and friends that will differ from my obligations to my professors, my fellow teammates, and to the fellow members of my community and nation.

I must consider what I owe “by right” – according to the proper “just” proportion – as a citizen to the political society as a whole (legal or general justice). If I have money and/or special talents that others lack, I will likely owe more, especially if the city is in grave need. So too I must consider what I owe “by right” – according to the proper just proportion – to fellow citizens in the city. If they are my “equals,” I owe them an equal return (commutative justice). If I have money and/or a position superior to my fellow citizen, I may owe more, depending upon the nature of the exchange. And finally, there is the question of what those who have been given the responsibility to care for the common good owe to each of the citizens (distributive justice). This is not something citizens can determine for themselves since each of us has largely only our own needs and interests in view, whereas the common good includes the good of all the citizens as a whole.

In each case, what I owe others depends on who I am, my skills and abilities, my position in society, and my relationship to the parties involved. In all the virtues, there is a certain “balance” or “measure” to be achieved. With temperance and fortitude, the “measure” is often something internal. How much

alcohol is too much? The answer depends upon how big I am, how much I have eaten, how accustomed I am to drinking alcohol, along with a host of other factors. I also must often gauge the situation. I can drink a certain amount with my friends but likely should drink less when I am out to dinner with fellow employees. I need to know how much I can drink before certain results occur, and I have to understand my relationship with the people I am with or the situation I am in (driving, walking, social, business) if I am to make wise judgments.

When justice is under consideration, the *measure* is less “internal” and has more to do with the objective nature of the person or relationship involved. Is this *my* child? If not, then although I have certain default obligations toward him or her, I do not have the *same* obligations as the child’s parents. Even if the child is unknown to me, I can and should take care that the child does not run out into the street and get hit by a car or does not get bitten by a stray dog. But I would be acting beyond what is “right” were I to discipline the child as if the child were my own or give the child a ride on my motorcycle without the permission of his or her parents.

Note, however, that what prudence dictates regarding these more particular matters might change with circumstances. Some cultures or groups in certain neighborhoods may find it acceptable to give a child a ride on a motorcycle, while others might not. The danger from a fast-moving brush fire might dictate my spirited the child away to safety even when in other circumstances it would not be in accord with what is “right” according to the relationship between me, the child, and the child’s parents.

Or consider another famous case. Thomas argues that it would be “unjust” to baptize Jewish children against the wishes of their parents because this would constitute a violation of the parent’s “right of parental authority” (*ius patriae potestatis*). From whence arises this “right”? Thomas answers that, since children before the age of reason cannot care for themselves, they must be under the care and protection of their parents. “Hence,” says Aquinas, “it would be contrary to natural justice [*contra iustitiam naturalem*] if a child, before coming to the use of reason, were to be taken away from its parents’ custody, or anything done to it against its parents’ wish.”¹ Only when one attains the age of reason and has the capacity to make a free choice can the person be baptized against the wishes of his or her parents.

Parents would still have an obligation to care for their children and educate them in the virtues, and children would still have an obligation to obey their parents when it comes to the common good of the household. But there is no “universal, absolute right” to baptism that would “trump” the respect owed parents. And yet there is also no universal, absolute “right” of parents to oppose baptism that would

¹ *ST* II-II, q. 10, a. 12. Cf. *Quodlibet* 2, q. 4, a. 2.

keep a young person from choosing it when he or she comes of age.

According to the modern notion of “universal rights,” a student’s mother and a student’s teacher both have equal “rights.” This may be true in certain respects and with regard to certain things. Both the student’s mother and the student’s teacher have an equal “right” to the due process of law and freedom of speech. And yet it is clear that the student does not *owe* the teacher the same things that he owes his mother. He owes his teacher behavior that is respectful and does not disturb others in class. He owes his mother much, much more, and he owes her an attentive listening even more than he owes it to his teacher. A student is not only allowed to argue with one’s instructor, but in some classes is often encouraged to do so. Thinking that one can engage in the same sort of dialectical arguments with one’s mother that one engages in with one’s instructor or one’s classmates is to make a serious category mistake. “Justice” on the classical, Thomistic view means treating each appropriately, giving to each what is appropriate to their position and dignity, usually also with a view to the common good.¹

Justice will sometimes demand that I *always* refrain from doing certain things that are simply contrary to human nature, as, for example, killing an innocent person or committing adultery.² On the Christian understanding, a good list of such basic prohibitions can be found in the precepts of the Decalogue. Again, more on that in due course. And yet, although we universally owe to others not to lie to them, we do not owe everyone the same amount of the truth. I may owe my mother or a priest to whom I am confessing all the details of my exploits “by right,” whereas those details are ones I would not owe my theology professor, to whom the student might say no more than “I have been having troubles at home.”

Natural Right and Social Contract “Rights”

Consider the difference between the traditional Catholic view of distributive justice and the modern social contractarian view, which holds that the “justice” and

¹ The idea that justice must be connected not only with *ius* but also with the common good can be traced back in the Latin tradition to Cicero. Cf. Cicero, *De inventione* 2.53.160: “Iustitia est habitus animi communi utilitate conservata suam cuique tribuens dignitatem.” (“Justice is a habit of mind which gives every man his desert [what is his according to his dignity] while preserving the common advantage.”) Many Christian thinkers followed this line of thought.

² Cf. John Paul II, *Veritatis splendor*, 52: “The negative precepts of the natural law are universally valid. They oblige each and every individual, always and in every circumstance. It is a matter of prohibitions which forbid a given action *semper et pro semper*, without exception, because the choice of this kind of behaviour is in no case compatible with the goodness of the will of the acting person, with his vocation to life with God and to communion with his neighbour. It is prohibited — to everyone and in every case — to violate these precepts. They oblige everyone, regardless of the cost, never to offend in anyone, beginning with oneself, the personal dignity common to all.”

“injustice” that governs business practices is solely *contractual*. I owe to others only what I have contracted to give. People owe me only what *they* have contracted to give. Making a judgment between “good” or “bad” contracts is based solely on whether both parties entered into the contract freely.

While the Christian tradition has long respected contracts as establishing a set of mutually beneficial obligations and responsibilities, the Church, following Aquinas, has long understood that such contractual “rights” must also be in accord with proper respect for the natural *ius* that should govern both parties in their relations with and obligations to each other and/or the community as a whole. Catholics who follow St. Thomas can say that a contract is “unjust” when it does not respect the proper *debitum* between the persons – as, for example, when an employer is not treating an employee with the dignity and respect due a *person*, but treating him or her instead like a machine or a pack mule, working more hours without rest than would be healthy or in unsafe conditions.¹

So too the “right” to private property responds to an important human need to have stability in one’s affairs and, as Pope St. John Paul II argued, to be able to have resources on which one can exercise one’s personal creativity and workmanship.² Society is obligated not to intrude lightly on that which “belongs” to another in this way. And yet, on the Catholic view, that “right” is not absolute, nor can it be abstracted from considerations of the common good. Although society owes its members a certain respect for their individual privacy and “property” – we are bound to give others a certain “space” for their own efforts and creativity, time to think and consider how they will choose to face the fundamental questions of meaning that challenge all human beings – still and all, the members of a society also have obligations to the common good: the fruits of their labors should serve the well-being of others, and their property should not be hoarded while others suffer and starve.³

For Hobbes, contracts are primary. There is no natural justice *before* the social contract, so justice necessitates first and foremost preserving contracts into which we have freely entered. For Aquinas, contracts are secondary and must be subservient to natural justice, a determination based on ranking the goods due to human persons and to the common welfare.

It is difficult to understand how, on a Hobbesian view, the state could judge any contract to be illicit or “unjust” unless it was not freely entered into or unless it endangered public order, such as in times of war or natural disaster. This, of course,

¹ Cf. among the many possible examples, Paul VI, *Octogesima adveniens*, 14; John Paul II, *Laborem exercens*, 9, 16; *Centesimus annus*, 43; Benedict XVI, *Caritatis in veritate*, 36, 63.

² Cf. esp. *Laborem exercens*, 9 and 12.

³ Cf. esp. *Centesimus annus*, sec. IV.

was the essentially view the U.S. Supreme Court took early in the twentieth century when it struck down state labor laws governing working hours and worker safety.¹

For Aquinas, one can determine the justice of such contracts, but not as we often do, with the big sledgehammer of universal rights. Owners have a “right” to private property, yes, but it is not unlimited, as many Americans assume. Workers have a “right” to a dignified wage, but it too should be tailored to specific circumstances. Is a minimum wage meant for the single wage earner in a household appropriate (is it a *debitum*) for employers who employ mostly teenagers making money for gas and video games? There is an “unjust” wage, but it is not “unjust” merely because it does not mean a standardized, universal “right.”

Employers have obligations to workers; workers have obligations to each other and to employers. Both have obligations to the common good of the community. What governs these obligations is not *merely* the contracts individuals have made. Nor is this merely a question of what individual “rights,” either of the owner or the worker, apart from considerations of the common good. Nor should we think of distributive justice as though it were commutative. We should recognize in each transaction the obligations we have to another or to others in the context of the common good of the whole of the political society.

A Brief History of Ius and Its Uses

There is not sufficient space here, nor would it be entirely relevant to our current discussion, to attempt an adequate account of the history of *ius* and its uses from Cicero to Aquinas.² But a brief, necessarily simplified account may provide some needed context, primarily to lend context to certain developments in the thought of Aquinas.

For Thomas, and for all medieval writers of the age, one of the most important authorities when it came to law, justice, and “right” (*ius*) was the twelfth-century canon lawyer Gratian, who began his highly influential *Decretum* with these words.³

¹ On this, see Glendon, *Rights Talk*, chap. 2. The most famous of these cases was *Lochner v. New York* (1905), the central case in what has come to be known as “The Lochner Era.”

² A nice survey of some of the relevant medieval material can be found in Kenneth Pennington, “Lex Naturalis and Ius Naturale,” *Jurist* 68, no. 2 (2008): 569-91. The reader should be aware, however, that this author fundamentally misunderstands the thought of Aquinas.

³ For the sake of clarification, the *Decretum Gratiani* was the shorter name of the book also known as the *Concordia discordantium canonum* or *Concordantia discordantium canonum* (Concordance of Discordant Canons), an influential collection of various canon laws. It forms the first part of the collection of six legal texts, which together became known as the *Corpus Juris Canonici*.

Human kind is ruled by two things: namely natural *ius* and *mores*. The *ius* of nature is what is contained in the law (*lex*) and the Gospel, by which each person is commanded to do to others what he wants done to himself and is prohibited from inflicting on others what he does not want done to himself. Whence Christ says in the Gospel: “All things whatsoever you would that men should do to you, do you also to them. For this is the law (*lex*) and the prophets.” (Matt 7:12).¹

There are three key terms in this passage, which I have indicated with the original Latin either in the text or in parentheses: *ius* (often translated “law,” but more properly “right”), *mos* (custom), and *lex* (written law).

Among these three, we should not confuse *ius* with *lex*. Gratian notes that what distinguishes *lex* is that it is *written*. Citing one of the many specious etymologies from Isidore’s *Etymologiae*, Gratian proposed that “*lex* is so named because it binds, or because it is read as writing” (*Lex dicitur quia ligat, uel quia legatur utpote scripta*). Even though the etymology is specious, it shows that he understood *lex* to be something written.² This is likely why he changed terms from *ius* to *lex* in the passage quoted above. He used *ius* when he was referring to the *ius* of nature (*ius naturae*) and switched to *lex* when he was referring to the written law of the Old Testament. *Ius* is said to be “contained in the law” (*continenter in lege*); it is not identical with it. *Ius* is generally something *unwritten*, whereas *lex* is written.

This distinction will break down when we get to Thomas’s discussion of the natural law (*lex naturalis*) and the eternal law (*lex aeterna*), both of which are unwritten. But Thomas is not unaware of the problem. Although he says in *ST* I-II, q. 90, a. 4 that one essential element of any law is that it must be *promulgated* – echoing Gratian’s comment that laws (*leges*) are established when they are promulgated (*promulgantur*) – Thomas hedges this part of the definition a bit when it comes to the natural law by claiming that “the natural law is promulgated by the very fact that God instilled it into man’s mind so as to be known by him naturally.”³ With regard to the eternal law, the promulgation is though “the Divine Word and the

¹ *Decretum Gratiani*, first recension, working edition of Gratian’s *Decretum* produced by a team under the general editorship of Anders Winroth, revised 5 Oct. 2019, a Project of the Stephan Kuttner Institute of Medieval Canon Law, Yale University, D. 1 d.a.c. 1. This, to my mind, is the best version of this portion of Gratian’s text currently available. “Humanum genus duobus regitur, naturali videlicet iure et moribus. Ius nature est, quod in lege et evangelio continetur, quo quisque iubetur alii facere, quod sibi vult fieri, et prohibetur alii inferre, quod sibi nolit fieri. Unde Christus in evangelio: ‘Omnia quecumque vultis ut faciant vobis homines et vos eadem facite illis. Hec est enim lex et prophete.’”

² Gratian, *Decretum*, D.1 c.3 s.v.: *Lex est constitutio scripta. . . . Lex dicitur quia ligat, uel quia legatur utpote scripta.*

³ *ST* I-II, q. 90, a. 4, ad 1. Cf. Gratian, *Decretum*, D. 4 d.p.c. 3: “Leges instituuntur, cum promulgantur,” after which he adds that they are “made firm when they are approved with customary use” (*firmanantur, cum moribus utentium approbantur*).

writing of the Book of Life.” This is not exactly “promulgation” in the sense implied in the definition of law in *ST I-II*, q. 90, a. 4, but it is, we might say, analogically related. It is there for us to “see” and to “read” at least in a metaphorical sense, but not directly.¹ Strictly speaking, for Thomas, “law is not the same as right itself, strictly speaking, but an expression of right” (*lex non est ipsum ius, proprie loquendo, sed aliqualis ratio iuris*).²

Since *ius* and *lex* are so often confused with one another, it will be worth making a brief digression to consider the context of this last statement (taken from *ST II-II*, q. 57, a. 1, ad 2) for the light it will shed on our later considerations. According to Thomas, just as there preexists in the mind of the craftsman a *ratio* of the things to be made externally by his craft, which expression is called the rule of his craft (*regula artis*), so too there preexists in the mind an expression of the particular just work that the reason determines and that is a rule of prudence (*ita etiam illius operis iusti quod ratio determinat quaedam ratio praeexistit in mente, quasi quaedam prudentiae regula*). If this rule is expressed in writing it is called a “law,” which according to Isidore is a “written decree” (*si in scriptum redigatur, vocatur lex, est enim lex, secundum Isidorum, constitutio scripta*); hence the conclusion: law is not the same as right itself strictly speaking, but an expression of right. The importance of this point will become clear in due course as we seek to distinguish between natural law (*lex*) and natural right (*ius*).

Another important development in the idea of natural *ius* was its connection with the idea of the common good. One problem that might arise when one conceives of natural law or natural *ius* in terms of “giving to another what is due” is that we can begin to think of justice purely or primarily in terms of the one-to-one relationships characteristic of commutative justice and fail to see these interactions within the broader context of our obligations to the common good. This problem often characterizes our modern use of “rights” language. Modern citizens claim a “right” to smoke, publish pornographic material, or build a forty-story building in a residential neighborhood regardless of the consequences on the community as a whole.

Even in ancient Rome, however, disputes could arise over the “rights” associated with land ownership, since in the early republican period, one needed to be a landowner to serve in the military. When these men were away fighting for Rome, their farms were sometimes left untended and had to be sold off by their families to wealthier property holders. This accumulation of land in the hands of larger landholders became the source of much tension in the Roman republic over many years and was one of the points-of-dispute that led to the famous conflict

¹ *ST I-II*, q. 91, a. 1, ad 2.

² *ST II-II*, q. 57, a. 1, ad 2.

between the Senate and the Gracchi brothers. Should the “right of possessing” (*ius possidendi*) the land by those who had purchased it be allowed to trump the threat to the common good presented by decreasing numbers of small landowners to serve the increasing needs of the Roman legions? The Gracchi brothers argued that the land should be redistributed; Cicero held that it should not.¹ But this had more to do with different understandings of what constituted the common good than it did with any conception of an absolute character of the landholder’s “right” (*ius*). Cicero himself, although he opposed the reforms of the Gracchi, defined justice as “a habit of mind that gives every man his desert while preserving the common advantage” (*Iustitia est habitus animi communi utilitate conservata suam cuique tribuens dignitatem*).²

Many Christian thinkers followed this line of thought.³ A nice example can be found in the *Sententiae* of Peter Abelard (c. 1079–1142), who says: “The philosophers define justice as the ‘habitus’ of the mind to render to every person what is his as long as the common good is preserved” (*Iustitiam uero sic definiunt philosophi: Iustitia est habitus animi reddens unicuique quod suum est, communi utilitate seruata*). Here, it seems clear he is quoting Cicero. But then he continues: “Justinian [more properly, Ulpian] defined this concept in his definition when he would say, ‘Justice is the constant and perpetual will,’ etc.” Abelard comments on that famous definition, claiming “‘His’ can refer to the receiver as well as to the giver. If it refers to the receiver then it ought to be regulated by the preservation of the common good (*communi utilitate seruata*).” Summing up, he concludes: “Justice refers to the common good in all matters” (*Iustitie siquidem est omnia ad communem utilitatem referre*).⁴

Sorting through the Sources in the Summa

¹ For background accounts of the dispute, see P. A. Brunt, *Social Conflict in the Roman Republic* (New York: Norton, 1974), chaps. 4–5, and David Stockton, *The Gracchi* (Oxford: Oxford University Press, 1979), chaps. 3–8.

