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Natural Law: New Clues for Contemporary Issues

Robert B. Mellert, S.M.

The composite of ethical concerns facing civilization at this point in history seems to indicate that the fundamental ethical issue is no longer that of interpersonal relationships, but that of the man-nature relationship. This is evident not only with regard to the ecological crisis and our concern for establishing an environmental ethics, but also in the implications of some of the new biological advances and the ethical questions they are beginning to generate.

The rapid increase in the total world population during the past hundred years, combined with the increased rate at which we raid our natural resources to support a rapidly rising standard of living, has led many to wonder about the ultimate benefit of our scientific, technological civilization for the overall history of mankind. In taking the Genesis command to "increase and multiply, fill the earth and subdue it" (Gen. 1, 28) too literally, we have perhaps exceeded certain limitations inherent in nature itself. Already we are experiencing the consequences of ignoring the existence of those limitations in the form of international power struggles over resource areas and developmental rights. Even world peace is contingent upon some agreement on an ethics of nature.

Some of the issues being raised today in the fields of biology and medicine are likewise issues about limitations in the man-nature relationship. Research into genetic manipulation, begun by the green revolution to increase food supplies through high-yield crops, is now being projected to improve the human species as well. Contraception, cloning (a form of asexual reproduction), and in-vitro fertilization and gestation will enable us to change the natural reproductive process in man to a totally planned and painless procedure. All of these ultimately ask the question, "To what extent can and should man go in altering his own physical nature?" On the one hand, many beneficial results can be achieved as a consequence of the new knowledge and new techniques, especially for those who cannot have children normally or who otherwise could not have normal children. Yet, it is easy to see the possibilities for abuse and harm as well.

What is to prevent the same kind of escalation that obtained in industrial technology from repeating itself in physiological technology? Paul Ramsey has taken note of this precedent to repudiate much of what is being proffered by the new biology. In *Fabricated Man* he writes, "From man's rape of the earth and his folly in exercising stewardship over his environment by divine commission, there can be derived no reason to believe that he ought now to reach for domination over the modification of his own species as well." One might reject Ramsey's pessimistic conclusions, but one would be well advised not to ignore his warnings.

One of the difficulties that we are finding as we try to develop a moral understanding of the man-nature relationship is that the ethical perspectives of the past century have been almost exclusively anthropocentric in orientation. Situationism, existentialism, and Marxism, despite their different conclusions about morality, all begin with a man-centered universe and attempt to resolve the issues of conflict that face man in understanding himself and in relating to his fellow man. An ethics of nature, if present at all, is mentioned only in passing and only in relation to the major theme. Man's absolute value vis-a-vis the world is left an unchallenged presupposition, and as a result little insight can be derived concerning the determination of principles and guidelines in man's interaction with nature.

What about natural law? The word "natural" suggests the possibility of finding some affinity with the problem we are examining. But to what extent can the "natural" of natural law, which is a philosophical concept that describes the essence of a reality, correspond to "nature" as popularly understood to describe an environment of birds, trees, and streams?

Because the natural law tradition is both long and rich, antedating the scientific, technological civilization of the contemporary Western world, I decided that there might be more insight for an ethical perspective here than has been generally recognized. Since St. Thomas Aquinas is one of the towering figures in the development of the natural law theory, I thought it fitting to reread his tract *de Lege* in the *Summa Theologica* (I-II, 90-108) with this new question in mind. I cannot say that in the process I discovered an ethics of nature that can serve to answer all our contemporary ecological and bio-medical questions, but there are some insights that I feel are worth sharing.

Thomas' chief contribution to the history of natural law is that he subsumes under divine law all the various species of law. Included is his synthesis of *lex*, which is imperative or prescriptive law as given by a lawgiver, and *ius*, which is traditional or customary law, often translated as "right." Because the divine reason is author both of the imperatives found in nature and society and of the custom that is the expression of nature and society, God is properly understood as the first lawgiver. All manifestations of the order of creation, whether by *lex* or by *ius*, are thus participations in the *ratio aeterna*, or *lex divina*. Indeed, although Thomas is very much aware of the distinction between *lex* and *ius*, he purposely does not draw the distinction in *de Lege*, where, in quoting Tully (91, 3), Isadore (94, 4), Ulpian (96, 1), and Gratian (94, 4), he uses the terms interchangeably. In the wider order of things Thomas sees them as both mandated by the one divine law.