² Cicero, *De inventione* 2.53.160.

³ On this, see Stephan Kuttner, “A Forgotten Definition of Justice,” *Mélanges Gérard Fransen* (Studia Gratiana 20: Rome, 1976), 76–110, reprinted in *The History of Ideas and Doctrines of Canon Law in the Middle Ages* (London: Variorum, 1980).

⁴ Peter Abelard, *Sententie magistri Petri Abaelardi*, ed. David Luscombe et al. (Corpus Christianorum, Continuatio Mediaevalis 14; Turnhout: Brepols, 2006) 134–35: “Iustitiam uero sic definiunt philosophi: Iustitia est habitus animi reddens unicuique quod suum est, communi utilitate seruata. Hoc idem Iustinianus sua diffinitione notauit cum diceret sic: Iustitia est constans et perpetua uoluntas, etc.... ‘Suum’ potest referri tam ad accipientem quam ad tribuentem. Si ad accipientem referatur, tunc determinandum est communi utilitate seruata. Iustitie siquidem est omnia ad communem utilitatem referre.” It is not certain that this text is Abelard’s. It had been attributed to a certain Hermannus; see Luscombe’s introduction to his edition, pp. 10*–12*.

It was common for canonists and authors writing treatises *de legibus* in the twelfth and thirteenth centuries to provide their own list of definitions and distinctions.¹ This was essentially what Thomas was providing in *ST I-II*, qq. 90-97. It is characteristic among scholars to call this section of the *Summa* Thomas's "Treatise on Law." This is problematic for two reasons. First, there are no separate "treatises" in the *Summa*. Each section is intimately tied to the others. But second, even if one wanted to separate out a section "on the laws," one would have to include all the material from q. 90 up through q. 108, which includes the sections on the Old Law and the New Law. In these later *quaestiones*, Thomas will make his own use of the material handed down to him from Gratian and from Gratian's predecessors, especially Ulpian, Cicero, and Aristotle, as did nearly every other author of the period. It was a commonplace for medieval authors to craft their own sets of definitions and distinctions, borrowing heavily from their authorities, but rarely identical with them either.

So we need to keep clear in our minds that Thomas was navigating through a rough sea of constantly shifting verbiage. As he did so, he also had to avoid various intellectual and doctrinal mines that could explode if he failed to steer carefully around them. We can identify at least three major challenges he had inherited from his sources.

The first challenge involved reconciling the classical natural law tradition with Gratian's claim that the natural law was "what was contained in the law and the Gospel." This problem was exacerbated by the common association among Christian authors of the natural law with St. Paul's statement in Romans 2:14-15 about "the Gentiles, who have not the law," but who "do by nature those things that are of the law" and thereby show that the law is "written in their hearts." Next to this passage in the "ordinary gloss" on the Bible, Thomas found the comment: "Although they have no written law, yet they have the natural law [*legem naturalem*], whereby each one knows, and is conscious of, what is good and what is evil."² In other versions of the gloss, he would have found in the margin the words, "i.e., *ius naturale*."

Why would this pose a problem? For one reason, because Gratian had defined natural *ius* as "what is contained in the law and the Gospel," prompting the question: How can Gratian's comment make sense if natural *ius* is defined precisely by being *unwritten* and "the law" is written? So too, according to St. Paul, the law "written

¹ To get a sense of these, see Michael Crowe, *The Changing Profile of the Natural Law* (The Hague: Martinus Nijhoff, 1977), 72-110. And for an analysis focusing on Aquinas's more proximate theological predecessors, see Beryl Smalley, "William of Auvergne, John of La Rochelle, and St. Thomas Aquinas on the Old Law," in *St. Thomas Aquinas, 1274-1974: Commemorative Studies* (Toronto: P.I.M.S., 1974), 2:11-72.

² Thomas quotes the gloss in the *sed contra* of his discussion of the question, "Whether there is a natural law?" Cf. *ST I-II*, q. 91, a. 2, sc.

in the hearts” of the Gentiles was *unwritten*, unlike the written law of the Jews. Moreover, how can natural *ius* be “contained in” the Jewish written law and the Christian Gospel, when both of these are objects of divine revelation, not natural reason? And then there is the problem of imagining that all those very specific laws in the Old Testament could be considered expressions of natural *ius* – laws about what to eat and not eat, what to wear and not wear, how many elders should be appointed to the head council, how many years before a foreigner could become a member of the Jewish people, how many turtledoves, goats, or oxen should be sacrificed for various things, and that sparrows should be sacrificed in the case of leprosy. Could any of these be counted among the precepts of the “natural law”?

Second, Thomas had inherited various traditions concerning “natural law” (*lex naturalis*). Some understood it to be simply the order of nature that suffuses the world. Ulpian had said that it was “what nature has taught all animals.” And Gratian, as we have seen, described it as “what is contained in the law and the gospel.”¹ Thomas had to sort through these different authoritative accounts without entirely rejecting any of them.

And third, along with inheriting the various bits and pieces of a complex natural law tradition, Thomas had also inherited a Christian tradition of the virtues that had been given new form and force by the reception of the major works of Aristotle in the mid-thirteenth century. How, then, to understand the relationship between the natural law, the written Mosaic Law, grace, and the virtues, especially with regard to the role of the virtues of prudence, charity, and justice? Fortunately Thomas was an expert at sorting through and putting an intelligible order on just such confusions.

The Need for a Revealed Written Law to Express Natural Ius

Let us begin with how Thomas navigated around the first of these potential difficulties: confusions that can arise over the relationship between the classic understanding of the “unwritten” natural *ius* and what Gratian had said about “what is contained in the law and the Gospel.”

On Thomas’s account, as we have seen, just as there preexists in the mind of the craftsman a *ratio* of the things to be made externally by his craft, which expression is called the rule of his craft (*regula artis*), so too there preexists in the mind an expression of the particular just work that the reason determines and that is a kind of rule of prudence (*quasi quaedam prudentiae regula*). This rule, if expressed in writing, is called a “law” (*lex*). So, for example, I might determine, as a general rule of prudence, the basic conclusion that one should never kill an innocent person. I could then commit that statement to writing, either as a reminder

¹ For the relevant references, see below, nn. 70-72.

to myself or to help inspire others or to communicate a prohibition the community intends to enforce. But even if I committed the statement to writing, it must have preexisted in my mind as a precondition of my writing it down.

Justice is the virtue of properly recognizing and acting upon a natural *ius* “right” or “obligation” out in the world. When we recognize that we have an obligation to preserve the life of another – this might be a conclusion we draw from the fact that the other is a creature beloved by God, made in the image of God and thus of infinite value and dignity, or simply because I know I would not wish to be harmed – I can also draw the general conclusion that “I should not murder an innocent person.” Thus, if the act I am contemplating would result in the death of an innocent person, I would say to myself I “ought not to do it.” That general principle that I should not take the life of another person, which I hold in my mind “as if by habit,” is what Thomas identifies with “the natural law.” It is an expression of a *ius* that I recognize as something “due” to other persons because of their inherent dignity and worth as the kind of creature they are with the kind of nature God has imparted to them. I would not owe the same forbearance, for example, to a cow or a chicken.

If we were to write down the general principle in the form “Do not murder innocent persons,” this would be an expression of the natural obligation that we each have to others. As written, it is an expression of both a natural *ius* and natural *law*, even though, strictly speaking, they are not the same. If we wrote the precept down in a civil code, it would become part of human law. Human law, however, will likely also have “positivistic” elements tailored to specific conditions (for example, under what circumstances a police officer may or may not use deadly force; what constitutes killing in the first, second, or third degree; what kinds of punishment are due to those who kill with various degrees of intent; and so on). There would be even more need for specifications tailored to particular conditions when it comes to the general prohibitions against harming others in their property (issuing in the general precept against stealing) or harming others with words (such as lying or bearing false witness), specifying what kinds of false statements constitute “slander” (lying to one’s mother is not slander), what kinds of “taking” constitutes “stealing,” and how grave various forms of theft should be considered when determining punishment.

The problem with our natural powers – including both our will and the power of our natural reason to judge what is “just” and thus to know what ought to be done and what ought to be avoided – is that these powers have been corrupted by sin, especially original sin. As Thomas often explains, one must consider human nature in two ways. In the first way, we can think of human nature in its full integrity or wholeness (*in sua integritate*), as it was in the first man before he sinned. Secondly, however, there is human nature as it exists in us now, corrupted due to original sin

(*corrupta in nobis post peccatum primi parentis*).¹

At his creation, before the fall, man was able to act in accord with the natural law. It was at that point, says Thomas, “according to his proper natural condition that [man] should act in accordance with reason”; indeed, “this law was so effective in man’s first state, that nothing either outside or against reason could take man unawares.” After man turned away from God, however, “he fell under the influence of his sensual impulses,” which began to rule him as though they themselves were a kind of law. This law, the law of the *fomes peccati* (tinder for sin), is, says Thomas, “a deviation from the law of reason.”² The more man fell under its sway, the more he “departed from the path of reason” – so much so that Thomas proclaims elsewhere, rather starkly, that “the law of nature was *destroyed* by the law of concupiscence” (*lex naturae per legem concupiscentiae destructa erat*).³ The result, according to Thomas, is that in his present fallen state, man is largely *not* able – that is, no longer able – to do the good proportioned to his nature.⁴

God has not left us to our own devices since the fall, however. He directs us to the good, says Thomas, which is union with himself, both by “teaching us by means of his law” and “aiding us by means of his grace.”⁵ In our fallen state, our intellects are often blinded by sin, and even when we know the good, we often cannot discipline our will to do it. Because we do not always recognize what obligations follow from the natures of things; because we suffer from a fallen human nature which has damaged both our intellect and will; because we get confused and pass unjust laws – that is to say, laws that are not in accord with, or a direct violation of, natural law, natural *ius*, and natural justice – God has given us a *written* law. He has revealed some of the basic obligations of natural *ius* in the written commands contained in the Mosaic Law, or what Thomas calls “the Old Law.”

The Distinctions and Ordered Hierarchy of the Precepts of the Old Law

Thomas is aware of the problem of associating the written Old Law with the unwritten natural law.⁶ So, as was his custom, he made some necessary distinctions to clarify matters. Some precepts, says Thomas, are clear expressions or “dictates” (*dictamen*) of the natural law. Others are a mix of natural law and divine positive

¹ See, for example, *ST I-II*, q. 109, a. 2.

² *ST I-II*, q. 91, a. 6.

³ Thomas Aquinas, *The Commandments of God: Conferences on the Two Precepts of Charity and the Ten Commandments*, trans. L. Shapcote, O.P. (London: Burns Oates, 1937), prol., p. 2.

⁴ *ST I-II*, q. 109, a. 2.

⁵ *ST I-II*, q. 90, prol.

⁶ For more on this topic, see Randall B. Smith, “What the Old Law Reveals about the Natural Law According to Thomas Aquinas,” *The Thomist* 75, no. 1 (January 2011): 95-139.

law. Those which are “dictates” of the natural law, Thomas calls “moral precepts” (*moralia*). Those which are applications of the natural law to the situations in which the Jewish people found themselves before the coming of Christ were either “ceremonial precepts” (*ceremonialia*) or “judicial precepts” (*iudicialia*). We will have more to say on their continuing value presently.

Among the “moral precepts,” says Thomas, there are three grades (*gradus*), distinguished according to their degree of universality or particularity and thus according to their accessibility to human reason. Thomas’s account is based on an analogy between speculative and practical reasoning. As every judgment of the speculative reason proceeds from the natural knowledge of first principles, so too every judgment of the practical reason proceeds “from certain naturally known principles” (*ex quibusdam principiis naturaliter cognitis*). These principles of practical rationality are what Thomas calls “the first and common precepts of the natural law” (*prima et communia praecepta legis naturae*), “which are *per se nota* to human reason.”¹ As *per se nota*, these precepts need not (and indeed cannot) be deduced from principles that are prior. According to Thomas, the two precepts that are “the first and common precepts of the natural law, which are self-evident to human reason” (*prima et communia praecepta legis naturae, quae sunt per se nota rationi humanae*), are the two commandments that Christ himself calls the “first and most important,” and that sum up the law and prophets, namely, to “love the Lord your God with all your heart, soul, and mind,” and to “love your neighbor as yourself.”²

Thomas makes clear elsewhere that there are alternative forms of this second commandment to “love your neighbor as yourself”: namely, “Do unto others as you would have them do unto you,” or the negative form of the same commandment: “Don’t do to others what you wouldn’t want them to do to you,” or sometimes he says more simply, “Do harm to no one.”³ Such commandments constitute for Thomas the primary precepts of the natural law.

The precepts of the second grade are derived from those of the first and are related to them “as conclusions to common principles.” They still concern matters so evident (*adeo explicita*), says Thomas,⁴ that “at once, after very little consider-

¹ See *ST* I-II, q. 100, a. 3, ad 1.

² *ST* I-II, q. 100, a. 3, ad 1.

³ “Do harm to no one” may seem too broad and general, but there are important precedents. The *Digest* 1.1.3 quotes Ulpian’s assertion that there are three basic principles of *ius*: to live honorably (*honeste vivere*), not to harm another (*alterum non laedere*), and to render to each his own (*suum cuique tribuere*). So too, Plato, in the *Crito* (49d) argues: “it is never right to do wrong (κακῶς) or to requite wrong with wrong, or when we suffer evil to defend ourselves by doing evil in return. And in *Symposium* 1.335e: “For it has been made clear to us that in no case is it just to harm anyone.”

⁴ *ST* I-II, q. 100, a. 1.

ation” (*statim, cum modica consideratione*), “one is able to approve or disapprove of them by means of these common first principles.” This is a relatively simple moral judgment, insists Thomas, of which everyone, even the untrained, is capable.¹ As examples of the second grade of precept – those which “the natural reason of every man of its own accord and at once, judges ought to be done or not done” (*quae statim per se ratio naturalis cujuslibet hominis dijudicat esse facienda vel non facienda*) – Thomas lists² the following: “Honor your father and mother,” “Thou shalt not kill,” and “Thou shalt not steal.”

The third grade of precept, finally, are those that require a more complex moral judgment. These, says Thomas,³ require not a “slight consideration” (*modica consideratione*), as do the precepts of the second grade, but “much consideration” (*multa consideratio*) of the various circumstances. Not all are able to do this carefully, says Thomas, “but only those who are wise; just as it is not possible for all to consider the particular conclusions of the sciences, but only for those who are philosophers.” As an example of the third grade of precept – those “which are judged by the wise to be done after a more subtle [*subtiliori*] consideration of reason” (*quae subtiliori consideratione rationis a sapientibus judicantur esse observanda*) – Thomas lists⁴: “Rise up before the hoary head, and honor the person of the aged man.” Thomas insists⁵ that even the precepts of this third grade “belong to the law of nature” (*de lege naturae*), but they are such that “they need to be taught, the wiser giving instruction to the less wise” (*indigeant disciplina, qua minores a sapientioribus instruantur*).

Thomas summarizes the essential elements of this threefold hierarchy once again in *ST* I-II, q. 100, a. 11 (emphases added for the sake of clarity).

The moral precepts derive their efficacy from the very dictate of natural reason [*dictamine naturalis rationis*]... Now of these there are three grades.

(1) For some are most certain [*certissima*], and so evident as to need no promulgation [*ideo manifesta quod editione non indigent*]. Such are the commandments of the love of God and our neighbor, and others like these [such as “Do unto others as you would have them do unto you]...which are, as it were, the ends of the commandments; and so no man can have an erroneous judgment about them.

(2) Some precepts are more particular [*magis determinate*], the reason of which any person, even an uneducated one, can at once easily grasp [*quorum rationem statim quilibet, etiam popularis, potest de facili videre*]; and yet they need to be promulgated, because human judgment, in a few instances, happens to be led astray concerning them. These are the precepts of the decalogue.

¹ *ST* I-II, q. 100, a. 11.

² *ST* I-II, q. 100, a. 1.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

(3) Again, there are some precepts the reason for which is not so evident to everyone, but only to the wise [*quorum ratio non est adeo cuilibet manifesta, sed solum sapientibus*]; and these are the moral precepts added to the decalogue....

This third class of precept – those “added to the Decalogue” – might include relatively simple moral norms such as “Honor the aged” (as mentioned above) or “Don’t commit acts of prostitution,” or a relatively more complex moral determination such as “Don’t evade the truth by giving in to the judgment of the majority.” (See Ex 23:2: “Neither shall you yield in judgment to the opinion of the majority, to stray from the truth.”) Numerous examples of such moral precepts exist throughout the Old Testament for those need to be taught, “the wiser giving instruction to the less wise.”

Now the nature of this “teaching” can take two forms, according to Thomas. For there are certain moral precepts of the Old Law that are derived as “conclusions from principles.” So, for example, if I am bidden to “honor my father and mother,” and if I am supposed to “do unto others as I would have them to do unto me,” then, by extension, not only am I called upon to honor *my own* father and mother, but also I should respect the fathers and mothers of others, hence “respect the elderly.”