The distinction, however, is important for our considerations here. In the tract Thomas cites Tully's opinion that *ius* is derived from nature (91, 3), not from a human lawgiver, and that it is promulgated by the divine lawgiver via an impression upon natural things, *res naturales*, (93, 5, ad 1). Thus, there appears a dual principle regarding the promulgation of the divine law to creatures. One is exclusively to man,

and it proceeds hierarchically from God to legitimate authority to subject (cf. 93, 3). The other proceeds from God directly to subject by way of impression, and this pertains to rational and non-rational beings alike. Whereas the former is a delineation of *lex*, the latter is based upon *ius*. Our concern here is primarily with the *ius*-principle, because it applies both to man and to all natural things. For these *res naturales* constitute what is today popularly called "nature"; i.e., the birds, trees, and streams.

Thomas takes one more position that seems significant in this regard. He saves Isadore's distinction between *ius naturale* and *ius positivum* and Isadore's placement of *ius gentium* under the latter (95, 4). The basis for this distinction is that the former is common to all animals, whereas *ius gentium* pertains only to man, and is thus a subdivision of *ius positivum*. While the introduction of Isadore's argument seems somewhat unnecessary at this point, it is repeated with clearer purpose in II-II, 57, 4, where Thomas reveals that its basis is in Ulpian, who distinguishes *ius naturale* from *ius gentium* for precisely the same reason Thomas uses in defending Isadore's distinction (95, 4, ad 1).

The significance of this move is that it reveals a kind of subordination according to the *ius*-principle that is different from that in the *lex*-principle. The *lex*-principle, as we have seen, is hierarchical. The *ius*-principle is direct and universal. God imprints his divine law upon all creatures, and the natural law is simply a reading of that impression. Among all creatures there is a certain instinctual understanding of the *ius naturale*; in man there is in addition a rational expression of that understanding. This is what we mean by *ius positivum* and that subdivision of it called *ius gentium*. In other words, the *ius gentium* is a particularization of the more general *ius positivum*, which is the particular human expression of the *ius naturale*. The *ius naturale* and the *ius positivum* are not, therefore, exclusive categories. Rather, the former is a generic category containing the latter. But the divine promulgation of both proceeds directly by way of impression. According to the *ius*-principle, then, God promulgates the *ius naturale* to creation as a whole, and the *ius positivum* is a particular human reading of the *ius naturale* with the aid of reason.

Here we confront the main issue. When Thomas refers to man's understanding of the natural law as impressed upon his nature, he is speaking explicitly only of man's reading of his own human nature. Thus he speaks of man's inclination which he shares with all other substances, such as preservation, and the inclination he shares with all other animals, such as preservation, and the inclination he shares with all other animals, such as reproduction, the care of offspring, etc. (94, 2). Then he speaks of the nature proper to man as inclining him to know the truth about God and to live in society (94, 2). These three constitute man's reading of his own nature as both rational and animal. What Thomas does not explain explicitly in this passage is rational animal's relationship to the other substances and animals in his universe. He merely notes that in fact man shares in the end of the non-rational natures.

There is, I believe, something important that is implied here, and that has been largely ignored in much contemporary philosophy. In claiming that every being has its own nature given to it by God, and that man does indeed share some of the same ends with non-rational creatures, Thomas is assuming that there is something inherent in the very nature of beings that gives them their own particular meaning and worth. Meaning and worth are not merely the result of an act of man. Human purposes may contribute to the meaning of entities in nature from the human perspective, but the fundamental meaning and value are in nature irrespective of their utility to man. Man, therefore, does not create the values in nature; he relates himself to them. The ethics of nature, consequently, is a relational ethics. But what, precisely, is man's relationship to the *res naturales*, and does this relationship entail certain responsibilities in their regard?