Other precepts of the Old Law are derived, however, as specifications of the general principles to specific circumstances. These precepts involve elements of divine positive law; God has determined what was best for particular circumstances. So, for example, according to Aquinas, the best form of government is “mixed,” which he describes as follows.

the best form of government is in a state or kingdom, where one is given the power to preside over all; while under him are others having governing powers: and yet a government of this kind is shared by all, both because all are eligible to govern, and because the rules are chosen by all. For this is the best form of polity, being partly kingdom, since there is one at the head of all; partly aristocracy, in so far as a number of persons are set in authority; partly democracy, i.e. government by the people, in so far as the rulers can be chosen from the people, and the people have the right to choose their rulers.¹

This is the form of government, says Thomas, which God provided for the Jewish people during their time of wandering in the desert, specifying it to their particular situation.

Such was the form of government established by the Divine Law. For Moses and his successors governed the people in such a way that each of them was ruler over all; so that there was a kind of kingdom. Moreover, seventy-two men were chosen, who were elders in virtue: for it is written (Dt. 1:15): “I took out of your tribes wise and honorable, and appointed them rulers”: so that there was an element of aristocracy. But it was a democratic government

¹ *ST I-II*, q. 105, a. 1.

in so far as the rulers were chosen from all the people; for it is written (Ex. 18:21): “Provide out of all the people wise men,” etc.; and, again, in so far as they were chosen by the people.¹

This is but one example, but there are many others in Aquinas’s text whereby he shows how God provided wisely for the Jewish people. We can learn valuable lessons from these examples, if we read them as Aquinas did – namely, in relation to the basic principles of natural right and natural justice they instantiate. We can learn even from these more particular precepts because they show us how divine wisdom applied the general principles of natural right and natural justice to specific conditions. These general lessons can be learned even though we are not bound to obey the particulars of these precepts: It is not necessary, for example, that the Senate should have exactly seventy-two members, or that we should have only a unicameral legislature instead of the bicameral legislature we currently possess, simply because the conditions of the Jewish people made this particular arrangement apposite at the time.²

Inclinations to Goods Distinctive of Human Nature and Commandments

One question that would likely arise about the material I have just presented on Thomas’s understanding of the relationship between the natural law and the Old Law is how any of that matches up with the famous discussion in *ST I-II*, q. 94, a. 2 about the three “inclinations.” There has been a great deal of discussion of these inclinations – indeed, entire moral systems have been developed out of them – so I beg the reader’s pardon in advance if I presume to dispose of them here in fairly short order. There is obviously more that would need to be said to defend properly the position I am about to propose, but all that can be provided now is simply an overview.

As I mentioned above, Thomas inherited several traditions associated with the natural law. One held that the natural law was simply the order of nature that suffuses the cosmos. This the view many Stoic authors seems to have held.³ Yet another view, expressed most famously by the Roman jurist Ulpian, was that the natural law was “what nature has taught all animals” (*quod natura omnia animalia docuit*), although Ulpian adds in the same place that this sense of the natural law is not “proper” to mankind but is common to all animals (*nam ius istud non humani generis proprium, sed omnium animalium... commune est*).⁴ And Gratian handed

¹ Ibid.

² See Randall B. Smith, “How Faith Perfects Prudence: Thomas Aquinas on the Wisdom of the Old Law and the Gift of Counsel,” in *The Virtuous Life: Thomas Aquinas on the Theological Nature of Moral Virtues* (Leuven: Peeters, 2017), 143-62.

³ A good example can be found in the works of Seneca, but see, in particular, his essay *On Providence*.

⁴ *Digest*, 1.1.1.3: “Ius naturale est, quod natura omnia animalia docuit.” Note,

down the notion (controversial among modern commentators) that the natural law is “what is contained in the law and the gospel” (*quod in lege et evangelio continetur*).¹

In order to produce an ordered hierarchy of these three, Thomas made use of a well-known text from Cicero’s *De officiis* (1.4.11). “First of all,” Cicero had stated, “Nature has endowed every species of living creature with the instinct of self-preservation, of avoiding what seems likely to cause injury to life or limb, and of procuring and providing everything needful for life – food, shelter, and the like.”² This passage corresponds very clear to the similar point in *ST I-II*, q. 94, a. 2: “[I]n man there is first of all an inclination to good in accordance with the nature that he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law.”³ Thomas transformed Cicero’s point, which was about animals, to a deeper *metaphysical* point: *All* substances seek to preserve their own being.

Thus, while on the one hand human beings are united to all existing things in certain ways and are *like* them – we seek to preserve our being – yet even here, human beings do this in their own distinctive ways. As Cicero points out, we need “food, shelter, and the like.” Nature has often provided other animals with instinctual abilities to obtain these things – beavers build dams, birds build nests, and bees make hives – whereas human beings must *learn* to build shelters, gather food, and, unlike other creatures, *make* our clothing because we have not been provided with a tough hide, feathers, scales, or other natural covering to protect us from the elements.

But there should be no mistake here, and it is an important point to remember when we are talking about human nature and human flourishing, that we are *physical* beings, and we need sufficient food, clothing, housing, and shelter. Thus, if one were raising a child to become a mature adult, teaching him how to obtain these essential elements of survival would be foundational.

What else? “A common property of all creatures is also the reproductive

however, that in the original, the term used is “*ius*” not “*lex*.”

¹ *Digest*, D. 1 d.a.c. 1.

² “Principio generi animantium omni est a natura tributum, ut se, vitam corpusque tueatur, declinet ea, quae nocitura videantur, omniaque, quae sint ad vivendum necessaria anquirat et paret, ut pastum, ut latibula, ut alia generis eiusdem.”

³ “Inest enim primo inclinatio homini ad bonum secundum naturam in qua communicat cum omnibus substantiis, prout scilicet quaelibet substantia appetit conservationem sui esse secundum suam naturam. Et secundum hanc inclinationem, pertinent ad legem naturalem ea per quae vita hominis conservatur, et contrarium impeditur.”

instinct,” writes Cicero, “(the purpose of which is the propagation of the species) and also a certain amount of concern for their offspring.”¹ In the *Summa* Thomas says this: “Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, ‘which nature has taught to all animals.’”²

Notice that Thomas has relegated Ulpian’s definition to this second level, not the third, which is “proper” to human beings, which was true in Ulpian’s original text as well. But the point here is that human beings as a species, like other animals, propagate offspring and care for them as they grow. Not all animals do this; snakes, lizards, and fish (among others) do not care for their young as they mature. But like all other mammals, human beings do. This is another important aspect of our nature. We have to *raise* new members of the species; we cannot simply lay them as eggs on the beach and let them hatch the way turtles do.

Moreover, just as young human beings have to be *taught* how to get food, build shelters, and clothe themselves against the weather, they also need to learn how to propagate and rear their young. This too is not entirely “natural” to them. Like other human activities, it must be brought under the consideration of *reason* and the *affections*. Other animals may propagate out of instinct, but we are meant to reproduce and raise children in *love* and with human *understanding, care, and compassion*. Turtle mothers do not dote over their young; they lay their eggs and move on. But human mothers do. This has something to do with the fact the human beings take quite a long time to develop to maturity relative to other species.

“But the most marked difference between man and beast,” says Cicero, is this:

the beast, just as far as it is moved by the senses and with very little perception of past or future, adapts itself to that alone which is present at the moment; while man – because he is endowed with reason, by which he comprehends the chain of consequences, perceives the causes of things, understands the relation of cause to effect and of effect to cause, draws analogies, and connects and associates the present and the future – easily surveys the course of his whole life and makes the necessary preparations for its conduct. Nature likewise by the power of reason associates man with man in the common bonds of speech and life; she implants in him above all, I may say, a strangely tender love for his offspring. She also *prompts men to meet in companies, to form public assemblies and to take part in them themselves*; and she further dictates, as a consequence of this, the effort on man’s part to provide a store of things that minister to his comforts and wants – and not for himself alone,

¹ “Commune item animantium omnium est coniunctionis appetitus procreandi causa et cura quaedam eorum, quae procreata sint.”

² “Secundo inest homini inclinatio ad aliqua magis specialia, secundum naturam in qua communicat cum ceteris animalibus. Et secundum hoc, dicuntur ea esse de lege naturali quae natura omnia animalia docuit, ut est coniunctio maris et feminae, et educatio liberorum, et similia.”

but for his wife and children and the others whom he holds dear and for whom he ought to provide; and this responsibility also stimulates his courage and makes it stronger for the active duties of life. *Above all, the search after truth and its eager pursuit are peculiar to man.* And so, when we have leisure from the demands of business cares, we are eager to see, to hear, to learn something new, and we esteem a desire to know the secrets or wonders of creation as indispensable to a happy life. Thus we come to understand that what is true, simple, and genuine appeals most strongly to a man's nature.¹

Here is Thomas's abbreviated version:

Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.²

Human beings have reason and understanding. They can search for the causes of things. They can eat a certain food today, notice over a long period of time whether it fostered health or, although delicious, just made us fat and lethargic. We can note these things and adapt our behavior accordingly. Indeed, we can gather together with others, ask them to relate *their* experiences, and find out what *they* have learned. We can plan for the future, not only storing up food for the winter, as squirrels do, but storing up provisions for some year when there is a drought or a flood. We can save money to send our children to college or for retirement. Spouses buy life insurance so that, even after they have died, the one who survives will have money to live on.

This passage from Cicero and the abbreviated form found in Aquinas express in essence two famous statements about human nature found in the works of

¹ Emphasis added. "Sed inter hominem et beluam hoc maxime interest, quod haec tantum, quantum sensu movetur, ad id solum, quod adest quodque praesens est se accommodat, paulum admodum sentiens praeteritum aut futurum. Homo autem, quod rationis est particeps, per quam consequentia cernit, causas rerum videt earumque praegressus et quasi antecessiones non ignorat, similitudines comparat rebusque praesentibus adiungit atque adnectit futuras, facile totius vitae cursum videt ad eamque degendam praeparat res necessarias. Eademque natura vi rationis hominem conciliat homini et ad orationis et ad vitae societatem ingeneratque inprimis praecipuum quendam amorem in eos, qui procreati sunt impellitque, ut hominum coetus et celebrationes et esse et a se obiri velit ob easque causas studeat parare ea, quae suppeditent ad cultum et ad victum, nec sibi soli, sed coniugi, liberis, ceterisque quos caros habeat tuerique debeat, quae cura exsuscitat etiam animos et maiores ad rem gerendam facit. Inprimisque hominis est propria veri inquisitio atque investigatio. Itaque cum sumus necessariis negotiis curisque vacui, tum avemus aliquid videre, audire, addiscere cognitionemque rerum aut occultarum aut admirabilium ad beate vivendum necessariam ducimus. Ex quo intellegitur, quod verum, simplex sincerumque sit, id esse naturae hominis aptissimum."

² *ST* I-II, q. 94, a. 2.

Aristotle, although Aristotle is far from the only one in the ancient Greek world to give voice to these judgments. The very first words of Aristotle's *Metaphysics* are these: "All men by nature desire to know." Aristotle goes on to argue that not only do human beings desire to know, they want to know the ultimate *causes* of things.¹ And in the *Politics*, Aristotle famously says that "man is by nature a political animal" (*politikon zoon*).²

Thomas's abbreviation of Cicero's text to emphasize these two inclinations "proper to" human beings that are perfective of a person's nature – to know the truth, especially about the ultimate cause or causes of things and to live in society – help clarify their connection with the two "first and common precepts" of the natural law: namely, to love God with all one's heart, mind, and strength, and to love one's neighbor as oneself.

It should be clear enough how the commandment to love one's neighbor as oneself and the related "second table" commandments serve to nurture and protect the human good of living socially, in the society of beings who deserve our respect for their dignity as we would wish for them to respect ours. But what about our inclination to the good of knowing the truth, especially about the ultimate cause or causes of things?

Without peace among citizens in the *polis*, without the necessary cooperation between the members of a society, without the freedom that comes from trusting that others are telling the truth and not "bearing false witness," the human inclination to know the truth would be frustrated and remain unfulfilled. So too, for a Christian author such as Aquinas, the "highest cause" and the source of all goodness was thought to be found only in God, so failure to open one's heart to that truth and strive after it with all one's mind and strength would also cause one fail to realize the supreme good of the human person, which was fully realized only in union with the First Cause, the Truth Itself, which, as Aquinas says, "all men call God." So along with the provisions to "love one's neighbor as oneself" and "do unto others," we also have been given the commandment to "love God," along with its related commandments not to put anything before the Truth or to mistake anything else for the First Cause, the Highest Truth, and the Source of All Goodness *other than* the One who fits those descriptions in reality. It would be a crucial mistake, for example, to confuse the lying, adulterous, not-altogether-admirable god Zeus depicted in Homer and Hesiod with "the Good" or "the One" Plato refers to in several of his dialogues.³ As is well known, Socrates was unhappy with the association of the two and with the stories of the gods recounted by Homer and Hesiod, especially because

¹ See Aristotle, *Metaphysics* 1.980a and 1.981a.

² Aristotle, *Politics* 1.1253a.

³ See, for example, *Republic* 454c-508e.

of the immorality it inspired or legitimated in human beings.¹

There is a major difference between saying a man like Achilles is “godlike,” when the model one is imitating is Zeus or Ares as opposed to claiming that a person is acting “in the image of likeness of God” when the model is the God who is Goodness Itself, the Creator God of Justice and Love who selflessly sacrificed himself for our salvation. So too it makes a difference when one is bidden to “love your neighbor,” even your enemies, “as God has loved you,” if you believe that God is not merely an unknowing “principle” of Goodness but a conscious, willing God who created us out of an infinite love, who has been provident for us continuously even in our sinfulness, and who emptied himself of his divinity, embracing our humanity, dying for us on a cross. Nor would we wish to overlook the fact that, for Thomas and the Christian tradition of which he is a part, the ultimate end of mankind, that which is the only thing that can satisfy his longing for true beatitude, is union with God, which for Thomas means knowing God in the beatific vision.

Since the two highest goods that are perfective of human nature are (to put it very simply) to know the truth, especially about the ultimate cause or causes of things – or as Thomas says, in his even more abbreviated version, “to know the truth about God” – and to “live in society,” so the most basic principles of the natural law are to “love God” and to “love one’s neighbor as oneself.” And along with these, we also have the ten precepts of the Decalogue God has revealed to us to help guide and protect us.

It is from this understanding of the natural law that Thomas (and others before him, back to Gratian) can claim that the natural law is, as it were, “contained in the law and the Gospel.” The natural law is contained in the Old Law, primarily in the two commandments to love God and neighbor and the Ten Commandments derived from them, but also in other, related moral precepts. On Thomas’s account, the commandments are *based on* and *grounded in* human nature, but they do not by themselves cover the entire spectrum of natural justice, nor are they meant to. So, for example, if we want to know how to treat animals, or if we want to know the best form of government (as we saw above), then we need to look beyond the Ten Commandments to the judicial precepts of the Old Law. A host of examples can be found in Thomas’s discussion of the “causes” of the ceremonial and judicial precepts, which serve as what I have described elsewhere as a “textbook for prudence.”² The Old Law, if it is understood properly in relation to its most basic

¹ See, for example, *Republic* 379a–380c.

² See my article, “How Faith Perfect Prudence.” And for a discussion of how widespread this interest in the Old Law was at Paris in the thirteenth century, likely due to the influence of Maimonides’ *Guide of the Perplexed*, see Beryl Smalley, “Auvergne, La Rochelle, and Aquinas on the Old Law,” in *Commemorative Studies*, vol. 2. Cf. also Maimonides, *Guide of the Perplexed*, esp. bk. 3, chaps. 30-50.

principles, can *teach* us, as St. Paul says, as a *pedagogue*, a teacher or tutor (cf. Gal 3:24).

And yet prudence is not a matter of merely following the law. Nor is it a matter of merely knowing certain universal principles or rules, although this is an important first step. Understanding is one of the integral parts of prudence.¹ But prudence requires much more. For Thomas, it requires things like memory, quick-wittedness, and the ability to size up a situation. But above all, the more we know about the natures of the things or persons we are dealing with, the more we know how they react to different situations of cause-and-effect, the more likely we will be to make judgments that are wise, prudent, and just.

Anyone who thinks we do all this and do it well habitually *without* the teaching of others, the constant support of a community of virtue, and the help of God's grace has not only misunderstood Thomas, he has greatly overestimated the capacities of human nature. That person should read the section in the *Summa* on the New Law and our need for God's grace, by which "charity is spread abroad in our hearts." There, he or she will find that, along with the law to *teach* us the natural law, we need the grace of the Gospel to *fulfill* it.

The Need for the New Law to Fulfill the Natural Law

We have discussed how the natural law is "contained in" the law. What about "the gospel"? As Thomas says in the prologue to those famous questions on law, after God has "instructed us by means of the law," it was still necessary for him to "assist us by means of His grace."² After the teaching provided by the Old Law, we still need the New Law, the law of grace, by which "charity is spread abroad in our hearts."³

As we have seen, the "natural law has been effaced by sin" – not completely but in substantial and critical ways. In this regard, there is a difference between our two major faculties, intellect and will. With regard to the first, our *knowledge* of the natural law has not been completely eradicated, as Thomas makes clear in many places. We still know, for example, what he calls "the first and common precepts of the natural law" such as to "Love your neighbor as yourself" and "Do unto others as you would have them do unto you." These cannot be abolished from the heart of man. As to the secondary precepts, such as "Do not lie" or "Do not steal," these can in some instances be abolished from men's hearts, claims Thomas, but generally only due to "vicious customs and corrupt habits, as among some, theft, and even unnatural vices...were not considered sinful."⁴

¹ See *ST* II-II, q. 49, a. 2.

² *ST* I-II, q. 90, prol.

³ *ST* I-II, q. 106, a. 1.

⁴ *ST* I-II, q. 94, a. 6.

What *has* been effaced substantially since the fall, however, is the ability of our will to do the good that we know. This is St. Paul's point in Romans 7:19: "for the good which I would do, I do not: but the evil which I would not, that I do." It is Thomas's point too. For we must recall, as we saw above, that there are *two* stages of remediation that come through the divine law. On the one hand, we are "instructed by means of God's law" – that is, by the written precepts of the Old Law that were given as a "remedy for human ignorance."¹

But after man had been "instructed by the Law," it was still necessary that he should be "assisted by God's grace": Because "after man had been instructed by the Law, his pride was convinced of his weakness, through his still being unable to fulfill what he knew."² For the natural law to be fulfilled completely, then, it is not enough for those precepts to be written, as it were, merely on our minds, they must be, to use the language of the Bible, written once again "on our hearts." And that is the role of the New Law, the law of grace, by which, as Thomas says repeatedly, quoting Romans 5:5, "charity is spread abroad in our hearts."³ And so too Thomas quotes St. Augustine, saying that "as the law of deeds was written on tables of stone, so is the law of faith inscribed on the hearts of the faithful"; and "What else are the Divine laws written by God Himself on our hearts, but the very presence of His Holy Spirit?"⁴

Thus, we must not treat the natural law as if it were simply a moral calculus, the way people often treat deontological or utilitarian ethics. We must not forget that the "teaching" of the natural law – even the divinely authorized teaching of the natural law such as is found in the moral precepts of the Old Law – is merely the first part of a twofold moral remediation. Thus after God "instructs us by means of His Law," it remains for him to "assist us by means of His grace." The second and truly essential step in restoring in us the "law written on our hearts" at our creation, but effaced by our own sin, comes with the advent of the new covenant when, as the prophet Jeremiah says, God will "give His laws into our minds and in our hearts will He write them" and when, as the prophet Ezekiel promised "God will give us a new heart and a new spirit, spreading charity abroad in our hearts, so that we may walk in the Lord's commandments and keep them" (Ezek 36:26-7). For we know that we are children of God, as the Apostle John tells us, when we love God and keep his commandments, and when keeping his commandments is not burdensome (1 Jn 5:1-3). Or as Thomas puts much the same thing:

Now [fulfilling the Law] is very difficult to a man without virtue: thus even the Philosopher

¹ *ST* I-II, q. 98, a. 6.

² *Ibid.*

³ See, for example, *ST* I-II, a. 107, a. 1, ad 2.

⁴ *ST* I-II, q. 106, a. 1. Cf. Augustine, *On the Spirit and the Letter*, 24 and 21.

states (Ethic. v, 9) that it is easy to do what a righteous man does; but that to do it in the same way, viz. with pleasure and promptitude, is difficult to a man who is not righteous. Accordingly we read also (1 Jn. 5:3) that “His commandments are not heavy”: which words Augustine expounds by saying that “they are not heavy to the man who loves; whereas they are a burden to him that loves not.”¹

It is worth noting the association Thomas makes here between the “pleasure and promptitude” in doing the righteous act that a man has when he possesses the virtue of justice and something similar that happens when acts are animated by love. Recall that at the heart of the Ten Commandments were the two commandments to love God and neighbor. Thus we are to see the commandments as more particular expressions of the fundamental obligations I owe to others *in love*. That is to say, if I love my grandmother, I cannot steal from her. If I love my mother, I cannot dishonor her. If I love my friend, I cannot lie to him. If I love my wife, I cannot harm her. Indeed, one might say that these are not usually experienced as “obligations” the way we often “feel” obligated to do something. When I love my grandmother, I wouldn’t even consider stealing from her. If I love my spouse, “harming” her in any way would be the farthest thing from my mind. I would never even consider it. Quite frankly, it would seem the only “logical” or “natural” choice. Harming my wife and loving her are simply contradictory, similar to the way that saying “All men are mortal” and “No men are mortal” are simply contradictory. I don’t experience the precept “Don’t harm your wife” as *burdensome*, the way I experience “Wash and dry all the dishes before you go to bed” to be burdensome.

Just as the precepts of the law should be seen as particular expressions of the fundamental obligations to love God and love my neighbor as myself, so too we should understand that, to fulfill the law in the spirit in which it was given by God – they are commandments given in love to help us become once more the loving creatures God made us to be, that is to say, “in His image and likeness” – we are called upon to act animated *by love*.² The law, as St. Augustine says, must be written not only in our minds but also in our hearts. And it must also eventually be stamped on our emotions and in our very bodies.

Two questions present themselves. First, how are we to become loving, or *more* loving? The answer for Christians has to do with opening ourselves up to and cooperating with God’s grace. The second question, however, concerns how we can transform ourselves – intellect, will, appetites, emotions, and body – in accord with the respect for the dignity of others we owe. The answer here, for Thomas, brings us to a consideration of the *virtues*.

¹ *ST* I-II, q. 107, a. 4.

² For a fuller discussion, see Randall B. Smith, “Natural Law and Grace: How Charity Perfects the Natural Law,” in *Faith, Hope, and Love: Thomas Aquinas on Living by the Theological Virtues*, ed. H. Goris et al. (Leuven: Peeters, 2015), 233-57.

Virtues

Consider that important text from book 1 of Cicero's *De officiis* that Thomas used in the famous text on the several human "inclinations" in *ST I-II*, q. 94, a. 2. At the conclusion of that passage in Cicero's *De officiis* 1.10-14, he writes that "[i]t is from these elements that is forged and fashioned that moral goodness which we seek" (*Quibus ex rebus conflatur et efficitur id, quod quaerimus, honestum*).¹ And then at the beginning of the very next section, he announces, "You see here...the very form and as it were the face of moral goodness" (*Formam quidem ipsam...et tamquam faciem honesti vides*).²

What has been translated here as "moral goodness" is the Latin *honestum*, which in its original context does not mean merely "honest." Cicero and his Roman contemporaries would often speak of the *bonum honestum*, which is not the "honest good" but, rather, the goodness that is worth choosing for its own sake: the noble good, the good of the noble person, as opposed to the *bonum utile* or "useful good," the good that is merely "advantageous" to the doer. In the *Digest* of Justinian, a text from Ulpian stated that there were three precepts of *ius*: "to live honorably (*honeste vivere*), not to harm another (*alterum non laedere*), and to render to each his own (*suum cuique tribuere*)."³

So, having described the basic elements of human nature, what then does Cicero call the "form" of this "moral goodness" (*honestum*)? He says:

[A]ll that is morally right (*honestum*) rises from some one of four sources: it is concerned either (1) with the full perception and intelligent development of the true; or (2) with the conservation of organized society, with rendering to every man his due (*tribuendoque suum cuique*), and with the faithful discharge of obligations assumed; or (3) with the greatness and strength of a noble and invincible spirit; or (4) with the orderliness and moderation of everything that is said and done, wherein consist temperance and self-control. Although these four are connected and interwoven, still it is in each one considered singly that certain definite kinds of moral duties (*certa officiorum genera*) have their origin.⁴

Clearly we have here a description of the four cardinal virtues: (1) wisdom (or prudence), (2) justice, (3) courage, and (4) temperance.

And so too we find in Thomas's *Summa* that, after providing a general account of the law (in *ST I-II*, qq. 90-97), he focuses special attention on the Old Law (qq. 98-105), the New Law (qq. 106-08), and grace (qq. 109-14) and then proceeds in the *secunda secundae* to give a more detailed account of, first, the "theological virtues" of faith, hope, and love, and then of the more specific obligations related to the four

¹ Cicero, *De officiis* 1.14.

² Cicero, *De officiis* 1.15.

³ *Digest* 1.1.10.

⁴ Cicero, *De officiis* 1.15.

cardinal virtues of prudence, justice, temperance, and fortitude. These questions are too often left unread, as though Thomas's moral theory ends with his general consideration of the natural law in *ST* I-II, qq. 90-97. Quite the contrary, what Thomas says in the prologue to the *secunda secundae* is that "after a general consideration [*commune considerationem*] of virtues, vices, and other things pertaining to moral matters," which is what he presented in the *prima secundae*, "it is necessary to consider each of them [the virtues and vices] in particular [*singula in speciali*]. For universal moral discourse [*sermones...morales universal*] is less useful, since actions are singulars [*actiones in particularibus sunt*]." ¹ This comment clearly suggests the relative importance of this later material on the individual virtues.

Although some contemporary scholars treat Thomas as though he was a "natural law ethicist" while others treat him as though he was a "virtue ethicist," the truth is, he was both, and this is made plain by the fact that both the natural law ethicists and the virtue ethicists usually trace the origins of their school of thought back to Aquinas. Thomas united both traditions, just as Cicero and Aristotle had done before him, within a context provided by Christian theological reflection.

I will not enter here into the complicated debate that has arisen in recent years about whether in his discussion of the cardinal virtues in the *secunda secundae* Thomas treats them as infused cardinal virtues or acquired virtues. ² As Thomas makes clear, charity is the "form" of the virtues (*caritatem esse formam virtutum*), ³ and therefore without charity there is no true virtue (*Ergo sine caritate vera virtus esse non potest*). ⁴

Given what we have seen concerning the natural law, however, we might presumptively say something like this. Just as the New Law does not do away with the Old Law but, rather, perfects and completes what is begun by the Old Law, in accord with Thomas's consistent principles that "grace does not violate nature but perfects it," so too the infusion of charity into the cardinal virtues does not violate the nature of the virtues but completes and perfects them. The problem, of course, is that, just as I as a fallen creature could obey the moral precepts of the Old Law merely out of *fear* or out of a desire to justify myself, and not "freely," out of a deep concern for the dignity and well-being of the person involved, so too I might inculcate in myself a certain kind of discipline that would *resemble* a virtue but not be a "true virtue." I might, for example, be like the sort of Roman about whom Augustine complained in *The City of God*, who was admirably courageous in a

¹ *ST* II-II, q. 1, prol.

² For a good overview, see the articles on this topic in *The Virtuous Life: Thomas Aquinas on the Theological Nature of Moral Virtues* (Leuven: Peeters, 2017).

³ *ST* II-II, q. 23, a. 8, sc.

⁴ *ST* II-II, q. 23, a. 7, sc.

certain sense (braved danger for the sake of the city) but did so for personal glory, not necessarily out of a selfless love for his fellow citizens.

An important caveat we might wish to add, however, is that God can choose to infuse his grace on anyone. So just as it is impossible for us to judge the interior motivations of a person when it comes to the law, so also we often will not be able to discern from our external perspective whether a person is motivated by the gift of charity spread abroad in his or her heart, or something else. All we can say is that, *if one is* motivated by selfless charity, that selfless charity must have been a gift of God's grace, made possible by the sacrifice of Christ on the cross, his resurrection, ascension, and sending of the Holy Spirit, whether the agent doing the act is aware of the Giver of the gift or not. We needn't deny the existence of such loving acts outside of the Christian fold, but we also cannot really *know* in any particular case which virtues are animated by God's gift of selfless charity and which are not. And this is true of both Christians and non-Christians alike. Only God can truly know, although we *might* be able to know (as in the case of a canonized "saint") if God revealed this information to us.

Reading in Context, Understanding Connections, Avoiding Unfortunate Mistakes

It is important to understand Thomas's thought on both the natural law and the virtues within his historical and intellectual context if we are to learn from Thomas what he has to teach us. As Pope John Paul II has rightly noted, "To understand a doctrine from the past correctly, it is necessary to set it within its proper historical and cultural context."¹ If we fail to do so, we make ourselves subject to a series of unfortunate misunderstandings and mistakes.

We might, for example, mistake what Thomas means by respect for a "right" (*ius*) within the context of concern for the common good with the social contractarian notion of a "right" (usually based on the preservation of life and property) or with the post-Enlightenment notion of a universal, subjective "right" that "trumps" social benefits and must be respected apart from all but the most egregious threats to the common good.

So too we might be tempted to think of "justice" and "right" primarily or solely in terms of commutative justice in relations between individuals, forgetting almost entirely the categories (and different character of) distributive justice and general justice, both of which force a greater concern for the common good.

Lacking the proper historical and textual context, we might be tempted to make the natural law into a moral calculus not unlike the universal principles of Kant's categorical imperative. Prudence, on this view, would be understood as little more than applying the general principles of law to specific circumstances rather than

¹ John Paul II, *Fides et ratio*, 87.

taking prudence to be a much more finely honed instrument that takes into account social roles, social circumstances, past experiences, and possible future outcomes. Prudence on the authentic Thomistic view is something more like a skill requiring not only a firm understanding of the fundamental principles, but also memory, docility, shrewdness, reason, foresight, and the proper amount of both circumspection, and caution.

By the same token, we must also not imagine we can discuss the role of prudence in applying general principles to specific cases without being guided by the fundamental exceptionless norms of the Ten Commandments and the foundational precepts to love God and neighbor.

We would also, if we were guided by Aquinas, not imagine that we can do “ethics” without concern for the fall and its consequences on human nature, both our intellect and our will. We would not imagine that the natural law or the virtues could be taken as stand-alone ethical systems that operate without a proper understanding of human nature and without the help of divine revelation and God’s grace.

To these, we could and should add a long list of other potential problems that arise from not appreciating the importance of a proper understanding of the divine order within the cosmos, and over misunderstandings about the relationship between God’s permissive will and its relation to human free choices, to name but two. These are topics that would need to be treated. There is simply no space to treat them properly here.

Summary

What we can gather from Thomas’s writings can perhaps be summarized this way. We become aware, either through reason or revelation, of certain obligations and responsibilities that are incumbent upon us by nature (that is to say, through a consideration of the nature of things and their natural ends) or by custom and convention. These objective obligations we have to others because of the nature of our relationship to them within the context of the common good, Thomas would characterize with the term *ius* (singular) or *iura* (plural).

We discipline and train ourselves to discern these obligations rightly, judge properly between them, and act accordingly by developing the virtues of *prudence* and *justice*.¹ Fortitude and temperance are also important, but they are more self-

¹ We will not labor to disentangle these two virtues right at the moment, as would otherwise be needed. For Thomas, prudence is the “form” of the other virtues. All the other cardinal virtues require a prudent judgment for them to be virtues. But if the prudent judgment issues in a decision about the proper balance in matters of food and drink, this would be prudence informing temperance. If the prudent judgment issues in a decision about the proper mean between the extremes of cowardice and rashness, this would be prudence informing fortitude. And if prudence issues in a judgment about one’s obligations and duties to others, this would be prudence informing justice. More would need to be said

regulating than other-regarding. It is true, however, that a person will often fail to be just because he or she lacks the fortitude to stand up to adversity or danger, or because he or she is unwilling to lose access to certain physical benefits or pleasures. Hence the need for fortitude and temperance.

Judging correctly between my various obligations to others and to the common good and fulfilling them properly – in the right way, *freely*, and out of a concern for the objective dignity and worth of others – is the means by which we realize our flourishing as the kind of creatures God has made us to be. Made in the image of God, each individual is possessed of an infinite dignity and value, and so cannot be instrumentalized toward the end of achieving some other valued goal or collection of values. Made in the image of the Triune God, we are also fundamentally *social* and *relational*. Thus, if we are to live well in community with others and continue to be able to pursue truth to the highest degree, we must perfect our faculties of intellect and will by means of the virtues – most prominently prudence, justice, temperance, and fortitude.

Since our integral nature has been damaged by sin, in our fallen state our intellects are often blinded to what objectively we owe to others and what we therefore *ought* to do. God, therefore, out of his love for us, has revealed the most fundamental obligations we have toward him and others in the Ten Commandments of the Mosaic Law. God, who is our Creator, and “who alone is good, knows perfectly what is good for man, and by virtue of his very love proposes this good to man in the commandments.”¹ But after God has taught our intellects by means of his law, we often find ourselves still incapable of fulfilling the law fully, in such a way as to achieve our true human flourishing. And it is for this reason that we need God’s grace, by which charity is spread abroad in our hearts.

So too, on this account, the virtues must be animated by this same selfless love of *charity*, if they are to free us from sin and make us truly capable of perceiving the truth – the truth about the love of God for the world, the truth about the dignity of each human person, and the more particular truths we need to know to give to others what they need, what is their “due,” treating them with the respect they are owed “by right” – according to their intrinsic dignity and relation with us in the context of the common good.

Are “right” or “justice” *derived from* law? No. They are the preconditions of law. Hence we say that the human law must be in accord with and not be in contradiction to the basic principles of the natural law. But of course we are obligations to do much more “in justice” than merely follow the law, especially

in this regard, especially about the relationship between the judgments of reason and the obedience (or lack thereof) of the will. But that is a much more complicated discussion.

¹ Cf. John Paul II, *Veritatis splendor*, 35.

since the law is framed of necessity in terms of negative prohibitions.¹ Not everything we owe to others can be contained within the general statements of the natural law found in the Ten Commandments. These precepts are a *sine qua non*, a beginning, a starting point that informs our prudence. But it is meant to guide our prudence, not replace it.