Perhaps one can infer an answer to this question from the difference between the *ius-principle* and the *lex-principle* in the tract *de Lege*. According to the *lex-principle*, man's hierarchical position over the ontologically lesser beings would permit him mastery and dominion over them, as stated in the divine law of revelation (Gen. 1, 28). In the past we have generally derived our morality from this principle. However, the notion of man sharing the *ius naturale* with all the rest of creation implies something different. Precisely as rational animal, man has the ability to read the designs of the *lex divina* in its manifestations to *all levels* of the ontological hierarchy. His ontological position of superiority is thus tempered by his ontological position of participant, by which man, too, must receive, accede to, and share in the *ius naturale* with non-rational beings. Thus, the *ius-principle* requires that man as rational must take account of and integrate himself with the *iura naturalia* of the other animals and substances. The end of *animal rationalis* cannot be in opposition to the ends of *res naturales*. It must somehow include them in a more complete synthesis for which man, precisely as rational, is responsible.

We must recall at this point that Thomas' main concern was *not* to distinguish *lex* and *ius*, but to demonstrate how both were manifestations of the divine reason. Therefore, we should not expect to find any separation between them in the practical order. How are they reconcilable into a single ethical perspective?

The fact that man stands in a position of superiority to all other elements of nature by virtue of the hierarchy of being does not pose any contradiction to the fact that he is a co-equal recipient in the divine "impression" by which God promulgates the natural law to all creatures. What it means is that the faculties which give man his hierarchically superior position, his intellect and will, must be used to pursue ends that are harmonious not only to his own human nature, but to the nature of all things that share with him the impress of the divine law. Man's rational nature, therefore, elevates man only in the sense of the responsibilities that it entails. The *imago Dei* given him by his Creator is not a private gift, but a public (cosmic) trust.

We can, perhaps, even go one step further. Because the impression of divine law

appears in all natural things, which thus share in the natural law according to their distinct natures, man not only has a responsibility to care for nature and not ravage it for fulfillment of his arbitrary whims. He also must respect nature and reverence it as a source of divine revelation. For if God is seen in the things he has made (Rom. 1, 20), then there is in the *ius naturale* of all things a divine presence that demands respect. Among primitive man, this reverence and respect for nature was an essential part of his religious traditions and ceremonies. One took from nature only what was necessary, and then only on condition that one appeased the divine spirits whose domain had been disturbed. For Thomas, the *ius naturale* serves to evoke the same reverence for nature and man's feeling of oneness with it that these more primitive ethical codes and cults achieved through their principle of animism.

In sum, then, there are two things we might take note of in rereading St. Thomas on the natural law with our contemporary problems in mind. First, we can learn that the natural law may require a fundamental reorientation of our values regarding nature. Whereas man's superiority over the rest of nature is still affirmed, we cannot thereby also affirm that nature has value only in respect to man. There is in nature a certain value that merits respect for its own sake, irrespective of its use for man. Nature is not simply part of the media of divine communication, but the locus of divine effects in its own right. When man disrespects nature or shows a lack of reverence towards it, he acts contrary to the natural law.

This does not mean, however, that all human intervention is proscribed. Obviously, man's position of superiority must count for something, too, and intervention in nature is a condition for his very survival. But such intervention may be undertaken only in conjunction with a healthy concern for nature and the values inherent in it. A certain balance must be obtained between man and nature, between his primacy in nature and his common membership in it by natural law.

Secondly, we can learn from this perspective that human actions must take on a wider perspective than merely the human context. Man's relation to man is important, but man's relation to nature is equally important. An ethics with sufficient extension to be serviceable for the Twentieth Century must be a holistic ethics. It must promote an integration and balanced interaction of all the elements that compose reality. From man's perspective, it must promote a human understanding of and sensitivity to the contours of nature, and require that man work out his destiny within these contours and according to them rather than in opposition to them or in disregard of them.

This does not immediately give us answers to pollution, the energy crisis, cloning, or artificial placenta. It does suggest that we look for solutions not only in what is valuable to human purposes, but also to the values within nature itself. For the *res naturales* are not simply a collection of instruments to be used pragmatically or situationally according to immediate, or even long-range human advantage. They are realities with values in themselves. An ethics of nature, therefore, must first of

all promote within man an appreciation of those values and a sensitivity towards them in the whole complex of decisions that build a human civilization. Then the new knowledge and techniques that touch what God has created will also respect the impress of the natural law that He placed there. Only when man acquires a sensitivity to the values inherent in nature and directs his human planning in accord with the contours of natural law will he really respect and reverence nature—his own included—and nature's God.

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