Is prudence nothing more than an application of these general principles? No. These principles are simply too general to cover all cases. They are helpful and apply fairly easily in a good number of situations we encounter from day to day. But life is often more complicated. Thus we need to *learn more* from the Old Law than merely the basic principles.

We need to learn more about nature and human nature. We need to strengthen our ability to judge wisely in prudence by developing the related, integral virtues of memory, understanding, reason, shrewdness, foresight, circumspection, caution, as well as my ability to be taught and/or coached by others with great wisdom and experience. On this view, developing prudence takes both experience and practice, watching what others who are wise and just and loving do, seeing how certain acts result in certain consequences, noticing how even though my goal was x, I did not achieve that goal. Doing x brought about z instead of y. Thus, I need to modify my approach. But I cannot lie, steal, or kill. My modifications cannot involve a violation of any of those fundamental principles. Even so, I still have fairly wide breadth of possibilities.

And yet, it is important to note that, apart from clear violations of these basic principles contained in the Ten Commandments, people of good will can disagree about various ways to achieve an end. There will be people who are wiser and more prudent than others in various areas, but even among the wise there may be disagreements. Which is why we need wise leaders to bring various groups together, see the pros and cons, and make *one judgment* based on the best appraisal of the collective wisdom of the *polis* for the common good. This is why wise political leadership becomes so essential.²

The sort of selfless love that we need to fulfill the commandments and that is meant to animate the virtues is the kind Christ showed on the cross; it is not something of which we are capable on our own, however, especially in our fallen state with corrupted natures. So God must give that virtue to us as a gift of his grace

¹ Cf. *ibid.*, 52: “[T]he fact that only the negative commandments oblige always and under all circumstances does not mean that in the moral life prohibitions are more important than the obligation to do good indicated by the positive commandments. The reason is this: the commandment of love of God and neighbor does not have in its dynamic any higher limit, but it does have a lower limit, beneath which the commandment is broken.”

² For a good discussion, see Yves Simon, *A General Theory of Authority* (Notre Dame: University of Notre Dame Press, 1962).

– a gift we must act upon, but that is unmerited nonetheless. Thomas associates this grace with what he calls “the New Law,” the law of love, the law instilled in us by God’s own Holy Spirit, distinguishing it as the necessary second part of the “divine law,” along with “the Old Law.”¹

Allow me to conclude, then, with several passages from Pope John Paul II’s encyclical *Veritatis splendor*, each of which helps sum up the substance and goal of the moral life. Though these passages were not written by Aquinas, they communicate what I take to be an accurate account of what lies at the heart of Thomistic moral theology and what animates its spirit. In this regard, they serve as a fitting conclusion to our discussion.

The Christian, thanks to God’s Revelation and to faith, is aware of the “newness” which characterizes the morality of his actions: these actions are called to show either consistency or inconsistency with that dignity and vocation which have been bestowed on him by grace. In Jesus Christ and in his Spirit, the Christian is a “new creation,” a child of God; by his actions he shows his likeness or unlikeness to the image of the Son who is the first-born among many brethren (cf. *Rom* 8:29), he lives out his fidelity or infidelity to the gift of the Spirit, and he opens or closes himself to eternal life, to the communion of vision, love and happiness with God the Father, Son and Holy Spirit.²

Furthermore, Jesus reveals by his whole life, and not only by his words, that freedom is acquired in *love*, that is, in the *gift of self*. The one who says: “Greater love has no man than this, that a man lay down his life for his friends” (*Jn* 15:13), freely goes out to meet his Passion (cf. *Mt* 26:46), and in obedience to the Father gives his life on the Cross for all men (cf. *Phil* 2:6-11). Contemplation of Jesus Crucified is thus the highroad which the Church must tread every day if she wishes to understand the full meaning of freedom: the gift of self in *service to God and one’s brethren*. Communion with the Crucified and Risen Lord is the never-ending source from which the Church draws unceasingly in order to live in freedom, to give of herself and to serve.³

It is in the saving Cross of Jesus, in the gift of the Holy Spirit, in the Sacraments which flow forth from the pierced side of the Redeemer (cf. *Jn* 19:34), that believers find the grace and the strength always to keep God’s holy law, even amid the gravest of hardships. As Saint Andrew of Crete observes, the law itself “was enlivened by grace and made to serve it in a harmonious and fruitful combination.

¹ The New Law and man’s freedom are, on this view, not mutually contradictory but complementary. God’s grace frees man’s will from its slavery to sin and elevates it to greater love of God and neighbor. It would be odd for someone to complain, “Yes, I did that good deed for my mother, but I did it out of a deep and profound love for her, so I didn’t do it freely.”

² John Paul II, *Veritatis splendor*, 73.

³ John Paul II, *Veritatis splendor*, 87.

Each element preserved its characteristics without change or confusion. In a divine manner, he turned what could be burdensome and tyrannical into what is easy to bear and a source of freedom.”... This is what is at stake: the *reality* of Christ’s redemption. *Christ has redeemed us!* This means that he has given us the possibility of realizing *the entire* truth of our being; he has set our freedom free from the *domination* of concupiscence.¹

No human sin can erase the mercy of God, or prevent him from unleashing all his triumphant power, if we only call upon him. Indeed, sin itself makes even more radiant the love of the Father who, in order to ransom a slave, sacrificed his Son: his mercy towards us is Redemption. This mercy reaches its fullness in the gift of the Spirit who bestows new life and demands that it be lived.²

¹ John Paul II, *Veritatis splendor*, 103.

² John Paul II, *Veritatis splendor*, 118. I am grateful to Michel Bastit for reading an earlier draft of this article and for his generous and wise comments.

In Memoriam

Jude Patrick Dougherty (1930-2021)

*Elizabeth C. Shaw**

BY NOW MUCH of the readership of this *Quarterly* is aware of the recent death of Dr. Jude P. Dougherty, dean emeritus of the School of Philosophy at the Catholic University of America. Jude died at his home in Potomac, Maryland, on March 6, 2021. His wife, Patricia, passed away just three months earlier, in December 2020. Jude and Patricia had four sons and ten grandchildren.

Jude earned a bachelor's degree from Catholic University in 1954 and an M.A. the following year. His master's thesis was entitled "A Critique of Benedetto Croce's Theory of Reality according to the Principles of St. Thomas Aquinas." He wrote a dissertation titled "Recent American Naturalism," on the thought of John Dewey and his school, and received a Ph.D. from Catholic University in 1960. Jude taught at Marquette University and Bellarmine College before returning to Catholic University in 1966. He was appointed dean of the School of Philosophy in 1967 and remained in that position for over thirty years. He spent 1974-75 as a visiting professor at Katholieke Universiteit Leuven in Belgium. At Jude's invitation, his friend and fellow philosopher Cardinal Karol Wojtyła visited Washington and lectured at Catholic University in July 1976.

Among the earliest members of the Fellowship of Catholic Scholars, Jude also served as its executive secretary and treasurer from 1994 to 1997. In 1994 the Fellowship bestowed on him the Cardinal Wright Award for outstanding service to the Church. Over the years his essays and reviews regularly appeared in the pages of this *Quarterly*. He was an esteemed colleague, friend, and mentor to countless members of the Fellowship. Many, I am sure, also knew him through his association, often in leadership positions, with other professional organizations such as the American Catholic Philosophical Association, the Society for Philosophy of Religion, the Metaphysical Society of America, the American Philosophical Association, the European Academy of Sciences and Arts, and the Pontifical Academy of St. Thomas Aquinas. It should come as no surprise that the list of his

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prestigious honors is quite long.

I came to know Jude well after he appointed me to the staff of *The Review of Metaphysics*, where his tenure as editor-in-chief lasted an astounding forty-four years. During that time the journal published over 900 articles, a testament to Jude's profound impact on the field of professional philosophy. The *Review* itself demonstrates his breadth of competence and keen eye for excellence in scholarship across the history of philosophy and all the branches of the discipline, including metaphysics, philosophy of science, philosophy of religion, hermeneutics, ethics, phenomenology, aesthetics, epistemology, and political philosophy.

It is no coincidence that Jude's own publications were similarly wide-ranging. In addition to hundreds of shorter pieces and various commentaries, he authored books on *The Theological Directions of the Ecumenical Movement* (1964), *The Impact of Vatican II* (1966), *The Good Life and Its Pursuit* (1984), *Western Creed, Western Identity* (2000), *The Logic of Religion* (2002), *Jacques Maritain: An Intellectual Profile* (2003), *Wretched Aristotle: Using the Past to Rescue the Future* (2009), *The Nature of Scientific Explanation* (2013), and *Interpretations: Reading the Present in Light of the Past* (2018).

In remarks at a luncheon celebration of his 75th birthday, Jude cited Cambridge philosopher G.E. Moore's statement that "the most important and interesting thing which philosophers have tried to do is no less than this; namely: To give a general description of the *whole* of the Universe, mentioning all the most important kinds of things which we know to be in it."¹ It seems fair to say that this capacious view of the field sums up Jude's own approach to and engagement in the philosophical enterprise.

By his example of scholarship and personal virtue Jude Dougherty has established a legacy for which we owe thanks to God. We pray, and are confident, that it will bear much fruit for years to come in the lives of his numerous friends and colleagues.

¹ G. E. Moore, *Some Main Problems of Philosophy* (London: George Allen & Unwin, 1953), 1.

Three Philosophers

Russell Shaw

NOT UNLIKE PERSISTENT SMOG, intellectual confusion has been a deadening presence in Catholicism in the years since Vatican Council II. Yet here and there amid the encircling mists of bad arguments and lame analogies, a small but significant body of Catholic intellectuals has stood firm in defense of clear thinking and good sense.

For me at least, three stand out – Ralph McInerny, Germain Grisez, and Jude Dougherty. The news that Dougherty, longtime dean of the School of Philosophy at the Catholic University of America, had died in early March moves me to pay tribute to them for their notable contributions to the Church they loved.

McInerny, who died in 2010, was no doubt the best known of them for having written the *Father Dowling* mysteries that provided the basis for a popular TV series. But along with writing fiction, McInerny, a prodigious worker, also produced a score of serious books on philosophical and religious topics while providing a consistent voice of courageous clarity in troubled times during a long career as a philosophy professor at Notre Dame. (He also had a finely honed sense of humor, as suggested by the subtitle of his introduction to St. Thomas Aquinas: *A Handbook for Peeping Thomists*.)

Grisez, a good friend with whom I was privileged to collaborate on several writing projects, died in 2018. He had begun his teaching career at Georgetown but spent his later years at Mount Saint Mary's University, where he taught seminarians and wrote his brilliant three-volume magnum opus of moral theology, *The Way of the Lord Jesus*. His contributions to the Catechism of the Catholic Church, though not publicly known, were enormous. A deeply kind man to whose generosity many of his former students bear witness, he nevertheless was ferocious in spearing sloppy thinking from whatever source, no matter how highly placed.

Jude Dougherty was linked to Catholic University almost his entire adult life, first as an undergraduate and then a graduate student, then, starting in 1966, as a professor of philosophy, and finally as the first lay dean of the university's School of Philosophy, a position he held for over thirty years.

Like McInerny and Grisez, Dougherty wrote many books (for example, *The Logic of Religion* and *The Nature of Scientific Explanation*). But his most significant contribution was to keep the School of Philosophy a trustworthy exponent of the best in the Catholic intellectual tradition at a time when the forces of dissent seemed to have seized control of the university. Today, of course, under leadership of its

current president, John Garvey, Catholic University is a solidly Catholic institution embodying high standards of excellence. But by no means was this always so, and Dougherty's grit and integrity were indispensable back then.

McInerny and Dougherty were both uncompromising Thomists who embraced the thought of St. Thomas Aquinas and labored to transmit it to new generations. Grisez readily admitted the crucial role of St. Thomas in shaping his own thinking, though eventually he concluded he was not himself a Thomist – a judgment borne out by the “New Natural Law Theory” that he and philosopher John Finnis created and that now plays a key part in contemporary ethical thinking.

It would have been worth the price of admission to be present if the three men, who knew one another well, had ever come together to argue about Thomism and share views on the future of Catholic higher education. Absent that, we have the important intellectual legacies that each left. And that is very much

Book Reviews

Douglas Farrow. *Theological Negotiations: Proposals in Soteriology and Anthropology*. Baker Publications, 2018. 288 pp. \$38.00.

Reviewed by Paul Kucharski, Theological College, Washington, DC

In the preface to his *Theological Negotiations*, Douglas Farrow admits that he does not consider himself a “proper scholar of any of the major figures who appear here,” thinkers like Anselm, Aquinas, Luther, and Calvin (to name but a few). The essays comprising his book, rather, are “just another case of someone learning as they write” (viii). What he hopes to learn about is the dialectic of nature and grace as it pertains to our understanding of the Church, the sacraments, and salvation, and what he hopes to contribute is a “fresh way of seeing the differences” between Catholic and Protestant approaches in these matters and thereby an advancement in ecumenical theology.

As a reviewer, I’ll make a similar admission – apart from Aquinas (and even here many would quibble), I am not a proper scholar of any of the major figures who appear in Farrow’s book. Some of the theologians he discusses, like James Torrance, for example, I was hearing about for the first time. I am a philosopher by training and, though primarily a work of theology, there is much of philosophical interest in *Theological Negotiations*. Echoing Farrow, then, what follows is a case of someone learning as he reviews, and I’ll start by saying that there is much to learn from in these wide-ranging and stimulating essays.

In chapter 1 Farrow begins with a general question about the relationship between philosophy and theology. He takes as his interlocutors Aquinas, Kant, and Barth. Kant and Barth both reject the possibility of philosophical or natural theology. As for revealed theology, Kant values it solely as a means for moral improvement, while Barth views it as the only theology worthy of the name. Aquinas, however, takes revealed theology to be the completion and elevation of natural theology, which remains a subordinate yet legitimate science. This is so, Farrow argues, because Aquinas recognizes that if God is the author of both our natural capacities and our supernatural end, then the former should allow for genuine, albeit limited, knowledge of God. This leads to chapter 2’s discussion of what Aquinas has to say on the relation between our natural desire for happiness and our supernatural desire for the *visio Dei*. Here Farrow is highly critical of Aquinas’s “angelomorphism.” In sum, Farrow thinks that Aquinas paints a rather inhuman picture of heaven, one that turns a man into a “seraph with (unused) muscle and bone” (56). He has in mind the lack of any mention in Aquinas’s treatment of

heaven of things like plants and animals and anything resembling an active or political life among the beatified. This shows, Farrow thinks, that Aquinas inadvertently sets grace against nature, something he could have avoided had he recognized that the Incarnation elevated human nature above angelic nature, and reflected more deeply on the role that Christ, and specifically Christ's humanity, will play in the new creation that is heaven.

In chapter 3 Farrow delves into questions surrounding justification and sanctification, using Luther's *The Freedom of a Christian* as a springboard. After a helpful overview of both Luther's psychological struggles and theological concerns, Farrow considers Luther's position that justification occurs by faith alone, prior to good works and sanctification, and that "it is precisely faith that makes [a good man] good and enables him to do good" (74). Against this, Farrow supports Trent's stance that sanctification both follows and contributes to justification, because the more one grows in holiness the more one participates in the life of Christ and thus the more one is justified. Moreover, he argues, faith apart from hope and charity, and without some philosophical consideration of human nature, offers no guidelines/measurements for growth in sanctity. That being said, Farrow is sympathetic with Luther's concerns over an understanding of penance that would suggest "horse-trading" with God or buying heaven with good works. He thinks that the Church has been unduly influenced by certain scholastics who focus too much on the punitive rather than remedial character of penance, and too little on the manner in which penance draws its efficacy from its participation in Christ's redemptive sacrifice. This tendency, in Farrow's view, risks the creation of more figures like Luther. He develops this line of thinking in chapter 4, where he expands upon and defends Anselm's notion that "sin requires either payment or punishment and that payment averts punishment" (105). This position stands in contrast to Aquinas, who thinks that satisfaction for sin occurs through punishment. And so, according to Farrow, the expiation for sin takes place through Christ's free offering of himself to the Father rather than through the particular punishments inflicted upon Christ, and the efficacy of our penances in this life and our potential suffering in purgatory in the next lies in their participation in Christ's offering, not in their purported proportionality to whatever sins we have committed.

Shifting to a focus on the sacraments, Farrow begins chapter 5 by observing that human beings are "defined naturally by a vocation to worship God and supernaturally by a vocation to commune with God" (127). With James Torrance, he affirms that for the Christian worship must be grounded in Christ, the model of worship, or one risks falling into "doxological Pelagianism." Against Torrance Farrow argues that if we follow Luther in rejecting the doctrine of transubstantiation, then the Eucharist is inevitably grounded in our actions and offerings rather than in Christ's, and thus becomes an instance of doxological Pelagianism. This

leads in chapter 6 to a consideration of how best to interpret the doctrine of transubstantiation. Farrow recites some common objections to Aquinas's views, in particular to his view that the accidents of the Eucharist are "free-floating," that is, inhere in neither the bread nor the wine, which have ceased to exist, nor in the person of Christ. He proposes, as an alternative, that because the Eucharist is our participation in the new creation or heavenly life as such, the outcome of the conversion of bread and wine into the person of Christ cannot be seen by us, "not because of a separation of substance from accidents but because of a positional or situation separation." We can't see because we have yet to be transformed into those "fit for the courts of the Lord" (161). He concludes by submitting his proposal for magisterial review (170).

The final three chapters deal with moral matters, broadly speaking. In chapter 7 Farrow reflects upon the modern notion of autonomy that emerged out of the nominalist tradition. Once we reject the existence of natures and forms, Farrow argues, the will lacks any guidance in determining value, which inevitably leads to problematic conceptions of self-governance and self-determination, including a tendency to attack the body, "the most obvious locus of the given" and "most stubborn impediment to the power claimed by the will" (193). True autonomy comes, as we find in thinkers like Irenaeus and Anselm, when we freely align ourselves with the various goods that God has destined for us in both the natural and supernatural realms. In chapter 8 Farrow reflects upon the different ways that Christians may invite dialogue and union with their Jewish brethren, and argues that "the Mosaic form of the covenant should continue to shape even baptized Jews in a manner distinct from baptized Gentiles, albeit not in any fashion that effectively divides them from the latter" (222). The final chapter, the shortest in the book, reflects upon the gift that is fear of God. It is ethically useful, Farrow argues, because it puts into perspective other fears (like fear of chastisement or public disapproval). Moreover, such fear stems from and promotes reverence for God, not just dread of punishment, which is proper given God's preeminence.

There is no denying both Farrow's philosophical and theological acumen, nor his facility with the terms and players in key Protestant-Catholic debates. On topics with which I am more familiar, I found his analysis and insights impressive. Anyone interested in how Thomists have interpreted and evaluated Aquinas's doctrine of humanity's two-fold end, for example, should pay close attention to pp. 34-44, and especially to the critical section "Querying Both Thomas and Thomists." On topics with which I am less familiar, I found Farrow to be an able teacher who whetted my appetite for further investigation. I never thought I'd want to read more by Irenaeus and Aquinas on whether human nature has surpassed angelic nature in light of the Incarnation, but here we are. What is most impressive, I think, is the balance Farrow strikes between putting forth weighty and often inventive theological proposals

while respecting tradition and remaining sensitive to the goals of ecumenical dialogue.

No doubt different readers will find different things to object to. I myself remain unconvinced by Farrow's critique of Aquinas's "angelomorphism." It seems to me that Aquinas's rejection of the placement of certain lower goods in heaven has less to do with his views on motion, as Farrow argues, or some undue favoring of the "spiritual life of the philosopher" over the "eucharistic liturgy" as the model for the world to come (50, 57), and more to do with what Aquinas thinks it would mean to be in the presence of Goodness Itself. Compared to God, all lower goods are but the palest imitators. Moreover, throughout the book I found that certain of Farrow's philosophical claims gave me pause. In chapter 7, for example, he says that "Anselm's ontological argument does not move from thought to being, or from definition to reality, except by way of a prior movement from being to thought and from reality to definition" (205). This is a curious interpretation. If Anselm does not take himself to be moving from a thought of what God is to God's existence, that is, to be giving a kind of proof for God's existence, then what does he take himself to be doing? Farrow argues that Anselm's proof "does not establish the being of God by the thinking of man but rather establishes the thinking of man by the being of God." I struggle to understand what this claim could mean, and I think others more versed in Anselm than myself would struggle as well. Finally, I'd like to hear more about Farrow's very interesting interpretation of transubstantiation, because I wonder if his efforts to get rid of floating accidents create a new problem, namely, that the appearance and taste of what remains after the sacramental change have now become pure illusion.

Such questions and comments may reflect my own ignorance, to be sure. At the very least, they show that Farrow succeeds in what he sets out to accomplish: to put forth various "proposals in soteriology and anthropology" that spark robust conversation among those with an interest in theology, both philosophical and revealed.

Elizabeth Jennings. *The Collected Poems*. Edited by Emma Mason. Manchester, UK: Carcanet Press, 2012. 1,019 pp. Paper, £26.95.

Reviewed by Jeff Koloze, Ph.D., DeVry University and Lorain County Community College

Elizabeth Jennings (1925-2001) wrote copiously (the 957 pages of poems in this volume attest to that) and trenchantly about important topics of human life. Contemporary readers, students especially, who may be used to briefer books, may find this one volume daunting since it contains material from her twenty-six

published volumes, juvenilia, and unpublished and undated poems. However, the time one might spend in coming to appreciate Jennings's poems is well worth the investment.

A devout Roman Catholic, Jennings wrote poetry that faithfully reflects the human condition. Her work concerns not only the great beauties of the Christian tradition (for example, the city of Rome or translations of Michelangelo's sonnets), but also darker aspects of life on which the Faith shines its light, including disordered sexuality, materialism, and so on.

To manifest God's love for his creatures, Jennings uses highly structured poetry. There are few poems in her oeuvre that are strictly free verse. The sonnet seems to be her favored form, tetrameter being her meter of choice. In fact, for Jennings, form manifests the religious nature of poetry itself:

God
Is present in all poetry that's made
With form and purpose. Everything that's said
Is written to be said. (775)

Throughout the volume, the reader is aware of the rhythm of her poetry. Scanning it can increase our appreciation for her artistry. Often, the scansion of her lines is easy to perceive:

- / - / - / - /
The light that breaks across the air
- / - / - - - /
And halts a shadow with a stare? (833)

The pyrrhic foot in the second line draws attention to the shadow, which, like the meter, indicates an absence. Sometimes, the scansion is not mellifluous, as in this example:

/ - - / - - // - /
Charted as dangerous that night is now. (358)

Here the spondee indicates the subject, the hyperbaton impeding an awareness of the line being another tetrameter. It would be challenging to decode the meter of the thirteen-line sentence in "A Sky in Childhood" (505).

Jennings often breaks syntax, frequently with line-length parentheticals. Her technique of repetition within parentheticals to satisfy the meter of a poem and to emphasize certain ideas further complicates the reading. A stunning case is a triple repetition (the pairs "near, near," "hands, hands," and "down, down") in "Naming the Stars" (844). Sometimes Jennings deliberately breaks poetic lines to disturb the

syntax even more:

old age can divest,
With truthful changes, us of fear of death. (324)

Here a prepositional phrase separates the direct object from the verb. The sense of distance is compounded by a stanza break and a pause at the end of the preceding stanza.

Such syntax challenges make the reading more delightful, however, by involving the reader in the process of discovering the important things that Jennings wanted to say about her topics. Readers may appreciate her variety of literary devices to illustrate her poetic intent. The following litany of literary devices demonstrates that Jennings is, unlike some contemporary poets, not only knowledgeable about those devices but also able to use them well.

Jennings uses alliteration, as in the following h's:

Tomorrow through heat
We carry him
And hear his heart
And bring him home. (451)

Note the anthropomorphism of "that pride of leaves" (307), and assonance, as in the following sibilants:

Shall we speak or shall
We let the silence be
As obedient as a shell
Which stores the voice of the sea? (445)

Jennings puns about menopause when she writes: "she has bridged the pause / Between fruition and decay" (59); a metaphor where "fire" is an agent of purification (148) and a "mountain" represents any challenge to a goal (844). She uses oxymoron in describing Christ's "triumphant dereliction" (493) or "happy fear" (591), and a paradox: "I'm lost now I am free" (402). She personifies "Time [as] a dancer now in the dead of night" (469). She compares the "dance" of English's linguistic roots in the simile "like love" (587); uses synecdoche: "Poetry, the long / Finger of time" (325); and synesthesia: "A radiance that I could almost hear, / Sights I could touch" (810).

A similar catalog could be compiled of the rhetorical modes available to Jennings, yet definition seems to be most common. Using this rhetorical mode could make any poetry preachy, but her language assures the potency of the denotations. For example, she defines "Great art" in a functional way, as something that "surveys

/ The loss of time itself" (611). Moreover, she offers unique appositions, as in "the future / A door half open at night, swinging on wind" (612), or renaming the Virgin Mary, elsewhere traditionally identified as "Mary of solace" and "Mary of mercy," as "Queen of formal gardens" (451). Jennings uses a related definitional strategy, negation, when reflecting on the role of the poet: "The poem is not your plot / Or life or worry. It is imagination" (591); and "poetry's not the life / Of the poet but the work" (910).

Cataloging the common topics or themes in Jennings's work would result in another litany of items that she would want her readers to appreciate. Some are indeed striking. For example, the same poet who compares a clown to Christ Crucified (103) writes that Christ in the Eucharist is "Hidden, yes, but only that we may / Not be afraid" (743); and "So that no ecstasy // Should too excite us, God / Hides in this frail Host" (745). Her love of the city of Rome punctuates the entire volume.

A problem of reviewing a deceased poet's work is that sometimes questions about the topics or absence of certain topics in his or her work must remain unanswered. For example, Jennings does write about war, adopting the liberal perspective of its futility, several times; see, for example, her comment on the Falkland Islands War (648). Her concern for children is evident in many instances. She mourns over children who are "cast out" (473), writes about a child's rape (640), mourns that "one horrific murder was / Done by two boys of ten" (695), and regrets that Down Syndrome children "have a lack" (725).

All of these episodes in British culture can be subsumed under her rubric of "new ways of killing" (714). The modern student reader, the activist academic, or the general reader (presuming all three are staunchly pro-life as the audience of this journal is) would wonder, however, why Jennings does not specify those new ways of killing children, specifically abortion (which was legalized in the United Kingdom in 1967) and infanticide. Direct or indirect references to abortion and infanticide in the poems are rare. A notable exception is the opposite, care for the newborn, as when she praises a doctor who defended unborn children and preemies: "How much he wanted premature lives to continue" (797). Either those contemporary political and social issues were too emotionally difficult for her (unlikely, given that she did write about emotionally charged scenes where children were brutally murdered), or she chose to ignore those political issues because she had faith that

all evil, every pain,
Appalling suffering and what seems like injustice
Fall into place for they are nothing beside
The gracious dream of God. (898)

To her credit, Jennings writes several poems concerning the remaining life issue,

euthanasia. In “Euthanasia” she documents how the elderly try to show that they are healthy because they fear doctors who are more “murdering ministers” than medical helpers (443).

Perhaps the most that a reviewer can do is accept the presumption in the following line that justifies the lack of any political intent in Jennings’s poems: “Least of all do I carry a message, invoke a cause or yield my sympathy” (763).

Beyond this criticism, however, what one takes away from reading Jennings is a remarkable collection of memorable lines and images. Some entire poems, such as “Song of Time” (540), are lyrical gems, and numerous other lines could function as life-affirming and thought-provoking maxims. Who would ever think that sick people’s memories “Keep death at bay by building round their illness / A past they never honoured at the time” (159)? Or that “Prayer yet could be a dance” (320)? Or that “From torch to star, from moon to candle-flame” (490) reduces thousands of years of salvation history to one line? Or that “Night will come softly as a tranquil ghost” (517)? Or that “In Winter or in Autumn...nostalgia / Cancels the present” (526)? Or that a Chardin still life can become “a seize of sight” (553), “seize” carrying either of two highly negative connotations, a capture or an epileptic seizure? Or that “Abstract shapes convey / The mind ill at ease with the heart” (557)? Or that “life is full only because it stays / So brief a time” (881)?

“Ordinary” people (the less poetic among us) probably would not conjure these images, which is why Jennings’s insights are priceless.

Leslie Woodcock Tentler. *American Catholics: A History*. New London, CT: Yale University Press, 2020. xiii + 402 pp. Cloth, \$25.99.

Reviewed by Thomas W. Jodziewicz, University of Dallas

This comprehensive and accessible history of American Catholicism offers a fresh perspective on what the author suggests is a story “with meaning for Catholics and non-Catholics alike” (xiii).

It is important to bear in mind the author’s own position. After noting her parents’ rabid anti-Catholicism, grounded in their political and social radicalism, Tentler describes her own conversion, her marriage to “an exemplary Catholic,” and the beginnings of their own family as a “natural” result. She notes: “[S]till my parents’ daughter, I doubt that I could have converted to the church in what I reasonably regarded as its triumphal mode.” Rather, as she explains, “I needed a church that, while claiming to possess ultimate truth, was also willing to concede that it did not have all the answers. I thought I had found it in postconciliar Catholicism” (x-xi).

Tentler is fair-minded in her retelling of the creation of the Catholic subculture

in the United States as a result of a lingering anti-Catholicism. The irony of the story is that, despite the Church's embrace of an "otherness" (not always by choice), there was an ever greater Catholic assimilation into America's democratic and individualistic ethos. The final section of the book is entitled "A World Unbound, 1963-2015," the final chapter of which is "Toward an Uncertain Future." In these last pages Tentler offers a very personal sense of where she thinks that the Church is today as it faces various difficult challenges ranging from abuse scandals to declining numbers of schools, parishioners, religious, and priests in a world with an increasing proportion of "nones."

As part of her personal perspective, she describes two visits to Our Lady of the Angels Cathedral in Los Angeles. The first was as a tourist on a weekday. She found the aesthetics of the structure extraordinary, but the sanctuary to be "lacking in what I would call a devotional atmosphere." A short time later she returned for a Sunday Mass, which she found joyful and beautiful, "a living faith indeed!" in an archdiocese in which Sunday Masses are offered in forty-two languages. For her this is a reason for hope: "[H]ope for the nation, hope for immigrant peoples, hope for the church.... I was ready to accept the gift and look to the Catholic future with joyful expectation" (352-53).

Although the book, as would be expected, is heavily reliant on secondary sources, there is a welcome inclusion of archival materials, particularly of personal perspectives. The author's previous books on the Archdiocese of Detroit and on contraception also provide examples of this sort of bottom-up history.

One of Tentler's tasks, and one that is not so easy, given "the paucity of relevant sources," is to give "priority...to emphasize lay religion in all its variety." During the centuries covered, what did it mean to be a "good Catholic"? (xii) The historical context for these moments runs from early Spanish and French entradas through English colonial persecution and on to the new Republic's grudging toleration of Roman Catholicism, renewed immigration and renewed persecution, and finally mid-twentieth-century acceptance. She intends to present all of this with a balanced sense of the interaction of the faith, and the faithful, with this new world. The powerful American impulse toward conformity, noticed by many observers, including Alexis de Tocqueville, was resisted by Catholics safe in their subculture. At the same time, though, Catholics sought to be fully accepted. The price for this was to leave the subculture and to conform more fully to an ever secularizing culture. This latter project appears now to have prevailed in "A World Unbound." American Catholics in poll after poll seem to have very few differences with a self-autonomous, consumerist culture. Is there, after all, anything distinctive to a Catholic engagement with what is often referred to as postmodernity? What of this traditional idea of being "in" but not "of" the world? Does it still have resonance? Is it still a vital challenge?

Tentler offers an excellent introduction to this, our moment in the American Catholic journey. But it would be helpful if the Americanist moment at the turn of the twentieth century were explored more fully, given the clash here of American and Catholic. So, too, the absence of Bishop John England of Charleston and his antebellum efforts to bring Catholic and American together in his episcopal and apologetical work (a diocesan constitution and a discussion of slavery, respectively) is surprising. It is decidedly a painful moment in many ways. Yet, as we move “Toward an Uncertain Future,” the historical otherness traced in these pages is not necessarily an inconsequential prelude to an uncritical assimilation into a relativist and triumphant materialism. Rather, it is a reminder that the call to be different, but with charity and humility, is an enduring summons truly to love our God and our neighbor.

Bill Gates. *How to Avoid a Climate Disaster: The Solutions We Have and the Breakthroughs We Need*. New York: Knopf, 2021.

Reviewed by Charles E. Sprouse III, Benedictine College

With *How to Avoid a Climate Disaster: The Solutions We Have and the Breakthroughs We Need*, people of faith will encounter the first purportedly comprehensive view of the policies and technologies necessary to eliminate all global greenhouse gas emissions by 2050. Considering that 51 billion tons of carbon dioxide¹ are added to the earth’s atmosphere each year, getting to zero “will be hard.” In fact “the world has never done anything quite this big!” These are startling statements, especially from Bill Gates, who (with Paul Allen) achieved the unbelievable goal of “a computer on every desk and in every home.” Still, Gates is optimistic in stating that “this book is about what it will take and why I think we can do it.” Importantly, though, this opinion comes not from the “blind optimism” in technological progress that is rejected by Pope Francis in *Laudato si’* but from confidence in the genius of the human intellect.

Allow me to offer a few preliminary comments to acknowledge the legitimate concerns that Gates’s authorship brings for Catholics, given his enthusiasm over the way improved global health outcomes leads to smaller families² as well as the Gates Foundation’s philanthropic efforts toward proliferating artificial contraception,³

¹ Based on 2019 data using carbon dioxide equivalent (written “CO₂e”), a measure that Gates prefers in order to account for all greenhouse gases. Here “added” means a net addition.

² Bill Gates on “Does saving more lives lead to overpopulation?”—available at <https://www.youtube.com/watch?v=obRG-2jurz0>.

³ Bill & Melinda Gates Foundation has a “longer-term goal of universal access to

connections to controversial Common Core U.S. educational curricula,¹ and problematic vaccination projects.² In this book Gates largely avoids moral controversies by drawing a narrow scope, that of green technologies, and promoting their development and implementation. His goals emerge from a common morality in the mold of Bernard Gert, as encapsulated by his closing sentence: “If we keep our eye on the big goal – getting to zero – and we make serious plans to achieve that goal, we can keep the climate bearable for everyone, help hundreds of millions of poor people make the most of their lives, and preserve the planet for generations to come.”

Gates is keenly aware of his status as the world’s most prominent philanthropist and the face of global technocracy. Before explicating his plan, Gates enchants skeptical readers by stating frankly that he is guilty of being an “imperfect messenger” and “a rich guy with an opinion,” and he laments the unnecessarily polarized state of public environmental debates. At a minimum, penning the book meritoriously answers Pope Francis’s appeal “for a new dialogue about how we are shaping the future of our planet.”³ For better and for worse, Gates’s lack of technical environmental training allows him to explore climate topics in a way accessible to novice readers, while at times frustrating technical readers. On a personal level Gates shines through as a concerned global citizen with a passion for learning and avoiding the climate disaster portended by scientists. He offers an account of how his personal journey unfolded and how his views on the environment evolved. And although Gates’s goal is “not to convert the unconverted, it’s to tell the converted, OK, what does a real plan look like,”⁴ an honest reading of the book’s first chapters may just do that for some readers. Eventually Gates lands on an intriguing proposition, namely, that the summative nature of greenhouse gas emissions suggests the necessity of eliminating emissions rather than pursuing reductions.

In the first chapter (“Why Zero?”) the focus is environmental history and climate science. Here familiar foundational topics are taught in a refreshingly new synthesis, with generous verbiage and reasonable fidelity, from physical phenomena

voluntary family planning,” which includes the development and distribution of various artificial contraceptives. Read more at <https://www.gatesfoundation.org/What-We-Do/Global-Development/Family-Planning>.

¹ Stephanie Banchemo, “School-Standards Pushback,” citing concerns over government imposition and modern educational philosophy, available at <https://www.wsj.com/articles/SB10001424052702303630404577390431072241906>.

² Mogensen et al., “The Introduction of Diphtheria-Tetanus-Pertussis and Oral Polio Vaccine among Young Infants in an Urban African Community: A Natural Experiment”, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5360569/>.

³ *Laudato si*, 14.

⁴ “Bill Gates and Rashida Jones Ask Big Questions,” podcast, episode 4: “Is it too late to stop climate change?”

like the greenhouse effect to the use of carbon dioxide equivalents (CO₂e) to measure environmental impact. Gates's curious nature helps him avoid the pitfalls of most introductory explanations, yielding a true working knowledge. For example, greenhouse gases cause warming by absorbing outgoing terrestrial radiation, rather than incoming solar radiation, which Gates recognizes as counterintuitive and deserving further explanation. So, he wonders, "how can the sun's heat get past greenhouse gases on its way to the earth but then get trapped by these same gases in our atmosphere?" "The answers lie in a neat bit of chemistry and physics." Solar radiation has shorter wavelengths than earth's radiation, such that earth's radiation gets absorbed by greenhouse gas molecules (like carbon dioxide [CO₂]), which tend to be larger and have multiple elements (carbon and oxygen, for example), rather than the "copies of the same atom" found in the smaller molecules of typical atmospheric gases (like nitrogen [N₂] and oxygen [O₂]).¹ Thus, greenhouse gases restrict Earth's ability to cool by radiating energy away, causing the greenhouse effect of "trapping heat." Continuing further, greenhouse gases themselves are not monolithic; some are more absorptive and have longer atmospheric lifetimes, causing greater environmental harm. These factors are accounted for in a metric called Global Warming Potential (GWP), where carbon dioxide's value is exactly 1 by definition and others are scaled accordingly, with larger numbers representing more environmental impact. (Methane's GWP is 28, for example.)² Carbon dioxide equivalents, Gates's favored metric, work in a similar way, though he does not use them numerically a single time in the book. Regardless of metric, from Gates's humanistic perspective "what matters isn't the amount of greenhouse gas emissions; what matters is the higher temperatures and their impact on humans."

Gates spends much of chapter 2, titled "This Will Be Hard," enumerating the present and future impacts of greenhouse gas emissions, acknowledging the complexity of climate forecasting and sticking within the bounds of current scientific knowledge. Individual events, such as a heat wave or hurricane, are not attributable to climate change; however, there are predictably more hot days and intense storms. Human activity through the industrial age (1850-present) has raised the temperature of the earth by at least 1°C (1.8°F),³ and if we continue our current

¹ The average wavelength of terrestrial (earthly) radiation is around 10 μm (10-5 m), roughly 20 times longer than the average wavelength of solar radiation of 0.5 μm (5•10-7 m). From NASA Earth Observatory, available at <https://earthobservatory.nasa.gov/features/EnergyBalance/page2.php>.

² Methane's GWP₁₀₀ value from IPCC AR5 is 28 without carbon feedback modeling, accounting for warming over a century. Alternatively, methane's GWP₂₀ value is 84, showing its high potency in the short term, tempered over time by its short atmospheric lifespan. CO₂e is also calculated over both time spans, something Gates omits when critiquing the measure.

³ Stated in IPCC Special Report *Global Warming of 1.5°C*, which projects warming

path, “we’ll probably have between 1.5 and 3 degrees Celsius of warming by mid-century, and between 4 and 8 degrees Celsius by the end of the century.” This statement should alarm readers, especially considering the persistent climb of carbon dioxide levels in the atmosphere, famously shown by the “Keeling curve.”¹ Rising sea levels from glacial melting and warmer oceans will also pressure humankind. Today, seawater is bubbling up in the storm drains of Miami, and the city itself is slowly sinking, suggesting the projected two feet of sea level rise by 2100 will be disastrous. For poor countries like Bangladesh the situation is even more dire, with waters already covering 20%–30% of the land, storms routinely wiping out large swaths of crops, and farmers’ lives tragically being lost. Gates sticks to a positive and charitable tone, though it is worth mentioning that annual global emissions continue to climb despite decades of IPCC work, *An Inconvenient Truth* in 2006, and both the Paris Agreement and *Laudato si’* in 2015. Gates’s comprehensive plan for climate change is a new and important contribution to ongoing discussions, mainly regarding the “mitigation” of emissions.

Fossil fuels are to humans as water is to fish, says Gates in reference to David Foster Wallace’s “This is Water” speech, where Wallace explained that “the most obvious, ubiquitous, important realities are often the ones that are hardest to see and talk about.”² Our plastic toothbrush, the rubber soles of our shoes, gasoline for our vehicles, the paint on our walls, and countless other products are made from fossil fuels. Mitigating all of our emissions, though, also requires us to stop making products using processes that release emissions, such as cotton clothes grown with synthetic fertilizer, harvested with tractors (made of steel, plastic, rubber, and so on), and transported on cement roads. The water analogy, like others in the book, is rather labored, for without “important” water fish quickly die, and environmental issues are easy to “see and talk about.”³ Again employing water, Gates motivates zeroing carbon using a bathtub analogy: “The climate is like a bathtub that’s slowly filling up with water. Even if we slow the flow of water to a trickle, the tub will eventually fill up and water will come spilling out onto the floor. That’s the disaster we have to prevent.” Water (emissions) accumulates as it pours in, causing the water level to rise in the bathtub (the atmosphere, not the “climate”); thus, we need to stop pouring water in, while also deploying carbon capture technologies to “open up the

of another 0.5°C without any further greenhouse gas emissions, based on the current composition of the atmosphere.

¹ The Keeling curve is a famous graph of the carbon dioxide concentration at the Mauna Loa Observatory in Hawaii from 1958 to the present day. Available at <https://keelingcurve.ucsd.edu/>.

² Wallace’s “This is Water” speech was given at the Kenyon College commencement in 2005. Available at <https://www.wsj.com/articles/SB122178211966454607>.

³ More broadly, environmental topics commonly receive media coverage and appear in public debate. Anecdotally, I rather enjoy teaching courses on the topic.

drain and let water flow out.” The tub analogy is instructive, though technical readers may also conceptualize the lifespan of greenhouse gases (water), analogous to the water in the tub slowly evaporating away.¹

In clear alignment with *Laudato si'*, whether intentionally or unintentionally,² Gates states “it would be immoral and impractical to try to stop people who are lower down on the economic ladder from climbing up. We can’t expect poor people to stay poor because rich countries emitted too many greenhouse gases.” As the largest emitters and those responsible for the most historical emissions, rich countries should transition first and help poorer countries generate more energy, more cleanly. Here Gates has in mind poor children who would benefit greatly from having electricity for lights, to read and study, and air conditioners to temper severe temperatures. Therein lies an underestimated challenge of going from 51 billion to zero by 2050, the need for additional power generation in developing countries, combined with historical studies indicating the adoption of new energy sources usually takes around half a century.³ Consider electric vehicles and solar power. Data from 2019 shows that these widely available and substantially subsidized technologies make up less than 2% of U.S. car sales and less than 2% of U.S. power production, respectively.⁴ The economics of these technologies need to improve to reduce what Gates calls the “Green Premium,” which he defines as the cost of green technology as a percentage above a traditional carbon emitting technology (for example, advanced biofuels for jets cost \$5.35 per gallon compared regular jet fuel at \$2.22, “that’s a premium of over 140%”).⁵

As preparation for subsequent chapters on zeroing individual categories of emissions, Gates uses chapter 3 to suggest “Five Questions to Ask in Every Climate

¹ Other physical phenomena can also be incorporated into the analogy. Rather than only water, the tub is actually being filled with many different liquids (representing different emissions flowing in at different rates, possessing different physical characteristics, interrelationships, and functional dependences on thermodynamic properties), the tub volume is not strictly fixed, nor are the walls completely hydrophobic.

² Gates’s wife Melinda is Catholic, and they attend Mass together as a family. See <https://www.christianpost.com/news/bill-gates-reveals-family-goes-to-catholic-church-it-makes-sense-to-believe-in-god-116166/>.

³ Vaclav Smil, *Energy Transitions: History, Requirements, Prospects* (Santa Barbara, CA: ABC CLIO, 2010).

⁴ Solar power was 1.8% of U.S. electricity generation in 2019 (<https://www.eia.gov/energyexplained/electricity/electricity-in-the-us.php>), and plug-in electric vehicle sales totaled 326,644 in 2019 (<https://afdc.energy.gov/data/10567>) out of around 17 million (<https://www.caranddriver.com/news/a30416492/us-auto-sales-2019/>), making up 1.9% of vehicle sales. Preliminary numbers from 2020 show improvements to around 3% in the U.S., still quite low.

⁵ Green Premium values are generally stated rather than detailed, further information is given at <https://www.breakthroughenergy.org>.

Conversation.” Although the questions themselves are uninspiring and fairly obvious, they point towards central tenets of Gates’s perspective.

(1) “How Much of the 51 Billion Tons Are We Talking About?” A challenge of climate discussions, even for the bright and learned Gates, is the magnitude of the numbers. A ton is 2,000 pounds, the weight of a Clydesdale horse, and we are talking about 51 billion of them – that’s 51,000,000,000 tons (or Clydesdales) added to the atmosphere, annually. Breakthrough Energy, Gates’s sustainable energy group, “only funds technologies that could remove at least 500 million (500,000,000) tons a year,” or around 1% of global emissions. While this portion of the chapter reads like investment advice, the takeaway is to discuss environmental topics in terms we can wrap our heads around.

(2) “What’s Your Plan for Cement?” Considering cement reinforces the need for diverse initiatives targeting different segments of the economy, since making steel and cement alone accounts for “around 10% of all emissions.” Using percentages of the 51 billion tons, Gates uses the following breakdown, and dedicates individual chapters toward zeroing out each category:

- “How We Make Things” (31%) – cement, steel, consumer products
- “How We Plug In” (27%) - coal plants, natural gas plants
- “How We Grow Things” (19%) - synthetic fertilizer, equipment emissions
- “How We Get Around” (16%) - passenger vehicles, planes, trains
- “How We Keep Cool and Stay Warm” (7%) - furnaces, air conditioners, refrigerant leaks.

(3) “How Much Power Are We Talking About?” Power, which measures the flow of electricity at an instant (rather than energy which measures the total consumption over time), also uses incredibly large numbers, a typical incandescent bulb consumes 40 Watts of power, an average U.S. house consumes 1000 Watts (1 kilowatt),¹ a small U.S. town consumes 1,000,000 Watts (1 megawatt), a midsize U.S. city consumes 1,000,000,000 Watts (1 gigawatt), the entire U.S. consumes 1,000,000,000,000 Watts (1 terawatt), and the world consumes 5,000,000,000,000 Watts (5 terawatts). So, as with question #1 on emissions, power discussions should be connected to the percentage of power that can be produced, reduced, or eliminated by a green technology (at the local or global level).

(4) “How Much Space Do You Need?” Wind and solar power require hundreds or thousands of times more space than do nuclear or fossil fuel plants. For instance, a green energy farm generating 5 Watts per square meter of land, as might occur with a mixture of wind (generating 1-2 Watts per square meter) and solar (generating 5-20 Watts per square meter), would need to cover roughly 200,000,000 square

¹ The U.S. Energy Information Administration (EIA) reports an average residential energy consumption of 10,909 kilowatt hours per year, averaged out over the 8,766 hours per year, gives an average power consumption at any given instant of 1244 Watts.

meters (almost 50,000 acres) to power a midsize U.S. city (1,000,000,000 Watts), whereas a fossil fuel plant (500-10,000 Watts per square meter) powering that same city might cover 200,000 square meters (almost 50 acres).

(5) “How Much Is This Going to Cost?” Here again is one of the most important contributions of the book, the coverage of Green Premiums. While there is not a single accepted way to calculate Green Premiums, and the numbers continually change, high premiums indicate an area in need of additional innovation, to achieve a Green Premium “low enough for middle-income countries to pay.”

Each question is a quantification: tons of carbon, adding categories up to 100% emissions, amounts of power, amounts of space, and amounts of money, a clear illustration of Gates’s self-professed (and mistaken) effort to “solve” the “problem” of the environment. In sharp contrast to *Laudato si*, Gates’s book is tragically bereft of any reverence toward nature, eschewing the value of encountering nature out of which environmental conscientiousness comes. His framing assures that the “solutions we have and the breakthroughs we need” are strictly material, yet material innovations are unable to fix a lack of appreciation and respect for the home God prepared for us.

Each chapter, from 4 through 8, covers one of the five categories of emissions. Although “How We Make Things” is responsible for the largest portion of global emissions at 31%, Gates chooses to tackle “How We Plug In” (at 27%) first, considering it the most important category. Why? Because developing the ability to plug into plentiful, affordable, clean energy plays a central role in zeroing out other categories as well (switching from natural gas furnaces to electric heat pumps for example, as covered in chapter 8). In other words, clean energy bears the burden of needing to expand significantly to facilitate the electrification of carbon intensive processes in other categories. Accounting for electrification, population growth, and wealth increases, “the world will need much more than three times the electricity we generate now” by 2050. Regarding energy supply, Gates calls on the U.S. to expand renewable power capacity “5 to 10 times faster than we’re doing right now,” taking advantage of our large supply of renewables, “including hydropower in the Pacific Northwest, strong winds in the Midwest, and year-round solar power in the Southwest and California,” as well as building new nuclear plants and retrofitting fossil fuel plants with carbon capture systems. On affordability, Gates claims all U.S. power can come from zero-carbon sources with an electricity rate increase “between 1.3 and 1.7 cents per kilowatt-hour, roughly 15% more than what most people pay now.” Unfortunately, that crucial figure is accompanied by little explanation and no reference, leaving it unclear how (or if) the cost of transitioning the system is factored in. Gates also stops short of detailing the energy storage portion of that zero carbon U.S. energy grid, despite effectively motivating the challenges posed by intermittency (periods where the wind doesn’t blow and the sun

doesn't shine) and seasonal variations (where Midwestern wind varies by a factor of two to four, and Seattle sunshine varies by two). Energy storage is, rather, an area where Gates, like Pope Francis, sees a need for "breakthroughs."

Along with vast expansions of wind and solar, construction of numerous new nuclear plants is a key part of Gates's vision for increasing power supply, based the ability to install nuclear power anywhere for baseline power. The most exciting development comes from a company founded by Gates called TerraPower, which has designed and simulated the next generation of nuclear fission plant using a traveling wave nuclear reactor.¹ In operation, these reactors use both enriched and depleted uranium, capturing more power from the nuclear material and reducing radioactive waste. Safe, stable operation of a pilot plant by TerraPower would be exactly the type of breakthrough we need. Meanwhile, scalable nuclear fusion remains decades away, or as the joke goes, "40 years away, and it always will be." Gates notes the promise of the ITER facility in France, which hopes to generate excess power in the late 2030s. (Here "excess power" accounts for the sizable energy input required to initiate fusion, which involves heating types of hydrogen "well over 50 million degrees Celsius" to give hydrogen atoms enough energy to fuse into helium when they collide.)

In "How We Make Things" the focus is squarely on raw materials, with very little coverage of manufacturing or consumer products. Just three materials are examined closely: steel, concrete, and plastics. For steel and concrete demand is growing as urbanization continues its upsurge and existing roadways are periodically repaired and replaced. Current production methods for both steel and concrete emit significant amounts of carbon dioxide. To produce steel, iron ore (containing iron and oxygen) is melted in the presence of coke (a type of coal, predominantly carbon) and oxygen, with the goal of releasing the oxygen from the iron ore and bonding some carbon from the coke to the newly pure iron (less than 1% by weight). While this occurs, though, some of the hot carbon and oxygen atoms also bond to form carbon dioxide. Concrete production has a similar downside, where heating limestone (containing calcium, carbon, and oxygen) produces calcium oxide and carbon dioxide. Plastics, on the other hand, sequester carbon from fossil fuels for centuries, making them virtually irrelevant to climate change. For all three materials, Gates prices out a Green Premium based on simply using direct air capture to eliminate the carbon dioxide emissions, with steel at 16%–29%, cement at 75%–140%, and ethylene plastic at 9%–15%. Steel production could eliminate the carbon dioxide byproduct by using molten oxide electrolysis (separating iron and

¹ Although not described in the book, TerraPower's "Natrium" reactor plans to incorporate thermal energy storage, such as with molten salt, to allow their nuclear plants to buffer fluctuations in solar and wind. See <https://www.neimagazine.com/news/news/terrapower-launches-natrium-reactor-8109913>.

oxygen with electricity), though for cement Gates says, “nobody knows of a way to make cement without going through this process.” Several alternative processes have been demonstrated,¹ though large-scale, affordable, and strong zero-carbon concrete remains a breakthrough away.

The real disappointment of the chapter is the lack of coverage of sustainable materials and design. Taking plastics for example, long decomposition times are beneficial from the perspective of climate change; however, plastics introduce “new carbon” into the environment and result in microplastic pollution,² causing environmental damage as well as supporting a culture of consumerism. In other words, the affordability of plastics, and to an extent their unnatural appearance, feed into the mindset of consuming more and more material items (often of low quality), ultimately treating the environment as a giant trash can for our throwaway society.

Next is “How We Grow Things,” a category responsible for 19% of the 51 billion tons a year. As perhaps only Gates can, he again begins the chapter with thought-provoking stories from his global travels, offering readers a window to see outside their cozy life cubes, and in doing so generously highlights those “most vulnerable” to climatic hazards. For example, Gates expresses concern over poor farmers’ ability to achieve crop yields in warmer climates of intense storms and unreliable precipitation patterns. On the agricultural crises and throughout the book, Gates skillfully frames impending climate challenges, though unfortunately his “solutions” continue the prevailing anthropocentric technocracy, consistently treating the environment as a “problem” to be solved. For farmers, Gates sees solutions in the breeding work of agronomist Norman Borlaug and the Green Revolution, placing man above nature and pitting man against man, ignoring food sovereignty critics like Vandana Shiva who call for seeds to be returned from “billionaire dictators” “to the hands of farmers.”³

For meat lovers Gates favors supplementing cattle with chemicals like 3-nitrooxypropanol daily, which reduces methane emissions (mostly from burping) by 30%. Perhaps less appetizing are plant-based meat products such as Beyond Meats and Impossible Foods, which have been in Gates’s investment portfolio, causing him to say, “I’m biased, but I have to say that artificial meat is pretty good.” Plant-based meats currently carry a Green Premium of 86%. As with nearly all technological ventures, Gates supports “cell-based meat,” which is meat grown in a laboratory by starting from “a few cells drawn from a living animal.” Continuing the bioengineer-

¹ R.P. Siegel, “Cutting the Carbon from Concrete,” *Mechanical Engineering* 142, no. 2 (2020): 38-43.

² Christopher Blair Crawford and Brian Quinn, *Microplastic Pollutants* (Amsterdam: Elsevier, 2017).

³ Vandana Shiva, *One Earth, One Humanity vs. the 1%* (Oakland, CA: PM Press, 2018).

ing theme, he surveys potential ways to reduce emissions from fertilizers through genetic modification of crops and specially designed bacteria that constantly produce nitrogen. Fortunately, more natural approaches are also gaining traction, with recent dried tropical red seaweed (*asparagopsis taxiformis*) feeding studies finding 60%–80% reductions in methane emissions.¹

The next category to be zeroed out is “How We Get Around,” which is the fourth largest category of global emissions at 16%, but the largest category in the U.S. since Americans drive and fly a lot. By noting the low cost and high energy content of gasoline, Gates shows why electric vehicles struggle to gain market share. He also holds the progressive anthropocentric view that “we should be glad that more people and goods are moving around.” At least on the supply side, electric vehicles (EVs) are making progress, with all electric vehicles available from “more than half the alphabet: Audi, BMW, Chevrolet.” EVs carry a modest Green Premium, Gates says, due to “an 87% decrease” in the cost of batteries since 2010 (again without detail or reference). To walk through the economics, Gates compares a Chevrolet Malibu (\$22,095) to a Chevrolet Bolt EV (\$36,620), stating they are “roughly comparable” in power and space.² Gates finds that based on the higher selling price, higher insurance, lower maintenance, and lower fuel cost, EVs cost an extra \$0.10 per mile (for the average annual travel of 12,000 miles, that is an extra \$1,200 per year). His analysis, though, is immediately compromised when he says the electric vehicle costs \$10,000 more before any tax incentives, when simple subtraction shows a difference of \$14,525, so the only part of the analysis explicitly laid out is off by almost 50%.

On biofuels and electrofuels, Gates notes the competition between food and fuel caused by U.S. gasoline containing 10% ethanol from corn, whereas advanced biofuels from switchgrass (often also ethanol) grow without fertilizer and few people seek out a “switchgrass salad.” These concerns cause first generation biofuels to be omitted from economic comparisons, with zero-carbon advanced biofuels carrying a 106% Green Premium (\$5.00 per gallon versus \$2.43 for a gallon of gasoline), and electrofuels bringing a hefty 237% Green Premium (\$9.00 per gallon versus \$2.43 for a gallon of gasoline). Regarding larger electric vehicles, such as garbage trucks, buses, and 18-wheelers, high annual travel allows upfront costs to be recovered earlier through fuel savings; however, battery weight and range become a greater

¹ B.M. Roque et al., “Red Seaweed (*Asparagopsis taxiformis*) Supplementation Reduces Enteric Methane by over 80% in beef steers,” *PLoS One* 16, no. 3 (2021): e0247820.

² Based on 2020 model year information www.chevrolet.com, the Malibu has 102.9 ft³ of passenger space and 250 HP, compared with 94.4 ft³ and 200 HP for the Bolt EV. The Bolt EV’s 56.6 ft³ of cargo space listed in the book requires the back seat to be folded down, with the trunk volume being 16.9 ft³, slightly more than the Malibu’s 15.7 ft³. The Malibu is the best option for comparison, yet the differences are notable.

concern. For transporting cargo, the weight of today's batteries would reduce the cargo capacity by 25%.¹ Electric ships and planes have a similar challenge with weight, which Gates illustrates through tenuous comparisons between small two passenger electric planes and Boeing 787s. I will note, however, that several electric planes are being developed for regional travel with around a dozen passengers and should be in use within five years, after companies navigate the U.S.'s notoriously slow regulatory processes.²

The last category, "How We Keep Cool and Stay Warm," addresses air conditioners and refrigerators, which are already electric, and furnaces, which Gates sees as needing to be switched out for electric heat pumps. For several areas, including Houston and Chicago, Gates calculates a negative Green Premium for air-sourced heat pumps (around -25%), meaning their cost is already cheaper than a natural gas furnace and electric A/C. All these electrified systems circulate a refrigerant through a series of components to achieve the desired cooling or heating effect, and the refrigerants currently in use are "known as F-gases, because they contain fluorine." Upon release, whether at the end of life or due to a slow leak, these refrigerants cause significant climate change, with some causing 1000 times that of an equivalent amount of carbon dioxide, indicating a need for F-gas alternatives.³ Gates says F-gas alternatives are in the early stages of development, "far too early to put a price tag on them," without mentioning any specifics. There are, however, systems available using F-gas alternatives, mainly carbon dioxide, ammonia, and hydrocarbon natural refrigerants.⁴

In the ninth chapter, "Adapting to a Warmer World," Gates focuses especially on the climatic changes projected for South Asia and sub-Saharan Africa, illustrating how humanity will need "adaptation" to survive the pressures of nature. Poor farmers are the foremost example, some already spending half their money on food and being faced with drier soil and shorter growing seasons, as well as incipient crop-eating pest infestations. Through his travels to Kenya, where "roughly one-third of the population works in agriculture,"⁵ Gates met the Talam family, whose

¹ Based on a 2017 study from Carnegie Mellon for a 600-mile range. 900-mile electric cargo trucks are not currently feasible, while diesels can run well beyond 1,000 miles without refueling.

² These planes save weight by using composite airframes, which themselves require extensive certifications, on top of the delays associated with gaining approval for novel electric propulsion systems.

³ U.S. EPA, "Understanding Global Warming Potentials," available at <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials>. Best practices require consideration of both the GWP and Ozone Depletion Potential (ODP) of refrigerants.

⁴ Several products are available from Mayekawa, including those shown https://www.mayekawa.com/products/heat_pumps/.

⁵ Other sources say around 75% work in agriculture at least part time, though the one-

story shows several avenues for supporting impoverished third-world farmers. The Talams were “desperately poor” smallholder subsistence farmers until the opening of a milk chilling plant, which allowed their milk to be preserved and transported nationwide for higher prices. Along with storing milk, chilling plants can also offer testing for contaminants, vaccinations, and community-based training. When done properly, farmers can afford to buy additional livestock, offering nutritional protein and a buffer against unpredictable harvest yields. Gates proposes agricultural research groups like CGIAR (Consultative Group for International Agricultural Research) as farmers’ best hope for the innovations needed to adapt to climate change, implying the necessity of genetically modifying crops and animals. Although the pitfalls are generally ignored, recent farmer protests in India show the downsides of changing or manipulating markets, as well as the potential for profiteering and even a type of enslavement that occurs when farmers depend on others for seeds and market access.

Shifting toward offering general insights “informed by dozens of experts in science, public policy, industry, and other areas,” which itself is an example of the interdisciplinary cooperation supported by Pope Francis, Gates suggests three modes of action on adaptation: “reducing the risks posed by climate change,” “preparing for and responding to emergencies,” and “recovery.” Cities, for example, need computer models to inform infrastructure decisions, helping to limit flood damage and project demand for cooling centers (to offer refuge to residents without air conditioning). Water poses another challenge, as shrinking aquifers suggest the need for sea water desalination plants and enough clean energy to power the plants’ chemical processes and pump the drinking water inland. Emergency response and recovery include charitable efforts on the ground, but extreme scenarios might require geoengineering in the sky, where a climate emergency reaching a “tipping point” might demand deploying aerosolized particles in the upper atmosphere to block a portion of sunlight or using salt sprays to make clouds more reflective. Reservedly Gates considers geoengineering a “Break Glass in Case of Emergency” type of technology, with development based on our prudential need to prepare because “there may come a day when we don’t have a choice.”

In “Why Government Policies Matter,” positive examples are shown from the British and U.S. Clean Air Acts, from eliminating smog to reducing the levels of poisonous gases in the air. Decades later, similar programs in China reduced pollution in Beijing by 35% and Baoding by 38% in only a few years. According to Gates, policies have “also helped reduce greenhouse gases a bit,” somewhat confounding since the poisonous gases cited are also greenhouse gases, and

third figure may come from Kenya’s unemployment nearing 40% and 61.1% of the labor force working in agriculture. See <https://www.cia.gov/the-world-factbook/countries/kenya/#economy>.

quantitatively a serious understatement.¹ Gates calls for innovation in policy, citing as exemplary the federal funding of dams in the 1950s, fuel efficiency standards for cars in the 1970s, and the largest investment in clean energy and energy efficiency in American history in the 2009 American Recovery and Reinvestment Act. Funding early research with a high risk of failure and decades of development before profitability is the role of government to Gates, “when the private sector won’t because it can’t see how it will make a profit.” This ideally leads to innovations within that country that can be exported globally for profit, although of course the possibility also exists for another country to take the breakthrough and sell it globally at a lower price, without funding the development of the technology. Gates steadfastly implores innovators to reduce the Green Premiums to zero, as well as favoring broad government interventions such as loan guarantees, incentives, taxes, and bans. Guaranteed loans for solar arrays, subsidies for efficient products like LED bulbs, tax rebates for electric vehicles, carbon taxes on fuels and factories, and bans on specific activities and products are all a part of Gates’s vision. Here little effort is made to answer Gates’s own fifth question on cost, which is a constant hurdle for forging consensus in the U.S., and part of the reason the forced Senate vote on H. R. 109, the “Green New Deal,” failed 0-57, with 43 members voting “Present.”² Policies, though, are only one of the three levers needing to work together, technology and markets are the others, and chapter 11, “A Plan for Getting to Zero,” aims to show how to make that happen.

Demand for greening human activities is “growing at every level” around the world, Gates says, with voters calling for action and governments across the world committing to dramatic emissions reductions. While public appetite for decarbonization is growing in the U.S. and is well established in Europe, these uncited poll results are likely flimsy ground on which to claim a type of public mandate for overhauling lives, especially if respondents are affirming an idea without grasping the implications, especially when 2030 and 2050 seem far afield. This seems a misstep in the plan, overlooking the need to build public consensus and establish goodwill toward historically large investments. Nevertheless, Gates sees zeroing emissions as a clear public goal, so “now we need to pair these goals with specific plans for achieving them.” A critical element of Gates’s approach is to prioritize zeroing by 2050 over reductions by 2030, for the two often conflict when large investments and long lifespans are present. Replacing coal-fired power plants with gas-fired ones is, then, misguided. Instead, the object is to remove obstacles from

¹ From 1990 to 2010 total emissions of the six principal air pollutants decreased by more than 41%, while the Gross Domestic Product increased by more than 64%. See <https://www.epa.gov/clean-air-act-overview/40th-anniversary-clean-air-act>.

² U.S. Senate Roll Call Votes 116th Congress - 1st Session. Note though that newer iterations are also being dubbed the “Green New Deal.”

zero-carbon power generation and prepare them for rapid deployment worldwide. At the same time everything possible is to be electrified as quickly as possible, “from vehicles to industrial processes and heat pumps.”

Tying back to technology and markets, Gates sees the need for a supply of green technologies and markets that prefer green technologies. Increasing supply will occur by reducing the costs and risks for private companies to invest, allowing companies to navigate the high-cost, low-volume early portion of product rollouts. And when products go to market, long-term financing and other incentives are needed to promote early adoption. Carbon taxes also factor into this equation, driving up the cost of traditional technologies so green technologies can be competitive. On energy, policies largely define demand, where states and localities can institute laws prescribing higher percentages of energy that must come from renewable sources. Gates shines a light on the entities usually responsible for these standards, called Public Utility Commissions (PUCs). This, of course, can lead to controversy since most customers have a single option for purchasing power, which is no choice at all, and that option will pass along whatever costs are required to meet the “clean electricity standard” in effect, whether through renewables or nuclear or carbon capture. As the chapter progresses from carbon to energy to fuel to products, it becomes painfully clear that a specific plan, even for one region of the U.S., is not laid out. On carbon pricing, for example, Gates says, “I’m not going to prescribe what the solution should look like.” Little can be found outside of the common fodder, except perhaps on products, where Gates favors labeling to identify “clean” suppliers and using “border adjustments” to account for differences in manufacturing techniques, such as penalizing imported products made using carbon-intensive processes. For the policy lever, Gates exudes confidence in the ability of national, state, and local governments to realize major reductions, and that nations will meet the goals of the Paris Agreement by 2025, leading to further international agreements.

The final chapter, aside from a few pages addressing the Covid-19 pandemic, offers suggestions for “What Each of Us Can Do.” After largely ignoring political factors and assuming public support of environmental initiatives, Gates identifies the single most important thing we can do as “get political,” meaning anything from writing a letter to running for U.S. Congress. Opportunities for individuals to exert influence include as a consumer, employee, and friend. Making environmentally conscious purchases helps to fund the development of green technologies and signals an existing market, and talking with your employer and friends about decarbonizing can help build a green culture in your immediate circle.

Considered as a whole, readers with reservations about Gates will see him personalized but will struggle (justifiably, I believe) to believe many of his unsupported claims, especially those familiar with environmental issues. I have

provided a number of clarifications here, as well as points of agreement and disagreement, striving to convey the book's content with fidelity and interpret the author's intent with charity. To be clear, I believe this book is an important contribution to our national environmental discussion, and as a nation we have much to gain from having a more informed citizenry. My concerns are more about what is omitted from the book than what is included. It is not a globalist plan, for international cooperation is necessary and Gates emphasizes the important roles of localities. It is, however, a dreary plan, where the heroes are the technologists and their inventions, rather than humanity restoring our rightful respect for creation and our Creator.

Beyond technological solutions and breakthroughs, my own answer to "How to Avoid a Climate Disaster" begins with acknowledging our sins against our home and our failure to follow God's command to care for the earth. We need to make reparations to heal our planet and reconnect ourselves to the land from which our technology often separates us, tempering our consumption as historically rich peoples with unprecedented ability to impact the environment. Our ingenuity needs to develop technologies carefully, rather than continually creating new environmental and societal damage, continuing the well-known goal of faithful technologists to responsibly use the resources of creation for the genuine improvement of human lives. Governments do have a legitimate role to play in promoting the common good, which includes working together respectfully to transition away from unsustainable activities. Failing to work together will severely deepen divisions between the "ordinary man" and the "ruling class" on environmental issues, blinding us from what should naturally be a unifying, common pursuit. This is a better foundation on which technologists and citizens can fulfill our role as stewards of the environment, conserving the wonderful planet entrusted to us while trusting in God's providence.

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